

FEDERAL COMMUNICATIONS COMMISSION PROCESS
REFORM ACT OF 2013

JANUARY 31, 2014.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 3675]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3675) to amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Communications Commission Process Reform Act of 2013”.

SEC. 2. FCC PROCESS REFORM.

(a) **IN GENERAL.**—Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 12 the following new section:

“SEC. 13. TRANSPARENCY AND EFFICIENCY.

“(a) **INITIAL RULEMAKING AND INQUIRY.**—

“(1) **RULEMAKING.**—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2013, the Commission shall complete a rulemaking proceeding and adopt procedural changes to its rules to maximize opportunities for public participation and efficient decisionmaking.

“(2) **REQUIREMENTS FOR RULEMAKING.**—The rules adopted under paragraph (1) shall—

“(A) set minimum comment periods for comment and reply comment, subject to a determination by the Commission that good cause exists for departing from such minimum comment periods, for—

“(i) significant regulatory actions, as defined in Executive Order 12866; and

“(ii) all other rulemaking proceedings;

“(B) establish policies concerning the submission of extensive new comments, data, or reports towards the end of the comment period;

“(C) establish policies regarding treatment of comments, ex parte communications, and data or reports (including statistical reports and reports to Congress) submitted after the comment period to ensure that the public has adequate notice of and opportunity to respond to such submissions before the Commission relies on such submissions in any order, decision, report, or action;

“(D) establish procedures for publishing the status of open rulemaking proceedings and proposed orders, decisions, reports, or actions on circulation for review by the Commissioners, including which Commissioners have not cast a vote on an order, decision, report, or action that has been on circulation for more than 60 days;

“(E) establish deadlines (relative to the date of filing) for—

“(i) in the case of a petition for a declaratory ruling under section 1.2 of title 47, Code of Federal Regulations, issuing a public notice of such petition;

“(ii) in the case of a petition for rulemaking under section 1.401 of such title, issuing a public notice of such petition; and

“(iii) in the case of a petition for reconsideration under section 1.106 or 1.429 of such title or an application for review under section 1.115 of such title, issuing a public notice of a decision on the petition or application by the Commission or under delegated authority (as the case may be);

“(F) establish guidelines (relative to the date of filing) for the disposition of petitions filed under section 1.2 of such title;

“(G) establish procedures for the inclusion of the specific language of the proposed rule or the proposed amendment of an existing rule in a notice of proposed rulemaking; and

“(H) require notices of proposed rulemaking and orders adopting a rule or amending an existing rule that—

“(i) create (or propose to create) a program activity to contain performance measures for evaluating the effectiveness of the program activity; and

“(ii) substantially change (or propose to substantially change) a program activity to contain—

“(I) performance measures for evaluating the effectiveness of the program activity as changed (or proposed to be changed); or

“(II) a finding that existing performance measures will effectively evaluate the program activity as changed (or proposed to be changed).

“(3) **INQUIRY.**—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2013, the Commission shall complete an inquiry to seek public comment on whether and how the Commission should—

“(A) establish procedures for allowing a bipartisan majority of Commissioners to place an order, decision, report, or action on the agenda of an open meeting;

“(B) establish procedures for informing all Commissioners of a reasonable number of options available to the Commission for resolving a petition, complaint, application, rulemaking, or other proceeding;

“(C) establish procedures for ensuring that all Commissioners have adequate time, prior to being required to decide a petition, complaint, application, rulemaking, or other proceeding (including at a meeting held pursuant to section 5(d)), to review the proposed Commission decision document, including the specific language of any proposed rule or any proposed amendment of an existing rule;

“(D) establish procedures for publishing the text of agenda items to be voted on at an open meeting in advance of such meeting so that the public has the opportunity to read the text before a vote is taken;

“(E) establish deadlines (relative to the date of filing) for disposition of applications for a license under section 1.913 of title 47, Code of Federal Regulations;

“(F) assign resources needed in order to meet the deadlines described in subparagraph (E), including whether the Commission’s ability to meet such deadlines would be enhanced by assessing a fee from applicants for such a license; and

“(G) publish each order, decision, report, or action not later than 30 days after the date of the adoption of such order, decision, report, or action.

“(4) DATA FOR PERFORMANCE MEASURES.—The Commission shall develop a performance measure or proposed performance measure required by this subsection to rely, where possible, on data already collected by the Commission.

“(b) PERIODIC REVIEW.—On the date that is 5 years after the completion of the rulemaking proceeding under subsection (a)(1), and every 5 years thereafter, the Commission shall initiate a new rulemaking proceeding to continue to consider such procedural changes to its rules as may be in the public interest to maximize opportunities for public participation and efficient decisionmaking.

“(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

“(1) IN GENERAL.—Notwithstanding section 552b of title 5, United States Code, a bipartisan majority of Commissioners may hold a meeting that is closed to the public to discuss official business if—

“(A) a vote or any other agency action is not taken at such meeting;

“(B) each person present at such meeting is a Commissioner, an employee of the Commission, a member of a joint board or conference established under section 410, or a person on the staff of such a joint board or conference or of a member of such a joint board or conference; and

“(C) an attorney from the Office of General Counsel of the Commission is present at such meeting.

“(2) DISCLOSURE OF NONPUBLIC COLLABORATIVE DISCUSSIONS.—Not later than 2 business days after the conclusion of a meeting held under paragraph (1), the Commission shall publish a disclosure of such meeting, including—

“(A) a list of the persons who attended such meeting; and

“(B) a summary of the matters discussed at such meeting, except for such matters as the Commission determines may be withheld under section 552b(c) of title 5, United States Code.

