105TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 105–441
Part 1

CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS CREATION ACT

MARCH 13, 1998.—Ordered to be printed

Mr. GEKAS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1704]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1704) to establish a Congressional Office of Regulatory Analysis, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congressional Office of Regulatory Analysis Creation Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) Federal regulations have had a positive impact in protecting the environment and the health and safety of all Americans; however, uncontrolled increases in the costs that regulations place on the economy cannot be sustained;

(2) the legislative branch has a responsibility to see that the laws it passes are properly implemented by the executive branch;

(3) effective implementation of chapter 8 of title 5, United States Code (relating to congressional review of agency rulemaking) is essential to controlling the regulatory burden that the Government places on the economy; and

(4) in order for the legislative branch to fulfill its responsibilities under chapter 8 of title 5, United States Code, it must have accurate and reliable information on which to base its decisions.

SEC. 3. ESTABLISHMENT OF OFFICE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a Congressional Office of Regulatory Analysis (hereinafter in this Act referred to as the "Office"). The Office shall be headed by a Director.

(2) APPOINTMENT.—The Director shall be appointed by the Speaker of the House of Representatives and the majority leader of the Senate without regard to political affiliation and solely on the basis of the Director's ability to perform the duties of the Office.

(3) TERM.—The term of office of the Director shall be 4 years, but no Director shall be permitted to serve more than 3 terms. Any individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of that term may continue to serve until the individual's successor is appointed.

(4) REMOVAL.—The Director may be removed by a concurrent resolution of the Congress.

(5) COMPENSATION.—The Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level III of the Executive Schedule in section 5314 of title 5, United States Code.

(b) PERSONNEL.—The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the House of Representatives.

(c) EXPERTS AND CONSULTANTS.—In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH.—The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government, including the Office of Management and Budget, and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory

agencies and commissions shall promptly furnish the Director any available material which the Director determines to be necessary in the performance of the Director's duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or regulatory agency or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, agency, establishment, or regulatory agency or commission is authorized to provide the Office such services, facilities, and personnel.

(e) RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.—In carrying out the duties and functions of the Office, and for the purpose of coordinating the operations of the Office with those of other congressional agencies with a view to utilizing most effectively the information, services and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data, estimates, and statistics developed by the General Accounting Office, Congressional Budget Office, and the Library of Congress, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comptroller General, the Director of the Congressional Budget Office, and the Librarian of Congress are authorized to provide the Office with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.

(f) APPROPRIATIONS.—There are authorized to be appropriated to the Office to enable it to carry out its duties and functions for fiscal years 1998 through 2006 such sums as may be necessary but not to exceed the amount appropriated to carry out chapter 35 of title 44, United States Code.

SEC. 4. RESPONSIBILITIES.

(a) TRANSFER OF FUNCTIONS UNDER CHAPTER 8 FROM GAO TO OFFICE.—

(1) DIRECTOR'S NEW AUTHORITY.—(A) Section 801 of title 5, United States Code, is amended by striking "Comptroller General" each place it occurs and inserting "Director of the Office".

(B) Section 801(a)(2)(B) of title 5, United States Code, is amended by striking "Comptroller General's" and inserting "Director of the Office's".

(2) DEFINITION.—Section 804 of title 5, United States Code, is amended by adding at the end the following:

"(4) The term 'Director of the Office' means the Director of the Congressional Office of Regulatory Affairs established by section 3 of the Congressional Office of Regulatory Analysis Creation Act.".

(3) MAJOR RULES.—

(A) REGULATORY IMPACT ANALYSIS.—In addition to the assessment of an agency's compliance with the procedural steps for "major" rules described in section 801(a)(2)(A) of title 5, United States Code, the Office will also conduct its own regulatory impact analysis of these "major" rules. This analysis shall include—

(i) a description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits;

(ii) a description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms and the identification of those likely to bear the costs;

(iii) a determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(iv) a description of alternative approaches that could achieve the same regulatory goal at a lower cost, together with an analysis of the potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(v) a summary of how these results differ, if at all, from the results that the promulgating agency received when conducting similar analyses.

(B) TIME FOR REPORT TO COMMITTEES.—Section 801(a)(2)(A) of title 5, United States Code, is amended by striking "15" and inserting "45".

(4) NONMAJOR RULES.—The Office shall conduct a regulatory impact analyses, as defined in paragraph (3)(A), of any nonmajor rule, as defined in section 804(3) of title 5, United States Code, when requested to do so by a committee of the House of Representatives or the Senate, or individual Representative or Senator.

(5) PRIORITIES.—

(A) ASSIGNMENT.—To ensure that analysis of the most significant regulations occurs, the Office shall give first priority to, and is required to conduct analyses of, all "major" rules, as defined in section 804(2) of title 5, United States Code. Secondary priority shall be assigned to requests from committees of the House of Representatives and the Senate. Tertiary priority shall be assigned to requests from individual Representatives and Senators.

(B) DISCRETION TO DIRECTOR OF OFFICE.—The Director of the Office shall have the discretion to assign priority among the secondary and tertiary requests.

(b) TRANSFER OF CERTAIN FUNCTIONS UNDER THE UNFUNDED MANDATES REFORM ACT OF 1995 FROM CBO TO OFFICE.—

(1) COST OF REGULATIONS.—Section 103 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1511) is amended—

(A) in subsection (b), by striking "the Director" and inserting "the Director of the Congressional Office of Regulatory Analysis"; and

(B) in subsection (c), by inserting after "Budget Office" the following: "or the Director of the Congressional Office of Regulatory Analysis".

