

TRUTH IN REGULATING ACT OF 2000

—————
JULY 20, 2000.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. BURTON of Indiana, from the Committee on Government
Reform, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 4744]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 4744) to require the General Accounting Office to report to Congress on economically significant rules of Federal agencies, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
I. Purpose	2
II. Need for Legislation	3
III. Committee Action	7
IV. Section-by-Section Analysis	8
V. Oversight Findings	10
VI. Budget Analysis and Projections	10
VII. Congressional Budget Office Estimate	10
VIII. Constitutional Authority Statement	11
IX. Changes in Existing Law Made by the Bill, as reported	11
X. Committee Recommendations	12
XI. Congressional Accountability Act; Public Law 104-1	12
XII. Unfunded Mandates Reform Act; Public Law 104-4, Section 425	12
XIII. Federal Advisory Committee Act (5 U.S.C. App.) Sec. 5(b)	12
Minority Views	13
Additional Views	19

I. PURPOSE

The purposes of the bipartisan “Truth in Regulating Act of 2000” are to increase the transparency of important regulatory decisions; promote effective Congressional oversight to ensure that agency rules fulfill statutory requirements in an efficient, effective, and fair manner; and increase the accountability of Congress and the agencies to the people they serve. The bill establishes a Congressional Office of Regulatory Analysis (CORA) function within the General Accounting Office (GAO). This regulatory analysis capability is intended to enhance Congressional responsibility for regulatory decisions developed under the laws Congress enacts. The most basic reason for the bill is Constitutional: just as Congress needs a Congressional Budget Office (CBO) to check and balance the Executive Branch in the budget process, so it needs an analytic capability to check and balance the Executive Branch in the regulatory process.

SUMMARY

In brief, the Truth in Regulating Act of 2000 is intended to do the following:

Requires that GAO conduct independent evaluations of economically significant rules and report its findings to the Congressional Committees of jurisdiction which requested GAO’s help.

Section 3 defines “economically significant rule” as a rule having a \$100 million or more effect on the economy or a significant impact on small businesses, and “independent evaluation” as a substantive evaluation of the agency’s and the public’s data, methodology and assumptions and any additional evaluation that GAO determines to be necessary.

Section 4(a)(1) provides that a Chairman or Ranking Member of a Committee of jurisdiction of either House of Congress may request GAO to review an economically significant rule after it is published by an Executive Branch agency.

Section 4(a)(2) requires that GAO submit a report to the Committee of jurisdiction in both Houses of Congress not later than 180 days after requested or, in the case of proposed or interim rules, by not later than the end of the public comment period. GAO’s report shall include its independent evaluation of the rule.

Section 4(a)(3) requires that GAO’s independent evaluation include: an evaluation of the potential quantifiable and nonquantifiable benefits of the rule and the persons likely to receive the benefits; an evaluation of the quantifiable and nonquantifiable costs of the rule and the persons likely to bear the costs; an evaluation of any alternative approaches that could achieve the same goal in a more cost-effective manner or that could provide greater net benefits; an evaluation of the regulatory impact analysis (RIA), federalism assessment, or other analysis or assessment prepared by the agency; and, a summary of the results of GAO’s evaluation, including an identification of any changes made by the agency from the proposed rule to the final rule.

Section 4(a)(4) establishes procedures for prioritizing Committee requests. Priorities for GAO reports will be determined by the Majority and Minority Leaders of the Senate and the Speaker and the

Minority Leader of the House, with the highest priority to requests regarding proposed and interim rules.

II. NEED FOR LEGISLATION

Article I, Section 1 of the U.S. Constitution vests all legislative powers in the U.S. Congress. While Congress may not delegate its legislative functions, it routinely authorizes Executive Branch agencies to issue rules that implement laws passed by Congress. Congress has become increasingly concerned about its responsibility to oversee agency rulemaking, especially due to the extensive costs, benefits and impacts of Federal rules.

Over the past five years, Congress has changed the direction of the Federal Government from the endless burden of more taxes and spending to the new fiscal discipline of balance and accountability. America's freedom and innovation have resulted in a quality and productivity revolution and an American economy that is the unparalleled envy of the world. American business has brought incredible improvements to our quality of life, health care, and education. Through the new emphasis on flexibility and innovation, State and local governments have led the way to safer, cleaner, and better places to live. Congress should take responsibility for the impact of Federal regulatory programs on our economy and innovation. In addition to taxes, the Federal Government imposes tremendous costs and restrictions on innovation on the private sector, State and local governments, and the public through ever increasing Federal regulations. Congress should strive for quality, efficiency, and accountability in Federal regulations.

The burden of Federal regulations on the American public continues to grow. Professor Thomas D. Hopkins, Interim Dean, College of Business at the Rochester Institute of Technology, projected total off-budget regulatory costs for 1999 to be \$758 billion.¹ Families spend more on regulation than on medical expenses, food, transportation, recreation, clothing, and savings. In an annual report on the Federal regulatory state, Clyde Wayne Crews, Director of Competition and Regulation Policy at the Competitive Enterprise Institute, reported that the \$758 billion in regulatory costs rival the \$829 billion total of individual income taxes collected. Mr. Crews also stated that "Corporate taxes, at \$189 billion [in 1998], are greatly outdistanced by regulatory costs. Even pretax corporate profits, \$718 billion in 1998, are outstripped by regulatory costs."²

In 1999 alone, the Federal Register published 71,161 pages, the highest number of pages since 1980, the last year of the Carter presidency, which amounts to a 4 percent increase over the 1998 level. This level is also a 43 percent increase in number of pages in 10 years. In 1999, of the 4,538 new rules in various stages, as shown in the Unified Agenda of Federal Regulatory and Deregulatory Actions, 963 are expected to have a significant economic impact on small businesses, which is a 35 percent increase in five years—from 711 to 963. The number of economically significant rules expected increased 17 percent from 1998 to 1999—from 117 to 137.