“(3) PRESERVATION OF OPEN MEETINGS REQUIREMENTS FOR AGENCY ACTION.—Nothing in this subsection shall limit the applicability of section 552b of title 5, United States Code, with respect to a meeting of Commissioners other than that described in paragraph (1).

“(d) ACCESS TO CERTAIN INFORMATION ON COMMISSION’S WEBSITE.—The Commission shall provide direct access from the homepage of its website to—

“(1) detailed information regarding—

“(A) the budget of the Commission for the current fiscal year;

“(B) the appropriations for the Commission for such fiscal year; and

“(C) the total number of full-time equivalent employees of the Commission; and

“(2) the performance plan most recently made available by the Commission under section 1115(b) of title 31, United States Code.

“(e) FEDERAL REGISTER PUBLICATION.—

“(1) IN GENERAL.—In the case of any document adopted by the Commission that the Commission is required, under any provision of law, to publish in the Federal Register, the Commission shall, not later than the date described in paragraph (2), complete all Commission actions necessary for such document to be so published.

“(2) DATE DESCRIBED.—The date described in this paragraph is the earlier of—

“(A) the day that is 45 days after the date of the release of the document; or

“(B) the day by which such actions must be completed to comply with any deadline under any other provision of law.

“(3) NO EFFECT ON DEADLINES FOR PUBLICATION IN OTHER FORM.—In the case of a deadline that does not specify that the form of publication is publication in the Federal Register, the Commission may comply with such deadline by publishing the document in another form. Such other form of publication does not relieve the Commission of any Federal Register publication requirement applicable to such document, including the requirement of paragraph (1).

“(f) CONSUMER COMPLAINT DATABASE.—

“(1) IN GENERAL.—In evaluating and processing consumer complaints, the Commission shall present information about such complaints in a publicly available, searchable database on its website that—

“(A) facilitates easy use by consumers; and

“(B) to the extent practicable, is sortable and accessible by—

“(i) the date of the filing of the complaint;

“(ii) the topic of the complaint;

“(iii) the party complained of; and

“(iv) other elements that the Commission considers in the public interest.

“(2) DUPLICATIVE COMPLAINTS.—In the case of multiple complaints arising from the same alleged misconduct, the Commission shall be required to include only information concerning one such complaint in the database described in paragraph (1).

“(g) FORM OF PUBLICATION.—

“(1) IN GENERAL.—In complying with a requirement of this section to publish a document, the Commission shall publish such document on its website, in addition to publishing such document in any other form that the Commission is required to use or is permitted to and chooses to use.

“(2) EXCEPTION.—The Commission shall by rule establish procedures for redacting documents required to be published by this section so that the published versions of such documents do not contain—

“(A) information the publication of which would be detrimental to national security, homeland security, law enforcement, or public safety; or

“(B) information that is proprietary or confidential.

“(h) TRANSPARENCY RELATING TO PERFORMANCE IN MEETING FOIA REQUIREMENTS.—The Commission shall take additional steps to inform the public about its performance and efficiency in meeting the disclosure and other requirements of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), including by doing the following:

“(1) Publishing on the Commission’s website the Commission’s logs for tracking, responding to, and managing requests submitted under such section, including the Commission’s fee estimates, fee categories, and fee request determinations.

“(2) Releasing to the public all decisions made by the Commission (including decisions made by the Commission’s Bureaus and Offices) granting or denying requests filed under such section, including any such decisions pertaining to the estimate and application of fees assessed under such section.

“(3) Publishing on the Commission’s website electronic copies of documents released under such section.

“(4) Presenting information about the Commission’s handling of requests under such section in the Commission’s annual budget estimates submitted to Congress and the Commission’s annual performance and financial reports. Such information shall include the number of requests under such section the Commission received in the most recent fiscal year, the number of such requests granted and denied, a comparison of the Commission’s processing of such requests over at least the previous 3 fiscal years, and a comparison of the Commission’s results with the most recent average for the United States Government as published on www.foia.gov.

“(i) PROMPT RELEASE OF STATISTICAL REPORTS AND REPORTS TO CONGRESS.—Not later than January 15th of each year, the Commission shall identify, catalog, and publish an anticipated release schedule for all statistical reports and reports to Congress that are regularly or intermittently released by the Commission and will be released during such year.

“(j) ANNUAL SCORECARD REPORTS.—

“(1) IN GENERAL.—For the 1-year period beginning on January 1st of each year, the Commission shall prepare a report on the performance of the Commission in conducting its proceedings and meeting the deadlines established under subsection (a)(2)(E) and the guidelines established under subsection (a)(2)(F).

“(2) CONTENTS.—Each report required by paragraph (1) shall contain detailed statistics on such performance, including, with respect to each Bureau of the Commission—

“(A) with respect to each type of filing specified in subsection (a)(2)(E) or (a)(2)(F)—

“(i) the number of filings that were pending on the last day of the period covered by such report;

“(ii) the number of filings described in clause (i) for which each applicable deadline or guideline established under such subsection was not met and the average length of time such filings have been pending; and

“(iii) for filings that were resolved during such period, the average time between initiation and resolution and the percentage for which each applicable deadline or guideline established under such subsection was met;

“(B) with respect to proceedings before an administrative law judge—

“(i) the number of such proceedings completed during such period; and

“(ii) the number of such proceedings pending on the last day of such period; and

“(C) the number of independent studies or analyses published by the Commission during such period.

