

ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT
OF 2015

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JULY 29, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. CHAFFETZ, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1759]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 1759) to amend title 5, United States
Code, to provide for the publication, by the Office of Information
and Regulatory Affairs, of information relating to rulemakings, and
for other purposes, having considered the same, report favorably
thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 1759, the All Economic Regulations are Transparent (ALERT) Act brings needed transparency to the regulatory process. The bill requires agencies to submit monthly regulatory updates to the Office of Information and Regulatory Affairs (OIRA) for all rules expected to be proposed or released in the upcoming year. OIRA is then required to make the monthly regulatory updates publicly available on the Internet. The regulatory updates will include a summary, the objective of each rule, its legal basis, and other information. If a notice of proposed rulemaking has been issued for a rule, the update must include a schedule for completing the rulemaking, an estimate of the cost, and the economic effects considered. A rule must be noticed for at least six months before it can become effective.

H.R. 1759 requires OIRA to publish two annual cumulative assessments of agency rulemaking on October 1st of each year. One assessment, to be published in the Federal Register, provides information about regulatory activity of the past year, including the number of rules issued, any deregulatory actions, and information received in the monthly updates. The other assessment, to be published on the Internet, provides information about the regulatory review process during the past year, including cost-benefit analyses, the number of OIRA reviews, and rules submitted to the Government Accountability Office under the Congressional Review Act.

BACKGROUND AND NEED FOR LEGISLATION

Regulatory transparency is essential for public participation. Enhanced transparency and public participation in the regulatory process requires that the public be apprised in a timely manner about upcoming rulemaking activity.

In recent years, regulatory transparency has diminished. The public has been given less time to prepare for the opportunity to participate in the regulatory process and less time to prepare for the impact of the regulation itself. Currently, the primary regulatory transparency tools are the government-wide semi-annual "Unified Agenda of Regulatory and Deregulatory Actions" (Unified Agenda) and annual agency "Regulatory Plans," both required under Executive Order 12866.¹ These tools are intended to provide notice and transparency into both near term and long term anticipated regulatory activity.

While President Obama's Executive Order 13563 reaffirmed Executive Order 12866, the current Administration has been inconsistent in meeting the requirements for the Unified Agenda and Regulatory Plans.² Traditionally the Unified Agenda has been issued in April and October of each year and the Executive Order requires that the Regulatory Plans be issued with the October agenda.³ The Administration never issued the Spring 2012 Unified

¹ Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993).

² Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 18, 2011).

³ See Exec. Order No. 12291, Federal Regulation, 3 C.F.R. 127 (Feb. 17, 1981), and Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993).

Agenda and the Fall 2012 edition was issued in late December.⁴ In 2013, the Spring Unified Agenda was issued in July and the Fall Unified Agenda was issued in late November, but it was not published in the Federal Register until January 2014.⁵

Additionally, OIRA Administrators under the current Administration have actively sought to shrink the scope of the Unified Agenda.⁶ The Executive Order requires agencies to provide information for the Unified Agenda for “all regulations under development or review.”⁷ However, in June 2012, OIRA Administrator Cass Sunstein issued a memorandum encouraging agencies to reduce the number of rules included on the agenda, by removing rules that are listed as long-term or rules that are not expected to move forward within the next year.⁸ In 2013, Administrator Howard Shelanski issued a substantially similar memorandum.⁹

The ALERT Act will modernize and expand the regulatory transparency tools available to the public by requiring agencies to make monthly updates for rules that are anticipated to be proposed or finalized within the upcoming year. The ALERT Act also creates a statutory deadline for OIRA to submit information to the public about the rulemaking process and the regulatory effects of rules issued and proposed during the past year. The regulatory transparency tools in the ALERT Act will create greater certainty about anticipated regulatory action and the effects of such action on the public.

LEGISLATIVE HISTORY

H.R. 1759, the All Economic Regulations are Transparent (ALERT) Act of 2015, was introduced on April 13, 2015 by Rep. John Ratcliffe (R-TX) and referred to the Committee on Oversight and Government Reform and the Committee on the Judiciary. On April 15, 2015, the Committee on the Judiciary favorably reported H.R. 1759 without amendment by a roll call vote 14 to 9. On May 19, 2015, the Committee on Oversight and Government Reform held a Full Committee Business Meeting to consider H.R. 1759. Congressman Stephen Lynch (D-MA) offered an amendment that was not adopted by a roll call vote of 17 to 18. Ranking Member Elijah Cummings (D-MD) offered an amendment that was not adopted by a roll call vote of 17 to 19. The bill was then ordered favorably reported by a roll call vote 20 to 17.