¹Thomas D. Hopkins article published in the December 1998 journal *Policy Sciences*.

²P. 7, Clyde Wayne Crews, Jr., "Ten Thousand Commandments: An Annual Policymaker's Snapshot of the Federal Regulatory State," 2000 Edition.

In recent years, various statutes (such as the Unfunded Mandates Reform Act of 1995 and the Small Business Regulatory Enforcement Fairness Act of 1996) and executive orders (such as President Reagan's 1981 Executive Order 12291, "Federal Regulation," and President Clinton's 1993 Executive Order 12866, "Regulatory Planning and Review") have mandated that Executive Branch agencies conduct extensive regulatory analyses, especially for economically significant rules having a \$100 million or more effect on the economy or a significant impact on small businesses. Unfortunately, Congress does not have the analytical capability to independently and fairly evaluate these analyses.

Congress currently has two opportunities to review agency regulatory actions. Under the Administrative Procedure Act (APA), Congress can comment on agency proposed and interim rules during the public comment period. Under the Congressional Review Act (CRA), Congress can disapprove an agency final rule after it is promulgated but before it is effective. Unfortunately, Congress has been unable to fully carry out its responsibility under the CRA because it has neither all of the information it needs to carefully evaluate agency regulatory proposals nor sufficient staff for this function. Therefore, since the March 1996 enactment of the CRA, there has been no completed Congressional resolutions of disapproval.

To assume oversight responsibility for Federal regulations, Congress needs to be armed with an independent evaluation of more than just the agency's regulatory documents, including agency-identified alternatives and the agency's costs and benefits data. What is needed additionally is an analysis of legislative history to see if there is a non-delegation problem, such as in the Food and Drug Administration's proposed rule to regulate tobacco products, which was struck down by the Supreme Court in *FDA v. Brown & Williamson*, or backdoor legislating, such as in the Department of Labor's Birth and Adoption Unemployment Compensation ("Baby UI") rule, which provides paid family leave to small business employees, even though Congress in the Family and Medical Leave Act said no to paid family leave and any coverage of small businesses. Also, Congress needs an identification of nonregulatory and lower-cost alternatives neglected by the agency, such as in the Department of Labor's proposed rule for an ergonomics standard, and an identification and analysis of other sources of costs, benefits and impacts data, such as in the Environmental Protection Agency's rule on Particulate Matter and Ozone and Labor's Baby UI rule.

During the 105th Congress, on June 3, 1998, after a March 11, 1998 hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, the Committee favorably reported H.R. 1704, the "Congressional Office of Regulatory Analysis Creation Act" (Rept. 105-441, Part 2). This bill, introduced by Small Business Subcommittee Chairwoman Sue Kelly on May 22, 1997, called for the establishment of a new Legislative Branch Congressional Office of Regulatory Analysis (CORA) agency to, among several duties, analyze all major rules and report to Congress on potential costs, benefits, and alternative approaches that could achieve the same regulatory goals at lower costs. This agency was intended to aid Congress in analyzing Federal regulations. The Committee Report stated, "Congress needs the expertise that

CORA would provide to carry out its duty under the CRA. Currently, Congress does not have the information it needs to carefully evaluate regulations. The only analyses it has to rely on are those provided by the agencies which promulgate the rules. There is no official, third-party analysis of new regulations” (p. 5).

In January and February 2000, Government Reform Subcommittee Chairman David McIntosh and Small Business Subcommittee Chairwoman Kelly introduced bills (H.R. 3521 and H.R. 3669, respectively) which established a CORA function within GAO, which is an existing Legislative Branch agency. These bills and H.R. 4744 respond to the main objection of the earlier bill in the 105th Congress by establishing a CORA function in an existing Legislative Branch agency instead of creating a new agency. GAO is the logical location within the Legislative Branch since it already has some responsibilities under the CRA. On May 10, 2000, the Senate passed S. 1198, the “Truth in Regulating Act of 2000,” by unanimous consent. It also places the CORA function within GAO.

During the 106th Congress, the Committee did not hold a hearing specifically on H.R. 4744 but the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs did hold a June 14, 2000 hearing, entitled “Does Congress Delegate Too Much Power to Agencies and What Should be Done About It?”. At the hearing, Senator Sam Brownback and Representative J.D. Hayworth testified that Congress needs to assume more responsibility for regulations. Dr. Wendy Lee Gramm, Director, Regulatory Studies Program, Mercatus Center, George Mason University and former Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), Alan Raul, Partner, Sidley & Austin and former OMB General Counsel, and David Schoenbrod, Professor of Law, New York Law School and Adjunct Scholar, Cato Institute, all echoed their belief that Congress needs to assume more responsibility for regulations, especially for regulatory proposals without an explicit delegation of regulatory authority from Congress.

Witnesses stressed the need for analytical assistance so that Congress could especially provide timely comment on proposed rules that: (a) take into account Congressional legislative intent; (b) examine other, less costly regulatory and nonregulatory alternative approaches besides those in an agency proposal; and (c) identify additional, non-agency sources of data on benefits, costs, and impacts of an agency’s proposal.

