



## Legislative Bulletin.....February 26, 2014

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## H.R. 3865 — Stop Targeting of Political Beliefs by the IRS Act of 2014 (Camp, R-MI)

**Order of Business:** [H.R. 3865](#) is scheduled to be considered on Wednesday, February 26, 2014, subject to a rule.

**Summary:** This legislation prohibits the amending of the current rule Internal Revenue Service (IRS) rules, regulations, or guidance regarding 501(c)(4) organizations for 1 year after enactment.

**Additional Background:** The IRS has not amended the rule relating to 501(c)(4) organizations since 1959. Officials in the IRS have [publically admitted](#) that the applications of conservative groups were being improperly scrutinized. For example, the 501(c)(4) tax-exempt status applications of groups with the names “tea party” or “patriots” were specifically stalled by the IRS. After this targeting has come to light, the Obama Administration proposed a rule change. The proposed rule was released on November 29, 2013; over [94,000 public comments](#) have already been received.

**Committee Action:** H.R. 3865 was introduced on January 1, 2014, and referred to the House Committee on Ways and Means. On February 18, 2014, the Committee favorably reported an amended version of the bill by a [vote](#) of 23 to 13.

**Outside Groups in Support:** National Association of Manufacturers—**Key Vote**. U.S. Chamber of Commerce—**Key Vote**. Concerned Women for America—**Including in Annual Scorecard**. Heritage Action—**Key Vote**. Other groups in support:

- [60 Conservative and Free Market Groups](#) including Heritage Action, Freedom Works, Club for Growth, American for Prosperity, Family Research Council, Americans for Tax Reform, American Conservative Union, and Tea Party Patriots
- National Right to Life Committee, Inc.
- Citizens Against Government Waste
- Traditional Values Coalition

- Concerned Women for America
- National Taxpayers Union
- Independent Women’s Voice
- National Rifle Association-Institute for Legislative Action (NRA-ILA)

**Outside Groups in Opposition:**

- Americans for Campaign Reform
- Brennan Center for Justice
- Campaign Legal Center
- Citizens for Responsibility and Ethics in Washington
- Common Cause
- Democracy 21
- Demos
- League of Women Voters
- Public Citizen
- Sunlight Foundation
- U.S. PIRG

**Administration Position:** No Statement of Administration Policy.

**Cost to Taxpayers:** According to the Congressional Budget Office [cost estimate](#) CBO “implementing the legislation would have no significant impact on IRS administrative costs, which are subject to appropriation. The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 3865 would result in a negligible loss of revenues over the 2014-2024 period, therefore, pay-as-you procedures apply.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to the Congressional Budget Office [cost estimate](#) “JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.”

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> 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?:** No.

**Constitutional Authority:** According to the sponsor, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, clauses 1 and 18.” Chairman Camp’s statement in the Congressional Record can be viewed [here](#).

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## **H.R. 2804 — All Economic Regulations are Transparent Act of 2014 (ALERRT Act) (Holding, R-NC)**

**Order of Business:** [H.R. 2804](#) is scheduled to be considered on Wednesday, February 26, 2014, subject to a rule.

**Summary:** This bill offers a significant reform to the way that agencies propose and issue regulations. It creates checks and balances for federal agencies and increases public participation in the regulatory process. It ensures that those affected by proposed regulations will have more meaningful opportunities to weigh in. This bill includes several titles:

**Title I: All Economic Regulations are Transparent Act of 2014:** Increases regulatory transparency by requiring agencies to submit to the [Administrator of the Office of Information and Regulatory Affairs \(the “Administrator”\)](#) detailed information about each rule they expect to propose or finalize in the following year. The information about the regulations must include a summary of the rule and the legal basis for the rule. In addition, the agency is required to provide an approximate schedule for completing action on any rules they expect to submit and an estimate of whether the rule will cost under \$50 million, from \$50 to \$100 million, or over \$100 million, with greater cost brackets included. For any rule that has had a notice of proposed rulemaking, the agencies must either submit economic effects, including the effect on jobs, considered or submit an affirmative statement that such information was not considered. All of agency rule making information must be compiled and published annually. No rule may take effect unless monthly online disclosure requirements in the bill were met for the 6 months previous to the rule’s issuance.

**Title II: Regulatory Accountability Act of 2014:** The legislation amends the Administrative Procedures Act (APA) to change the process by which federal agencies propose and adopt regulations. It requires greater documentation of the cost-benefit analysis and supporting data in the docket for proposed rules. It codifies existing executive orders, provisions that are designed to increase regulatory accountability and transparency, and also extends those requirements to additional federal agencies. The legislation provides a new definition for “major rule,” “major guidance,” and “high-impact rule” under the APA. The definition of major rule is amended to include an annual “cost on the economy of \$100,000,000 or more.” The previous definition defined a major rule as an annual “effect” of \$100,000,000 or more. The definition for major guidance would follow the same criteria. High-impact rules are defined as having an annual cost on the economy of \$1 billion or more as determined by the [Office of Information and Regulatory Affairs](#). Agencies would be required to hold hearings for high-impact rules. The bill also requires 90-days advance notice proposed rulemaking for major rules, high-impact rules, and rules involving novel legal or policy to allow greater public input.