“(3) PUBLICATION AND SUBMISSION.—The Commission shall publish and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate each report required by paragraph (1) not later than the date that is 30 days after the last day of the period covered by such report.

“(k) DEFINITIONS.—In this section:

“(1) AMENDMENT.—The term ‘amendment’ includes, when used with respect to an existing rule, the deletion of such rule.

“(2) BIPARTISAN MAJORITY.—The term ‘bipartisan majority’ means, when used with respect to a group of Commissioners, that such group—

“(A) is a group of 3 or more Commissioners; and

“(B) includes, for each political party of which any Commissioner is a member, at least 1 Commissioner who is a member of such political party, and, if any Commissioner has no political party affiliation, at least one unaffiliated Commissioner.

“(3) PERFORMANCE MEASURE.—The term ‘performance measure’ means an objective and quantifiable outcome measure or output measure (as such terms are defined in section 1115 of title 31, United States Code).

“(4) PROGRAM ACTIVITY.—The term ‘program activity’ has the meaning given such term in section 1115 of title 31, United States Code, except that such term also includes any annual collection or distribution or related series of collections or distributions by the Commission of an amount that is greater than or equal to \$100,000,000.

“(5) OTHER DEFINITIONS.—The terms ‘agency action’, ‘ex parte communication’, and ‘rule’ have the meanings given such terms in section 551 of title 5, United States Code.”.

(b) EFFECTIVE DATES AND IMPLEMENTING RULES.—

(1) EFFECTIVE DATES.—

(A) NONPUBLIC COLLABORATIVE DISCUSSIONS.—Subsection (c) of section 13 of the Communications Act of 1934, as added by subsection (a), shall apply beginning on the first date on which all of the procedural changes to the rules of the Federal Communications Commission required by subsection (a)(1) of such section have taken effect.

(B) SCHEDULES AND REPORTS.—Subsections (i) and (j) of such section 13 shall apply with respect to 2014 and any year thereafter.

(2) RULES.—Except as otherwise provided in such section 13, the Federal Communications Commission shall promulgate any rules necessary to carry out such section not later than 1 year after the date of the enactment of this Act.

SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COMPLAINTS IN QUARTERLY REPORT.

In compiling its quarterly report with respect to informal consumer inquiries and complaints, the Federal Communications Commission may not categorize an inquiry or complaint with respect to section 227 of the Communications Act of 1934 (47 U.S.C. 227) as being a wireline inquiry or complaint or a wireless inquiry or com-

plaint unless the party whose conduct is the subject of the inquiry or complaint is a wireline carrier or a wireless carrier, respectively.

SEC. 4. EFFECT ON OTHER LAWS.

Nothing in this Act or the amendments made by this Act shall relieve the Federal Communications Commission from any obligations under title 5, United States Code, except where otherwise expressly provided.

SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNIVERSAL SERVICE PROGRAM.

(a) IN GENERAL.—Section 254 of the Communications Act of 1934 (47 U.S.C. 254) is amended by adding at the end the following:

“(m) APPLICATION OF ANTIDEFICIENCY ACT.—Section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply—

“(1) to any amount collected or received as Federal universal service contributions required by this section, including any interest earned on such contributions; or

“(2) to the expenditure or obligation of amounts attributable to such contributions for universal service support programs established pursuant to this section.”.

(b) REPEAL OF TEMPORARY PROVISION.—Title III of Public Law 108–494 (118 Stat. 3997) is repealed.

Amend the title so as to read: A bill to amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission, and for other purposes.

PURPOSE AND SUMMARY

H.R. 3675, the “Federal Communications Commission Process Reform Act of 2013,” improves the processes of the Federal Communications Commission (FCC, Commission, or Agency) and provides for greater transparency and efficiency in the procedures followed by the agency. The legislation requires the Commission to conduct a rulemaking and adopt procedural changes to its rules to maximize opportunities for public participation and efficient decision-making, as well as conduct an inquiry seeking public comment on whether and how the Commission should make additional changes.

BACKGROUND AND NEED FOR LEGISLATION

The communications and technology sector is rapidly evolving, and is among the most competitive and innovative in our economy. From fiber optics to 4G wireless service, from the smartphone to the tablet to the connected TV, this sector has been creating new services and new devices—and the high-quality jobs that come with high-tech innovation and investment—despite the economic challenges our country is facing. In 2012, the industry invested \$68 billion to deploy broadband infrastructure, a billion more than in 2011, totaling more than \$1.2 trillion dollars invested to upgrade their networks since 1996. See US Telecom, Broadband Industry Stats, Broadband Investment, <http://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment>. The United States is now the world leader in wireless LTE network deployment. Improving the openness, transparency, and predictability of the FCC will strengthen the communications and technology sector.

The Committee on Energy and Commerce has long had concerns with the processes and procedures of the Agency, under both Republican and Democrat-led commissions. The Committee has held numerous oversight and legislative hearings examining the prac-

tices of the Agency and the impact that flawed FCC process has on consumers, industry, and the economy. While there were improvements to the Commission's process under recent chairmen, this legislation will ensure that reforms remain in place from one administration to the next.

H.R. 3675, as amended, is the product of several months of bipartisan subcommittee negotiations. A bipartisan amendment in the nature of a substitute adopted during full Committee consideration of the bill requires the FCC to conduct a rulemaking and adopt rules that address identified procedural concerns. The legislation is a significant step towards a better-functioning agency.

