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DRAFT

SUMMARY AND PURPOSE OF LEGISLATION

H.R. 2623, the “Lessening Regulatory Costs and Establishing a Federal Regulatory Budget Act of 2017” provides a method by which the economic costs of significant regulatory actions may be offset by the repeal of other regulatory actions and instituting a system of incremental regulatory costs budgeting. The principals of offsetting regulatory actions by repealing other regulatory actions and regulatory budgeting were first implemented by Executive Orders 13,771 and 13,777. H.R. 2623 builds upon these executive orders to ensure federal agencies undertake regulatory activities in a prudent, measured manner, while removing unnecessary or outdated regulations.

BACKGROUND AND NEED FOR LEGISLATION

In recent decades, the number of regulations in effect has grown at a remarkable rate. Between 1996 and 2016, federal agencies averaged 6,477 regulatory actions per year.¹ According to the Office of Management and Budget (OMB), federal agencies published over 36,000 final rules between fiscal year (FY) 2007 and FY 2016.² Of these rules, 609 were major rules, meaning the anticipated effect on the economy of a just one of them was at least \$100 million annually.³ This is a substantial increase from just a decade prior, when agencies issued only 95 major rules between October 1, 1995, and September 30, 2005.⁴

The Code of Federal Regulations now contains more than one million “regulatory restrictions,” which contain command terms such as *shall* and *must*.⁵ While accounting for the true cost of regulations is difficult, estimated annual impacts of regulatory activity on the economy range from hundreds of billions of dollars to over two trillion dollars.⁶ One analysis of regulatory costs found that the growth of regulation since 1980 had resulted in a loss of \$4 trillion in potential GDP for 2012.⁷ The same analysis also found the American economy would

¹ Patrick McLaughlin, *Regulatory Data on Trump’s First Year*, MERCATUS CENTER (Jan. 30, 2018), <https://www.mercatus.org/publications/regulatory-data-trump-first-year>.

² OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, 2017 DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT 8 (2017), *available at* https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf.

³ *Id.* at 8.

⁴ OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, 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.

⁵ McLaughlin, *supra* note 1.

⁶ CLYDE W. CREWS, COMPETITIVE ENTERPRISE, INSTITUTE, TEN THOUSAND COMMANDMENTS 2 (2017), <https://cei.org/sites/default/files/Ten%20Thousand%20Commandments%202017.pdf>; *see also* Dan Bosch & Dan Goldbeck, 2017: *The Year in Regulation*, AM. ACTION F. (Jan. 5, 2018), <https://www.americanactionforum.org/research/2017-year-regulation/> (showing regulatory costs imposed since 2005).

⁷ 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>.

have been nearly 25 percent larger than it was by 2012 if regulation levels remained constant since 1980.⁸

The accumulation of regulations has a very real cost on individuals, and the effects of regulations are not borne uniformly across the socio-economic strata. Those with higher income levels or better access to financial resources are able to better weather changes in prices, increasing barriers to entry, and lower economic mobility tied to increasing regulatory burdens.⁹ Essentially, excess regulatory burdens disproportionately affect low-income individuals and households.¹⁰ A recent analysis found that a 10 percent increase in federal regulatory burden is associated with a 2.5 percent increase in poverty.¹¹

H.R. 2623 seeks to alleviate this burden on individuals and the economy by forcing the government to take a more prudent approach to regulation, producing rules that are more efficient in their costs and outcomes. H.R. 2623 requires agencies to form Regulatory Reform Task Forces (RRTFs or Task Forces) with the express charge of evaluating the agency's regulations and other regulatory actions and identifying duplicative, outdated, or unduly burdensome regulatory actions for modification, replacement, or repeal. The Act further requires the implementation of a budgeting mechanism to account for incremental regulatory costs and mandates the repeal of two regulatory actions for each new significant regulatory action implemented. These principals were first instituted by Executive Orders 13,771 and 13,777, though the concepts pre-date the President's orders and have been successfully implemented by other governments.