**Title III: Regulatory Flexibility Improvements Act:** This legislation closes loopholes and expands the number of rules covered by the Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness act so that effects on small entities are fully considered when estimating the economic impact of the rule. It requires that alternative rules be identified that

could have less economic impact and that agencies consider these alternatives. It requires Internal Revenue Service interpretive rules to also be examined through a regulatory flexibility analysis. The legislation requires the Chief Counsel for Advocacy of the Small Business Administration to propose and issue rules that govern agency compliance with the legislation. The legislation also expands to all agencies requirements to convene review panels comprised of representatives of small businesses to offer advice about the potential impact of the proposed rule. These panel requirements currently apply only to EPA, OSHA and the Consumer Financial Protection Bureau.

**Title IV: Sunshine for Regulatory Decrees and Settlements Act of 2013:** This legislation modifies the consent decree and settlement agreement process in litigation seeking new regulation. Consent decrees and settlement agreements are voluntary agreements by parties that are officially ordered or allowed by the court. This legislation provides protections against the abuse of consent decrees to require specific regulatory action by agencies. Agencies that submit consent decrees to the court will be required to explain how the proposed decree furthers the public interest and affects other outstanding mandatory duties of the agency. The legislation requires any proposed covered settlement agreement or consent decree to be published in the Federal Register to allow for public comment 60 days prior to the decree's filing with the court. The legislation also requires that efforts to settle include mediation or alternative dispute resolution programs. This legislation allows parties that would be affected by the proposed regulations to weigh in before consent decrees or settlement agreements requiring regulations are adopted. This legislation allows greater public transparency and participation in the rulemaking process.

**Additional Background:** The ALERRT Act is a regulatory reform package that consists of four separately introduced bills; H.R. 2804-All Economic Regulations are Transparent Act of 2014(as introduced), H.R. 2122-Regulatory Accountability Act, H.R. 2542-Regulatory Flexibility Improvements Act, H.R. 1493-Sunshine for Regulatory Decrees and Settlements Act of 2013. According to the [CBO](#), “federal agencies issue 3,000 to 4,000 final rules each year. Most are promulgated by the Departments of Transportation, Homeland Security, and Commerce, and the Environmental Protection Agency (EPA). Agencies that issue the most major rules (those with an estimated economic impact on the economy of more than \$100 million per year) include the Department of Health and Human Services, the Department of Agriculture, and EPA.”

**Committee Action:** On February 21, 2014, the House Committee on Oversight and Government Reform held a markup on H.R. 2804 and the favorably reported the bill, as amended by a [vote](#) of 19 to 15.

**Outside Groups in Support:** Key Vote: National Association of Manufacturers. Key Vote: National Federation of Independent Business (NFIB). Other groups in support:

- American Farm Bureau Federation

**Administration Position:** The Executive Office of the President issued the following [Statement of Administration Policy](#): “If H.R. 2804 were presented to the President, his senior advisors would recommend that he veto the bill.”

**Cost to Taxpayers:** No Congressional Budget Office (CBO) cost estimate is available for the latest version of the bill that is comprised of four separately introduced bills. However, the CBO prepared cost estimates for the bills that were included in the overall package. See below:

- **Title I:** The CBO [estimates](#) that implementing H.R. 2804 and requiring agencies to prepare “monthly supplemental reports for 3,000 to 4,000 final regulations each year would cost less than a million dollars a year, subject to the availability of appropriated funds, over the 2014-2018 period.” Furthermore, CBO further states that “any net increase in spending by those agencies would not be significant.”
- **Title II:** The CBO [cost estimate](#) for H.R. 2122 states that “implementing H.R. 2122 would cost about \$70 million over the 2014-2018 period, assuming appropriation of the necessary funds. Such funding would cover the governmentwide costs of additional personnel, contractor costs, and other administrative expenses associated with meeting the new requirements under the legislation.” The CBO cost estimate further states that “enacting the bill could affect direct spending and revenues if agencies not funded through annual appropriations incur additional costs, CBO estimates that any net increase in spending or change in revenues for those agencies would not be significant.”
- **Title III:** The CBO [estimates](#) that “implementing H.R. 2542 would cost \$45 million over the 2014-2018 period, assuming appropriation of the necessary funds. Enacting the bill could affect direct spending by agencies not funding through the annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending would not be significant. Enacting H.R. 2542 would not affect revenues.”
- **Title IV:** The CBO [estimate](#) for H.R. 1493 states that “implementing H.R. 1493 would cost \$7 million over the 2014-2018 period, primarily because litigation involving consent decrees and settlements agreements would probably take longer and agencies would face additional administrative requirements, including new requirements to report more information to the public.” The estimate further states that “the increased length of the process to finalize consent decrees and settlement agreements might deter some future lawsuits and decrees the number of future cases. On the net, CBO estimates that enacting the legislation would increase annual direct spending by an insignificant amount. Enacting the bill would not affect revenues.”