⁴ See Leland E. Beck, *OMB Releases Fall 2012 Unified Agenda & Regulatory Plan: Meaning What?*, Federal Regulations Advisor (Dec. 22, 2012), <http://www.fedregsadvisor.com/2012/12/22/omb-releases-fall-2012-unified-agenda-regulatory-plan-meaning-what/>.

⁵ See Sofie Miller, *New Regulatory Agenda Lists Thousands of New Rules*, Reg. Studies Center GWU (July 10, 2013) available at: http://research.columbian.gwu.edu/regulatorystudies/sites/default/files/u41/20130710_spring2013unifiedagenda.pdf, Leland E. Beck, *Fall 2013 Unified Agenda Published: Something New, Something Old*, Federal Regulations Advisor (Nov. 27, 2013), <http://www.fedregsadvisor.com/2013/11/27/fall-2013-unified-agenda-published-something-new-something-old/>, and Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions, 79 Fed. Reg. 895 (Jan. 7, 2014).

⁶ Clyde Wayne Crews, *Big Sexy Holiday Fun with the Unified Agenda of Federal Regulations*, Forbes (Dec. 2, 2013) available at: <http://www.forbes.com/sites/waynecrews/2013/12/02/big-sexy-holiday-fun-with-the-unified-agenda-of-federal-regulations/>.

⁷ Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993).

⁸ Memorandum from OIRA Admin. Cass Sunstein “Fall 2012 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Jun. 13, 2012).

⁹ Memorandum from OIRA Admin. Howard Shelanski “Fall 2013 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Aug. 7, 2013).

In the 113th Congress, identical legislation (H.R. 2804) was introduced on July 24, 2013 by Congressman George Holding (R-NC). The bill was referred to the Committee on Oversight and Government Reform and the Committee on the Judiciary. The Committee on Oversight and Government Reform ordered the bill favorably reported by roll call vote of 19 to 15 on February 11, 2015. H.R. 2804 passed the House on February 27, 2014 by a vote of 236 to 179. The text of H.R. 2804 was included in H.R. 4, which passed the House on September 18, 2014.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the All Economic Regulations are Transparent (ALERT) Act of 2015.

Section 2. OIRA publication of information relating to rules

Requires agency heads to submit to the Administrator of the Office of Information and Regulatory Affairs (OIRA) a monthly update of each rule the agency expects to propose or finalize in the upcoming year which includes for each rule: summary; objectives; legal basis; whether comments will be requested on the proposed rule; the stage of the rulemaking process; whether the rule is subject to a regulatory review under 5 U.S.C. § 610; and, if a notice of proposed rulemaking has been issued for a rule, the agency must also include a schedule for completion and an estimate of the cost.

Requires the Administrator to make the monthly updates publicly available on the Internet.

Requires the Administrator to publish an annual cumulative assessment of agency rulemaking in the *Federal Register*. The following information shall be included: information received in the monthly submissions; cost and benefit analyses of rules; agency action that reduced the scope of the regulatory state; the total costs of rules; and the total number of rules for which a cost estimate was unavailable.

Requires the OIRA Administrator to make publicly available on the Internet on an annual basis certain information about the review and analysis of each proposed or finalized rule. The following information will be included: cost and benefits analyses; docket numbers; regulatory identifier number; the number and a list of rules reviewed by OIRA; and the number and list of rules covered under the Congressional Review Act. The first publication will require the cost and benefit analyses for all proposed and final rules in the past 10 years.

Provides that a rule may not take effect until the monthly submission to OIRA has been publicly available on the Internet for not less than 6 months. The 6 month requirement does not apply to rules that do not require notice and public comment and rules the President issues an executive order declaring necessary.

Section 3. Effective dates

Establishes effective dates for the monthly updates and OIRA publications, and provides that the 6 month requirement not take effect until 8 months after enactment.