1) *The President's Executive Orders*

a. *Executive Order 13,771 "Reducing Regulation and Controlling Regulatory Costs"*

On January 30, 2017, President Trump signed Executive Order (EO) 13,771, which created a "one-in-two-out" rule requiring agencies to eliminate at least two regulations prior to issuing a new regulation.¹² Under the order, agencies are required to classify their regulatory proposals as regulatory or deregulatory. A deregulatory action for the purposes of the order is one that "has total costs less than zero."¹³ Deregulatory actions may be used to satisfy the "two-out" requirement to repeal or revise two existing regulations for each new regulation issued, and may be used across components within the same agency.¹⁴

⁸ *Id.* at 8.

⁹ DUSTIN CHAMBERS, PATRICK A. MCLAUGHLIN, AND LAURA STANLEY, REGULATION AND POVERTY: AN EMPIRICAL EXAMINATION BETWEEN THE INCIDENCE OF FEDERAL REGULATION AND THE OCCURRENCE OF POVERTY ACROSS THE STATES, MERCATUS CENTER 5-6 (2018), <https://www.mercatus.org/system/files/chambers-regulation-poverty-mercatus-working-paper-v1.pdf>.

¹⁰ *Id.* at 5-7.

¹¹ *Id.* at 7.

¹² Exec. Order No. 13,771, 82 Fed. Reg. 9339 (2017).

¹³ Mancini, Dominic J., Acting Administrator, Office of Information and Regulatory Affairs, Memorandum: Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs" (M-17-21) (April 5, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation> [hereinafter OMB M-17-21].

¹⁴ OMB M-17-21.

The Order also established a regulatory cost cap, requiring agencies to offset the cost of new regulations by repealing equally costly regulations.¹⁵ In fiscal year 2017, EO 13,771 set a cap of zero new regulatory costs.¹⁶ In subsequent years, the Office of Management Budget (OMB) will allocate to each agency a set amount of incremental regulatory costs permissible over the course of each fiscal year.¹⁷ H.R. 2623 codifies both of the one-in-two-out mechanism and the incremental cost budgeting mechanism described in EO 13,771.

b. Executive Order 13,777 “Enforcing the Regulatory Reform Agenda”

On February 24, 2017, President Trump signed EO 13,777 to implement the regulatory reform principals set forth in EO 13,771.¹⁸ EO 13,777 requires each agency to establish an RRTF with the objective of reducing “the regulatory burden placed on the American people.”¹⁹ The order further requires agency heads to designate a Regulatory Reform Officer (RRO) to oversee implementation of EOs 13,771 and 13,777, and other regulatory reform policies.²⁰ Agency task forces are required to identify regulations that:

- Eliminate jobs, or inhibit job creation;
- Are outdated, unnecessary, or ineffective;
- Impose costs that exceed benefits; or
- Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.²¹

2) Similar regulatory reform efforts undertaken by other global democracies

The concept of regulatory budgeting and a one-in-two-out type system did not originate recently, or even in the United States. Beginning in 2001, the Canadian provincial government of British Columbia (BC) undertook ambitious regulatory reforms that experimented with regulatory budgeting.²² British Columbia set forth the goal of reducing regulatory requirements

¹⁵ Exec. Order No. 13771, 82 Fed. Reg. 9339 (2017).

¹⁶ C. William Smalling, PC., Comparison of Executive Orders 13771 and 13777 to Texas H.B. 1290, ENVIRONMENTAL AND ENERGY LAW BLOG, Wednesday, June 14, 2017, available at https://cwilliamsmallinglaw.com/lawyer/2017/06/14/Environmental/COMPARISON-OF-EXECUTIVE-ORDERS-13771-AND-13777-TO-TEXAS-H.B.-1290_b130305.html.

¹⁷ Smalling, *supra* note XX.