Dr. Gramm testified that, “there’s clearly a need for more and better analysis that is independent of the agency writing the regulation * * * In my view, Congress cannot carry out its responsibilities effectively without such analysis.” She continued by recommending, “a shadow OIRA, and that is to perform independent, high-quality analysis of agency regulations at the proposal stage * * * whether or not the agency has considered the different alternatives, what might be other alternatives * * * I would suggest that all this analysis be done at the proposal stage so that this information can be put into the rulemaking record.”

On June 26, 2000, Chairwoman Kelly and Chairman McIntosh introduced H.R. 4744, the “Truth in Regulating Act of 2000,” which includes several needed improvements to the Senate-passed S. 1198. H.R. 4744 and S. 1198 share nearly identical purposes and

very similar provisions. However, H.R. 4744 includes some needed improvements, such as: (a) providing for timely Congressional comment on agency proposed rules during the public comment period, while there is still an opportunity to influence the cost, scope and content of the rule; (b) requiring GAO to review not only the agency's data but also the public's data to assure a more complete, unbiased and balanced evaluation; (c) including not only rules having a \$100 million or more effect on the economy but also rules with a significant impact on small businesses; (d) clarifying that GAO's evaluation of alternative approaches should include alternatives that achieve the same goal in a more cost-effective manner or that could provide greater net benefits; and, (e) changing procedures so that the bipartisan leadership of Congress instead of GAO determines the priority for GAO's independent evaluations, with highest priority to proposed and interim rules. Comments filed by Congress after the end of the public comment period can be ignored by an agency, as the Department of Labor did after its December 1999 proposed Baby UI rule, which was finalized in June 2000, i.e., in a little over 180 days.

Lastly, S. 1198 includes a pilot project approach to test the effectiveness of a CORA function in GAO; in contrast, H.R. 4744 includes a sunset provision approach, which is a more usual legislative approach for a new organizational function. In fact, the Committee was unable to find any examples in law of a pilot approach for an organization; instead, pilot projects have been used by Congress to demonstrate new and experimental service delivery approaches, e.g., for welfare reform or Medicaid.

As a consequence, at its June 29, 2000 markup, after extensive debate, the Committee rejected an amendment to substitute the text of H.R. 4763, which is identical to the Senate-passed version of S. 1198, i.e., without the needed improvements in H.R. 4744. During the debate, Subcommittee Chairman McIntosh clarified that H.R. 4744 does not require or expect GAO to conduct any new RIAs. Instead, GAO will evaluate the agency's RIA and review the public's cost-benefit and other impact analyses.

Instructed by GAO's independent evaluations, Congress will be better equipped to review final agency rules under the CRA. More importantly, Congress will be better equipped to comment knowledgeably on proposed rules during the public comment period.

The Committee has received letters of support for H.R. 4744 from: the bipartisan National Conference of State Legislatures (NCSL); the bipartisan National League of Cities (NLC), which represents 18,000 municipalities; Alliance USA, a national coalition of more than 1,000 business organizations and individual companies; Americans for Tax Reform; the Business Roundtable; the Chamber of Commerce of the USA, which represents over three million members; the General Motors Corporation; the National Association of Manufacturers, which has 14,000 member companies; National Small Business United, which has 65,000 members; the Schatz Bearing Corporation; the Small Business Survival Committee, which has 60,000 members; and, the Westchester County Chamber of Commerce.

An example of a comment submitted is from NCSL President Paul Mannweiler: "The independent evaluations to be carried out by the U.S. General Accounting Office would ensure a more effi-

cient, effective and fair development of agency regulations. For state and local government officials, it would provide another important marker for ensuring that appropriate federalism assessments are made on proposed rules." NLC President Bob Knight commented that, "Requiring the GAO to consider public data as well as agency data will ensure that a truly objective evaluation results from the GAO analysis." Chairman Karen Kerrigan of the Small Business Survival Committee commented that, "Allowing a Committee Chairman or Ranking Member to turn to * * * (GAO) for an independent evaluation of a proposed major rule's costs and benefits; reviewing the accuracy of various impact analyses; and determining alternative approaches to achieve the same goal in a more cost-effective manner will allow Congress and the public to more proficiently comment on a proposed rule." Lastly, Bruce Josten, Chamber of the United States Executive Vice President Government Affairs, commented that: "Armed with GAO reports, Congressional committees—and by extension the public—will be better equipped to review and respond to regulatory proposals."

The "Truth in Regulating Act of 2000" is a basic step toward a smarter partnership in regulatory programs. The best government is a government accountable to the people. For America to have an accountable regulatory system, the people's elected representatives must participate in, and take responsibility for, the rules promulgated under the laws Congress passes. H.R. 4744 is a meaningful step towards Congress's meeting its regulatory oversight responsibility.

III. COMMITTEE ACTION

The bipartisan "Truth in Regulating Act of 2000" (H.R. 4744) was introduced on June 26, 2000, by Small Business Subcommittee on Regulatory Reform and Paperwork Reduction Chairwoman Sue Kelly and Government Reform Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs Chairman David McIntosh.

After introduction, the bill was referred to the Committee on Government Reform. On June 29, 2000, the Government Reform Committee held a mark up of the bill. The Committee, by recorded vote did not accept an amendment offered by Subcommittee Ranking Member Dennis Kucinich and full Committee Ranking Member Henry Waxman to substitute the text of S. 1198, which was introduced as H.R. 4763 on June 27, 2000 by Rep. Gary Condit. By voice vote, the Committee then approved reporting H.R. 4744 without amendment to the full House.

VOTE OF THE COMMITTEE

There was one recorded vote on the Kucinich-Waxman amendment during the Committee's consideration of H.R. 4744, as follows.

Rollcall—An amendment offered by Mr. Kucinich to substitute the text of H.R. 4763 for the text of H.R. 4744. Defeated 15–18.

