115TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 115–14
Part 1

SEARCHING FOR AND CUTTING REGULATIONS THAT ARE UNNECESSARILY BURDENSOME ACT

FEBRUARY 21, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 998]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 998) to provide for the establishment of a process for the review of rules and sets of rules, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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69–006

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 998, the "Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2017" (SCRUB Act) establishes a Retrospective Regulatory Review Commission (Commission) to identify unnecessary regulations for repeal to reduce regulatory burdens and stimulate economic growth. If Congress agrees to the recommendations, the identified regulations would be repealed immediately or through a regulatory "cut-go" procedure. The SCRUB Act sets a goal of a 15 percent reduction in economic costs of regulations and prioritizes major rules more than 15 years old that can be reduced without diminishing effectiveness.

BACKGROUND AND NEED FOR LEGISLATION

Regulations have substantially hampered economic growth in the United States over the past 36 years.[1] One study estimated that the total regulatory burden on Americans is over $2 trillion.[2] Specifically, the "the growth of regulation since 1980 cost the United States roughly $4 trillion in GDP in 2012 alone,"[3] and if regulation levels remained constant with regulation levels in 1980, the American economy would have been nearly 25 percent larger by 2012.[4]

According to the Office of Management and Budget (OMB), federal agencies published over 36,000 final rules between fiscal year (FY) 2006 and FY 2015.[5] Of these rules, 555 were major rules, meaning the anticipated effect on the economy of a just one of them was at least $100 million annually.[6] This is a substantial increase from just a decade prior, when agencies issued only 95 major rules between October 1, 1995, and September 30, 2005.[7] This rapid growth in regulations helps explain why small businesses rank regulations as one of the top reasons for uncertainty and slow business growth.[8]

Regulations promulgated year after year have resulted in a cumulative burden that is stifling entrepreneurship and adversely affecting economic growth and the labor market.[9] While an indi-

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[1] BENTLEY COFFEY, PATRICK A. MCLAUGHLIN, AND PIETRO PERETTO, MERCATUS CENTER, GEORGE MASON UNIVERSITY, THE CUMULATIVE COST OF REGULATIONS 8 (2016), *available at* https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf.

[2] W. MARK CRAIN AND NICOLE V. CRAIN, NATIONAL ASSOCIATION OF MANUFACTURERS (NAM), THE COST OF FEDERAL REGULATION TO THE U.S. ECONOMY, MANUFACTURING AND SMALL BUSINESS 1 (2014), *available at* http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf.

[3] BENTLEY COFFEY, PATRICK A. MCLAUGHLIN, AND PIETRO PERETTO, MERCATUS CENTER, GEORGE MASON UNIVERSITY, THE CUMULATIVE COST OF REGULATIONS 8 (2016), *available at* https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf.

[4] *Id.*

[5] OFFICE OF INFORMATION AND REGULATORY AFFAIRS (OIRA), OMB, 2016 DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT 7 (2016), *available at* https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/draft_2016_cost_benefit_report_12_14_2016_2.pdf.

[6] *Id.*

[7] OIRA, OMB, 2006 REPORT TO CONGRESS ON THE COSTS AND BENEFITS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 2 (2006), *available at* https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf.

[8] NFIB, SMALL BUSINESS ECONOMIC TRENDS 18 (2016), *available at* http://www.nfib.com/assets/SBET-November-2016.pdf.

[9] PATRICK A. MCLAUGHLIN AND RICHARD WILLIAMS, MERCATUS CENTER, GEORGE MASON UNIVERSITY, THE CONSEQUENCES OF REGULATORY ACCUMULATION AND A PROPOSED SOLUTION 2 (2014), *available at* https://www.mercatus.org/system/files/McLaughlin_RegulatoryAccumulation_v2.pdf.

vidual regulation may be well intended to address a singular problem, over time and across the government, these regulations build up, duplicate, and sometimes conflict with each other.[10] Further, even as potentially duplicative or unnecessary regulations are identified, these regulations are often difficult to roll back and eliminate. Special interest groups and agency employees may have a vested interest in keeping regulations, even unnecessary ones, or no incentive to pare them down.[11] This regulatory buildup has created a net negative impact on the economy.[12]