¹⁸ Exec. Order No. 13,777, 82 Fed. Reg. 12285 (2017).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² LAURA JONES, CUTTING RED TAPE IN CANADA: A REGULATORY REFORM MODEL FOR THE UNITED STATES?, MERCATUS CENTER 3 (2015), <https://www.mercatus.org/system/files/Jones-Reg-Reform-British-Columbia.pdf>.

by one third in three years as well as introducing a requirement that at least one regulatory requirement be eliminated for each new regulatory requirement implemented.²³

The United Kingdom undertook a similar series of reforms in 2010 that bear great resemblance to the reforms contained in the President's directives and embodied in H.R. 2623. The UK began with a one-in-one-out regulatory reform system before expanding the practice to one-in-two-out, and now one-in-three-out.²⁴ Following the lead of BC and the UK, the Canadian federal government legislated a one-in-one-out regulatory cap in 2015.²⁵ While the BC model and the UK model differ in their approaches, the objectives of both were the same – to improve the quality of regulations and to reduce regulatory burdens so as to foster economic growth.²⁶

In BC, these reforms were particularly effective. The BC government exceeded their one-third reduction in three years target by repealing more than 40 percent of their regulations.²⁷ The BC government then set a subsequent goal of a 0 percent increase in regulatory requirements through 2019, which they are on track to exceed.²⁸ These reforms and reductions in regulatory requirements have coincided with a period of per capita GDP growth above the national average in Canada.²⁹ BC's real GDP and per capita disposable income also grew at above-national average rates, and business creation improved following the implementation of their reforms.³⁰

3) *Implementation of Executive Order 13,771 and Executive Order 13,777*

While there are several indicators that the President's orders on regulatory reform are working,³¹ one needs only to consult the Unified Agenda to see the different approach to regulation taken by the Trump Administration. The 2018 Spring Unified Agenda indicates the Administration is on track to undertake three deregulatory actions for every new regulation in FY

²³ REGULATORY REQUIREMENT COUNT AS OF 31 MARCH 2017, REGULATORY REFORM BC, https://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/2016_-_17_regulatory_requirements_count.pdf; JONES, *supra* note XX, at 19.

²⁴ ONE-IN, ONE-OUT: STATEMENT OF NEW REGULATION, HER MAJESTY'S GOVERNMENT (Apr. 2011), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48179/2836-onein-oneout-statement-new-reg.pdf; THE NINTH STATEMENT OF NEW REGULATION, DEP'T FOR BUS. INNOVATION & SKILLS (Dec. 2014), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397237/bis-14-p96b-ninth-statement-of-new-regulations-better-regulation-executive.pdf; Press Release, Her Majesty's Government, Government Going Further to Cut Red Tape by £10 Billion (Mar. 3, 2016), <https://www.gov.uk/government/news/government-going-further-to-cut-red-tape-by-10-billion>.

²⁵ JONES, *supra* note 22, at 3.

²⁶ JONES, *supra* note 22, at 12-14; ONE-IN, ONE-OUT: STATEMENT OF NEW REGULATION, *supra* note 24.

²⁷ REGULATORY REQUIREMENT COUNT AS OF 31 MARCH 2017, REGULATORY REFORM BC, https://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/2016_-_17_regulatory_requirements_count.pdf.

²⁸ *Id.*

²⁹ James Broughel, *Can the United States Replicate the British Columbia Growth Model?*, MERCATUS CENTER (May 25, 2017), <https://www.mercatus.org/publications/can-united-states-replicate-british-columbia-growth-model>.

³⁰ JONES, *supra* note 22, at 23.

³¹ *See, e.g.*, Dan Bosch & Dan Goldbeck, *2017: The Year in Regulation*, AM. ACTION FORUM (Jan. 5 2018), <https://www.americanactionforum.org/research/2017-year-regulation/> (noting the Trump Administration finalized only \$5.8 billion in new regulatory costs in 2017, compared with \$24.8 billion imposed during the final three weeks of the Obama Administration alone).

2018 while withdrawing or delaying more than 1,500 contemplated regulatory actions.³² To gauge implementation and results of the President's orders, the Committee also sought information directly from agencies.

On September 6, 2017, the Chairmen of the House Committee on Oversight and Government Reform and the House Committee on the Judiciary requested briefings from 24 agencies regarding their work to implement the regulatory reform EOs.³³ The briefings demonstrated that each agency has its own unique approach to implementation, but most agencies have been fully compliant with the EOs.³⁴ In many cases, agencies are using their charge to engage in a wholesale effort to seek out efficiencies in their programs.