The legislation would produce a collaborative process in which the Commission establishes the parameters to achieve congressionally established goals. The Commission is charged with setting its own deadlines and minimum comment periods for rules and publication of FCC documents and with developing performance measures for program activities, which will provide parties and the public certainty and accountability. In addition, the required notice of inquiry asks the FCC to seek public comment on particularly complex issues that warrant further examination and improvement.

While the legislation allows the Commission to set many of its own procedures and rules, H.R. 3675 also includes backstops that ensure accountability. The annual scorecard required by the legislation mandates yearly reports by the FCC regarding its performance in meeting the deadlines and guidelines established in the rulemaking. Taking inventory of whether the Commission is meeting its deadlines will allow the FCC to improve where needed and will give the public insight into the Agency's activity.

Provided the Commission completes the required rulemaking and inquiry process, the legislation also includes provisions allowing Commissioners to engage in non-public, collaborative discussions that are currently prohibited by the Government in the Sunshine Act, 5 U.S.C. § 552(b) (1976). The new provisions remedy real procedural problems for the Commission and contain significant safeguards to preserve the increased transparency that is the goal of the Government in the Sunshine Act. Non-public collaborative meetings would be monitored by attorneys from the Commission's Office of General Counsel, and each meeting would require public disclosure of the content of the meeting. The delayed implementation will ensure that both the statutory and regulatory changes to the Commission's process take effect contemporaneously.

H.R. 3675 will create a stronger, better regulatory agency for one of the economy's most vibrant sectors. The industry deserves an efficient and effective expert regulator, and the public deserves a transparent and accountable Federal government.

HEARINGS

The Committee on Energy and Commerce has been concerned about the processes of the FCC for many years and has had a number of oversight hearings on this matter. In the 110th Congress, the Subcommittee on Telecommunications and the Internet held two oversight hearings of the FCC, one on March 14, 2007, and a second on July 24, 2007. At each hearing, the Subcommittee received testimony from Chairman Kevin J. Martin, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commis-

sioner Jonathan S. Adelstein, and Commissioner Deborah Taylor Tate.

During the 111th Congress, the Subcommittee on Telecommunications and the Internet held a hearing on September 17, 2009, entitled “Oversight of the Federal Communications Commission.” The Subcommittee received testimony from Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, and Commissioner Meredith Attwell Baker.

The Subcommittee on Communications and Technology held a hearing on May 13, 2011, entitled “FCC Process Reform.” The Subcommittee received testimony from FCC Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, and Commissioner Mignon Clyburn.

The Subcommittee on Communications and Technology held a hearing on June 22, 2011, entitled “Reforming FCC Process.” The Subcommittee examined a staff discussion draft of legislation to reform the FCC’s processes. The Subcommittee received testimony from John Sununu, Honorary Co-Chair of Broadband for America; Kathleen Abernathy, Chief Legal Officer and Executive Vice President of Frontier Communications; Mark Cooper, Research Director of the Consumer Federation of America; Randolph J. May, President of the Free State Foundation; Brad Ramsay, General Counsel of the National Association of Regulatory Utility Commissioners; and Ronald Levin, William R. Orthwein Distinguished Professor of Law at Washington University School of Law.

The Subcommittee on Communications and Technology held an oversight hearing on July 11, 2013, entitled “Improving FCC Process.” The Subcommittee received testimony from Stuart M. Benjamin, Douglas B. Maggs Chair in Law and Associate Dean for Research at Duke Law; Larry Downes, Internet industry analyst and author; Robert M. McDowell, former FCC Commissioner and Visiting Fellow at Hudson Institute; Randolph J. May, President of Free State Foundation; Richard J. Pierce Jr., Lyle T. Alverson Professor of Law at George Washington University Law School; and James Bradford Ramsay, General Counsel of the National Association of Regulatory Utility Commissioners.

COMMITTEE CONSIDERATION

On July 24, 2013, the Subcommittee on Communications and Technology met in open markup session and favorably forwarded the bill to the full Committee by a voice vote.

On December 10 and 11, 2013, the Committee on Energy and Commerce met in open markup session and favorably reported H.R. 3675, as amended, to the House by voice vote.

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. There were no record votes taken in connection with ordering H.R. 3675 reported. A motion by Mr. Upton to order H.R. 3675 reported to the House, with amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

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

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 3675 is to improve the processes of the Federal Communications Commission by providing greater transparency and efficiency in the Agency's activity. The legislation accomplishes this by requiring the Agency to conduct a rulemaking and adopt rules, seek comment on procedural changes, and implement statutory changes to the Agency's current practices.

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 finds that H.R. 3675 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of Rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3675 contains no earmarks, limited tax benefits, or limited tariff benefits.

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 ESTIMATE

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:

January 29, 2014.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3675, the Federal Communications Commission Process Reform Act of 2013.

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

Sincerely,

DOUGLAS W. ELMENDORF,

Enclosure.

H.R. 3675—Federal Communications Commission Process Reform Act of 2013

Summary: H.R. 3675 would make a number of changes to procedures that the Federal Communications Commission (FCC) follows in its rulemaking processes. The bill also would require the FCC to create a public database of information about complaints made by consumers of telecommunications services. Finally, the bill would permanently exempt the Universal Service Fund (USF) from provisions of the Antideficiency Act.

CBO estimates that enacting H.R. 3675 would increase direct spending by \$197 million over the 2014–2023 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 3675 would not affect revenues.

Further, CBO estimates that implementing H.R. 3675 to amend the FCC’s operating procedures would cost \$15 million over the next five years, assuming appropriation of the necessary amounts; however, the FCC is authorized to collect fees sufficient to offset the cost of its regulatory activities each year. Therefore, CBO estimates that the net cost to implement those provisions of H.R. 3675 would not be significant, assuming annual appropriation actions consistent with the agency’s authorities.