Legislation is necessary to reduce the regulatory burden on individuals and businesses across the United States and avoid unnecessarily stifling economic growth. While experts and interested parties have suggested varying potential solutions for problems associated with regulatory accumulation, a reoccurring theme is the need for an independent regulatory commission.[13] The cumulative effect of regulations across multiple agencies and industries requires any review cut across all agencies. This legislation establishes an independent regulatory commission with experts who, rather than being tied to individual federal agencies, would identify overlap and duplication while also seeking to eliminate outdated or unnecessary regulations. Americans want to follow the rules; however, currently the regulatory system in America is overflowing with superfluous regulations that make it difficult and impose significant costs and burdens.

The SCRUB Act, through the establishment of an independent and transparent commission, will greatly reduce the regulatory burdens currently in existence. The SCRUB Act creates a commission for a limited time span with the independence necessary to provide objective recommendations for removal of ineffective regulations. The Presidents select members of the Commission from a list jointly offered by leadership in the U.S. House of Representatives and Senate. Those appointments are then subject to Senate confirmation. The legislation also requires transparency in the Commission process by requiring the Commission to establish a methodology for conducting the review and identifying regulations for repeal. The methodology is required to be published in the Federal Register. Finally, Congress must vote to implement the recommendations of the Commission before any regulation will be repealed. Congress will serve as a check against improper removal if a substantial need for the regulation still exists.

LEGISLATIVE HISTORY

Representative Jason Smith (R–MO) introduced H.R. 998 on February 9, 2017, which was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on the Judiciary. On February 14, 2017, the Committee considered H.R. 998 at a business meeting. The Committee

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[10] BENTLEY COFFEY, PATRICK A. MCLAUGHLIN, AND PIETRO PERETTO, MERCATUS CENTER, GEORGE MASON UNIVERSITY, THE CUMULATIVE COST OF REGULATIONS 38 (2016), *available at* https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf.

[11] PATRICK A. MCLAUGHLIN AND RICHARD WILLIAMS, *supra* note 9, at 5.

[12] *Id.*

[13] *See* MICHAEL MANDEL, PH.D., PROGRESSIVE POLICY INSTITUTE, REVIVING JOBS AND INNOVATION: A PROGRESSIVE APPROACH TO IMPROVING REGULATION 2 (2011), *available at* http://www.progressivefix.com/wp-content/uploads/2011/02/2011_Mandel_A-Progressive-Approach-to-Improving-Regulation.pdf; *see e.g.* PATRICK A. MCLAUGHLIN and RICHARD WILLIAMS, *supra* note 9, at 5–8.

ordered the bill reported favorably, without amendment, was reported favorably with a vote of 22 to 17.

During the 114th Congress, the House Committee on the Judiciary favorably reported the SCRUB Act (H.R. 1155) to the U.S. House of Representatives by a recorded vote of 17 to 12 on March 24, 2015. On January 7, 2016, the U.S. House of Representatives passed the legislation by a recorded vote of 245 to 174.

During the 113th Congress, the House Committee on the Judiciary favorably reported without amendment the SCRUB Act (H.R. 4874) to the U.S. House of Representatives on June 18, 2014. Following this, on July 24, 2014, the Committee on Oversight and Government Reform amended the SCRUB Act through an amendment in the nature of a substitute offered by Representative Doug Collins (R–GA). The amendment applied the Federal Advisory Committee Act to the Commission and made a number of other minor revisions to the bill.

SECTION-BY-SECTION

Section 1. Short title

Section 1 establishes the short title of the bill as the "Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2017" or the "SCRUB Act of 2017."

Section 2. Table of contents

Provides a table of contents for the bill with Titles I–V.

Title I—Retrospective Regulatory Review Commission

Section 101. In general

Subsection (a) establishes the Retrospective Regulatory Review Commission, to review rules to be repealed to reduce costs to the economy and establishes a termination date that is five-and-a-half years after enactment of the legislation.