(2) ASSISTANCE TO THE CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS.—Section 206 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1536) is amended—

(A) by amending the section heading to read as follows: **"SEC. 206. ASSISTANCE TO THE CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS."**; and

(B) in paragraph (2), by striking "the Director of the Congressional Budget Office" and inserting "the Director of the Congressional Office of Regulatory Analysis".

(c) OTHER REPORTS.—In addition to the regulatory impact analyses of major and nonmajor rules described in subsection (a) of this section, the Office shall also issue an annual report on an estimate of the total cost of Federal regulations on the United States economy.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

PURPOSE AND SUMMARY

H.R. 1704, the "Congressional Office of Regulatory Analysis Creation Act," would establish a Congressional Office of Regulatory Analysis ("CORA"). The bill would transfer the functions of the General Accounting Office ("GAO") under the Congressional Review Act and certain functions of the Congressional Budget Office ("CBO") under the Unfunded Mandates Reform Act to CORA. As a research arm of the Congress, CORA would receive copies of all rules issued by federal agencies; do an independent analysis of major rules and (as resources permit) rules for which an analysis is requested by committees and individual Senators and Members; and annually estimate the total cost of regulations to the U.S. economy.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1704 was introduced by Representative Sue Kelly (NY) with Small Business Committee Chairman Jim Talent (MO) as an original cosponsor on May 22, 1997. It was referred to the Judiciary Committee and the Government Reform and Oversight Committee. The bill currently has 43 cosponsors. Senator Richard C. Shelby (AL) introduced a companion bill in the Senate (S. 1675) on February 25, 1998.

The bill was a principal matter considered at the Subcommittee on Commercial and Administrative Law's September 25, 1997 hearing on the role of Congress in administrative rulemaking. Likewise,

H.R. 1704 was the focus of a hearing entitled "Congressional Review Act and its Impact on Small Business," held July 10, 1997 by the Small Business Committee's Subcommittee on Regulatory Reform and Paperwork Reduction.

On February 25, 1998, the Subcommittee on Commercial and Administrative Law approved an amendment in the nature of a substitute offered by Mr. Gekas and reported the amended bill favorably to the Judiciary Committee. The amendment made one change, capping the appropriation for CORA at the level appropriated for the Office of Information and Regulatory Affairs ("OIRA") in the Office of Management and Budget.

The Constitution places all legislative powers with the Congress.[1] While Congress may not delegate its essential legislative functions,[2] it routinely transfers authority to establish rules and regulations to the President and Executive Branch agencies. Consistent with Congress' broad delegations to the Executive Branch, numerous Supreme Court decisions have inferred a broad and encompassing power in the Congress to engage in oversight to enable it to carry out its legislative function.[3]

Although Congress has given broad power to the Executive Branch, Congress has sought both to retain power over the regulatory process and to make that process more open and participatory. To keep the regulatory process open, for example, Congress passed the original Administrative Procedure Act[4] in 1946 with purposes that include "keep[ing] the public currently informed of [agencies'] organization, procedure and rules" and "provid[ing] for public participation in the rulemaking process."[5] Likewise, the Freedom of Information Act[6] requires all agencies to (1) publish certain items of information in the Federal Register, (2) to make available for public inspection and copying certain other items of information, and (3) to make certain information available to any member of the public upon specific request for that information. Another example, the Regulatory Flexibility Act,[7] requires agencies to consider the special needs of small entities and make their analyses of the impacts of proposed rules available for public comment.

To retain direct control of the regulatory process, Congress used the legislative veto for most of this century. The legislative veto allowed one or both Houses of Congress to negate an agency action by passing a simple resolution that did not require the President's signature. When overturned by the Supreme Court's decision in

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[1] U.S. Const. art. 1, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."); *see also* U.S. Const. art. I, § 8 (enumerating powers of Congress).

[2] *Panama Refining* v. *Ryan,* 293 U.S. 388, 430 (1935); *Schechter Poultry* v. *United States,* 295 U.S. 495, 542 (1935).

[3] *See generally* Congressional Research Service, Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry 2 (Apr. 7, 1995); *see also* Congressional Research Service, Congressional Oversight Manual 5 (Feb. 1995).

[4] Administrative Procedure Act, Pub. L. No. 404, 60 Stat. 237 (1946) (codified as revised in scattered sections of 5 U.S.C.).

[5] Tom C. Clark, U.S. Dep't of Justice, Attorney General's Manual on the APA 9 (1947), *reprinted in* Charles Pou, Jr., Admin. Conf. of the U.S., Federal Administrative Procedure Sourcebook: Statutes and Related Materials 75 (2d ed. 1992).

[6] 5 U.S.C. § 552 (1994).

[7] 5 U.S.C. §§ 601–12 (1994).

INS v. *Chadha,* [8] there were as many as 295 legislative veto-type procedures written into federal law. [9]

In recent years, Congress has become increasingly cognizant of regulation and its obligation to oversee the administrative process. This is not without reason. The Office of Management and Budget estimated the total cost of regulation in 1997 to be $279 billion dollars. [10] In calendar year 1997 alone, agencies issued 3,997 new final rules and regulations. [11] Of these, 59 were designated "major" rules, meaning generally that each one had an annual effect on the economy of $100 million dollars or more. [12] The cumulative effect on the economy of just these 59 rules was at least $6 billion dollars. Given the huge economic effects—not to mention non-quantified effects—of regulation, Congress' obligation to oversee regulation is not a trivial responsibility.