H.R. 3675 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

To the extent that the FCC would increase annual fee collections to offset the costs of implementing its additional regulatory activities, the bill would impose a private-sector mandate on some commercial entities regulated by the FCC. Based on information from the FCC, CBO estimates that the cost of the mandate would be small, and fall well below the annual threshold established in UMRA for private-sector mandates (\$152 million in 2014, adjusted annually for inflation).

Estimated cost to the federal government: The estimated budgetary impact of H.R. 3675 is shown in the following table. The costs of this legislation falls within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars 2014												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–2019	2014–2024
CHANGES IN DIRECT SPENDING ^a													
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays ..	0	0	91	69	15	3	3	4	4	4	4	178	197

^a CBO estimates H.R. 3675 also would have an insignificant net impact on spending that is subject to appropriation.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the middle of fiscal year 2014.

Direct spending: H.R. 3675 would permanently exempt the USF from provisions of the Antideficiency Act. Created by the Telecommunications Act of 1996, the USF redistributes income from interstate telecommunications carriers to other carriers providing services to high-cost areas, low-income households, schools, libraries, and nonprofit health care providers in rural areas. The cash flows from the USF appear in the budget as revenues (for fund col-

lections) and direct spending (for amounts distributed from the fund).

Under current law, the USF has a temporary exemption from the Antideficiency Act that will expire at the end of calendar year 2015. Spending for one of the fund’s initiatives, the Schools and Libraries program, is affected by that exemption. When the USF receives and approves an application for funding from the Schools and Libraries program, it obligates funds to be paid to the recipient pending compliance with certain grant conditions. While the exemption is in place, the USF is able to obligate funds for schools and libraries without having sufficient amounts available to meet those obligations. Without the exemption, the Schools and Libraries program would be unable to obligate funds until sufficient resources to meet its obligation became available. This program, which distributes funds to eligible institutions to provide affordable Internet and telecommunications services, spent \$2.1 billion for those purposes in fiscal year 2013. By making the exemption permanent, H.R. 3675 would allow the program to obligate and spend funds faster than it would without the exemption.

CBO does not expect that the USF would collect or spend more as a result of the exemption; rather, we estimate that the timing of the spending would change. Specifically, CBO estimates that under the exemption, spending patterns would shift so that on balance more funds would be spent relative to the current-law baseline estimates over the next 10 years. CBO estimates that the increase in the rate of spending would increase costs by \$197 million over the 2014–2024 period.

Spending subject to appropriation: H.R. 3675 would require the FCC to adopt new rules related to the agency’s decision-making processes and to present certain information in greater detail on the agency website. Based on information from the FCC, CBO estimates that implementing those provisions would cost about \$15 million over the 2014–2019 period for additional administrative and information technology costs. However, the FCC is authorized to collect fees sufficient to offset its regulatory costs each year; therefore, CBO estimates that the net cost to implement H.R. 3675 would not be significant over the 2014–2019 period, assuming appropriation actions consistent with that authority.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for H.R. 3675, as ordered reported by the House Committee on Energy and Commerce on December 10, 2013

	By fiscal year, in millions of dollars 2014—													2014–2019	2014–2024
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024				
	NET INCREASE IN THE DEFICIT														
Statutory Pay-As-You-Go Impact ...	0	0	91	69	15	3	3	4	4	4	4	178	197		

Estimated impact on state, local, and tribal governments: H.R. 3675 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: Assuming the FCC would increase annual fee collections to offset the costs of its additional regulatory activities, the bill would increase the cost of an existing mandate on some commercial entities regulated by the agency. The FCC is authorized to collect fees sufficient to offset its regulatory costs each year, subject to its annual appropriation. If as a result of the bill the FCC increases its fees, the bill would impose a private-sector mandate on private entities required to pay those fees. Based on information from the FCC, CBO estimates that the cost of the mandate would be small—about \$15 million over the next five years—and fall well below the annual threshold established in UMRA for private-sector mandates (\$152 million in 2014, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Marin Burnett.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

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

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3675 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.

DISCLOSURE OF DIRECTED RULE MAKINGS

To achieve the reforms and regulatory predictability envisioned by the Committee, H.R. 3675 requires the Federal Communications Commission to conduct the specific rule making delineated in section 2(a).

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 section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

Section 2(a). Section 2(a) inserts after section 12 of the Communications Act of 1934 a new section, section 13, Transparency and Efficiency.

Section 13(a) Initial Rulemaking and Inquiry.

This subsection requires the FCC to conduct a notice and comment rulemaking and adopt rules to (1) set minimum comment and reply comment periods for rulemaking proceedings; (2) establish policies concerning extensive comments toward the end of a comment period; (3) establish policies to ensure that the public has time to review material submitted in a proceeding after the comment cycle has closed; (4) publish the status of open rulemakings as well as list the draft items the commissioners are currently considering; (5) establish deadlines for action on certain filings to the Commission and its bureaus; (6) establish guidelines for the disposition of petitions for declaratory ruling; (7) establish procedures for including the specific text of proposed rules in Commission Notice of Proposed Rule Makings (NPRM); and (8) to require the development of performance measures for FCC program activities, defined as each FCC program listed in the Federal budget or each program through which the FCC collects or distributes \$100 million or more.

