H. R. 5319

To amend the Congressional Budget Act of 1974 to establish a Federal regulatory budget and to impose cost controls on that budget, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2016

Mr. Walker (for himself, Mr. Ratcliffe, Mrs. Love, Mr. Hensarling, Mr. Loudermilk, and Mr. Brat) introduced the following bill; which was referred to the Committee on the Budget, and in addition to the Committees on Rules, the Judiciary, Oversight and Government Reform, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To amend the Congressional Budget Act of 1974 to establish a Federal regulatory budget and to impose cost controls on that budget, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Article I Regulatory Budget Act”.

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SEC. 2. PRESIDENT'S ANNUAL BUDGET SUBMISSIONS.

Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

“(40)(A) for the first fiscal year that begins at least 120 days after the date of enactment of this paragraph, and every fiscal year thereafter until the fifth fiscal year that begins after the date of enactment of this paragraph, a projection of the Federal regulatory cost of any proposed Federal regulation, rule, or statement (as such terms are defined in section 321 of the Congressional Budget Act of 1974) for the fiscal year and at least each of the 4 ensuing fiscal years, which shall include—

“(i) the projection of the Federal regulatory cost by agency and program; and

“(ii) any changes in a Federal regulation, rule, or statement in the Unified Agenda of Federal Regulatory and Deregulatory Actions, compiled by the Regulatory Information Service Center of the General Services Administration;

and

“(B) for the fifth fiscal year that begins after the date of enactment of this paragraph, and every fiscal year thereafter, a regulatory authority budget analysis of the Federal regulatory cost of complying with all current and proposed Federal regulations,
rules, and statements and proposals (as such terms
are defined in section 321 of the Congressional
Budget Act of 1974) for complying with section 322
of the Congressional Budget Act of 1974 for the fis-
cal year for which the budget is submitted and the
4 fiscal years after that year, which shall include a
regulatory authority budget analysis of the Federal
regulatory cost by agency and program.”.

SEC. 3. ESTIMATION AND DISCLOSURE OF COSTS OF FED-
ERAL REGULATION.

(a) COSTS TO PRIVATE SECTOR OF NEW FEDERAL REGULATIONS.—Chapter 6 of title 5, United States Code,
popularly known as the “Regulatory Flexibility Act”, is
amended—

(1) in section 603—

(A) in subsection (a), in the second sen-
tence, by inserting before the period the fol-
lowing: “and shall discuss in detail whether the
cost to businesses of complying with the pro-
posed rule will vary depending on the size of the
business and, if so, to what extent the cost will
vary and what factors contribute to the vari-
ation”;

(B) in subsection (c)—
(i) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and adjusting the margin accordingly;

(ii) by inserting “(1)” after “(e)”;

(iii) by striking “Consistent with the” and inserting the following:

“(2) The analysis of significant alternatives to the proposed rule shall include a detailed analysis of the costs and benefits of the proposed rule and each alternative, which shall separately address the costs and benefits for each industry.

“(3) Consistent with the”; and

(C) by adding at the end the following:

“(e) Each initial regulatory flexibility analysis shall also contain a description of the nature and amount of monetary costs that will be incurred by small entities, other businesses, and individuals in complying with the proposed rule.”;

(2) in section 604(a)—

(A) in the first paragraph designated as paragraph (6) (relating to minimization of significant economic impacts), by striking “and” at the end;
(B) by redesignating the second paragraph
(6) (relating to covered agencies), as paragraph
(8); and

(C) by inserting after paragraph (6) the
following:

“(7) a statement of the nature and amount of
monetary costs that will be incurred by small enti-
ties, other businesses, and individuals in complying
with the rule; and”; and

(3) in section 607, by inserting before the pe-
period the following: “, except that estimates of mone-
ty costs under sections 603(d) and 604(a)(7) shall
only be in the form of a numerical description”.

(b) AGENCY REPORTS.—Each agency that prepares
an initial regulatory flexibility analysis under chapter 6
of title 5, United States Code, shall, at the same time sub-
mit to each House of Congress, the Congressional Budget
Office, and the Office of Management and Budget a cost
estimate and cost benefit analysis of any new proposed
regulations, rules, or statements that would have a Fed-
eral regulatory cost (as defined in section 321 of the Con-
gressional Budget Act of 1974, as added by this Act) of
at least $100,000,000 for any fiscal year.

SEC. 4. GUIDANCE DOCUMENTS.