Subsection (b) establishes the membership of the Commission as nine members appointed by the President and confirmed by the Senate, selected from lists of recommendations from the leadership of both chambers.

Subsection (c) defines the power and authority of the Commission to hold meetings, hold public hearings, access information, and issue subpoenas for information and witnesses.

Subsections (d) through (g) set the rate of pay and travel expenses, provide for a Director of the Commission, and provide for staff and hiring authority.

Subsection (h), paragraph (1), directs the Commission to review regulations to identify regulations to repeal, giving priority to older major rules, with a goal of reducing cumulative costs of Federal regulation by 15%.

Paragraph (2) of the subsection establishes criteria by which the Commission will review regulations, including: whether purpose was achieved and rule could be repealed without recurrence, whether the costs of the regulation outweigh its benefits, whether the rule is now unnecessary or obsolete, whether the rule is ineffective at achieving its purpose, whether it conflicts with or duplicates other rules, whether compliance costs are excessive compared to al-

ternatives, whether the rule inhibits innovation or growth, whether the rule harms competition, and other criteria to eliminate or reduce unnecessarily burdensome costs.

Paragraph (3) of the subsection requires the Commission to establish a methodology to conduct the review and publish the terms in the Federal Register and on the Commission's website.

Paragraph (4) of the subsection requires the Commission to classify identified regulations as either appropriate for immediate repeal or eligible for repeal through regulatory cut-go procedures. The paragraph requires a majority vote for identifying and classifying rules.

Paragraph (5) of the subsection allows the Commission to initiate a review of a specific rule or set of rules upon submission by specified officials, including the President or a Member of Congress.

Subsection (i) requires the Commission to submit notices of meetings or hearings, reports at the conclusion of meetings, and annual reports to Congress.

Subsection (j) provides for Congressional consideration of the Commission's recommendations and requires agencies to repeal regulations in accordance with the recommendations upon enactment of a joint resolution approving of the recommendations.

Subsection (k) authorizes appropriations not to exceed $30 million.

Subsection (l) requires the Committee to establish a website to publish information about the Commission and Commission hearings and meetings. Requires comments and submissions to the Commission be published to the website.

Subsection (m) clarifies that the Federal Advisory Committee Act applies to the Commission and any subcommittees of the Commission.

Title II—Regulatory Cut-Go

Section 201. Cut-Go procedures

Section 201 requires agencies to repeal a Commission identified rule with equal to or greater than costs to the economy when issuing a new rule. Allows agencies to repeal rules prior to promulgating new regulations to apply the cost savings to new rules promulgated at a later time.

Section 202. Applicability

Sections 201 and 203 are applicable until an agency has repealed all regulations identified.

Section 203. OIRA Certification of cost calculations

Section 203 requires the Administrator of OIRA to review and certify agency determinations of costs of new rules under section 201.

Title III—Retrospective Review of Rules

Section 301. Plan for future review

Section 301 requires that agencies include a plan for a future review in all new regulations.

Title IV—Judicial Review

Section 401. Judicial review

Section 401 subjects an agency's compliance with the repeal provision, cut-go process, and the requirement for new regulations to include a future review plan to judicial review.

Title V—Miscellaneous Provisions

Section 501. Definitions

Section 501 defines the terms, "agency," "Commission," "major rule," "rule," and "set of rules."

Section 502. Effective date

Section 502 sets the effective date as the date of enactment of this bill into law.

EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, five amendments were offered to H.R. 998.

Ranking Minority Member Elijah E. Cummings (D–MD) offered an amendment to exempt unspecified regulations related to whistleblowers. The Cummings amendment was not adopted by a roll call vote of 12 to 21.

Representative Lawrence (D–MI) offered an amendment to exempt regulations related to lead paint. The Lawrence amendment was not adopted by a roll call vote of 14 to 21.

Representative Krishnamoorthi (D–IL) offered an amendment to change the priority of regulations reviewed from major regulations promulgated 15 or more years ago, to a chorological review starting with the oldest regulations. The Krishnamoorthi amendment was not adopted by voice vote.