EXPLANATION OF AMENDMENTS

Congressman Stephen Lynch (D–MA) offered an amendment to require the reporting of benefits in the monthly and annual reports in addition to the costs, which the bill requires. The amendment was not adopted by a roll call vote of 17 to 18. Ranking Member Elijah Cummings (D–MD) offered an amendment to strike the six month provision in the underlying bill. The amendment was not adopted by a roll call vote of 17 to 19. The bill was then adopted and favorably reported to the House by a roll call vote of 20 to 17.

COMMITTEE CONSIDERATION

On May 19, 2015 the Committee met in open session and ordered reported favorably the bill, H.R. 1759, by a roll call vote of 20 to 17, a quorum being present.

ROLL CALL VOTES

There were three recorded votes during consideration of H.R. 1759:

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

ROLL CALL

Vote #: 1

Vote on: Lynch amendment - H.R. 1759

Date: Tuesday, May 19, 2015

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>				MR. CUMMINGS (MD) <i>(Ranking)</i>	X		
MR. MICA (FL)				MRS. MALONEY (NY)	X		
MR. TURNER (OH)				MS. NORTON (DC)	X		
MR. DUNCAN (TN)		X		MR. CLAY (MO)	X		
MR. JORDAN (OH)		X		MR. LYNCH (MA)	X		
MR. WALBERG (MI)		X		MR. COOPER (TN)	X		
MR. AMASH (MI)		X		MR. CONNOLLY (VA)	X		
MR. GOSAR (AZ)		X		MR. CARTWRIGHT (PA)	X		
MR. DesJARLAIS (TN)		X		MS. DUCKWORTH (IL)	X		
MR. GOWDY (SC)		X		MS. KELLY (IL)	X		
MR. FARENTHOLD (TX)				MS. LAWRENCE (MI)	X		
MRS. LUMMIS (WY)		X		MR. LIEU (CA)	X		
MR. MASSIE (KY)		X		MRS. COLEMAN (NJ)	X		
MR. MEADOWS (NC)		X		MS. PLASKETT (VI)	X		
MR. DeSANTIS (FL)				MR. DeSAULNIER (CA)	X		
MR. MULVANEY (SC)		X		MR. BOYLE (PA)			
MR. BUCK (CO)				MR. WELCH (VT)	X		
MR. WALKER (NC)		X		MR. LUJAN GRISHAM (NM)	X		
MR. BLUM (IA)		X					
MR. HICE (GA)		X					
MR. RUSSELL (OK)							
MR. CARTER (GA)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)		X					

Roll Call Totals: Ayes: 17 Nays: 18 Present:

Passed: _____ Failed: X

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

ROLL CALL

Vote #: 2

Vote on: Cummings amendment - H.R. 1759

Date: Tuesday, May 19, 2015

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>				MR. CUMMINGS (MD) <i>(Ranking)</i>	X		
MR. MICA (FL)				MRS. MALONEY (NY)	X		
MR. TURNER (OH)				MS. NORTON (DC)	X		
MR. DUNCAN (TN)				MR. CLAY (MO)	X		
MR. JORDAN (OH)		X		MR. LYNCH (MA)	X		
MR. WALBERG (MI)		X		MR. COOPER (TN)	X		
MR. AMASH (MI)		X		MR. CONNOLLY (VA)	X		
MR. GOSAR (AZ)		X		MR. CARTWRIGHT (PA)	X		
MR. DesJARLAIS (TN)		X		MS. DUCKWORTH (IL)	X		
MR. GOWDY (SC)		X		MS. KELLY (IL)	X		
MR. FARENTHOLD (TX)		X		MS. LAWRENCE (MI)	X		
MRS. LUMMIS (WY)		X		MR. LIEU (CA)	X		
MR. MASSIE (KY)		X		MRS. COLEMAN (NJ)	X		
MR. MEADOWS (NC)		X		MS. PLASKETT (VI)	X		
MR. DeSANTIS (FL)		X		MR. DeSAULNIER (CA)	X		
MR. MULVANEY (SC)		X		MR. BOYLE (PA)			
MR. BUCK (CO)				MR. WELCH (VT)	X		
MR. WALKER (NC)		X		MR. LUJAN GRISHAM (NM)	X		
MR. BLUM (IA)		X					
MR. HICE (GA)		X					
MR. RUSSELL (OK)							
MR. CARTER (GA)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)		X					