Several major efforts at reforming the regulatory process have been introduced and seriously considered in both Houses of Congress. For example, in the 104th Congress, the House passed H.R. 9 and S. 343 was debated extensively on the Senate floor. In this Congress, S. 981 was introduced and reported out of the Senate Governmental Affairs Committee by Senator Thompson (TN). The latter bill would require cost-benefit analyses and risk assessment for major rules, a process for the review of existing rules, and executive oversight of the rulemaking process.

In parallel to efforts at reforming the regulatory process, Congress passed the Congressional Review Act ("CRA") as part of the Small Business Regulatory Enforcement Fairness Act [13] on March 29, 1996 to enhance Congress' authority over regulation. The CRA created a resolution of disapproval mechanism to allow Congress to strike down new regulations of which it disapproves. Unlike the legislative veto in *Chadha,* a CRA resolution must pass both Houses of Congress, so it satisfies the bicameralism and presentment requirements of the Constitution. Any member may introduce a resolution disapproving any agency regulation, and such resolutions may receive expedited consideration. Because a CRA resolution must be approved by the President (whose administration promulgated the rule), however, a resolution may require a veto-proof majority to become law. At present, only a handful of CRA resolutions have been introduced and none has passed either House of Congress. The threat of CRA disapproval resolutions, however, may cause agencies to be more aware of statutory authority and congressional intent. CORA would give Congress more of the information it needs to file credible resolutions of disapproval, and the ex-

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[8] 462 U.S. 919 (1983).

[9] *See id.* at 944 (citing James G. Abourezk, *The Congressional Veto: A Contemporary Response to Executive Encroachment on Legislative Prerogatives,* 52 Ind. L. Rev. 323, 324 (1977)).

[10] OIRA, OMB, Report to Congress on the Costs and Benefits of Federal Regulations (Sept. 30, 1997).

[11] Since March 1996, the Congressional Review Act has required that new final rules and regulations be reported to GAO and Congress. *See infra* note 13 and accompanying text.

[12] Major rules are those having or likely to have: (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. § 804(2).

[13] Pub. L. No. 104–121 (codified at 5 U.S.C. §§ 801–808).

istence of CORA alone would signal Congress' intent to seriously oversee regulation.

In addition to establishing the resolution of disapproval, the CRA requires agencies to submit rules to each House of Congress before they can take effect. It delays the effectiveness of major rules for 60 days [14] and requires the GAO to report within 15 days on the submitting agency's compliance with the procedural requirements that pertain to such rules.

Despite the CRA, Congress is at an inherent disadvantage in its responsibility to oversee regulation. Federal employees creating and enforcing regulations will number 126,000 in fiscal year 1998 and administering the federal regulatory apparatus will cost $17.2 billion dollars. [15] The Legislative Branch may have, at most, a handful of employees systematically monitoring regulation [16] and Congress will invest, by comparison to the Executive Branch, an infinitesimal amount in organized oversight of regulation. The Congressional Office of Regulatory Analysis would assist the Congress with oversight of regulation and the regulatory process. CORA would develop and apply uniform standards for analyzing regulation, an invaluable assistance to committees individually, and Congress as a whole, in overseeing the activities of the Executive Branch.

In addition to providing Congress with an institutional information source, the Committee believes that CORA would have at least one additional salutary effect on agency practices and behavior. Knowing that analyses of rules are subject to independent review, agencies would have added incentive to produce analyses that are more current, detailed, and consistent with scientific and economic standards. The role of CORA vis á vis agencies would be akin to that of CBO vis á vis OMB in budgetary matters. The presence of an informed second opinion, whether antagonistic or not, requires the renderer of the first opinion to produce information of higher quality. CORA's mere existence will cause agencies to do better work.

CORA would not impede regulation. Existing information collection and analysis would be transferred from GAO and CBO without modification, and the analysis done by CORA would inform Congress without affecting the regulatory process.

HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held one day of hearings on H.R. 1704 and a related bill, H.R. 1036. Testimony was received from the following witnesses: Representative Sue Kelly (NY); Representative J.D. Hayworth (AZ); Senator Sam Brownback (KS); Craig Brightup, Director of Government Relations, National Roofing Contractors Association; Profes-

[14] This delay provision is the only part of the CRA that can appropriately be deemed "regulatory reform" because it actually does affect the regulatory process.

[15] *See generally* Christopher Douglas et al., Regulatory Changes and Trends: An Analysis of the 1998 Budget of the U.S. Government (Center for the Study of American Business, Aug. 1997)

[16] The Congressional Review Act requires GAO to receive reports on new, final rules and report to Congress on the procedural soundness of major rules. Disregarding piecemeal committee oversight and GAO's studies-on-request, this is the only systematic Legislative-Branch regulatory oversight known to the Committee.

sor Marci Hamilton, Benjamin N. Cardozo School of Law, Yeshiva University; and Todd Robins, Staff Attorney, U.S. Public Interest Research Group.

COMMITTEE CONSIDERATION

On February 25, 1998, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported the bill H.R. 1704 in the form of an amendment in the nature of a substitute, by a recorded vote of 5 to 3, a quorum being present. On March 3 and 4, 1998, the Committee met in open session and ordered favorably reported the bill H.R. 1704 in the form of an amendment in the nature of a substitute by a recorded vote of 16 to 15, a quorum being present, as follows:

YEAS	NAYS
Mr. Hyde	Mr. Sensenbrenner
Mr. McCollum	Mr. Coble
Mr. Gekas	Mr. Conyers
Mr. Smith (TX)	Mr. Frank
Mr. Gallegly	Mr. Berman
Mr. Canady	Mr. Boucher
Mr. Inglis	Mr. Nadler
Mr. Goodlatte	Mr. Scott
Mr. Buyer	Mr. Watt
Mr. Bryant	Ms. Lofgren
Mr. Chabot	Ms. Jackson Lee
Mr. Jenkins	Mr. Meehan
Mr. Hutchinson	Mr. Delahunt
Mr. Cannon	Mr. Wexler
Mr. Rogan	Mr. Rothman
Mr. Graham	

*Mr. Pease, who was absent on official business announced that had he been present he would have voted aye.