Representative Raskin (D–MD) offered an amendment to exempt regulations related to conflicts of interest by employees of the executive branch. The Raskin amendment was not adopted by a roll call vote of 17 to 22.

Representative Raskin (D–MD) offered an amendment to exempt regulations related to clean air act. The Raskin amendment was not adopted by a roll call vote of 17 to 22.

COMMITTEE CONSIDERATION

On February 14, 2017, the Committee met in open session and ordered reported favorably the bill, H.R. 998, by a vote of 22 to 17, a quorum being present.

ROLL CALL VOTES

There were five roll call votes during consideration of H.R. 998:

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
115TH CONGRESS
RATIO 24-18
ROLL CALL

Vote on: Cummings amendment to H.R. 998

Date: 2-14-17 **Vote #: 1**

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) *(Chairman)*		X		MR. CUMMINGS (MD) *(Ranking)*	X		
MR. DUNCAN (TN)				MRS. MALONEY (NY)	X		
MR. ISSA (CA)		X		MS. NORTON (DC)	X		
MR. JORDAN (OH)		X		MR. CLAY (MO)			
MR. SANFORD (SC)		X		MR. LYNCH (MA)	X		
MR. AMASH (MI)		X		MR. COOPER (TN)			
MR. GOSAR (AZ)				MR. CONNOLLY (VA)	X		
MR. DesJARLAIS (TN)		X		MS. KELLY (IL)	X		
MR. GOWDY (SC)				MS. LAWRENCE (MI)	X		
MR. FARENTHOLD (TX)		X		MS. WATSON-COLEMAN (NJ)			
MS. FOXX (NC)		X		MS. PLASKETT (VI)	X		
MR. MASSIE (KY)		X		MS. DEMINGS (FL)	X		
MR. MEADOWS (NC)		X		MR. KRISHNAMOORTHI (IL)	X		
MR. DeSANTIS (FL)		X		MR. RASKIN (MD)	X		
MR. ROSS (FL)		X		MR. WELCH	X		
MR. WALKER (NC)		X		MR. CARTWRIGHT			
MR. BLUM (IA)		X		MR. DeSAULNIER			
MR. HICE (GA)		X		*(Vacancy)*			
MR. RUSSELL (OK)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)		X					
MR. COMER (KY)		X					
MR. MITCHELL (MI)		X					

Roll Call Totals: **Ayes: 12** **Noes: 21** **Present:**

Passed: **Failed: X**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
115TH CONGRESS
RATIO 24-18
ROLL CALL

Vote on: Lawrence amendment to H.R. 998

Date: 2-14-17 **Vote #: 2**

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) *(Chairman)*		X		MR. CUMMINGS (MD) *(Ranking)*	X		
MR. DUNCAN (TN)				MRS. MALONEY (NY)	X		
MR. ISSA (CA)		X		MS. NORTON (DC)	X		
MR. JORDAN (OH)		X		MR. CLAY (MO)	X		
MR. SANFORD (SC)		X		MR. LYNCH (MA)	X		
MR. AMASH (MI)		X		MR. COOPER (TN)			
MR. GOSAR (AZ)				MR. CONNOLLY (VA)	X		
MR. DesJARLAIS (TN)		X		MS. KELLY (IL)	X		
MR. GOWDY (SC)				MS. LAWRENCE (MI)	X		
MR. FARENTHOLD (TX)		X		MS. WATSON-COLEMAN (NJ)	X		
MS. FOXX (NC)		X		MS. PLASKETT (VI)	X		
MR. MASSIE (KY)		X		MS. DEMINGS (FL)	X		
MR. MEADOWS (NC)		X		MR. KRISHNAMOORTHI (IL)	X		
MR. DeSANTIS (FL)		X		MR. RASKIN (MD)	X		
MR. ROSS (FL)		X		MR. WELCH	X		
MR. WALKER (NC)		X		MR. CARTWRIGHT			
MR. BLUM (IA)		X		MR. DeSAULNIER			
MR. HICE (GA)		X		*(Vacancy)*			
MR. RUSSELL (OK)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)		X					
MR. COMER (KY)		X					
MR. MITCHELL (MI)		X					