Beginning in October 2017, the Committee held a series of three hearings at which agency representatives testified on their implementation of the President's executive orders.³⁵ Like the briefings, agencies reported they were largely compliant with the President's orders on regulatory reform. In particular, agencies reported significant representation of career staff on the Task Forces, and agencies further reported career staff were energized by the opportunity to improve their past regulatory actions.³⁶ Specifically, a representative of the General Services Administration testified, "we have not received any push-back from either career or anybody else we have engaged with. In fact, if anything, they see this as an opportunity not to only review the regulations that we have, but more importantly, looking at all of our day-to-day activities, our guidance documents, and that's what they're really excited about."³⁷

4) *H.R. 2623 improves regulatory procedure through increased transparency and stakeholder input*

Perhaps most importantly, this manner of regulatory reform is not a tradeoff between reducing regulatory burdens and pursuing critical government priorities like health and safety.

³² CURRENT REGULATORY PLAN AND THE UNIFIED AGENDA OF REGULATORY AND DEREGULATORY ACTIONS, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, <https://www.reginfo.gov/public/do/eAgendaMain> (last visited Apr. 27, 2018).

³³ Letter from Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform, and Bob Goodlatte, Chairman H. Comm. on Judiciary, to 24 CFO Act Agencies (September 6, 2017).

³⁴ Briefing by Dep't of Transp., to Comm. staff, H. Comm. on Oversight & Gov't Reform, H. Comm. on Judiciary (Oct. 13, 2017); Briefing by Dep't of Def., to Comm. staff, H. Comm. on Oversight & Gov't Reform, H. Comm. on Judiciary (Sept. 18, 2017); Briefing by General Services Administration, to Comm. staff, H. Comm. on Oversight & Gov't Reform, H. Comm. on Judiciary (Sept. 18, 2017).

³⁵ See generally *Regulatory Reform Task Forces Check-In: Hearing Before the Subcomms. on Healthcare, Benefits, and Administrative Rules and Government Operations of the H. Comm. On Oversight & Gov't Reform*, 115th Cong. (2017); *Regulatory Reform Task Forces Check In: Part II: Hearing Before the Subcomms. on Healthcare, Benefits, and Administrative Rules and Intergovernmental Affairs of the H. Comm. On Oversight and Gov't Reform*, 115th Cong. (2017); *Regulatory Reform Task Forces Check In: Part III: Hearing Before the Subcomms. on the Interior, Energy, and Environment and Intergovernmental Affairs of the H. Comm. On Oversight and Gov't Reform*, 115th Cong. (2017).

³⁶ *Regulatory Reform Task Forces Check-In: Hearing Before the Subcomms. on Healthcare, Benefits, and Administrative Rules and Government Operations of the H. Comm. On Oversight & Gov't Reform*, 115th Cong. (2017).

³⁷ *Regulatory Reform Task Forces Check-In: Hearing Before the Subcomms. on Healthcare, Benefits, and Administrative Rules and Government Operations of the H. Comm. On Oversight & Gov't Reform*, 115th Cong. (2017).

The reforms contained in H.R. 2623 and the President's regulatory reform orders are about changing the culture of federal regulatory practice. One of the inflection points identified in the BC model was regulators beginning to see themselves not simply as rule makers, but as rule managers.³⁸ Much like the implementation of regulatory impact analysis and cost-benefit analysis through prior statutes and executive orders, H.R. 2623 seeks to cause regulators to find increased efficiencies in their undertakings – doing the most for public health, welfare, and safety while limiting burdens on individuals and businesses to only those which must be imposed to meet critical governmental objectives.

H.R. 2623 relies on existing procedural and transparency mechanisms to ensure broad participation in the regulatory system, while adding additional safeguards and opportunities for stakeholder engagement. The text of H.R. 2623 does nothing to modify the rulemaking requirements set forth in Title 5 of the United States Code. Deregulatory actions will still be required to undergo standard notice-and-comment procedures. Critically, these procedural requirements mandate both the receipt of input from interested parties³⁹ and empowers a court to overturn a regulatory action if it is outside the power of the agency or arbitrary, capricious, or an abuse of discretion.⁴⁰ If agencies circumvent these procedural requirements or their mandates from Congress, their action will be subject to reversal by the courts.