VOTE OF THE COMMITTEE

There were recorded votes on two amendments during the Committee's consideration of H.R. 1704, as follows:

ROLLCALL NO.1

1. An amendment offered by Mr. Meehan to the amendment in the nature of a substitute reported by the Subcommittee regarding the appointment and removal of the Director of CORA. Defeated 12–18.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Sensenbrenner
Mr. Berman	Mr. McCollum
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Smith (TX)
Ms. Lofgren	Mr. Gallegly
Ms. Jackson Lee	Mr. Canady
Mr. Meehan	Mr. Inglis

Mr. Delahunt	Mr. Goodlatte
Mr. Wexler	Mr. Buyer
Mr. Rothman	Mr. Bryant
	Mr. Chabot
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Cannon
	Mr. Rogan
	Mr. Graham

*Mr. Pease, who was absent on official business announced that had he been present he would have voted no.

ROLLCALL NO. 2.

2. The amendment in the nature of a substitute reported by the Subcommittee.

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Sensenbrenner	Mr. Frank
Mr. McCollum	Mr. Berman
Mr. Gekas	Mr. Boucher
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Gallegly	Mr. Watt
Mr. Canady	Ms. Lofgren
Mr. Inglis	Ms. Jackson Lee
Mr. Goodlatte	Mr. Meehan
Mr. Buyer	Mr. Delahunt
Mr. Bryant	Mr. Wexler
Mr. Chabot	Mr. Rothman
Mr. Jenkins	
Mr. Hutchinson	
Mr. Cannon	
Mr. Rogan	
Mr. Graham	

*Mr. Pease, who was absent on official business announced that had he been present he would have voted aye.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that 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.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1704, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 13, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1704, the Congressional Office of Regulatory Analysis Creation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mary Maginniss, who can be reached at 226–2860.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Hon. John Conyers, Jr.
Ranking Minority Member.

H.R. 1704—Congressional Office of Regulatory Analysis Creation Act

Summary

H.R. 1704 would create a Congressional Office of Regulatory Analysis (CORA), to provide the Congress an independent analysis of the costs and benefits of rules that agencies issue as part of the regulatory process. The bill also would require CORA to report annually on the total cost of federal regulations to the U.S. economy. It would transfer to CORA certain functions now assigned to the General Accounting Office (GAO) and the Congressional Budget Office (CBO).

The cost of operating CORA would depend on the way in which it would be expected to carry out its responsibilities. If it is to perform rigorous, independent, and comprehensive regulatory analyses, we expect that its costs would be at least $30 million a year, However, H.R. 1704 would authorize annual funding for CORA at a level "not to exceed the amount appropriated" for the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB)—about $5 million a year. For that sum, analyses would have to consist largely of reviews of agency studies, rather than original analyses.

Enacting H.R. 1704 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 1704 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government

H.R. 1704 would establish a new Congressional office, CORA, to conduct its own regulatory analysis of all major rules, and, upon request of a Member of Congress or a committee, any nonmajor rule. The Speaker of the House and the Majority Leader of the Senate would appoint the director, who could serve up to three terms of four years each. The director would be authorized to hire staff, experts, and consultants, and to secure data and support from executive and Confessional agencies. The bill would transfer to the director certain functions of the CBO, which, under the Unfunded Mandates Act (Public Law 104–4), is required, if requested, to compare its cost estimates for regulations with those transmitted by OMB. It also would transfer to CORA the responsibility of the General Accounting Office to review procedures that federal agencies follow in preparing regulations as required by the Congressional Review Act (Public Law 104–21).

Unlike GAO's limited review of procedures, section 4 of the bill would require CORA to conduct its own analysis of major regulations issued by federal agencies and to prepare an estimate each year of the costs ant benefits of complying win federal regulations. Descriptions of alternative approaches, along win Heir costs and benefits, would also be included in the analysis. In a CBO study of 85 regulatory impact analyses, *Regulatory Impact Analysis: Costs at Selected Agencies and Implications for the Legislative Process* (March 1997), CBO determined that the cost and time to conduct an independent regulatory impact analysis (RIA) varied greatly depending upon the scope and complexity of the rule being analyzed, the nature of the information required to perform the RIA, and the degree of political consensus surrounding the rule. the costs of the RIAs examined were as low as $14,000 and as high as $6 million, and the time required to complete the RIAs ranged from six weeks to ore than 12 years. Agencies propose about 500 to 600 rules each year, and about 60 qualify as major rulings. Because the CBO study did not attempt to obtain a representative sample of RIAs, we cannot derive the cost of a "typical" or "average" RIA. Nonetheless, based on the CBO study and information from GAP and OMB, and assuming that roughly 60 major rules are issued a year, we concluded that CORA would require funding of at least $30 million annually to conduct comprehensive, independent RIAs. the total cost could increase if agencies complete more than 60 rules annually or if a few very expensive analyses pushed the total costs higher.