(a) DEFINITIONS.—In this section—
(1) the terms “agency” and “rule” have the meanings given such terms in section 551 of title 5, United States Code;

(2) the term “guidance document” means an agency statement of general applicability and future effect, other than a rule, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue; and

(3) the term “significant guidance document”—

(A) means a guidance document that the Office of Management and Budget determines will be disseminated to regulated entities or the general public and may reasonably be anticipated to—

(i) lead to an annual effect of not less than $100,000,000 on, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) create a serious inconsistency or otherwise interfere with an action taken or planned by an agency other than the agency issuing the guidance document;
(iii) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or

(iv) raise novel legal or policy issues arising out of legal mandates, the priorities of the President, or the principles set forth in Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review); and

(B) does not include a guidance document that the Office of Management and Budget determines—

(i) relates to regulations issued in accordance with the formal rulemaking provisions of sections 556 and 557 of title 5, United States Code;

(ii) pertains to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(iii) relates to regulations that are limited to agency organization, management, or personnel matters; or
(iv) is within a category of guidance documents exempted by the Administrator of the Office of Information and Regulatory Affairs.’

(b) LIMITATION ON GUIDANCE DOCUMENTS.—An agency may not issue a significant guidance document unless the agency issues the significant guidance document after notice and an opportunity for comment in accordance with the requirements for the promulgation of a rule under chapter 5 of title 5, United States Code.

(c) PRIVATE RIGHT OF ACTION.—Any person aggrieved of an action taken or failed to be taken under a guidance document that was not issued in accordance with subsection (b) may bring a civil action in an appropriate district court of the United States alleging that the guidance document should have been treated as a significant guidance document.

SEC. 5. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) FEDERAL REGULATORY BUDGET COST CONTROL SYSTEM.—Title III of the Congressional Budget Act of 1974 is amended—

(1) by inserting before section 300 the following:
“PART A—GENERAL PROVISIONS”;

and

(2) by adding at the end the following:

“PART B—FEDERAL REGULATORY BUDGET COST CONTROL

“SEC. 321. DEFINITIONS.

“In this part—

“(1) the term ‘CBO’ means the Congressional Budget Office;

“(2) the term ‘direct cost of Federal regulation’ means all costs incurred by, and expenditures required of, the Federal Government in issuing and enforcing Federal regulations, rules, and statements and Federal statutes;

“(3) the term ‘Federal regulation, rule, or statement’—

“(A) includes any guidance document issued after notice and an opportunity for comment in accordance with the requirements for the promulgation of a rule under chapter 5 of title 5, United States Code; and

“(B) does not include—

“(i) a Federal regulation, rule, or statement applying to—

“(I) the military; or
“(II) agency organization, management, or personnel; or
“(ii) a Federal regulation, rule, or statement designated by the President as being—
“(I) necessary because of an imminent threat to health or safety or other emergency;
“(II) necessary for the enforcement of criminal laws; or
“(III) necessary for national security;
“(4) the term ‘Federal regulatory cost’—
“(A) means all costs incurred by, and expenditures required of, the private sector, States, or local governments in complying with any Federal regulation, rule, or statement or any Federal statute; and
“(B) does not include the value of any benefit under the Federal regulation, rule, or statement or the Federal statute;
“(5) the term ‘gross domestic product’ means the gross domestic product of the United States during a fiscal year, consistent with Department of Commerce definitions;
“(6) the term ‘OMB’ means the Office of Management and Budget; and

“(7) the term ‘regulatory baseline’ means the projection described in section 326(a) of the Federal regulatory cost for the fiscal year after the date of the projection and the outyears.

“SEC. 322. ESTABLISHMENT OF LEVEL AND ALLOCATIONS.

“(a) Establishment of Level.—

“(1) In general.—In addition to the requirements under section 301, a concurrent resolution on the budget for a fiscal year shall set forth the appropriate level for the Federal regulatory cost for the fiscal year and for at least each of the 4 ensuing fiscal years.

“(2) Transition period.—

“(A) In general.—For the first fiscal year that begins at least 120 days after the date of enactment of this section, and each fiscal year thereafter until the fiscal year described in section 326(a), the Committee on the Budget of the Senate and the Committee on the Budget of the House of Representatives shall include in the concurrent resolution on the budget for the fiscal year as the appropriate level for the Federal regulatory cost for the fis-
cal year and any other fiscal year covered by
the resolution the proposed levels submitted by
the President under section 1105(a)(40) of title
31, United States Code.

“(B) Amendments.—

“(i) In general.—In the Senate and
the House of Representatives, it shall not
be in order to consider an amendment to
a concurrent resolution on the budget that,
if agreed to, would result in a net increase
in a level included pursuant to subpara-
graph (A).