Roll Call Totals: **Ayes: 14** **Noes: 21** **Present:**

Passed: **Failed: X**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
115TH CONGRESS
RATIO 24-18
ROLL CALL

Vote on: Raskin amendment 4 to H.R. 998 – Conflicts of Interest

Date: 2-14-17 **Vote #: 3**

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) *(Chairman)*		X		MR. CUMMINGS (MD) *(Ranking)*	X		
MR. DUNCAN (TN)				MRS. MALONEY (NY)	X		
MR. ISSA (CA)		X		MS. NORTON (DC)	X		
MR. JORDAN (OH)		X		MR. CLAY (MO)	X		
MR. SANFORD (SC)		X		MR. LYNCH (MA)	X		
MR. AMASH (MI)		X		MR. COOPER (TN)	X		
MR. GOSAR (AZ)		X		MR. CONNOLLY (VA)	X		
MR. DesJARLAIS (TN)		X		MS. KELLY (IL)	X		
MR. GOWDY (SC)				MS. LAWRENCE (MI)	X		
MR. FARENTHOLD (TX)		X		MS. WATSON-COLEMAN (NJ)	X		
MS. FOXX (NC)		X		MS. PLASKETT (VI)	X		
MR. MASSIE (KY)		X		MS. DEMINGS (FL)	X		
MR. MEADOWS (NC)		X		MR. KRISHNAMOORTHI (IL)	X		
MR. DeSANTIS (FL)		X		MR. RASKIN (MD)	X		
MR. ROSS (FL)		X		MR. WELCH	X		
MR. WALKER (NC)		X		MR. CARTWRIGHT	X		
MR. BLUM (IA)		X		MR. DeSAULNIER	X		
MR. HICE (GA)		X		*(Vacancy)*			
MR. RUSSELL (OK)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)		X					
MR. COMER (KY)		X					
MR. MITCHELL (MI)		X					

Roll Call Totals: **Ayes: 17** **Noes: 22** **Present:**

Passed: **Failed: X**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
115TH CONGRESS
RATIO 24-18
ROLL CALL

Vote on: Raskin amendment 5 to H.R. 998 – Clean Air Act

Date: 2-14-17 **Vote #: 4**

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) *(Chairman)*		X		MR. CUMMINGS (MD) *(Ranking)*	X		
MR. DUNCAN (TN)				MRS. MALONEY (NY)	X		
MR. ISSA (CA)		X		MS. NORTON (DC)	X		
MR. JORDAN (OH)		X		MR. CLAY (MO)	X		
MR. SANFORD (SC)		X		MR. LYNCH (MA)	X		
MR. AMASH (MI)		X		MR. COOPER (TN)	X		
MR. GOSAR (AZ)		X		MR. CONNOLLY (VA)	X		
MR. DesJARLAIS (TN)		X		MS. KELLY (IL)	X		
MR. GOWDY (SC)				MS. LAWRENCE (MI)	X		
MR. FARENTHOLD (TX)		X		MS. WATSON-COLEMAN (NJ)	X		
MS. FOXX (NC)		X		MS. PLASKETT (VI)	X		
MR. MASSIE (KY)		X		MS. DEMINGS (FL)	X		
MR. MEADOWS (NC)		X		MR. KRISHNAMOORTHI (IL)	X		
MR. DeSANTIS (FL)		X		MR. RASKIN (MD)	X		
MR. ROSS (FL)		X		MR. WELCH	X		
MR. WALKER (NC)		X		MR. CARTWRIGHT	X		
MR. BLUM (IA)		X		MR. DeSAULNIER	X		
MR. HICE (GA)		X		*(Vacancy)*			
MR. RUSSELL (OK)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)		X					
MR. COMER (KY)		X					
MR. MITCHELL (MI)		X					

Roll Call Totals: **Ayes: 17** **Noes: 22** **Present:**

Passed: **Failed: X**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
115TH CONGRESS
RATIO 24-18
ROLL CALL