H.R. 1704 would authorize the appropriation of such sums as necessary through 2006 to carry out the duties of the new office, but would limit the annual funding to amounts appropriated to OIRA. This level of resources suggests that rather than conducting an independent analysis for each major ruling, CORA would instead draw upon data provided by the agencies and would review

the methodology and comment on the costs and benefits of the rule. OMB has allocated $5.1 million from its 1998 appropriation to fund OIRA, and the president is requesting $5.2 million for 1999 to pay expenses and salaries for 47 employees of the office. (the funding level also covers OIRA's responsibilities under the Paperwork Reduction Act of 1995 to review proposals of agencies to collect data.) CBO estimates that implementing H.R. 1704 but limiting its funding to levels consistent with OIRA would cost $25 million over the 1999–2003 period (if funding for CORA is maintained at the 1998 level provided to OIRA) or $28 million over the five-year period (if funding is adjusted annually for inflation). Public Law 104–13 authorizes $8 million annually in each of the fiscal years 1999 through 2001 for OIRA.

We estimate that GAO would save about $500,000 begging in 1999 if its regulatory review functions were shifted to CORA. CBO currently catalogues RIAs but has received no requests to date to prepare a cost estimate for an RIA; as a result, we would expect savings in CBO spending would be negligible if H.R. 1705 is enacted.

Pay-As-You-Go Considerations:

None.

Intergovernmental and Private-Sector Impact

H.R. 1704 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state,local, or tribal governments.

Estimate Prepared By:

Mary Maginniss (226–2860).

Estimate Approved By:

Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 1 and Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Sec. 1 Short Title. This section entitles the bill the "Congressional Office of Regulatory Analysis Creation Act."

Sec. 2 Findings. This section lays out Congress' findings relating to the bill.

Sec. 3 Establishment of Office. This section establishes the Congressional Office of Regulatory Analysis ("CORA"). The Director of CORA is appointed by the Speaker of the House and the Majority Leader of the Senate without regard to political affiliation and solely on the basis of merit. The Director may be removed by a concurrent resolution of Congress. The procedure for both appointment and removal of the Director is modeled directly on the procedure

used for the Congressional Budget Office. The Director may serve a maximum of three four-year terms.

The Director is given power to appoint, fix compensation, and assign duties to personnel without regard to political affiliation and solely on the basis of merit. Employees of CORA are treated as employees of the House of Representatives. The Director is also empowered to hire experts and consultants on a temporary basis.

The Director is given power to secure information, data, estimates, and statistics from all departments, agencies, and establishments of the Executive Branch, including the Office of Management and Budget and all regulatory agencies and commissions. Executive Branch agencies must promptly furnish information to CORA. This is intended to give CORA the maximum access to information that CORA deems appropriate and useful to its mission.

The lone exception to CORA's power to access information is where disclosure would violate the law. This refers to instances in which disclosure is specifically barred by statute because, for example only, disclosure would threaten national security or reveal private entities' personal or proprietary information. This exception does not include information regarded by an agency as tentative, internal, or in "draft" form.

Upon agreement, the Director may utilize the services, facilities, and personnel of Executive Branch departments, agencies, and establishments. Executive Branch entities may provide such services, facilities, and personnel.

The Director may obtain information developed by the General Accounting Office, the Congressional Budget Office, and the Library of Congress, and, upon agreement, use the services of these entities. The bill authorizes the General Accounting Office, the Congressional Budget Office, and the Library of Congress to provide such information and services, facilities, and personnel.

Appropriations are authorized for CORA, but they are capped at the amount appropriated for the Office of Information and Regulatory Affairs ("OIRA") in the Office of Management and Budget. OIRA is authorized at $8 million dollars until 2001, and its fiscal 1998 appropriation is $5 million dollars.[17] The appropriation for CORA could only increase beyond this amount if Congress considered it worthwhile to bestow equal dollars on the Executive Branch's regulatory clearinghouse. This reflects the Committee's intention not to create an expansive bureaucratic agency in the Legislative Branch. While decisions about the source of funds are the province of others, the Committee believes it appropriate for some level of funding to be transferred from GAO and CBO to CORA consistent with the movement of responsibilities.

Within this limited appropriation, CORA would be able to carry out its mandated functions. OIRA reviewed thousands of rules per year during 1982–1993.[18] CORA would do a more thorough analy-

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[17] 44 U.S.C. § 3520; Treasury and General Government Appropriations Act, 1998, Pub. L. No. 105–61.

[18] OIRA, OMB, *More Benefits, Fewer Burdens: Creating a Regulatory System that Works for the American People (A Report to the President on the Third Anniversary of Executive Order 12866)* A–1 (Dec. 1996). The proportion of rules returned to the agencies for reconsideration by OIRA has also dropped. Between 1981 and September 30, 1993, OIRA returned an average of about 1.3 percent of the rules it reviewed. Between October 1, 1993 and June 30, 1996, OIRA

Continued

sis than OIRA, but only on major rules (on average, less than 100 per year) and those that are reviewed by request. As discussed in more detail below, CORA would begin to analyze major rules well before they were finalized, and it would review (and usually adopt) agencies' statistics and methodologies, in addition to using its independent expertise and judgement.

Sec. 4 Responsibilities. This section transfers the responsibilities of the General Accounting Office under the Congressional Review Act ("CRA") to CORA. This includes receiving copies of new agency rules and reporting to Congress on agencies' compliance with procedural requirements pertaining to promulgation of major rules. The time for reporting on agencies' compliance is extended from 15 to 45 days.

