

THE REGULATORY ACCOUNTABILITY ACT OF 2013

Key Provisions

1. Greater Transparency

- *Early public outreach.* This legislation heeds President Obama's recent call for "public participation and open exchange" *before* a rule is proposed. (Exec. Order 13,563). Prior to proposing any major rule (\$100M+ costs/year), regulators would be required to issue a simple notice that explains the problem they intend to address and invites the public to submit information on the need for a new rule and potential options the agencies should consider before proposing a rule.
- *Better scientific and technical data.* To improve the quality of new rules, agencies would be required to use the "best available" scientific, economic and technical information. This is consistent with the President's call for regulating "based on the best available science." (Exec. Order 13,563).
- *Less closed-door regulating.* This legislation would cut back on the misuse of guidance documents — agency directives written outside the normal public process of notice and comment — while allowing their legitimate use to continue. Specifically, it would adopt the good-guidance practices issued by OMB in 2007 (under then-Director Portman) and ensure that agencies do not use guidance to skirt the public input required to write new rules.

2. Stronger Cost-Benefit Analysis

- *Cost-Benefit Analysis.* This legislation builds well-recognized best practices for regulatory analysis (including cost-benefit analysis) into each step of the rulemaking process — proposed rule, final rule, and (for major rules only) judicial review. These principles are drawn from the longstanding, bipartisan Executive Order framework created by the Reagan and Clinton Administrations and reaffirmed by President Obama in January 2011. Those principles would be made permanent, enforceable and applicable to independent agencies, which are exempt today.

- *Least Burdensome Option.* This legislation requires agencies to adopt the “least costly” regulatory alternative that would achieve the policy goals set out by Congress. It permits agencies to adopt a more costly approach only if the agency demonstrates that it is more cost-effective. This would reinforce the White House’s instruction to federal agencies to “minimize regulatory costs”¹ and the President’s directive to “tailor regulations to impose the least burden on society.” (Exec. Order 13,563).

3. More Thorough Process for High-Impact Rules

- *Hearings for High-Impact Rules.* For high-impact rules (\$1B+ costs/year), the cost of getting the underlying facts wrong is substantial and warrants additional scrutiny. This bill would give parties affected by billion-dollar rules access to an administrative hearing to test the accuracy of the evidence and assumptions underlying the agency’s proposal. The scope of the hearing would be limited to “genuinely disputed” factual issues which, if misapprehended by the agency, could impose unnecessary burdens on the economy. Parties affected by major rules (\$100M+) would also have access to hearings, unless the agency concludes that the hearing would not advance the process or would unreasonably delay the rulemaking.
- *Substantial Evidence Review of High-Impact Rules.* As a consequence of the administrative hearing, high-impact rules would be reviewed under a slightly higher standard in court — substantial evidence review. This standard is still highly deferential, but it allows a court reviewing major rules to ensure that an agency’s justifications are supported by “evidence that a reasonable mind could accept as adequate to support a conclusion based on the record as a whole.” This standard would also apply to major rules that undergo the formal hearing procedure.

¹ Cass Sunstein, *Washington Is Eliminating Red Tape*, The Wall Street Journal (Aug. 23, 2011) (referring to White House memorandum to federal agencies).