YEAS	NAYS
Mr. Waxman	Mr. Burton
Mr. Lantos	Mr. Shays
Mr. Owens	Ms. Ros-Lehtinen
Mr. Kanjorski	Mr. McHugh
Mrs. Maloney	Mr. Horn
Ms. Norton	Mr. Mica
Mr. Fattah	Mr. Davis (VA)
Mr. Cummings	Mr. McIntosh
Mr. Kucinich	Mr. Souder
Mr. Davis (IL)	Mr. LaTourette
Mr. Tierney	Mr. Barr
Mr. Turner	Mr. Hutchinson
Mr. Allen	Mr. Terry
Mr. Ford	Mrs. Biggert
Ms. Schakowsky	Mr. Walden
	Mr. Ose
	Mr. Ryan
	Mr. Vitter

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 2. Findings and purposes

Congress finds that many Federal rules have improved the quality of life of Americans. Congress has responsibility to ensure that the laws are properly implemented by the Executive Branch. In order for Congress to ensure that the laws are implemented in an efficient, effective and fair manner, Congress needs accurate and reliable information on which to base decisions. The bill is intended to increase the transparency of important regulatory decisions, promote effective Congressional oversight of agency rules, and increase the accountability of Congress.

Section 3. Definitions

Section 3 includes definitions for “agency,” “economically significant rule,” and “independent evaluation.” The term “economically significant rule” means a rule having a \$100 million or more effect on the economy or a significant impact on small businesses. “Independent evaluation” means a substantive evaluation of the agency’s and the public’s data, methodology and assumptions and any additional evaluation that the Comptroller General of GAO determines to be necessary, including strengths or weaknesses in those data, methodology, and assumptions and any implications for the rule-making.

Rules having a significant impact on small businesses are specifically included in the definition of “economically significant rule” because small businesses are the backbone of America and deserve special analysis for regulatory burdens. Small businesses are less able to shoulder heavy regulatory burdens. To ensure a more complete, unbiased and balanced analysis by GAO, “independent evaluation” is defined to include not only the agency’s but also the

public's data. Merely evaluating the agency's data will not provide Congress with sufficient information in which to formulate appropriate comments on an agency proposed rule or a Congressional resolution of disapproval for an agency final rule. This Section does not require GAO to conduct any new RIAs.

Section 4. Report on rules

Section 4(a)(1) provides that a Chairman or Ranking Member of a Committee of jurisdiction of either House of Congress may request GAO to review an economically significant rule after it is published by an Executive Branch agency.

Section 4(a)(2) requires that GAO submit a report to the Committee of jurisdiction in both Houses of Congress not later than 180 days after requested or, in the case of proposed or interim rules, by not later than the end of the public comment period. The provision for shortened review time for proposed or interim rules is to ensure that comment by Congress is submitted during the public comment period, while there is still an opportunity to influence the cost, scope and content of the rule. The APA requires that all members of the public, including Congress, be given an equal opportunity to comment. In fact, under the APA, late Congressional comments cannot be considered by the agency unless all other late public comments are equally considered. Under the APA, agencies are required to consider timely Congressional and public comment filed during the public comment period and to respond to them in the preamble of the final rules. Therefore, GAO needs to complete its review during the same period afforded all other members of the public. GAO's report shall include its independent evaluation of the rule.

Section 4(a)(3) requires that GAO's independent evaluation include: an evaluation of the potential quantifiable and nonquantifiable benefits of the rule and the persons likely to receive the benefits; an evaluation of the quantifiable and nonquantifiable costs of the rule and the persons likely to bear the costs; an evaluation of any alternative approaches that could achieve the same goal in a more cost-effective manner or that could provide greater net benefits; an evaluation of the RIA, federalism assessment, or other analysis or assessment prepared by the agency; and, a summary of the results of GAO's evaluation, including an identification of any changes made by the agency from the proposed rule to the final rule. Requiring GAO to evaluate additional alternative approaches besides those identified in the rule is essential because the American people deserve the most cost-effective approach or one that provides the greatest net benefits.

Section 4(a)(4) establishes procedures for prioritizing Committee requests. Priorities for GAO reports will be determined by the Majority and Minority Leaders of the Senate and the Speaker and the Minority Leader of the House, with the highest priority to requests regarding proposed and interim rules, while there is still an opportunity to influence the cost, scope and content of the rule. This approach provides that the bipartisan leadership of Congress determines the priorities for GAO's independent evaluations instead of GAO.

Section 5. Authorization of appropriations

Section 5 authorizes \$5,200,000 for each year from Fiscal Year 2001 to 2003. This is the same annual level of funding as received by OMB's OIRA.

Section 6. Effective date; sunset provision

Section 6 establishes an effective date 180 days after enactment, with a three-year sunset provision. A 180-day delayed effective date provides sufficient time for GAO to hire appropriate analytical staff to conduct the independent evaluations, which differ substantially from GAO's usual audit reports.

V. OVERSIGHT FINDINGS

Pursuant to rule XIII, clauses 3(c)(1), of the Rules of the House of Representatives, the results and findings for these oversight activities are incorporated in the recommendations found in this bill and in this report.

VI. BUDGET ANALYSIS AND PROJECTIONS

H.R. 4744 provides for a new authorization for GAO. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act of 1974 are applicable.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 10, 2000.