Section 13(a) also requires the Commission to seek public comment on a notice of inquiry into whether and how the Commission should (1) allow a bipartisan majority of Commissioners to add an item to the Commission's agenda; (2) inform Commissioners of all options available on a given Commission item; (3) ensure that Commissioners have adequate time to review the text of Commission items; publish the text of items for Commission consideration prior to Commission vote; (4) establish deadlines for the processing of applications for licenses; (5) generate additional resources for the processing of applications; and (6) publish Commission decisions within 30 days of adoption.

Section 13(b) Periodic Review.

This subsection requires the FCC to conduct a rulemaking to review the rules established in subsection 13(a) every five years.

Section 13(c) Nonpublic Collaborative Discussions.

This subsection allows a bipartisan majority of Commissioners to meet for collaborative discussions if they disclose such meetings within two business days and comply with Office of General Counsel oversight. This subsection also applies to meetings of Federal-State Joint Boards.

Section 13(d) Access to Certain Information on the Commission's Website.

This subsection requires the FCC to provide links on the Commission's home page to the current budget, appropriations, number of full-time equivalent employees, and the Commission's performance plan.

Section 13(e) Federal Register Publication.

This subsection requires the FCC to publish the documents specified in the Federal Register no later than 45 days after release of the document or the day specified under any other provision of law.

Section 13(f) Consumer Complaint Database.

This subsection requires the FCC to put consumer complaint information in a publicly available, searchable database on its website.

Section 13(g) Form of Publication.

This subsection requires the FCC to publish documents specified in this section on its website.

Section 13(h) Transparency Relating to Performance in Meeting FOIA Requirements.

This subsection requires the FCC to take additional steps to inform the public about its performance in meeting the disclosure requirements of the Freedom of Information Act.

Section 13(i) Prompt Release of Statistical Reports and Reports to Congress.

This subsection requires the FCC to establish a schedule for the release of its required reports.

Section 13(j) Annual Scorecard.

This subsection requires the FCC to report annually regarding its performance in meeting the deadlines and guideline established in subsection (a), as well as how the Commission has used administrative law judges and independent studies.

Section 13(k) Definitions.

This subsection defines several terms used in the Act, including “performance measure” and “program activity.”

Section 2(b). Section 2(b) requires the Commission to adopt rules implementing new section 13 no later than one year after the date of enactment and delays the implementation of the non-public collaborative discussion provisions until all rules required by section 13 have taken effect.

Section 3. Section 3 prohibits the FCC from categorizing inquiries or complaints under the Telephone Consumer Protection Act as wireline or wireless inquiries or complaints unless the complaint or inquiry originated from the conduct of a wireline or wireless carrier.

Section 4. Section 4 specifies that the Act does not alter the general framework established by the Administrative Procedures Act and related laws, except where it does so explicitly (i.e., allowing deliberative collaboration among Commissioners and on the Federal-State Joint Boards).

Section 5. Section 5 creates a permanent waiver of the Antideficiency Act for the Federal Universal Service Fund. The Universal Service Fund has been subject to a series of temporary waivers since 2004.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE I—GENERAL PROVISIONS

* * * * *

SEC. 13. TRANSPARENCY AND EFFICIENCY.

(a) INITIAL RULEMAKING AND INQUIRY.—

(1) *RULEMAKING.*—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2013, the Commission shall complete a rulemaking proceeding and adopt procedural changes to its rules to maximize opportunities for public participation and efficient decisionmaking.

(2) *REQUIREMENTS FOR RULEMAKING.*—The rules adopted under paragraph (1) shall—

(A) set minimum comment periods for comment and reply comment, subject to a determination by the Commission that good cause exists for departing from such minimum comment periods, for—

(i) significant regulatory actions, as defined in Executive Order 12866; and

(ii) all other rulemaking proceedings;

(B) establish policies concerning the submission of extensive new comments, data, or reports towards the end of the comment period;

(C) establish policies regarding treatment of comments, ex parte communications, and data or reports (including statistical reports and reports to Congress) submitted after the comment period to ensure that the public has adequate notice of and opportunity to respond to such submissions before the Commission relies on such submissions in any order, decision, report, or action;

(D) establish procedures for publishing the status of open rulemaking proceedings and proposed orders, decisions, reports, or actions on circulation for review by the Commissioners, including which Commissioners have not cast a vote on an order, decision, report, or action that has been on circulation for more than 60 days;

(E) establish deadlines (relative to the date of filing) for—

(i) in the case of a petition for a declaratory ruling under section 1.2 of title 47, Code of Federal Regulations, issuing a public notice of such petition;

(ii) in the case of a petition for rulemaking under section 1.401 of such title, issuing a public notice of such petition; and

(iii) in the case of a petition for reconsideration under section 1.106 or 1.429 of such title or an application for review under section 1.115 of such title, issuing a public notice of a decision on the petition or application by the Commission or under delegated authority (as the case may be);

(F) establish guidelines (relative to the date of filing) for the disposition of petitions filed under section 1.2 of such title;

(G) establish procedures for the inclusion of the specific language of the proposed rule or the proposed amendment of an existing rule in a notice of proposed rulemaking; and

(H) require notices of proposed rulemaking and orders adopting a rule or amending an existing rule that—

(i) create (or propose to create) a program activity to contain performance measures for evaluating the effectiveness of the program activity; and

(ii) substantially change (or propose to substantially change) a program activity to contain—

(I) performance measures for evaluating the effectiveness of the program activity as changed (or proposed to be changed); or

(II) a finding that existing performance measures will effectively evaluate the program activity as changed (or proposed to be changed).