Roll Call Totals: Ayes: 17 Nays: 19 Present:

Passed: _____ Failed: ___X___

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

ROLL CALL

Vote #: 3

Vote on: Favorably Report H.R. 1759

Date: Tuesday, May 19, 2015

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>				MR. CUMMINGS (MD) <i>(Ranking)</i>	X		
MR. MICA (FL)				MRS. MALONEY (NY)	X		
MR. TURNER (OH)				MS. NORTON (DC)	X		
MR. DUNCAN (TN)	X			MR. CLAY (MO)	X		
MR. JORDAN (OH)	X			MR. LYNCH (MA)	X		
MR. WALBERG (MI)	X			MR. COOPER (TN)	X		
MR. AMASH (MI)	X			MR. CONNOLLY (VA)	X		
MR. GOSAR (AZ)	X			MR. CARTWRIGHT (PA)	X		
MR. DesJARLAIS (TN)	X			MS. DUCKWORTH (IL)	X		
MR. GOWDY (SC)	X			MS. KELLY (IL)	X		
MR. FARENTHOLD (TX)	X			MS. LAWRENCE (MI)	X		
MRS. LUMMIS (WY)	X			MR. LIEU (CA)	X		
MR. MASSIE (KY)	X			MRS. COLEMAN (NJ)	X		
MR. MEADOWS (NC)	X			MS. PLASKETT (VI)	X		
MR. DeSANTIS (FL)	X			MR. DeSAULNIER (CA)	X		
MR. MULVANEY (SC)	X			MR. BOYLE (PA)			
MR. BUCK (CO)				MR. WELCH (VT)		X	
MR. WALKER (NC)	X			MR. LUJAN GRISHAM (NM)		X	
MR. BLUM (IA)	X						
MR. HICE (GA)	X						
MR. RUSSELL (OK)							
MR. CARTER (GA)	X						
MR. GROTHMAN (WI)	X						
MR. HURD (TX)	X						
MR. PALMER (AL)	X						

Roll Call Totals: Ayes: 20 Nays: 17 Present:

Passed: X Failed: _____

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends title 5, United States Code, to provide for the publication, by the Office of Information and Regulatory Affairs, of information relating to rulemakings. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to amend title 5, United States Code, to provide for the publication, by the Office of Information and Regulatory Affairs, of information relating to rulemakings.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill 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

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

H.R. 1759—ALERT Act of 2015

H.R. 1759 would require federal agencies to provide certain information to the public regarding proposed and final regulations. The bill would require federal agencies to submit information for a proposed new supplement to the Unified Agenda of Federal Regulatory and Deregulatory Actions (a semiannual compilation of the federal regulations under development) that would be published monthly. The Office of Information and Regulatory Affairs would be required to post that information on the Internet on a monthly and annual basis. With certain exceptions, regulations would not be effective until six months after they have appeared in the proposed monthly report.

CBO estimates that preparing the monthly supplemental reports for 3,000 to 4,000 final regulations each year would cost less than a million dollars a year, subject to the availability of appropriated funds, over the 2016–2020 period. Because agencies routinely monitor the status of regulations that are being processed, CBO does not expect this additional reporting requirement would add a significant administrative burden. Based on information from the Congressional Research Service about the current regulatory process, CBO also expects that the requirements in H.R. 1759 would not significantly delay the implementation of final regulations.

Enacting H.R. 1759 could affect direct spending by some agencies (such as the Tennessee Valley Authority) because their operating costs are covered by receipts from the sale of goods, fees, and other collections. Therefore, pay-as-you-go procedures apply. Because most of those agencies can adjust the amounts collected, CBO estimates that any net changes in direct spending by those agencies

would not be significant. Enacting the bill would not affect revenues.