Hon. DAN BURTON,
*Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4774, the Truth in Regulating Act of 2000.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4744—Truth in Regulating Act of 2000

Summary: H.R. 4774 would require the General Accounting Office (GAO), at the request of a Chairman or Ranking Minority Member of an authorizing committee with appropriate jurisdiction, to independently evaluate and report on certain regulatory rules issued by federal agencies. The rules subject to review would be those that could have an annual effect on the U.S. economy of at least \$100 million or that could adversely affect the economy, environment, public health and safety, or state, local, or tribal governments. Each GAO report would include an evaluation of the potential costs and benefits of implementing a particular rule, alternative approaches for achieving the rule's goal at a lower cost, and an evaluation of the regulatory impact analysis or other assess-

ment performed by the agency issuing the rule. To carry out these functions, the bill would authorize the appropriation of \$5.2 million for each fiscal years 2001 through 2003. The bill would not take effect until 180 days after enactment, and would not apply to rules issued more than three years after that date.

Subject to appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$14 million over the 2001–2005 period. Enacting H.R. 4774 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 4774 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4774 is shown in the following table. This estimate assumes that the authorized amounts will be appropriated for each year from 2001 through 2003. The outlays estimated for 2001 are lower because the bill would not take effect until 180 days after enactment. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
GAO Spending Under Current Law:						
Estimated Authorization Level ¹	379	397	412	427	442	458
Estimated Outlays	379	394	409	421	436	452
Proposed Changes:						
Authorization Level	0	5	5	5	0	0
Estimated Outlays	0	3	5	5	1	0
GAO Spending Under H.R. 4774:						
Estimated Authorization Level	379	402	417	432	442	458
Estimated Outlays	379	397	414	426	437	452

¹The 2000 level is the amount appropriated for that year. The levels shown for 2001 through 2005 are baseline projections, reflecting annual adjustments for anticipated inflation. Without such adjustments, the level would stay constant at \$379 million.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 4774 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: John R. Righter. Impact on the State, local, and tribal governments: Susan Sieg Tompkins. Impact on the private sector: Sarah Sitarek.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. CONSTITUTIONAL AUTHORITY STATEMENT

Clauses 14 and 18 of Article I, section 8 of the Constitution grants the Congress the power to enact this law.

IX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 4744 does not make any changes in existing law.

X. COMMITTEE RECOMMENDATIONS

On June 29, 2000, a quorum being present, the Committee on Government Reform ordered the bill favorably reported by voice vote.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1

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 (P.L. 104-1).

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4,
SECTION 425

The Committee finds that the legislation does not impose any Federal Mandates within the meaning of section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION
5(b)

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).

MINORITY VIEWS

H.R. 4744 is an ill-conceived bill. It did not receive the benefit of a hearing or Subcommittee markup. Instead, it was rushed through the Committee in a flawed form.

H.R. 4744 calls on the Government Accounting Office (GAO) to review the cost-benefit analyses conducted by federal agencies as part of federal rulemaking. The Senate recently considered this issue and developed a workable, bipartisan approach to GAO involvement. The Senate bill, S. 1288, passed by unanimous consent in the Senate. It was recently introduced by Rep. Gary Condit in the House as H.R. 4763.

We can support the Condit-Senate approach. In fact, the Kucinich-Waxman substitute that was defeated on a party line vote during the full committee markup was identical to it.

Unfortunately, H.R. 4744 does not take this bipartisan approach. Instead, it would impose costly obligations on the GAO and would bog down the rulemaking process. That is why it is opposed by environmental groups such as the National Environmental Trust; labor organizations such as the AFL-CIO and the United Auto Workers; health groups such as the American Public Health Association; and consumer organizations such as Public Citizen. A letter urging opposition to H.R. 4744 from the Citizens for Sensible Safeguards—a broad based coalition of more than 200 public interest groups—is included as Attachment 1.

Moreover, GAO—the entity charged with carrying out the responsibilities in the bill—has expressed concern that H.R. 4744 requires too much analysis, in too short of a time period, without a promise of additional funding. Furthermore, GAO expressed concern that the requirement for independent analyses expands its responsibilities beyond its traditional role as an auditor. These concerns stand in stark contrast to GAO's support of the Kucinich-Waxman substitute. The GAO letter is included as Attachment 2.

The most important difference between the H.R. 4744 and the Kucinich-Waxman substitute is that H.R. 4744 would require GAO to conduct a host of new independent analyses, many of which are not currently performed by the agencies. The substitute would only require GAO to evaluate agency analyses.

During the markup, one of the authors of H.R. 4744—Rep. David McIntosh—stated that he did not intend to require GAO to conduct its own independent analyses. Unfortunately, the language of the bill is inconsistent with this stated intention.

As Rep. Jim Turner pointed out during the markup, H.R. 4744 requires “an independent evaluation,” which shall include “an evaluation of the potential benefits” and “potential costs” of the rule. Furthermore, H.R. 4744 requires GAO to conduct a number of analyses that are not currently conducted by the agencies. For instance, it requires cost/benefit, small business impact, and fed-

eralism analyses of some minor rules and of major rules promulgated by independent agencies. Because current law does not require that these analyses be performed by the agencies, GAO would have no choice but to conduct its own independent analyses under H.R. 4744.

We are also concerned that H.R. 4744 focuses more on the costs of regulations than on the benefits. In theory, the weighing of costs and benefits may appear appealing. But in practice, many of the most important regulatory benefits cannot be quantified. Thus, an undue emphasis on cost-benefit figures can skew the analysis. This problem is exacerbated by the requirement that GAO analyze the cost-effectiveness of alternatives to the regulation, which emphasizes the cost side of the equation.

This Committee has passed a number of regulatory reform measures which were voted out of Committee largely on a party line vote. None of these measures has been passed by the Senate. However, in this case, the Committee had an opportunity to take a different approach and pass a bipartisan bill that had received unanimous support in the Senate. We are disappointed that the Committee chose not to take this route when it rejected the Kucinich-Waxman substitute amendment.