H.R. 2623 builds upon these ingrained transparency and process mechanisms. Section 3 of the Act requires RRTFs to engage with the public and entities affected by regulations. This engagement will assist the RRTFs in identifying regulations that may be in need of modification, while allowing them to identify and avoid those regulations that are already working well. The RRTFs must also issue a public report on a biannual basis detailing their activities. Agency heads are also tasked with publicly releasing other information, such as a list of RRTF members. Agencies may also utilize their websites to receive input from the general public to guide their retrospective review.

5) Early results of the regulatory reforms in the President's executive orders

Since the President issued EO 13,771 and EO 13,777, agencies have demonstrated they are capable of realizing significant regulatory efficiencies while continuing to protect public health and safety and national security. For instance, the Department of Defense (DOD) published a final rule in February 2018, modifying its Freedom of Information Act (FOIA) regulations.⁴¹ Prior to this action, the DOD maintained a decentralized FOIA system with all 32 component offices of the DOD implementing their own systems.⁴² Under the DOD's recent action, all component-level FOIA regulations were rescinded in favor of one department-wide

³⁸ JONES, *supra* note 22, at 19.

³⁹ 5 U.S.C. § 553(c).

⁴⁰ *See* 5 U.S.C. § 706(2).

⁴¹ 83 Fed. Reg. 5196 (2018).

⁴² DEPARTMENT OF DEFENSE, CHIEF FREEDOM OF INFORMATION ACT OFFICER REPORT TO THE DEPARTMENT OF JUSTICE FOR 2018 3 (2018), http://open.defense.gov/Portals/23/Documents/FOIA/CFO/2018_DoD_Chief_FOIA_Officer_Report.pdf [hereinafter DOD FOIA Report 2018].

FOIA regulation.⁴³ The DOD was able to simplify their regulations and reduce regulatory burdens through standardization, resulting in projected cost-savings for the public.

The Department of the Treasury (the Treasury or the Treasury Department) is another agency to have undertaken significant action under the President's regulatory reform orders to the benefit of the public. In February 2018, the Treasury Department published a proposal to repeal 298 tax regulations.⁴⁴ These regulations consist of measures that, "(1) implement repealed statutes, (2) implement statutory provisions that have been significantly revised, or (3) are no longer applicable under the terms of the relevant statute or the regulations themselves."⁴⁵ The removal of such "deadwood" regulations will reduce the volume of tax regulations on the books, thereby allowing taxpayers and practitioners to more easily access applicable regulations. The Treasury has also undertaken other deregulatory actions in accordance with the President's orders.⁴⁶

There exist other opportunities to realize regulatory efficiencies while improving services to the public. For instance, the DOD, Department of Education, Department of Health and Human Services, and Department of Justice collect data on sexual violence through at least ten different programs.⁴⁷ The Government Accountability Office (GAO) reports, "Differences in these efforts may hinder the understanding of the overall occurrence of sexual violence."⁴⁸ Consolidating these programs into one government-wide system with one set of data standards would allow the government to better track, understand, prevent, and help victims of sexual assault, while facilitating a reduction in regulations.

The provision of government security clearances is another vitally important area that could benefit from the modification and replacement of existing regulations. Since 2010, there have been at least 33 rulemakings by a variety of agencies relating to security clearances. However, for years, the GAO has documented the shortcomings in the security clearance process, resulting in it being placed on GAO's "High Risk List" in 2018.⁴⁹ By consolidating federal standards, including the establishment of government-wide standards for the quality of background investigations as GAO recommends, the security clearance process could be improved while reducing duplicative, outdated, and ambiguous regulations.

The protection of whistleblowers is yet another critically important subject that could benefit from the simplification of existing regulations. There presently exist at least 13 parts of

⁴³ 83 Fed. Reg. 5196 (2018).