Vote on: H.R. 998 – Report to House Favorably

Date: 2-14-17 **Vote #: 5**

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) *(Chairman)*	X			MR. CUMMINGS (MD) *(Ranking)*		X	
MR. DUNCAN (TN)				MRS. MALONEY (NY)		X	
MR. ISSA (CA)	X			MS. NORTON (DC)		X	
MR. JORDAN (OH)	X			MR. CLAY (MO)		X	
MR. SANFORD (SC)	X			MR. LYNCH (MA)		X	
MR. AMASH (MI)	X			MR. COOPER (TN)		X	
MR. GOSAR (AZ)	X			MR. CONNOLLY (VA)		X	
MR. DesJARLAIS (TN)	X			MS. KELLY (IL)		X	
MR. GOWDY (SC)				MS. LAWRENCE (MI)		X	
MR. FARENTHOLD (TX)	X			MS. WATSON-COLEMAN (NJ)		X	
MS. FOXX (NC)	X			MS. PLASKETT (VI)		X	
MR. MASSIE (KY)	X			MS. DEMINGS (FL)		X	
MR. MEADOWS (NC)	X			MR. KRISHNAMOORTHI (IL)		X	
MR. DeSANTIS (FL)	X			MR. RASKIN (MD)		X	
MR. ROSS (FL)	X			MR. WELCH		X	
MR. WALKER (NC)	X			MR. CARTWRIGHT		X	
MR. BLUM (IA)	X			MR. DeSAULNIER		X	
MR. HICE (GA)	X			*(Vacancy)*			
MR. RUSSELL (OK)	X						
MR. GROTHMAN (WI)	X						
MR. HURD (TX)	X						
MR. PALMER (AL)	X						
MR. COMER (KY)	X						
MR. MITCHELL (MI)	X						

Roll Call Totals: **Ayes: 22** **Noes: 17** **Present:**

Passed: X **Failed:**

JASON CHAFFETZ, UTAH
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

CORRESPONDENCE
ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
MAJORITY (202) 225–5074
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http://oversight.house.gov

February 16, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

On February 14, 2017, the Committee on Oversight and Government Reform ordered reported without amendment H.R. 998, the "Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2017" (SCRUB Act) by a vote of 22 to 17. The bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on the Judiciary.

I ask that you allow the Committee on the Judiciary to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,

Jason Chaffetz
Chairman

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Elijah E. Cummings
The Honorable Thomas J. Wickham, Parliamentarian

Congress of the United States
House of Representatives

February 21, 2017

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Chaffetz,

I write with respect to H.R. 998, the "Searching for and Cutting Regulations that are Unnecessarily Burdensome Act." As a result of your having consulted with us on provisions within H.R. 998 that fall within the Rule X jurisdiction of the Committee on the Judiciary, I forego any further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 998 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation and that our committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation and asks that you support any such request.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 998 and would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during floor consideration of H.R. 998.

Sincerely,

Bob Goodlatte
Chairman

cc: The Honorable John Conyers, Jr.
The Honorable Elijah Cummings
The Honorable Paul Ryan, Speaker
The Honorable Thomas Wickham, Jr., Parliamentarian

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 establishes a commission to reduce regulatory burdens. 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 provide for the establishment of a process for the review of rules and sets of rules, and for other purposes.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII 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 establishes an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate 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 the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 21, 2017.

Hon. JASON CHAFFETZ,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 998, the SCRUB Act.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 998—SCRUB Act

Summary: H.R. 998 would establish a commission to review existing federal regulations and to identify those that should be repealed to reduce the cost of regulations on the economy. In addition, the legislation would require agencies to create a plan to review all new regulations within 10 years of their issuance. Finally, H.R. 998 would authorize the appropriation of up to $30 million to fund the commission.

CBO estimates that, assuming appropriation of the specified amounts, implementing H.R. 998 would cost $30 million over the 2018–2022 period to operate the commission. CBO estimates that enacting the bill could affect direct spending or revenues; therefore, pay-as-you-go procedures apply. However, CBO cannot estimate the direction or magnitude of those effects.