H.R. 1759 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On May 4, 2015, CBO transmitted a cost estimate for H.R. 1759 as ordered reported by the House Committee on the Judiciary on April 15, 2015. The two versions of the legislation are identical, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART I. THE AGENCIES GENERALLY

Chapter		Sec.
1. Organization		101
* * * * *		
6. The Analysis of Regulatory Functions		601
6. <i>The Analysis of Regulatory Functions</i>		601
6A. <i>Office of Information and Regulatory Affairs Publication of Information Relating to Rules</i>		651
* * * * *		

CHAPTER 6A—OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATION OF INFORMATION RELATING TO RULES

- Sec. 651. *Agency monthly submission to office of information and regulatory affairs.*
- Sec. 652. *Office of information and regulatory affairs publications.*
- Sec. 653. *Requirement for rules to appear in agency-specific monthly publication.*
- Sec. 654. *Definitions.*

SEC. 651. AGENCY MONTHLY SUBMISSION TO OFFICE OF INFORMATION AND REGULATORY AFFAIRS

On a monthly basis, the head of each agency shall submit to the Administrator of the Office of Information and Regulatory Affairs (referred to in this chapter as the “Administrator”), in such a manner as the Administrator may reasonably require, the following information:

- (1) For each rule that the agency expects to propose or finalize during the following year:
 - (A) A summary of the nature of the rule, including the regulation identifier number and the docket number for the rule.
 - (B) The objectives of and legal basis for the issuance of the rule, including—
 - (i) any statutory or judicial deadline; and

(ii) whether the legal basis restricts or precludes the agency from conducting an analysis of the costs or benefits of the rule during the rule making, and if not, whether the agency plans to conduct an analysis of the costs or benefits of the rule during the rule making.

(C) Whether the agency plans to claim an exemption from the requirements of section 553 pursuant to section 553(b)(B).

(D) The stage of the rule making as of the date of submission.

(E) Whether the rule is subject to review under section 610.

(2) For any rule for which the agency expects to finalize during the following year and has issued a general notice of proposed rule making—

(A) an approximate schedule for completing action on the rule;

(B) an estimate of whether the rule will cost—

(i) less than \$50,000,000;

(ii) \$50,000,000 or more but less than \$100,000,000;

(iii) \$100,000,000 or more but less than \$500,000,000;

(iv) \$500,000,000 or more but less than \$1,000,000,000;

(v) \$1,000,000,000 or more but less than \$5,000,000,000;

(vi) \$5,000,000,000 or more but less than \$10,000,000,000; or

(vii) \$10,000,000,000 or more; and

(C) any estimate of the economic effects of the rule, including any estimate of the net effect that the rule will have on the number of jobs in the United States, that was considered in drafting the rule. If such estimate is not available, a statement affirming that no information on the economic effects, including the effect on the number of jobs, of the rule has been considered.

SEC. 652. OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATIONS

(a) **AGENCY-SPECIFIC INFORMATION PUBLISHED MONTHLY** Not later than 30 days after the submission of information pursuant to section 651, the Administrator shall make such information publicly available on the Internet.

(b) **CUMULATIVE ASSESSMENT OF AGENCY RULE MAKING PUBLISHED ANNUALLY**

(1) **PUBLICATION IN THE FEDERAL REGISTER** Not later than October 1 of each year, the Administrator shall publish in the Federal Register, for the previous year the following:

(A) The information that the Administrator received from the head of each agency under section 651.

(B) The number of rules and a list of each such rule—

(i) that was proposed by each agency, including, for each such rule, an indication of whether the issuing agency conducted an analysis of the costs or benefits of the rule; and

(ii) that was finalized by each agency, including for each such rule an indication of whether—

(I) the issuing agency conducted an analysis of the costs or benefits of the rule;

(II) the agency claimed an exemption from the procedures under section 553 pursuant to section 553(b)(B); and

(III) the rule was issued pursuant to a statutory mandate or the rule making is committed to agency discretion by law.

(C) The number of agency actions and a list of each such action taken by each agency that—

(i) repealed a rule;

(ii) reduced the scope of a rule;

(iii) reduced the cost of a rule; or

(iv) accelerated the expiration date of a rule.

(D) The total cost (without reducing the cost by any off-setting benefits) of all rules proposed or finalized, and the number of rules for which an estimate of the cost of the rule was not available.

(2) **PUBLICATION ON THE INTERNET** Not later than October 1 of each year, the Administrator shall make publicly available on the Internet the following:

(A) The analysis of the costs or benefits, if conducted, for each proposed rule or final rule issued by an agency for the previous year.

(B) The docket number and regulation identifier number for each proposed or final rule issued by an agency for the previous year.

(C) The number of rules and a list of each such rule reviewed by the Director of the Office of Management and Budget for the previous year, and the authority under which each such review was conducted.