⁴⁴ DEP'T OF THE TREASURY, REGULATORY REFORM ACCOMPLISHMENTS UNDER PRESIDENT TRUMP'S EXECUTIVE ORDERS 17 (2018), <https://home.treasury.gov/sites/default/files/2018-04/20180423%20Regulatory%20Reform%20Report.pdf> [hereinafter Treasury Report].

⁴⁵ *Id.* at 17.

⁴⁶ *See generally Id.*

⁴⁷ GOV'T ACCOUNTABILITY OFFICE, GAO-17-491SP, 2017 ANNUAL REPORT: ADDITIONAL OPPORTUNITIES TO REDUCE FRAGMENTATION, OVERLAP, AND DUPLICATION AND ACHIEVE OTHER FINANCIAL BENEFITS 61 (2017), <https://www.gao.gov/assets/690/684304.pdf>.

⁴⁸ *Id.* at 61.

⁴⁹ Press Release, Government Accountability Office, GAO Adds Government-wide Personnel Security Clearance Process to "High Risk List" (Jan. 25, 2018), https://www.gao.gov/press/high_risk_security_clearance_process.htm.

the Code of Federal Regulations (CFR) relating to whistleblower protection.⁵⁰ Within these 13 parts of the CFR relating to whistleblower protection there exist untold additional sub-parts, sections, sub-sections, and so forth, which make knowing your rights as a whistleblower formidable. In the past three years, GAO has published not less than five reports finding deficiencies in whistleblower protections either government-wide or at individual agencies.⁵¹ A component of resolving these shortcomings in whistleblower protection could be the consolidation and simplification of the implementing regulations, leading to employees being able to better know their rights and agencies better understanding what they need to do to protect whistleblowers.

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 previous section.

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 a method by which the economic costs of significant regulatory actions may be offset by the repeal of other regulatory actions.

LEGISLATIVE HISTORY

Representative Mark Meadows (R-NC) introduced H.R. 2623, the Lessening Regulatory Costs and Establishing a Federal Regulatory Budget Act of 2017, on May 24, 2017. H.R. 2623 was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on the Judiciary. On November 30, 2017, the Committee considered H.R. 2623 at a business meeting and ordered the bill favorably reported, as amended, by roll call vote.

COMMITTEE CONSIDERATION

⁵⁰ See *The Whistleblower Protection Programs*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, https://www.whistleblowers.gov/regulations_page (last visited Apr. 28, 2018).

⁵¹ See, e.g., GOV'T ACCOUNTABILITY OFFICE, GAO-17-506, WHISTLEBLOWER PROTECTION: OPPORTUNITIES EXIST FOR DOD TO IMPROVE THE TIMELINESS AND QUALITY OF CIVILIAN AND CONTRACTOR REPRISAL INVESTIGATIONS (2017), <https://www.gao.gov/assets/690/687531.pdf>; GOV'T ACCOUNTABILITY OFFICE, GAO-17-227, CONTRACTOR WHISTLEBLOWER PROTECTIONS PILOT PROGRAM: IMPROVEMENTS NEEDED TO ENSURE EFFECTIVE IMPLEMENTATION (2017), <https://www.gao.gov/assets/690/683105.pdf>; GOV'T ACCOUNTABILITY OFFICE, GAO-17-110, WHISTLEBLOWER PROTECTION: ADDITIONAL ACTIONS WOULD IMPROVE RECORDING AND REPORTING OF APPEALS DATA (2016), <https://www.gao.gov/assets/690/681269.pdf>; GOV'T ACCOUNTABILITY OFFICE, GAO-15-112, WHISTLEBLOWER PROTECTION: ADDITIONAL ACTIONS NEEDED TO IMPROVE DOJ'S HANDLING OF FBI RETALIATION COMPLAINTS (2015), <https://www.gao.gov/assets/670/668055.pdf>; GOV'T ACCOUNTABILITY OFFICE, GAO-16-618, DEPARTMENT OF ENERGY: WHISTLEBLOWER PROTECTIONS NEED STRENGTHENING (2016), <https://www.gao.gov/assets/680/678332.pdf>.

On November 30, 2017, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported, as amended, by a roll call vote of 23-17.