CBO estimates that enacting H.R. 998 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 998 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 998 is shown in the following table. The costs of this legislation fall within function 800 (general government) and all budget functions that include funding for agencies that issue regulations.

	By fiscal year, in millions of dollars—					
	2018	2019	2020	2021	2022	2018–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	6	6	6	6	6	30
Estimated Outlays	6	6	6	6	6	30

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of fiscal year 2017 and that the funds for the commission will be provided each year.

Title I would establish a commission to review the Code of Federal Regulations to determine if any rules should be repealed to lower the cost of regulations on the U.S. economy. The commission would recommend to the Congress a list of rules to be repealed. Under the bill, no existing regulations could be repealed unless subsequent legislation to authorize the repeal was enacted.

The commission would consist of nine members appointed by the President and confirmed by the Senate. Members would be paid and reimbursed for travel expenses. In addition, the commission could hire staff and would end after either five years and a half after enactment or five years after all commissioner terms have commenced, whichever is later. H.R. 998 also would direct the commission to produce annual and final reports on its activities and would authorize the appropriation of up to $30 million to cover the costs of the commission. Assuming appropriation of those amounts, CBO estimates that implementing this title would cost $30 million over the 2018–2022 period.

Under title II, federal agencies would be directed to offset the estimated costs that new regulations would impose on the economy by repealing existing regulations that have been recommended for repeal by the commission. How agencies would comply with this requirement is unclear because repeal of existing regulations would depend on future Congressional action. It is also not clear how implementation of new rules would be delayed or postponed until existing regulations were approved for repeal. Consequently, CBO cannot estimate the budgetary effects of implementing title II.

Title III would require agencies to create a plan to review all new regulations within 10 years of being issued. Because agencies are already required to review regulations after they are issued, CBO expects that implementing title III would have no significant costs.

Pay-As-You-Go considerations: CBO estimates that enacting the bill could affect direct spending or revenues; therefore, pay-as-you-go procedures apply. However, CBO cannot estimate the direction or magnitude of those effects.

Intergovernmental and private-sector impact: H.R. 998 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal governments: Paige Piper/Bach; Impact on the Private-Sector: Zach Byrum.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS

Committee Democrats strongly oppose H.R. 998. We reject the view that this bill would be a panacea for eliminating regulations that have unnecessary regulatory costs on our economy. Through the creation of an unelected Commission, this bill would duplicate work agencies are already doing to review and repeal regulations—at a cost to taxpayers of $30 million—and it would prioritize corporate profits over the health and safety of the American public.

This new Commission would perform retrospective regulatory reviews that agencies are already required to conduct under current law.

The Regulatory Flexibility Act requires agencies to review each rule that has "a significant economic impact upon a substantial number of small entities" within ten years after it is published.[1]

Executive Order 13563, issued by President Obama, requires each agency to "periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed."[2]

Executive Order 13610, also issued by President Obama, requires each agency to report twice a year to the Office of Information and Regulatory Affairs on the status of their review efforts.[3]

In November 2014, a report prepared for the Administrative Conference of the United States highlighted the impact of these mandated reviews, concluding that "agencies identified tens of billions of dollars of cost savings and tens of millions of hours of reduced paperwork and reporting requirements through modifications of existing regulations."[4]

This bill would create a new unelected Commission to review existing regulations for repeal—including regulations that protect against conflicts of interest in the federal government and protect whistleblowers from retribution—based almost exclusively on cost and without consideration of the benefits.