In addition, CORA will conduct its own analyses of rules deemed "major" by the Office of Management and Budget under the CRA. These analyses would determine and/or describe: potential benefits, including those not quantifiable in monetary terms, and likely beneficiaries; potential costs, including those not quantifiable in monetary terms, and likely bearers of those costs; potential net benefits of the rule, including an evaluation of effects not quantifiable in monetary terms; a description of alternative approaches for achieving the same regulatory goal at a lower cost, together with an analysis of the potential benefits and costs of such alternatives, and a brief explanation of legal reasons why such alternatives, if proposed, could not be adopted; and a summary of how these results differ from any analyses put out by the promulgating agency. CORA would conduct analyses of non-major rules by request of committees and members of the House and Senate, giving priority, after major rules, to requests by committees, then to individual members. The Director is explicitly given discretion to assign priority among requests for analyses.

As discussed earlier, CORA would have broad access to information from Executive Branch agencies. The Committee anticipates that CORA would use its access to information in at least two ways to perform timely and relatively inexpensive analyses:

First, CORA would begin to analyze major rules well in advance of the time that the rule became final. By specifically requesting that agencies notify CORA of pending major rules or by monitoring the Federal Register (among myriad options), CORA could thoroughly inform itself of the pendency of major rules. It would begin its review of these rules early enough to complete and report its analysis to Congress in a timely fashion.

Second, CORA would review and should usually have good reason to adopt the statistics and methodologies used by the agency, in addition to bringing its own expertise and judgment to bear. Some debates and press accounts dealing with the bill have assumed that the analysis performed by CORA would be equivalent to other kinds of regulatory analyses. Reference has been made to a Congressional Budget Office study documenting the costs of regulatory impact analyses done by agencies under Executive Order

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returned 0.2 percent (5 out of 2,366) of the rules it reviewed. General Accounting Office, *Regulatory Reform: Implementation of the Regulatory Review Executive Order* 10–11 (Sept. 25, 1996) (GAO/T–GGD–96–185).

12866 and the Unfunded Mandates Reform Act.[19] The term "regulatory impact analysis" used in the bill is not a term of art. The scope of analysis is defined in the bill, which does not incorporate the requirements of any other statute or Executive Order. As CORA would review and use information obtained from the agencies, neither the costs nor the time-frames discussed in the CBO study are apposite to CORA.

H.R. 1704 transfers certain responsibilities of the Congressional Budget Office under the Unfunded Mandates Reform Act of 1995 to CORA. On request, CORA would compare agency-prepared estimates of the costs of regulations to implement a law and CBO estimates prepared when the law was enacted. As any office must do in a regime of limited resources, the Director would accommodate as much of what is requested of CORA consistent with its funding levels. CORA would also receive compiled statements on significant regulatory actions from OMB.

In addition, CORA would issue an annual report estimating the total cost of federal regulations to the U.S. economy. Like its analyses of major regulations, CORA would not start this report yearly "from scratch," but, rather, would make use of Executive Branch information, including the reports issued by the Office of Management and Budget under the Stevens Amendments,[20] which, for two years, have required a report on the cumulative costs and benefits of regulation. Recognizing how costly and time-consuming such an endeavor can be, the Committee expects that CORA would develop and refine its information and methodologies over many years.

Sec. 5 Effective Date. This section makes the Act effective 180 days from enactment.

AGENCY VIEWS

No agency views were received by the Committee.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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[19] Congressional Budget Office, Regulatory Impact Analysis: Costs at Selected Agencies and Implications for the Legislative Process (Mar. 1997).

[20] *See supra* note 10; Treasury and General Government Appropriations Act, Pub. L. No. 105–61, § 625; Treasury, Postal Services, and General Government Appropriations Act, Pub. L. No. 104–208, § 645.

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

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§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the [Comptroller General] *Director of the Office* a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the [Comptroller General] *Director of the Office* and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The [Comptroller General] *Director of the Office* shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of [15] *45* calendar days after the submission or publication date as provided in section 802(b)(2). The report of the [Comptroller General] *Director of the Office* shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the [Comptroller General] *Director of the Office* by providing information relevant to the [Comptroller General's] *Director of the Office's* report under subparagraph (A).

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§ 804. Definitions

For purposes of this chapter—

(1) * * *

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(4) The term "Director of the Office" means the Director of the Congressional Office of Regulatory Affairs established by

section 3 of the Congressional Office of Regulatory Analysis Creation Act.

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UNFUNDED MANDATES REFORM ACT OF 1995

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TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

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SEC. 103. COST OF REGULATIONS.

(a) * * *

(b) STATEMENT OF COST.—At the request of a committee chairman or ranking minority member, **[**the Director**]** *the Director of the Congressional Office of Regulatory Analysis* shall, to the extent practicable, prepare a comparison between—

(1) an estimate by the relevant agency, prepared under section 202 of this Act, of the costs of regulations implementing an Act containing a Federal mandate; and

(2) the cost estimate prepared by the Congressional Budget Office for such Act when it was enacted by the Congress.

(c) COOPERATION OF OFFICE OF MANAGEMENT AND BUDGET.—At the request of the Director of the Congressional Budget Office *or the Director of the Congressional Office of Regulatory Analysis*, the Director of the Office of Management and Budget shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by part B of title IV of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act).

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TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

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[SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.]

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to **[**the Director of the Congressional Budget Office**]** *the Director of the Congressional Office of Regulatory Analysis* on a reasonably timely basis after promulgation of the general notice of pro-

posed rulemaking or of the final rule for which the statement was prepared.