HENRY A. WAXMAN.
TOM LANTOS.
MAJOR R. OWENS.
EDOLPHUS TOWNS.
PAUL E. KANJORSKI.
PATSY T. MINK.
BERNARD SANDERS.
CAROLYN B. MALONEY.
ELEANOR H. NORTON.
CHAKA FATTAH.
ELIJAH E. CUMMINGS.
DENNIS J. KUCINICH.
ROD R. BLAGOJEVICH.
DANNY K. DAVIS.
JOHN F. TIERNEY.
TOM ALLEN.
HAROLD E. FORD, Jr.
JAN SCHAKOWSKY.

ATTACHMENT 1

CITIZENS FOR SENSIBLE SAFEGUARDS,
Washington, DC, June 28, 2000.

DEAR REPRESENTATIVE: On behalf of Citizens for Sensible Safeguards, a broad-based coalition of more than 200 public interest organizations, we are writing to express our strong opposition to H.R. 4744, which seeks to establish an office within GAO to conduct cost-benefit analysis of agency rules.

This legislation is vastly different from the Senate version (S. 1198), which recently passed by unanimous consent. In reaching this bipartisan compromise, our coalition worked closely with the Senate Governmental Affairs Committee to make sure that (1) GAO is capable of conducting the work assigned to it; (2) that an

extra-rulemaking process is not created; and (3) that cost considerations are not elevated above the benefit side of the equation.

H.R. 4744 violates all of these principles. Specifically:

- It requires that GAO conduct its own cost-benefit analysis. Cost-benefit analyses are extremely time-consuming, require significant expertise, and are done within the context of each rulemaking. Yet H.R. 4744 requires that GAO finish its analysis within 180 days for final rules, and 60 days—or the end of the public comment period, whichever is later—for proposed or interim final rules. This is clearly unworkable, especially considering that the bill authorizes only \$5.2 million to fund the office. The Senate bill, by contrast, only asks GAO to conduct “an evaluation of the agency’s analysis” to examine “underlying assessments and assumptions” (and allows 180 days for analysis of proposed rules, as it does for final rules). This is more realistic and fits much more naturally with GAO’s skill, which is in auditing agency activity, not in developing regulation.

- It requires GAO to assess regulatory alternatives using new criteria—not required of the agencies—that slant analysis to the cost side of the equation. H.R. 4744 requires GAO to conduct an analysis “of any alternative regulatory approaches that could achieve the same goal in a more cost-effective manner or that could provide greater net benefits * * *” Currently, agencies are not required to develop rules on the basis of a cost-effectiveness test, and in many cases, they are statutorily prohibited from doing so because of the seriousness of the health, safety, or environmental risks involved. Such a test inevitably leads to less protective standards. GAO should not be charged with evaluating rules on the basis of a standard that Congress has found, in many cases, to be inappropriate. This provision was removed from the Senate version for that reason.

- It puts GAO in the position of weighing outside analysis. Not only would GAO have to review the agency’s work, it would also have to review the “public’s data, methodology, and assumptions used in developing the economically significant rule”—presumably information from the public comment period, although the bill does not specify. This would put GAO in the position of weighing outside analysis (including self-serving analysis generated by affected industry)—in search of a “more cost effective” approach—that the agency has already reviewed and rejected. GAO would simply not have the time or the expertise to do its own credible, independent assessment of the “public’s data.”

Some of the language in this bill is somewhat ambiguous. The proponents may claim that it does not actually require GAO to conduct cost-benefit analysis. But if that’s the case, then why not go with language from the Senate version that is decidedly unambiguous? Clearly, the sponsors of H.R. 4744 have something more in mind.

In particular, we are concerned that H.R. 4744 creates an extra-rulemaking process at GAO—which could serve as the basis for rejecting agency rules—that includes none of the checks and balances of an executive branch rulemaking (e.g., notice and comment, judicial review, etc.). This is especially significant since the immense scope of the work, coupled with the limited time-frame, is likely to

produce sloppy work. Add in the bill's overemphasis on costs, and GAO's reports would provide a distorted regulatory picture that could bias Congress against important health, safety, and environmental protections.

Accordingly, we strongly urge you to oppose H.R. 4744. If you have any questions on this bill or would like to meet with coalition members, please contact Reece Rushing.

Sincerely,

AFL-CIO; AFSCME; American Public Health Association; Consumers Union; National Environmental Trust; OMB Watch; Public Citizen; UAW; United Steelworkers of America; U.S. PIRG.

ATTACHMENT 2

U.S. GENERAL ACCOUNTING OFFICE,
OFFICE OF THE GENERAL COUNSEL,
Washington, DC, June 29, 2000.

Hon. HENRY A. WAXMAN,
*Ranking Minority Member, Committee on Government Reform,
House of Representatives.*

Hon. DENNIS KUCINICH,
*Ranking Minority Member, Subcommittee on National Economic
Growth, Natural Resources, and Regulatory Affairs, Committee
on Government Reform, House of Representatives.*

As you requested, this letter provides our views regarding the role proposed for GAO by H.R. 4744, the "Truth in Regulating Act of 2000." We have met with majority and minority staff on several occasions regarding the GAO-related provisions of the Senate bill (S. 1198) that was passed by the Senate on May 9, 2000, as well as the previously introduced House bills on this issue (H.R. 3521 and H.R. 3669).

