



Legislative Bulletin.....May 16, 2013

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H.R. 1062 — SEC Regulatory Accountability Act

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Order of Business: [H.R. 1062](#) is scheduled to be considered on Friday, May 17, 2013, under a structured rule. The Rule provides for one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The Rule waives all points of order against amendments included in the report. Three amendments, made in order, will each be debated for ten minutes divided equally between a proponent and an opponent. The Rule provides one motion to recommit with or without instructions. The text of the Rule can be viewed [here](#).

Summary: The bill requires the SEC to follow the cost-benefit analyses guidelines that apply to agencies under [Executive Order No. 13563](#). Executive Order No. 13563 requires non-independent executive branch agencies to “conduct cost-benefit analyses before to ensure that the benefits of any rulemaking outweigh the costs.” As an independent agency, the SEC is currently not required to comply with the Executive Order. H.R. 1062 extends the provisions described in Executive Order No. 13563 to the SEC. This will ensure that before the SEC can issue a new regulation:

- the purpose of the regulation must be clearly defined and the problem addressed must be significant enough to warrant regulation;
- the Chief Economist of the SEC must assess all costs (qualitative and quantitative) of the proposed regulation and determine that the benefits outweigh the costs;
- the SEC must identify alternatives to the proposed regulation and explain why the proposed regulation would be more effective than the alternatives;
- the SEC must determine the costs of choosing not to regulate and alternatives to regulation must also be identified; and
- the SEC must determine the impacts of regulations on investor choice, small businesses, and market liquidity.

When publishing a final rule the SEC must describe any changes to the rule that it incorporated due to consumer or industry group concerns or explain why it did not incorporate their concerns when determining the costs or benefits.

In addition, within one year of enactment and every five years thereafter, the SEC would be required to review all current regulations and repeal, modify, or streamline all regulations that are excessively burdensome, outmoded, ineffective or insufficient.

Additional Background: Rep. Garrett introduced similar legislation, [H.R. 2308](#), in the 112th Congress. H.R. 2308 was ordered to be reported by the House Committee on Financial Services by a vote of 30-26 on February 16, 2012. H.R. 2308 was then incorporated into [H.R. 4078](#) - The Red Tape Reduction and Small Business Job Creation Act, which passed the House on July 26, 2012, by a [vote](#) of 245-172.

RSC Bonus Fact: The U.S. Court of Appeals for the D.C. Circuit, in [Bus. Roundtable v. SEC, 2011 WL 2936808 \(D.C. Cir. July 22, 2011\)](#), struck down an SEC rule by stating that the SEC “inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgments; contradicted itself; and failed to respond to substantial problems raised by commenters.”

Committee Action: Rep. Garrett introduced H.R. 1062 on March 12, 2013. It was subsequently referred to the House Committee on Financial Services. The Subcommittee on Capital Markets and Government Sponsored Entities held a [hearing](#) on April 11, 2013. The full Committee held a [markup](#) for H.R. 1062 on May 7, 2013, where the legislation was ordered to be reported by a [vote](#) of 31-28.

Administration Position: On May 15, 2013, the Executive Office of the President issued a [Statement of Administration Policy \(SAP\)](#) in opposition to H.R. 1062.

Cost to Taxpayers: The Congressional Budget Office (CBO) issued a [cost estimate](#) on May 13, 2013. CBO estimates that “implementing H.R. 1062 would cost the SEC \$23 million over the 2013-2018 period.” The SEC is authorized to collect fees to cover expenses so the CBO estimates the net budgetary effect to implement H.R. 1062 “would not be significant.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. According to the CBO [estimate](#), the SEC would need 10 additional staff to comply with the legislation.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment?: No.

Does the Bill Delegate Any Legislative Authority to the Executive Branch?: No.

Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: This bill does not contain any earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: According to Rep. Garrett, “Congress has the power to enact this

legislation pursuant to the following: Article I, Section 8, Clauses 1 ('The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States'), 3 ('To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes'), and 18 ('To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof)'). Rep. Garrett's statement in the Congressional Record can be viewed [here](#).

Outside Organizations in Support of H.R. 1062:

- U.S. Chamber of Commerce: **The Chamber has indicated that votes on H.R. 1062 may be included in their "How They Voted" Scorecard.**
- American Bankers Association
- Financial Services Roundtable
- Independent Community Bankers Association
- Securities Industry and Financial Markets Association
- [FreedomWorks](#)

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Amendments Ruled in Order (debatable for 10 minutes each)

1. **Sessions (R-PA)** – This [amendment](#) mandates that an analysis of jobs lost in the private sector and an analysis of jobs lost in the public sector as a result of any regulation be included as part of the assessment plans required under H.R. 1062.
2. **Hurt (R-VA)** – This [amendment](#) requires the SEC to ensure that rules adopted by the Municipal Securities Rulemaking Board (MSRB), and other national securities associations comply with the provisions of H.R. 1062. This amendment also expresses the sense of Congress that the rulemaking requirements of the bill that are applicable to the SEC are also required of the Public Company Accounting Oversight Board (PCAOB).
3. **Maloney (D-NY)** – This strike-all [amendment](#), offered in the nature of a substitute, expresses the sense of Congress that all economic analyses for proposed rules are subject to judicial scrutiny, and that the SEC is already required to conduct economic analyses as part of its rulemaking authority.

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