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DISSENTING VIEWS TO H.R. 1704

H.R. 1704 sets up a costly new bureaucracy to complete analyses already performed by agencies in the Executive Branch and the Legislative Branch. Because there is no justification for this repetitive new bureaucracy, we oppose its creation.

New regulations are already subject to extensive and costly review by all three branches of government. Before an Executive Branch agency addresses the requirements of Congress with regard to new regulations, the requirements of Executive Order 12866[1] must be satisfied. Among other things, the Executive Order requires that:

agencies are to regulate only upon reasoned determination that benefits justify costs;

all significant regulations are to be submitted to OMB, but only economically significant (i.e. those having an annual effect on the economy of $100 million or more) regulations are to undergo OMB review;

agencies are to choose regulatory objectives to address significant problems or compelling public needs; they are to choose regulatory approaches that maximize net benefits and minimize burdens for society and that are designed in the most cost-effective manner;

agencies are to include in their annual regulatory plans comments regarding risk analysis;

agencies are periodically to submit to OMB a plan to review existing regulations;

a newly created Regulatory Working Group is to serve as a forum to assist agencies in identifying and analyzing important regulatory issues: and

the Office of Information and Regulatory Affairs ("OIRA") is to disclose communications with agencies and private citizens regarding rules submitted for review.

Additionally, each agency head is required to designate a Regulatory Policy Officer who is to be involved in each stage of the regulatory process to further the aims of the Executive Order.

Further review is afforded by the federal courts, which, as a coequal branch of government, have exercised effective oversight. Congress, as another coequal branch of government, enacts the laws, passes annual appropriations, and holds oversight hearings. We also impose tremendous demands on the Executive Branch agencies under the Congressional Review Act ("CRA")[2] to provide reams of paper on new regulations. We have the General Accounting Office ("GAO") to review programs and provide other technical analysis on agency action. In addition, we have the Congressional Budget Office ("CBO") to do detailed economic analysis.

The Congressional Review Act requires all agencies promulgating a covered rule to submit a report to Congress and to the Comptrol-

[1] Exec. Order No. 12,866, 3 C.F.R. § 638 (1993).
[2] Pub.L. 104–121, Title II, § 251, Mar. 29, 1996, 110 Stat. 868, 5 U.S.C. §§ 801–808 (1996).

ler General ("CG") containing a copy of the rule, a concise general statement describing the rule (including whether it is deemed to be a major rule), and the proposed effective date of the rule.[3] In addition, the promulgating agency must submit to the CG (1) a complete copy of any cost-benefit analysis; (2) a description of the agency's actions pursuant to the requirements of the Regulatory Flexibility Act and the Unfunded Mandates Reform Act of 1995; and (3) any other relevant information required under any other act or executive order. Such information must also be made available to each House.[4]

The majority, not satisfied with the elaborate, painstaking, and extremely expensive reviews that are being performed already, has proposed a new agency, a so-called Congressional Office of Regulatory Analysis ("CORA") that would repeat those reviews. While the majority attempts to downplay the costs associated with the reviews this new agency would perform, in fact, the Congressional Budget Office has already examined the question and determined that such analyses, as they are already performed by executive branch agencies, cost an average of $570,000 per major regulation.[5]

SUMMARY OF CORA'S FUNCTIONS

Under the proposed legislation, the Directorship of CORA is supposedly nonpartisan, although the reality is that it is to be filled by the Speaker of the House and the Majority Leader of the Senate.[6] The Director would have the authority to appoint staff and hire experts and consultants. The Director would have the authority to direct all executive branch agencies to "promptly furnish the Director any available material which the Director determines to be necessary in the performance of the Director's duties and functions (other than material the disclosure of which would be a violation of law)."[7] The bill authorizes, for fiscal years 1998 through 2006, such sums as may be necessary, but not to exceed the amount appropriated to carry out chapter 35 of title 44, United States Code (i.e., the operation of OIRA), or approximately $5 million per year.[8]

For major rules, CORA would be required to assess an agency's compliance with the procedural steps set out in the CRA. CORA would also perform its own "regulatory impact analysis" which would include an analysis of the costs, benefits, net benefits, and alternative approaches that could achieve the same regulatory goal at a lower cost, together with an analysis of the potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted, and a summary of how CORA's findings differ, if at all, from the results that the promulgating agency received. The bill increases from 15 days to 45 days the time CORA (previously GAO) had to review the agencies' major rule submissions.[9] For non-major rules, CORA must perform

[3] *Id.* § 801(a)(1)(A).
[4] *Id.* § 801(a)(1)(B).
[5] Congressional Budget Office, *Regulatory Impact Analysis: Costs at Selected Agencies and Implications for the Legislative Process,* viii (March 1997).
[6] H.R. 1704, 105th Cong. § 3(a)(2)(1998).
[7] *Id.* § 3(d).
[8] *Id.* § 3(f).
[9] *Id.* § 4(a)(3).

a similar analysis at the request of a committee, but it has the authority to prioritize such requests.[10]

CORA is also assigned the task of comparing an agency's estimate of the cost of implementing a regulation with CBO's original estimate for the Act when it was enacted by Congress. CORA would share with CBO the right to request information from OMB.[11]

I. CORA is unnecessary.

Congress does not use its current authority to exercise control over the regulatory process. Since enactment of CRA, only six Joint Resolutions of Disapproval have been introduced and only one voted on. In that one instance, S.J. Res. 60 was brought up on September 17, 1996, and was, by unanimous consent, deemed not passed.[12] The purpose of the exercise was to allow a rule of the Health Care Financing Agency which increased payments to doctors and hospitals to take effect immediately rather than waiting the required 60 days. Accordingly, one may wonder whether there is real interest in Congress in reviewing every rule in this manner, or whether a more precise tool should be devised to address a more specific problem.