ROLL CALL VOTES

There were five roll call votes during consideration of H.R. 2623:

EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, four amendments were offered to H.R. 2623.

Representative Mark Meadows (R-NC) offered an amendment in the nature of a substitute making various improvements to the bill. The Meadows amendment was adopted by a roll call vote of 23-17.

Representative Raja Krishnamoorthi (D-IL) offered an amendment to exempt regulations relating to the process for obtaining or retaining a security clearance from the provisions of H.R. 2623. The Krishnamoorthi amendment was not adopted by a roll call vote of 17-23.

Delegate Eleanor Holmes Norton (D-DC) offered an amendment to exempt regulations relating to sexual harassment from the provisions of H.R. 2623. The Norton amendment was not adopted by roll call vote of 15-20.

Delegate Stacey Plaskett (D-VI) offered an amendment to exempt regulations relating to the protection of whistleblowers from the provisions of H.R. 2623. The Plaskett amendment was not adopted by a roll call vote of 16-21.

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 is to provide for a method by which the

economic costs of significant regulatory actions may be offset by the repeal of other regulatory actions. As such, this bill does not relate to employment or access to public services and accommodations.

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

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget and Impoundment Control Act (Pub. L. 113-67) the Committee has included a letter received from the Congressional Budget Office below.

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 of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of Rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

[Insert CBO score]

SECTION-BY-SECTION

Section 1. Short Title; Table of Contents.

Section 1 establishes the short title of the bill.

Section 2. Sense of Congress; Purpose.

Section 2 states it is the sense of Congress that the federal government should be fiscally responsible with regard to public and private funding sources and should manage costs associated with the imposition of private expenditures resulting from federal regulations.

The section also states the purpose of the Act is to remove unnecessary and outdated regulations and to prudently manage and control the cost of planned regulations.

Section 3. Establishing Regulatory Reform Capacity.

Section 3 requires agencies to appoint a Regulatory Reform Officer (RRO) to oversee regulatory reform initiatives and establish a Regulatory Reform Task Force to review the agency's regulations and other regulatory actions. The Task Force of the agency is required to review every regulation of the agency within five years and to identify regulations and regulatory actions that would be appropriate for repeal, replacement, or modification. The Agency's RRO and Task Force are required to consult with the public and entities significantly affected by regulations through a transparent process.

This section also requires the agency to make information about the task force available on the agency's website. The RRO is required to submit a biannual report to the head of the agency and to make the report available on the agency's website.

Section 4. Accountability.

Section 4 requires agencies to incorporate performance indicators to measure progress toward implementing the Act into the annual performance plan required under section 1115 of title 31, United States Code, and to consider progress toward implementing the Act in assessing the performance of individuals responsible for implementing the Act.

Section 5. Regulatory Planning and Budget.

Section 5 requires the Director of the Office of Management and Budget (OMB) to collect information from agencies on the regulatory actions under development at the agency and significant regulatory actions expected to be proposed or finalized in the next year. As part of this process, agencies will submit deregulatory actions proposed to offset the cost of new significant regulatory actions.

Section 5 requires the Director of OMB to establish a Federal Regulatory Budget for federal agencies and set an incremental regulatory cost allowance for each agency in the next fiscal year. Agencies are required to identify two deregulatory actions for each significant regulatory action, ensure the incremental regulatory costs of the significant regulatory action and associated deregulatory actions are within the agency's incremental regulatory cost allowance, and ensure the significant regulatory action has previously been noticed on the Unified Regulatory Agenda, prior to issuing any new significant regulatory action. The Director of the Office of Management and Budget is permitted to waive the requirements for an agency issuing significant regulatory actions, provided the waiver is in writing and made publicly available.

Section 6. Waiver.

Section 6 authorizes the Director of OMB to waive the requirements of section 3 if the agency generally issues very few or no rules and the agency requests the waiver in writing. The Director is required to make the written request and the written waiver publicly available online for the period of time the waiver is in effect.

Section 7. Definitions.

Section 7 defines agency, costs, deregulatory action, Director, incremental regulatory cost, regulation, regulatory action, and significant regulatory action.

SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

[Insert minority/other views]