“(ii) Waiver and appeal.—A point
of order under clause (i) may only be
waived by the affirmative vote of three-
fifths of the Members, duly chosen and
sworn. An affirmative vote of three-fifths
of Members, duly chosen and sworn, shall
be required to sustain an appeal of the rul-
ing of the Chair on a point of order raised
under clause (i).

“(3) Default total.—If there is not a level
for the Federal regulatory cost that is in effect for
a fiscal year under a concurrent resolution on the
budget—
“(A) for the first fiscal year that begins at least 120 days after the date of enactment of this section, and every fiscal year thereafter until the fiscal year described in subparagraph (B), the appropriate level for the Federal regulatory cost for the fiscal year shall be the proposed level submitted by the President under section 1105(a)(40) of title 31, United States Code;

“(B) for the fifth fiscal year that begins after the date of enactment of this section, the appropriate level for the Federal regulatory cost for the fiscal year shall be the amount of the first regulatory baseline submitted under section 326; and

“(C) for each fiscal year after the fiscal year described in subparagraph (B), the appropriate level for the Federal regulatory cost for the fiscal year shall be the level for the most recent fiscal year for which such a level was in effect (under subparagraph (B), this subparagraph, or a concurrent resolution on the budget).

“(b) ALLOCATION OF TOTALS.—
“(1) IN GENERAL.—For the first fiscal year that begins at least 120 days after the date of enactment of this section, and each fiscal year thereafter, the joint explanatory statement accompanying the conference report on a concurrent resolution on the budget for such fiscal year shall include allocations of the Federal regulatory cost in effect under subsection (a) for such fiscal year and at least each of the 4 ensuing fiscal years—

“(A) among each committee of the Senate and each committee of the House of Represent-atives;

“(B) by major functional category; and

“(C) by agency.

“(2) SUBALLOCATIONS.—As soon as practicable after receiving an allocation under paragraph (1), each committee shall—

“(A) suballocate its allocation—

“(i) among its subcommittees;

“(ii) among programs over which the committee has jurisdiction; and

“(iii) by agency; and

“(B) submit for printing in the Congres-sional Record a statement detailing each sub-
allocation made by the committee under sub-
paragraph (A).

“(c) POINT OF ORDER.—

“(1) IN GENERAL.—If a concurrent resolution
on the budget setting forth the appropriate level for
the Federal regulatory cost for a fiscal year has been
agreed to, it shall not be in order in the Senate or
the House of Representatives to consider any bill or
resolution, or amendment thereto, which would cause
an allocation or suballocation of the Federal regu-
latory cost made under subsection (b) for that fiscal
year to be exceeded.

“(2) WAIVER AND APPEAL.—A point of order
under paragraph (1) may only be waived by the af-
firmative vote of three-fifths of the Members, duly
chosen and sworn. An affirmative vote of three-fifths
of Members, duly chosen and sworn, shall be re-
quired to sustain an appeal of the ruling of the
Chair on a point of order raised under paragraph
(1).

“(d) DETERMINATIONS BY BUDGET COMMITTEES.—
For purposes of this section, the amount of the Federal
regulatory cost for a fiscal year and the amount of the
Federal regulatory cost of a bill or resolution, or amend-
ment thereto, shall be determined by the Committee on
the Budget of the Senate or the Committee on the Budget
of the House of Representatives, as the case may be.

“SEC. 323. ANALYSIS OF FEDERAL REGULATORY COST BY
CONGRESSIONAL BUDGET OFFICE.

“(a) IN GENERAL.—CBO shall prepare for each bill
or resolution of a public character reported by any com-
mittee of the Senate or the House of Representatives (ex-
cept the Committee on Appropriations of each House),
and submit to such committee—

“(1) an estimate of the costs which would be in-
curred by the private sector in carrying out or com-
plying with such bill or resolution in the fiscal year
in which it is to become effective and in each of the
4 fiscal years following such fiscal year, which shall
include—

“(A) a net present value estimate of the
cost of compliance by the private sector with
such bill or resolution; and

“(B) a discussion of the methodology used
to prepare, and the basis for, each such esti-
mate; and

“(2) a comparison of the estimate of costs de-
scribed in paragraph (1) with any available esti-
mates of costs made by such committee or by any
agency.
“(b) Look-Back Reviews.—CBO shall periodically submit to Congress a report, prepared in consultation with the Chairman of the Administrative Conference of the United States, that—

“(1) reviews a sample of laws of a public character for which an estimate was prepared under subsection (a)(1); and

“(2) compares the estimates of the costs described in paragraphs (1) and (2) of subsection (a) and the actual costs incurred by the private sector in carrying out or complying with the law in the fiscal year in which it took effect and in each of the 4 fiscal years following such fiscal year.