A witness called by the Majority, Prof. Marci Hamilton, observed at the Subcommittee's hearing on this legislation, "Let me just add, I think CRA is a bit of a problem, and the reason is because it doesn t solve the failure to take responsibility. It creates a mini-bureaucracy in the legislative branch. I am not sure a new small bureaucracy is going to solve a huge bureaucracy problem."[13]

If the Congress objects to any regulation, it already has ample authority to change it under current law. Yet, instead of exercising the responsibility to take these politically difficult votes, the majority instead proposes a costly, duplicative, and unnecessary bureaucracy.

II. CORA would be a very costly project.

A recent CBO analysis found, "[b]ased on a sample of 85 Regulatory Impact Analyses (RIAs) that the average cost [of reviewing a major regulation] was about $570,000, ... The median cost (the value below which half of the costs per RIA are found) was $270,000."[14] Taking an average CBO estimate of $570,000 per RIA, and its estimated 2.2 staff FTEs per RIA, and considering that Congress has received 93 major rules Congress since last March, the new Office would need a budget of over $35 million and a staff of more than 135 analysts.

If the purpose of CORA is simply to do a paper review to ensure that agencies have followed the required procedural steps (which is what GAO now does under CRA) then the cost might not be great—although the possible benefit of CORA then becomes mini-

[10] *Id.* § 4(a)(4–5).
[11] *Id.* § 4(b).
[12] S.J. Res. 60, 104th Cong., 142 Cong. Rec. S10723 (daily ed. Sep. 17, 1996) .
[13] *Hearing on the Role of Congress in Monitoring Administrative Rulemaking Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 105th Cong. (1997) (testimony of Prof. Marci Hamilton) (hereinafter, *"Subcommittee Hearing").*
[14] Congressional Budget Office, *supra* note 5, at viii.

mal. If, however, CORA is expected to do its own independent analyses, the cost to be anticipated would be much greater.

III. The real reason for CORA appears to be dissatisfaction with the substance of agency rule making.

It can be argued that the real driving force behind this legislation is the majority's dissatisfaction with the policies contained in new regulations rather than the procedures used to formulate and implement them. In addition to the Subcommittee's hearing on CORA, at which OSHA and EPA regulations were criticized by a representative of the roofing industry,[15] the Subcommittee has held two hearings at which the Environmental Protection Agency's National Ambient Air Quality Standards were criticized by industry witnesses.[16]

Indeed, some in the Majority have sought to oust their own in-house analysts when their independent reviews failed to support the Majority's policy preferences. In a recent well publicized incident, an effort was mounted to oust Congressional Budget Office Director June E. O Neill by members of the Majority who felt some of their proposals should be scored differently.[17] Commenting on this situation, *The Hill* editorialized, Perhaps it is naive to argue that the CBO should be above the political fray. But Congress and its leaders risk damaging their own credibility when they bring pressure on the CBO to produce budget projections that support their political ideology."[18] Presumably, the majority believes if it asks a question enough times, it will eventually get the answer it wants.

IV. CORA lacks public accountability and could lead to the defeat of critical public protections.

Federal agencies are bound by the Administrative Procedure Act ("APA"), which sets forth requirements such as notice and opportunities for public comment to ensure openness and to build a record on which agency action can be judicially reviewed. CORA, however, would not be bound by the APA. Consequently, important decisions at CORA regarding the costs and benefits of an agency rule could be made without public input. CORA therefore is more likely to be used as a tool to advance a political agenda than as a source of objective analysis.[19]

CONCLUSION

Not content to complain, obstruct, and otherwise try to hinder federal agencies as they work to enforce laws protecting the environment, public health, and worker safety, the majority now sees fit to place yet another bureaucratic obstacle in the path of agency

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[15] *Subcommittee Hearing, supra* note 13, at 59 (Testimony of Craig Brightup).

[16] *See Oversight Hearing Regarding the Congressional Review Act Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 105th Cong. (1997); *Oversight Hearing on the EPA's Rulemaking on the National Ambient Air Quality Standards for Particulate Matter and Ozone Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 105th Cong. (1997).

[17] A.B. Stoddard, *GOP Ready to Dump CBO Chief; June O Neill at Odds with Leaders on Economic Forecasts and Policies,* The Hill, Jan. 7, 1998, at 1.

[18] *Done in by Dynamic Scoring,* The Hill, Jan. 14, 1998, at 14.

[19] *See Subcommittee Hearing, supra* note 13 (testimony of Todd Robins, attorney for the U.S. Public Interest Research Group).

action. Instead of complaining about the rules and setting up another redundant and costly bureaucracy, Members of Congress have a constitutional obligation to have the courage of their convictions to exercise the power they already have. As a first step, members could do something that has not been done since the enactment of the Congressional Review Act: take a vote on one of the regulations, take some responsibility for their beliefs in the light of day. That is what the taxpayers pay us to do.

If any Committee has any questions about regulations, or if a Committee wants to check the work an agency has done, the GAO and the CBO are available. Despite occasional complaining from the majority about their results, they are independent and they work for us. They can provide the analysis Congress needs to make the decisions that we are charged with making under the Constitution.

We oppose the creation of a costly, unneeded bureaucracy, and dissent from the adoption of H.R. 1704.

JOHN CONYERS, JR.
HOWARD L. BERMAN.
JERROLD NADLER.
ROBERT C. SCOTT.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
STEVEN R. ROTHMAN.

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