Under the bill, agencies would have to repeal an existing health or safety regulation in order to promulgate a health or safety regulation in response to new threats, based solely on cost. The bill is silent on how the agencies should to calculate the costs of every rule. The bill establishes a regulatory "cut-go" process that would force agencies to prioritize between existing protections and responding to new threats to health and safety. Referred to as the "most extreme of all antiregulatory reforms" by the Center for Pro-

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[1] Pub. L. 96–354.
[2] 76 Fed. Reg. 3821 (Jan. 21, 2011).
[3] 77 Fed. Reg. 28,469 (May 14, 2012).
[4] Joseph Aldy, Report prepared for the Administrative Conference of the United States, *Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy* (Nov. 17, 2014) (online at *www.acus.gov/sites/default/files/documents/Aldy%2520Retro%2520Review%2520Draft%252011-17-2014.pdf*).

gressive Reform, regulatory cut-go would prohibit an agency from issuing any new rule—even in the case of an emergency or imminent harm to public health—until the agency first offsets the costs of that new rule by repealing an existing rule specified by the Commission.[5] This requirement would endanger public health and safety and unnecessarily delay federal rulemaking by years, wasting taxpayer dollars and agency resources.

The bill would take regulatory review out of the hands of agency subject-matter experts and place it in an unelected Commission. The Commission could devise any methodology for its review of rules, and no rules would be exempt. The bill would require the Commission to prioritize major rules in its review as well as those that have been in effect for more than 15 years.

The Commission would have virtually unlimited authority to subpoena witnesses or documents. Most agency Inspectors General do not have such broad authority to compel witness testimony. This broad subpoena power, combined with the Commission's uncircumscribed jurisdiction over all regulations, would mean that it could compel any American to testify on any subject. A schoolteacher could be compelled to testify about education rules, or a senior citizen could be compelled to testify about Medicare or Social Security rules.

The Commission's report to Congress, containing all of the rules that it would recommend for repeal, would be subject to an up or down vote. This requirement, which would not allow Congress to vote on each regulation subject to repeal individually, would usurp the authority of Congress.

Ranking Member Elijah Cummings offered an amendment that would have exempted rules that protect whistleblowers or impose penalties on individuals who retaliate against whistleblowers. Agencies issue rules that protect individuals who blow the whistle on waste, fraud, abuse, as well as health and safety issues. This amendment was rejected.

Rep. Brenda Lawrence offered an amendment that would have exempted rules relating to the protection of the public, including children, against lead poisoning. As the tragedy in Flint, Michigan demonstrates, federal rulemaking to address imminent harms to public health are often necessary. This amendment was also rejected.

Rep. Jamie Raskin offered an amendment that would have exempted any regulations relating to potential conflicts of interest of executive branch employees. This amendment would have ensured that agency ethics rules would stay in place. This amendment was also rejected.

Rep. Raskin offered another amendment that would have exempted rules that relate to the Clean Air Act. Cleaner air provides exceptional economic benefits because it results in the improved health and productivity of Americans and reduces medical expenses for air pollution-related health. This amendment was also rejected.

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[5] Letter from Center for Progressive Reform to Chairman Tom Marino and Ranking Member Hank Johnson, House Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law (July 15, 2015) (online at http://progressivereform.org/articles/071515_OIRA_Oversight_Hearings_Letter_Judiciary_Committee.pdf).

Rep. Raja Krishnamoorthi offered an amendment that would have required the Commission to begin its review by looking at the oldest operative regulations and then proceed chronologically to the newest rules. He argued that the Commission should focus on regulations that are outdated, duplicative, or otherwise easily removable. This amendment was also rejected.

The SCRUB Act is opposed by a broad coalition of groups, including:

- Citizens for Sensible Safeguards, a coalition of more than 150 consumer, labor, and good government groups;
- the Center for Progressive Reform, a nonprofit research and educational organization with a network of Member Scholars working to protect health, safety, and the environment through analysis and commentary; and
- the American Sustainable Business Council, a group representing more than 200,000 businesses and 325,000 business professionals, including industry associations, local and state chambers of commerce, micro-enterprise, social enterprise, green and sustainable business, local living economy groups, woman and minority business leaders, and investor networks.

The SCRUB Act is a dangerous solution in search of a problem. Congress already has authority under the Congressional Review Act to disapprove any rule that an agency proposes. These dangerous procedures would waste valuable resources, taxpayer dollars and place the health and safety of Americans at risk.

For these reason, Committee Democrats strongly oppose the SCRUB Act.

ELIJAH E. CUMMINGS,
Ranking Member.

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