\*The legislation will likely create savings for private sector as the regulatory burden on the American economy is decreased.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No CBO report on intergovernmental and private-sector mandates is available for the composite bill.

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> 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?:** No.

**Constitutional Authority:** According to the sponsor of H.R. 2804, as introduced, Congress has the power to enact this legislation pursuant to the following: Article I, Section 1 of the United States Constitution, in that the legislation concerns the exercise of legislative powers generally granted to Congress by that section, including the exercise of those powers when delegated by Congress to the Executive; Article I, Section 8 of the United States Constitution, in that the legislation concerns the exercise of specific legislative powers granted to Congress by that section, including the exercise of those powers when delegated by Congress to the Executive; and, Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "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" Congressman Holding's statement in the Congressional Record can be viewed [here](#).

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## **Amendments to H.R. 2804**

***Rep. Matt Cartwright (D, PA):*** This [amendment](#) strikes the requirement that agency rules be published for at least six months before they can be adopted found under Title I of the bill.

***Rep. Patrick Murphy (D, FL):*** This [amendment](#) cuts Title II, The Regulatory Accountability Act of 2014, and Title IV, Sunshine for Regulatory Decrees and Settlements Act of 2014, from the bill.

***Rep. Keith Rothfus (R, PA), Rep. Andy Barr (R-KY):*** This [amendment](#) adds the term "negative-impact on jobs and wages rule" to the Administrative Procedures Act. The criteria for determining whether a proposed rule would fall under this new rule category includes consideration of whether a rule will reduce employment or average weekly wages for employment, for sectors of the economy identified under the North American Industry Classification System by 1 percent or more annually during the 1-year, 5-year, or 10-year period after implementation. In addition, the Administrator of the Office of Information and Regulatory Affairs must also consider whether the new rule would reduce employment in an industry area previously identified by the Current Population Survey of the Bureau of Labor Statistics to have an unemployment rate of greater than 5 percent or whether the regulation would reduce employment by 1 percent in any industry area as defined by the Occupational Employment Statistics of the Bureau of Labor Statistics. In addition, the amendment requires the head of an

agency to certify that a rule was approved with knowledge of the impact and that it qualified as a negative impact on jobs and wages rules as defined by the amendment.

**Rep. Kevin Brady (R, TX):** This [amendment](#) requires that agencies identify in any Notice of Proposed Rulemaking (NPR) the achievable objective for the rule and the metrics that the agency will use to measure progress toward that object. It requires the agency to make a final determination that the rule meets the stated objective and that the identified metrics were used.

**Rep. Scott Rigell (R, VA):** This [amendment](#) requires that any analysis on any impairment of the ability of small entities to have access to credit be included as part of the initial regulatory flexibility analysis.

**Rep. Scott Tipton (R, CO):** This [amendment](#) clarifies that each agency, under the Regulatory Flexibility Act, must continue to annually publish a list of regulations subject to period review.

**Rep. Gerry Connelly (D, VA):** This [amendment](#) creates an exception that none of the provisions of the bill will apply to a rule or consent decree pertaining to air or water quality.

**Rep. Sheila Jackson Lee (D, TX):** This [amendment](#) exempts any rules made by the Secretary of Homeland Security or consent decree or settlement agreement pertaining to such a rule from the provisions of this Act.

**Rep. Hank Johnson (D, GA):** This [amendment](#) exempts any rules determined by the Director of the Office of Management and Budget to be job creating rules or have a net benefit from the provisions of this Act.

**Rep. George Miller (D-CA)/ Rep. Joe Courtney (D-CT), Amendment #11:** This [amendment](#) exempts any rules from the provisions of the Act if the rule was made by the Occupational Safety and Health Administration (OSHA) to prevent combustible dust explosions and fires.

**Rep. George Miller (D-CA)/ Rep. Joe Courtney (D-CT), Amendment #13:** This [amendment](#) exempts rules from the provisions of the Act if they were submitted by the Inspector General of a Federal agency and would improve protections for public and workplace health, protections for taxpayers, students, or increase effectiveness or efficiency of agency activities.

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