(3) INQUIRY.—Not later than 1 year after the date of the enactment of the Federal Communications Commission Process Reform Act of 2013, the Commission shall complete an inquiry to seek public comment on whether and how the Commission should—

(A) establish procedures for allowing a bipartisan majority of Commissioners to place an order, decision, report, or action on the agenda of an open meeting;

(B) establish procedures for informing all Commissioners of a reasonable number of options available to the Commission for resolving a petition, complaint, application, rulemaking, or other proceeding;

(C) establish procedures for ensuring that all Commissioners have adequate time, prior to being required to decide a petition, complaint, application, rulemaking, or other proceeding (including at a meeting held pursuant to section 5(d)), to review the proposed Commission decision document, including the specific language of any proposed rule or any proposed amendment of an existing rule;

(D) establish procedures for publishing the text of agenda items to be voted on at an open meeting in advance of such meeting so that the public has the opportunity to read the text before a vote is taken;

(E) establish deadlines (relative to the date of filing) for disposition of applications for a license under section 1.913 of title 47, Code of Federal Regulations;

(F) assign resources needed in order to meet the deadlines described in subparagraph (E), including whether the Commission's ability to meet such deadlines would be en-

hanced by assessing a fee from applicants for such a license; and

(G) publish each order, decision, report, or action not later than 30 days after the date of the adoption of such order, decision, report, or action.

(4) *DATA FOR PERFORMANCE MEASURES.*—The Commission shall develop a performance measure or proposed performance measure required by this subsection to rely, where possible, on data already collected by the Commission.

(b) *PERIODIC REVIEW.*—On the date that is 5 years after the completion of the rulemaking proceeding under subsection (a)(1), and every 5 years thereafter, the Commission shall initiate a new rulemaking proceeding to continue to consider such procedural changes to its rules as may be in the public interest to maximize opportunities for public participation and efficient decisionmaking.

(c) *NONPUBLIC COLLABORATIVE DISCUSSIONS.*—

(1) *IN GENERAL.*—Notwithstanding section 552b of title 5, United States Code, a bipartisan majority of Commissioners may hold a meeting that is closed to the public to discuss official business if—

(A) a vote or any other agency action is not taken at such meeting;

(B) each person present at such meeting is a Commissioner, an employee of the Commission, a member of a joint board or conference established under section 410, or a person on the staff of such a joint board or conference or of a member of such a joint board or conference; and

(C) an attorney from the Office of General Counsel of the Commission is present at such meeting.

(2) *DISCLOSURE OF NONPUBLIC COLLABORATIVE DISCUSSIONS.*—Not later than 2 business days after the conclusion of a meeting held under paragraph (1), the Commission shall publish a disclosure of such meeting, including—

(A) a list of the persons who attended such meeting; and

(B) a summary of the matters discussed at such meeting, except for such matters as the Commission determines may be withheld under section 552b(c) of title 5, United States Code.

(3) *PRESERVATION OF OPEN MEETINGS REQUIREMENTS FOR AGENCY ACTION.*—Nothing in this subsection shall limit the applicability of section 552b of title 5, United States Code, with respect to a meeting of Commissioners other than that described in paragraph (1).

(d) *ACCESS TO CERTAIN INFORMATION ON COMMISSION'S WEBSITE.*—The Commission shall provide direct access from the homepage of its website to—

(1) detailed information regarding—

(A) the budget of the Commission for the current fiscal year;

(B) the appropriations for the Commission for such fiscal year; and

(C) the total number of full-time equivalent employees of the Commission; and

(2) *the performance plan most recently made available by the Commission under section 1115(b) of title 31, United States Code.*

(e) **FEDERAL REGISTER PUBLICATION.**—

(1) **IN GENERAL.**—*In the case of any document adopted by the Commission that the Commission is required, under any provision of law, to publish in the Federal Register, the Commission shall, not later than the date described in paragraph (2), complete all Commission actions necessary for such document to be so published.*

(2) **DATE DESCRIBED.**—*The date described in this paragraph is the earlier of—*

(A) *the day that is 45 days after the date of the release of the document; or*

(B) *the day by which such actions must be completed to comply with any deadline under any other provision of law.*

(3) **NO EFFECT ON DEADLINES FOR PUBLICATION IN OTHER FORM.**—*In the case of a deadline that does not specify that the form of publication is publication in the Federal Register, the Commission may comply with such deadline by publishing the document in another form. Such other form of publication does not relieve the Commission of any Federal Register publication requirement applicable to such document, including the requirement of paragraph (1).*

(f) **CONSUMER COMPLAINT DATABASE.**—

(1) **IN GENERAL.**—*In evaluating and processing consumer complaints, the Commission shall present information about such complaints in a publicly available, searchable database on its website that—*

(A) *facilitates easy use by consumers; and*

(B) *to the extent practicable, is sortable and accessible by—*

(i) *the date of the filing of the complaint;*

(ii) *the topic of the complaint;*

(iii) *the party complained of; and*

(iv) *other elements that the Commission considers in the public interest.*

(2) **DUPLICATIVE COMPLAINTS.**—*In the case of multiple complaints arising from the same alleged misconduct, the Commission shall be required to include only information concerning one such complaint in the database described in paragraph (1).*

(g) **FORM OF PUBLICATION.**—

(1) **IN GENERAL.**—*In complying with a requirement of this section to publish a document, the Commission shall publish such document on its website, in addition to publishing such document in any other form that the Commission is required to use or is permitted to and chooses to use.*

(2) **EXCEPTION.**—*The Commission shall by rule establish procedures for redacting documents required to be published by this section so that the published versions of such documents do not contain—*

(A) *information the publication of which would be detrimental to national security, homeland security, law enforcement, or public safety; or*

(B) *information that is proprietary or confidential.*

(h) *TRANSPARENCY RELATING TO PERFORMANCE IN MEETING FOIA REQUIREMENTS.*—The Commission shall take additional steps to inform the public about its performance and efficiency in meeting the disclosure and other requirements of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), including by doing the following:

(1) Publishing on the Commission's website the Commission's logs for tracking, responding to, and managing requests submitted under such section, including the Commission's fee estimates, fee categories, and fee request determinations.