“SEC. 324. ENFORCEMENT.

“(a) Enforcement Language Required in Appropriation Acts.—If a concurrent resolution on the budget that includes levels and allocations of the Federal regulatory cost for a fiscal year has been agreed to, it shall not be in order in the Senate or the House of Representatives to consider a bill, joint resolution, amendment between the Houses, or conference report making appropriations for the fiscal year that does not include a provision prohibiting amounts made available under the measure from being obligated or expended to enforce a Federal regulation, rule, or statement that would cause a breach of
any level or allocation of the Federal regulatory cost in effect for a fiscal year.

“(b) Waiver and Appeal.—Subsection (a) may be waived or suspended in the Senate only by an affirmative vote of two-thirds of the Members, duly chosen and sworn. An affirmative vote of two-thirds of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a).

“(c) Review of Cost.—

“(1) Determinations of Cost.—

“(A) BEA Determination.—The Bureau of Economic Analysis of the Department of Commerce shall determine the change in the Federal regulatory cost attributable to each newly promulgated, or amendment to a, Federal regulation, rule, or statement.

“(B) Guidance for Agencies.—The Bureau of Economic Analysis of the Department of Commerce shall issue guidance to agencies regarding the methodology to be used to determine the amount of, and any change in, the Federal regulatory cost attributable to each newly promulgated, or amendment to a, Federal regulation, rule, or statement.
“(C) MANDATORY USE BY AGENCIES.—For purposes of any analysis conducted by an agency (without regard to whether the analysis is conducted for purposes of this Act), each agency shall determine the amount of, and any change in, the Federal regulatory cost attributable to each newly promulgated, or amendment to a, Federal regulation, rule, or statement in accordance with the guidance issued under subparagraph (B).

“(2) OMB DETERMINATION.—The OMB shall determine whether the change in the Federal regulatory cost determined under paragraph (1) would cause a breach of any level or allocation of the Federal regulatory cost in effect for a fiscal year, which shall incorporate any reduction to the level or allocation of the Federal regulatory cost attributable to a revision of a Federal regulation, rule, or statement during the fiscal year.

“(3) CBO REVIEW.—The CBO shall—

“(A) review the methodology used by the Bureau of Economic Analysis and the OMB for each determination under paragraphs (1) and (2); and
“(B) issue an opinion on whether the change in the Federal regulatory cost attributable to the applicable newly promulgated, or amendment to a, Federal regulation, rule, or statement would cause a breach of any level or allocation of the Federal regulatory cost in effect for a fiscal year.

“(d) IMPLEMENTATION.—The OMB shall issue a directive prohibiting funds from being obligated or expended to enforce a newly promulgated, or amendment to a, Federal regulation, rule, or statement during a fiscal year if—

“(1) the OMB determines that change in the Federal regulatory cost attributable to the newly promulgated, or amendment to a, Federal regulation, rule, or statement, as determined by the Bureau of Economic Analysis under subsection (c)(1), would cause a breach of any level or allocation of the Federal regulatory cost in effect for the fiscal year; and

“(2) the appropriation Act making the applicable appropriations for the fiscal year contains a provision described in subsection (a).

“(e) OFFSETTING SAVINGS.—In making determinations under this section with respect to a newly promulgated, or amendment to a, Federal regulation, rule, or
statement, the Bureau of Economic Analysis, the CBO, and the OMB shall subtract from the amount of the Federal regulatory cost, and any applicable allocation thereof, any reduction to the Federal regulatory cost that is attributable to a revision of another Federal regulation, rule, or statement made as part of the same rulemaking.

“(f) **Private Right of Action.**—Any person aggrieved of an action taken or failed to be taken under a Federal regulation, rule, or statement for which the OMB has issued a directive prohibiting enforcement under subsection (d) may bring a civil action in an appropriate district court of the United States alleging that the Federal regulation, rule, or statement should not have been enforced.

**SEC. 325. OMB–CBO REPORTS.**

“Not later than 5 years after the date of enactment of this section, and not later than September 15th of each odd-numbered year thereafter, OMB and CBO shall jointly submit to the President, the Senate, and the House of Representatives a report that includes—

“(1) a projection of the direct cost of Federal regulation and the Federal regulatory cost for the first fiscal year beginning after the date of the report and at least each of the 4 ensuing fiscal years;
“(2) a calculation of the estimated direct cost of Federal regulation and Federal regulatory cost as a percentage of the gross domestic product;

“(3) the reduction in estimated gross domestic product attributable to private sector compliance with all Federal regulations, rules, or statements and all Federal statutes;