We are not taking a position on whether Congress needs the type of regulatory analysis and reporting contemplated by the bill. However, in testimony earlier this month, we noted both the House and Senate legislation on this issue and said that we stood ready to assist Congress in carrying out its oversight responsibility.¹ We also said that our ability to carry out that role depended on how any legislation that is ultimately enacted addresses such issues as (1) the scope of the analysis contemplated, (2) the amount of time within which we must perform our reviews, (3) the number of requests that we receive, and (4) the resources that we are given to accomplish the tasks involved.

H.R. 4744 contains provisions that could affect each of these issues. With respect to the scope of our analysis, the bill states that our reports should include an evaluation of the potential benefits and costs of the rules, as well as an evaluation of any alternative approaches that could achieve the same goal in a more cost-effective manner or that could provide greater net benefits. This language could be interpreted to require us to prepare our own cost-benefit analysis for the rules—a complex and resource intensive

¹Regulatory Reform: Procedural and Analytical Requirements in Federal Rulemaking (GAO/T-GGD/OGC-00-157, June 8, 2000).

task that sometimes takes agencies months or years to complete. It is also a role that is very different than our traditional responsibility of evaluating agencies' analyses. To eliminate any ambiguity on this issue, the language in the bill could be clarified to specify that GAO's role would be to review the agencies' evaluations of costs, benefits, and alternative approaches.

With regard to the amount of time permitted for our reviews, H.R. 4744 states that, for proposed or interim final rules, our reports should be submitted to Congress within 60 calendar days of the request or by the end of the rulemaking comment period, whichever is later. While the bill provides us with 180 days to review other types of rules, it states that the procedures delineating priorities of requests should give the highest priority to proposed and interim final rules. Therefore, most of our reviews pursuant to H.R. 4744 could have to be completed within 60 days. We believe that we will often need more than 60 days to develop our reports given the size and complexity of many of the economic analyses that we could be expected to review. Also, on several occasions we have provided our views on proposed rules after the official comment period had ended, sometimes to great effect.² Therefore, we believe that providing 180 days for the review of all rules would permit GAO to perform meaningful and timely analyses.

The potential universe of rules that could be the subject of a congressional request under H.R. 4744 could also be substantial. The bill initially defines "economically significant" rules subject to a possible review request to include any proposed or final rule that would, among other things, have a \$100 million impact on the economy. We estimate that about 100 rules are published each year that meet this standard. The bill also includes in the definition of "economically significant" rules any proposed or final rule that has a significant effect on small entities under the Regulatory Flexibility Act. It is unclear how many rules this provision could add to the number of potentially reviewable rules, but it could be several hundred.

Finally, H.R. 4744 states that \$5.2 million is authorized to be appropriated to GAO in each fiscal year, but does not make our review responsibility contingent upon our receiving an additional appropriation. Therefore, we could be required to assume a significant additional workload with no additional funds during a period of time when the demand for GAO assistance throughout the Congress has never been greater. As we said in a report last year, an independent analysis of regulatory costs and benefits will be most useful to policymakers if the organization charged with this responsibility has sufficient resources to do a proper job.³

We would be happy to discuss these and other issues with you or your staff in greater detail, and to work with the Committee as it considers issues related to GAO in this important legislation. As noted earlier, we worked extensively with both majority and minority staff in the Senate on the related GAO provisions in S. 1198.

² See, for example, Dietary Supplements: Uncertainties in Analyses Underlying FDA's Proposed Rule on Ephedrine Alkaloids (GAO/HEHS/GGD-99-90, July 2, 1999). In response to our concerns, FDA partially withdrew this 1997 proposed rule.

³ Regulatory Accounting: Analysis of OMB's Reports on the Costs and Benefits of Federal Regulation (GAO/GGD-99-59, Apr. 20, 1999).

As a result of those discussions, we believe that the Senate bill provides a reasonable accommodation to our concerns.

Because of our previous discussions regarding this issue with congressional staff, we are sending copies of this letter to Representative Dan Burton, Chairman, Committee on Government Reform; Representative David McIntosh, Chairman, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform; Representative Sue Kelly, Chairwoman, Subcommittee on Regulatory Reform and Paperwork Reduction, Committee on Small Business; Representative Constance A. Morella; Senator Fred Thompson and Senator Joseph I. Lieberman, Chairman and Ranking Minority Member, respectively, of the Committee on Governmental Affairs; Senator Christopher Bond; Senator Richard C. Shelby; and Senator Carl Levin.

LYNN H. GIBSON
(For Robert P. Murphy, General Counsel).

ADDITIONAL VIEWS

The Minority Views section of this report erroneously states that H.R. 4744 “would require GAO to conduct a host of new independent analyses.” During the Committee debate, I clarified that H.R. 4744 does not require or expect GAO to conduct any new RIAs, cost-benefit analyses, or other impact analyses. The Minority Views section also erroneously states that the bill “requires cost/benefit, small business impact, and federalism analyses * * * Because current law does not require that these analyses be performed by the agencies, GAO would have no choice but to conduct its own independent analyses.” The bill merely requires GAO to analyze already-prepared agency analyses, not to prepare any missing cost/benefit, small business impact, federalism analysis, or any other missing analysis.