(2) Releasing to the public all decisions made by the Commission (including decisions made by the Commission's Bureaus and Offices) granting or denying requests filed under such section, including any such decisions pertaining to the estimate and application of fees assessed under such section.

(3) Publishing on the Commission's website electronic copies of documents released under such section.

(4) Presenting information about the Commission's handling of requests under such section in the Commission's annual budget estimates submitted to Congress and the Commission's annual performance and financial reports. Such information shall include the number of requests under such section the Commission received in the most recent fiscal year, the number of such requests granted and denied, a comparison of the Commission's processing of such requests over at least the previous 3 fiscal years, and a comparison of the Commission's results with the most recent average for the United States Government as published on www.foia.gov.

(i) *PROMPT RELEASE OF STATISTICAL REPORTS AND REPORTS TO CONGRESS.*—Not later than January 15th of each year, the Commission shall identify, catalog, and publish an anticipated release schedule for all statistical reports and reports to Congress that are regularly or intermittently released by the Commission and will be released during such year.

(j) *ANNUAL SCORECARD REPORTS.*—

(1) *IN GENERAL.*—For the 1-year period beginning on January 1st of each year, the Commission shall prepare a report on the performance of the Commission in conducting its proceedings and meeting the deadlines established under subsection (a)(2)(E) and the guidelines established under subsection (a)(2)(F).

(2) *CONTENTS.*—Each report required by paragraph (1) shall contain detailed statistics on such performance, including, with respect to each Bureau of the Commission—

(A) with respect to each type of filing specified in subsection (a)(2)(E) or (a)(2)(F)—

(i) the number of filings that were pending on the last day of the period covered by such report;

(ii) the number of filings described in clause (i) for which each applicable deadline or guideline established under such subsection was not met and the average length of time such filings have been pending; and

(iii) for filings that were resolved during such period, the average time between initiation and resolution and

the percentage for which each applicable deadline or guideline established under such subsection was met;
(B) *with respect to proceedings before an administrative law judge—*

(i) the number of such proceedings completed during such period; and

(ii) the number of such proceedings pending on the last day of such period; and

(C) the number of independent studies or analyses published by the Commission during such period.

(3) *PUBLICATION AND SUBMISSION.—The Commission shall publish and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate each report required by paragraph (1) not later than the date that is 30 days after the last day of the period covered by such report.*

(k) *DEFINITIONS.—In this section:*

(1) *AMENDMENT.—The term “amendment” includes, when used with respect to an existing rule, the deletion of such rule.*

(2) *BIPARTISAN MAJORITY.—The term “bipartisan majority” means, when used with respect to a group of Commissioners, that such group—*

(A) is a group of 3 or more Commissioners; and

(B) includes, for each political party of which any Commissioner is a member, at least 1 Commissioner who is a member of such political party, and, if any Commissioner has no political party affiliation, at least one unaffiliated Commissioner.

(3) *PERFORMANCE MEASURE.—The term “performance measure” means an objective and quantifiable outcome measure or output measure (as such terms are defined in section 1115 of title 31, United States Code).*

(4) *PROGRAM ACTIVITY.—The term “program activity” has the meaning given such term in section 1115 of title 31, United States Code, except that such term also includes any annual collection or distribution or related series of collections or distributions by the Commission of an amount that is greater than or equal to \$100,000,000.*

(5) *OTHER DEFINITIONS.—The terms “agency action”, “ex parte communication”, and “rule” have the meanings given such terms in section 551 of title 5, United States Code.*

TITLE II—COMMON CARRIERS

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PART II—DEVELOPMENT OF COMPETITIVE MARKETS

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SEC. 254. UNIVERSAL SERVICE.

(a) * * *

* * * * *

(m) APPLICATION OF ANTIDEFICIENCY ACT.—Section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply—

(1) to any amount collected or received as Federal universal service contributions required by this section, including any interest earned on such contributions; or

(2) to the expenditure or obligation of amounts attributable to such contributions for universal service support programs established pursuant to this section.

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PUBLIC LAW 108-494

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[TITLE III—UNIVERSAL SERVICE

[SEC. 301. SHORT TITLE.

[This title may be cited as the “Universal Service Antideficiency Temporary Suspension Act”.

[SEC. 302. APPLICATION OF CERTAIN TITLE 31 PROVISIONS TO UNIVERSAL SERVICE FUND.

[(a) IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on January 15, 2014, section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply—

[(1) to any amount collected or received as Federal universal service contributions required by section 254 of the Communications Act of 1934 (47 U.S.C. 254), including any interest earned on such contributions; nor

[(2) to the expenditure or obligation of amounts attributable to such contributions for universal service support programs established pursuant to that section.

[(b) POST-2005 FULFILLMENT OF PROTECTED OBLIGATIONS.—Section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply after January 15, 2014, to an expenditure or obligation described in subsection (a)(2) made or authorized during the period described in subsection (a).]