“(4) a detailed description of the effect on the economy of the United States of Federal regulations, rules, and statements and Federal statutes, which shall be categorized as relating to—

“(A) regulation of the economy;

“(B) security, including homeland security;

“(C) the environment;

“(D) health and safety; or

“(E) the Federal budget;

“(5) a discussion of the expected reduction in personnel, administrative overhead, and programmatic costs that would be achieved by Federal agencies that issue regulations, rules, or statements with a Federal regulatory cost if the Federal agencies reduced the Federal regulatory cost by 5 percent;
“(6) recommendations for budgeting, technical, and estimating changes to improve the Federal regulatory budgeting process;

“(7) the Federal regulatory cost imposed by each Executive branch agency on regulated entities;

“(8) the direct cost of Federal regulation attributable to each Executive branch agency;

“(9) the Federal regulatory costs imposed by each Executive branch agency on small businesses, small organizations, and small governmental jurisdictions (as those terms are defined in section 601 of title 5, United States Code); and

“(10) the sum of the costs described in paragraph (9).

“SEC. 326. REGULATORY BASELINE.

“(a) IN GENERAL.—For the fifth fiscal year that begins after the date of enactment of this section and for every second fiscal year thereafter, CBO, in consultation with OMB, shall submit to the President, the Senate, and the House of Representatives a regulatory baseline, consisting of a projection of the Federal regulatory cost for the fiscal year and at least each of the 4 ensuing fiscal years. In preparing the projection of the regulatory baseline under this subsection, for the second fiscal year covered under the projection and each fiscal year thereafter,
CBO shall adjust the baseline for the estimated growth during that fiscal year in the gross domestic product.

“(b) Deadline.—The CBO shall submit a regulatory baseline required under subsection (a) for a fiscal year not later than the date on which the CBO submits the report required under section 202(e)(1) with respect to that fiscal year.

“(c) Regular Updates on Development of Regulatory Baseline.—Not later than the date on which the CBO submits the report required under section 202(e)(1) with respect to each fiscal year during the period beginning on the date of enactment of this section and ending on the date on which the CBO submits the first projection of the Federal regulatory cost under subsection (a), the CBO shall submit to the Committee on the Budget of the Senate and the Committee on the Budget of the House of Representatives an annual update on the progress of the CBO in developing the regulatory baseline.”.

(b) Technical and Conforming Amendment.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) by inserting before the item relating to section 300 the following:

“Part A. General Provisions”;

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and

(2) by inserting after the item relating to section 315 the following:

"PART B. FEDERAL REGULATORY BUDGET COST CONTROL"

"Sec. 321. Definitions.
"Sec. 322. Establishment of level and allocations.
"Sec. 323. Analysis of Federal regulatory cost by Congressional Budget Office.
"Sec. 324. Enforcement.
"Sec. 325. OMB–CBO reports.
"Sec. 326. Regulatory baseline."

4 SEC. 6. STUDY OF NONMAJOR RULES.

(a) DEFINITIONS.—In this section—

(1) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(2) the term "covered guidance document" means any guidance document that has resulted or is likely to result in an annual effect on the economy of not less than $10,000,000;

(3) the term "covered nonmajor rule" means any rule that has resulted in or is likely to result in an annual effect on the economy of not less than $10,000,000 and not more than $100,000,000;

(4) the term "guidance document" means an agency statement of general applicability and future effect, other than a rule, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue;
(5) the term “Federal regulatory cost” has the meaning given that term under section 321 of the Congressional Budget Act of 1974, as added by this Act; and

(6) the term “rule” has the meaning given that term in section 804 of title 5, United States Code.

(b) REPORTS.—Not later than 120 days after the date of enactment of this Act and every 2 years thereafter, the Comptroller General of the United States shall submit to Congress a report regarding covered nonmajor rules and covered guidance documents, which shall include, for the 4-year period immediately preceding the report—

(1) the number of covered nonmajor rules promulgated;

(2) the number of covered nonmajor rules implemented;

(3) the number of covered guidance documents developed;

(4) the number of covered guidance documents issued;

(5) the Federal regulatory cost of each covered nonmajor rule implemented;

(6) the Federal regulatory cost of each covered guidance document issued;
(7) the aggregate Federal regulatory cost of all covered nonmajor rules implemented;

(8) the aggregate Federal regulatory cost of all covered guidance documents issued; and

(9) a discussion of any covered nonmajor rule for which an initial regulatory flexibility analysis was prepared under section 603 of title 5, United States Code, a final regulatory flexibility analysis was prepared under section 604 of title 5, United States Code, or a cost benefit analysis was prepared that underestimated the actual Federal regulatory cost of implementing the covered nonmajor rule.