Attachment 1, an unsigned letter from ten organizations on Citizens for Sensible Safeguards letterhead, misunderstands several aspects of the bill. First, it also erroneously states that the bill “requires that GAO conduct its own cost-benefit analysis.” Second, the letter states that the GAO analysis will be slanted to the cost side of the equation “in search of a ‘more cost effective’ approach.” Instead, the bill calls for an analysis of alternatives that could achieve the goal in a more cost-effective manner or that could provide greater net benefits. Alternatives that achieve the same goal achieve the same benefit; alternatives that provide greater net benefits are more beneficial. Third, the letter states that the bill “creates an extra-rulemaking process at GAO * * * that includes none of the checks and balances of an executive branch rulemaking (e.g., notice and comment, judicial review, etc.)” This is a misunderstanding of the bill and the agency rulemaking process. The bill merely calls for GAO’s analytic help so that Congressional Committees can effectively participate in the agency’s rulemaking process at the proposed rule stage and can effectively consider actions under the CRA at the final rule stage. The agency continues to be the ultimate decisionmaker after notice and consideration of comments from Congressional Committees and other public commentators, and agency actions continue to be subject to judicial review.

Attachment 2 is a pre-Committee markup letter from GAO. The Committee debate addressed GAO’s concerns: (a) H.R. 4744 does not require or expect GAO to conduct any new RIAs, cost-benefit analyses, or other impact analyses; (b) under the APA’s fairness provisions, GAO cannot be given more time than other members of the public to comment on agency regulatory proposals; (c) the inclusion of rules, within the scope of GAO’s new evaluation function, that significantly impact small businesses is desirable because small businesses, which are the backbone of America, deserve a special analysis for new agency regulatory burdens on them; and

(d) authorization bills do not include guaranteed appropriation amounts. In fact, GAO was unable to provide the Committee with any example of an enacted authorization bill with such a guarantee.

DAVID MCINTOSH.

The text of H.R. 4744 follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Truth in Regulating Act of 2000”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) many Federal regulations have improved the quality of life of the American public, however, uncontrolled increases in regulatory costs and lost opportunities for better regulation should not be continued;

(2) the legislative branch has a responsibility to ensure that laws passed by Congress are properly implemented by the executive branch; and

(3) in order for the legislative branch to fulfill its responsibilities to ensure that laws passed by Congress are implemented in an efficient, effective, and fair manner, the Congress requires accurate and reliable information on which to base decisions.

(b) PURPOSES.—The purposes of this Act are to—

(1) increase the transparency of important regulatory decisions;

(2) promote effective congressional oversight to ensure that agency rules fulfill statutory requirements in an efficient, effective, and fair manner; and

(3) increase the accountability of Congress and the agencies to the people they serve.

SEC. 3. DEFINITIONS.

In this Act, the term—

(1) “agency” has the meaning given such term under section 551(1) of title 5, United States Code;

(2) “economically significant rule” means any proposed or final rule, including an interim or direct final rule, that may have an annual effect on the economy of \$100,000,000 or more 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, or for which an agency has prepared an initial or final regulatory flexibility analysis pursuant to section 603 or 604 of title 5, United States Code; and

(3) “independent evaluation” means a substantive evaluation of the agency’s and the public’s data, methodology, and assumptions used in developing the economically significant rule, and any additional evaluation that the Comptroller General determines to be necessary, including—

(A) an explanation of how any strengths or weaknesses in those data, methodology, and assumptions support or detract from conclusions reached by the agency; and

(B) the implications, if any, of those strengths or weaknesses for the rulemaking.

SEC. 4. REPORT ON RULES.

(a) IN GENERAL.—

(1) REQUEST FOR REVIEW.—When an agency publishes an economically significant rule, a chairman or ranking member of a committee of jurisdiction of either House of Congress may request the Comptroller General of the United States to review the rule.

(2) REPORT.—The Comptroller General shall submit a report on each economically significant rule selected under paragraph (1) to the committees of jurisdiction in each House of Congress not later than 180 calendar days after a committee request is received, or in the case of a request for review of a notice of proposed rulemaking or an interim final rulemaking, by not later than the end of the 60-calendar-day period beginning on the date the committee request is received, or the end of the period for submission of comment regarding the rulemaking, whichever is later. The report shall include an independent evaluation of the economically significant rule by the Comptroller General.

(3) INDEPENDENT EVALUATION.—The independent evaluation of the economically significant rule by the Comptroller General under paragraph (2) shall include—

(A) an evaluation of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of the persons or entities likely to receive the benefits;

(B) an evaluation of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms and the identification of the persons or entities likely to bear the costs;

(C) an evaluation of any alternative approaches that could achieve the same goal in a more cost-effective manner or that could provide greater net benefits, and, if applicable, a brief explanation of any statutory reasons why such alternatives could not be adopted;

(D) an evaluation of the regulatory impact analysis, federalism assessment, or other analysis or assessment prepared by the agency or required for the economically significant rule; and

(E) a summary of the results of the evaluation of the Comptroller General and the implications of those results, including an evaluation of any changes from the proposed rule made by the agency in the final rule.

(4) PROCEDURES FOR PRIORITIES OF REQUESTS.—In consultation with the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives, the Comptroller General shall develop procedures for determining the priority and number of those requests for review under paragraph (1) that will be reported under paragraph (2). The procedures shall give the highest priority to requests regarding a notice of proposed rulemaking, and to requests regarding an interim final rulemaking.

(b) **AUTHORITY OF COMPTROLLER GENERAL.**—Each agency shall promptly cooperate with the Comptroller General in carrying out this Act. Nothing in this Act is intended to expand or limit the authority of the General Accounting Office.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the General Accounting Office to carry out this Act \$5,200,000 for each of fiscal years 2001 through 2003.

SEC. 6. EFFECTIVE DATE; SUNSET PROVISION.

(a) **EFFECTIVE DATE.**—This Act shall take effect 180 days after the date of enactment of this Act.

(b) **SUNSET PROVISION.**—This Act shall not apply with respect to rules published on or after the date that is 3 years after the effective date of this Act.