(D) The number of rules and a list of each such rule for which the head of an agency completed a review under section 610 for the previous year.

(E) The number of rules and a list of each such rule submitted to the Comptroller General under section 801.

(F) The number of rules and a list of each such rule for which a resolution of disapproval was introduced in either the House of Representatives or the Senate under section 802.

SEC. 653. REQUIREMENT FOR RULES TO APPEAR IN AGENCY-SPECIFIC MONTHLY PUBLICATION

(a) **IN GENERAL** Subject to subsection (b), a rule may not take effect until the information required to be made publicly available on the Internet regarding such rule pursuant to section 652(a) has been so available for not less than 6 months.

(b) **EXCEPTIONS** The requirement of subsection (a) shall not apply in the case of a rule—

(1) for which the agency issuing the rule claims an exception under section 553(b)(B); or

(2) which the President determines by Executive order should take effect because the rule is—

- (A) necessary because of an imminent threat to health or safety or other emergency;*
- (B) necessary for the enforcement of criminal laws;*
- (C) necessary for national security; or*
- (D) issued pursuant to any statute implementing an international trade agreement.*

SEC. 654. DEFINITIONS

In this chapter, the terms “agency”, “agency action”, “rule”, and “rule making” have the meanings given those terms in section 551.

* * * * *

DISSENTING VIEWS

H.R. 1759, the ALERT Act, is another attack on agency rulemakings that is mischaracterized by its proponents as improving transparency. H.R. 1759 would be unnecessarily burdensome for agencies. Agencies already are required to provide status updates twice a year on their plans for proposing and finalizing rules pursuant to the Regulatory Flexibility Act and Executive Order 12866. This bill would require agencies to report monthly.

The bill would impose an arbitrary and unnecessary moratorium on rulemakings that would prohibit a rule from taking effect until the Office of Information and Regulatory Affairs (OIRA) has posted certain information online for at least six months. The only narrow exceptions to this moratorium would be if an agency claims an exception from the notice and comment provisions of the Administrative Procedure Act or if the President issues an executive order.

The Coalition for Sensible Safeguards, which includes more than 150 labor, scientific, health, and good government groups, sent a letter to the Committee opposing the ALERT Act on May 18, 2015. The letter stated:

We are particularly concerned with the provision contained in Section 653(a) that would delay important rules, essential to protecting the health, safety, and welfare of the American public, until six months after information supplied by agency heads is posted on the Internet by the Administrator of the Office of Information and Regulatory Affairs (OIRA), unless such rules meet certain limited exceptions. As a result of this requirement, the benefits of critically needed regulations—whether measured in lives saved, environmental damage averted, or money saved—would be put on hold unnecessarily for six months or longer.

The bill would also require the Administrator of OIRA to issue a cumulative report annually. Some of the reporting requirements would be duplicative with current law and even other sections of this legislation. The bill, for example, would require OIRA to report the same information it is required to report on a monthly basis under a different section of this bill.

OIRA would also be required to report the total cost of all rules proposed or finalized and the number of rules for which a cost estimate was not available. OIRA is already required to issue an annual report on the costs and benefits of federal rules and paperwork under the Regulatory Right-to-Know Act (P.L. 106-554). Unlike the Regulatory Right-to-Know Act, however, this bill would explicitly prohibit OIRA from taking into account benefits when providing the estimated cumulative costs of proposed and final rules.

H.R. 1759 would require OIRA to provide a report on the “number of rules and a list of each such rule for which a resolution of disapproval was introduced in either the House or Senate under section 802.” This requirement exemplifies the unnecessary and duplicative nature of H.R. 1759. Under this requirement, the legislative branch would be requiring the executive branch to report on the activities of the legislative branch.

Ranking Member Cummings offered an amendment during the Committee’s consideration of H.R. 1759 that would have removed the bill’s six month moratorium on rules taking effect.

Representative Lynch offered an amendment that would have required agencies to report on the benefits of proposed rules instead of only the costs and that would have required OIRA to include an estimate of the total benefits of all rules proposed or finalized in the required annual cumulative reports.

These amendments, which were not adopted, would have mitigated significant flaws in the underlying bill.

ELIJAH E. CUMMINGS,
Ranking Member.

