

Cost-Benefit Analysis: Comparison of Key Bills

Background, Application, Cost-Benefit Analysis Standard

As of January 16, 2017

	CHOICE Act	Regulatory Accountability Act	SEC Regulatory Accountability Act	Commodity End User Relief Act	FORM Act
Background	<ul style="list-style-type: none"> Commonly perceived as the key House starting point for financial reform Introduced in the 114th Congress as H.R. 5983 A CHOICE Act 2.0 is expected shortly 	<ul style="list-style-type: none"> Passed in the House in the 115th Congress on 1/11/2017 as H.R. 5 Promoted in Speaker Paul Ryan's <i>A Better Way</i> 	<ul style="list-style-type: none"> Passed in the House in the 115th Congress on 1/12/2017 as H.R. 78 	<ul style="list-style-type: none"> Passed in the House in the 115th Congress on 1/12/2017 as H.R. 238 	<ul style="list-style-type: none"> Passed in the House in the 114th Congress as H.R. 3189 As of 1/16/2017, has not been introduced to 115th Congress
Application	<ul style="list-style-type: none"> Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA, NCUA 	<ul style="list-style-type: none"> All Executive and Independent Agencies 	<ul style="list-style-type: none"> SEC 	<ul style="list-style-type: none"> CFTC 	<ul style="list-style-type: none"> Federal Reserve
Cost-Benefit Analysis Standard	<ul style="list-style-type: none"> May <u>not</u> adopt a regulation if agency determines that <u>quantified</u> costs <u>outweigh</u> <u>quantified</u> benefits Congress may waive this requirement by joint resolution¹ 	<ul style="list-style-type: none"> May propose or adopt a regulation <u>only</u> upon a reasoned determination that the benefits <u>justify</u> the costs 	<ul style="list-style-type: none"> May propose or adopt a regulation <u>only</u> upon a reasoned determination that benefits <u>justify</u> costs 	<ul style="list-style-type: none"> Must <u>assess and publish</u> analysis of the costs and benefits (both quantitative and qualitative) of the proposed or adopted regulation 	<ul style="list-style-type: none"> May propose or adopt a regulation <u>only</u> upon a reasoned determination that the benefits <u>outweigh</u> the costs

1. Other provisions of the CHOICE Act require Congressional approval of all "major" rules (as defined in the bill). While related to cost-benefit analysis, these provisions are separable and appear independent of cost-benefit analysis provisions in other bill proposals (e.g., the Regulations From the Executive in Need of Scrutiny ("REINS") Act of 2017 (H.R. 26), which is further discussed [here](#)).

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Alternatives and Judicial Review of Cost-Benefit Analysis

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Alternatives	<ul style="list-style-type: none"> Must <u>identify and analyze all available</u> alternatives and explain why the regulation meets the objectives of the regulation <u>more effectively</u> than the alternatives 	<ul style="list-style-type: none"> Must <u>consider reasonable</u> alternatives and adopt the <u>least costly</u> alternative, <u>unless</u> additional benefits of a more costly rule <u>justify</u> additional costs <i>and</i> the agency explains its reasons in the interests of <u>public health, safety or welfare</u> relevant under the authorizing statute 	<ul style="list-style-type: none"> Must <u>assess</u> costs and benefits of <u>available</u> regulatory alternatives and <u>choose</u> approach that <u>maximizes net benefits</u> 	<ul style="list-style-type: none"> Must <u>consider available</u> alternatives to direct regulation Must <u>consider</u> which approaches, among alternative regulatory approaches, will <u>maximize net benefits</u> 	<ul style="list-style-type: none"> Must <u>assess</u> costs and benefits of <u>available</u> regulatory alternatives and <u>choose</u> approach that <u>maximizes net benefits</u> Must <u>evaluate</u> whether the regulation is <u>tailored</u> to impose the <u>least impact</u> on the availability of credit and economic growth, and to impose the <u>least burden</u> on society
Judicial Review of Cost-Benefit Analysis	<ul style="list-style-type: none"> If agency has not complied with cost-benefit analysis requirements, a court shall vacate regulation <u>unless</u> the agency shows by clear and convincing evidence that vacating would result in irreparable harm ¹ 	<ul style="list-style-type: none"> Court “shall not defer to the agency’s determination of costs and benefits” if the agency failed to conform to OIRA guidelines (required by the bill to be promulgated) when conducting a cost-benefit analysis ^{1, 2} 	<ul style="list-style-type: none"> Default to general APA judicial review principles 	<ul style="list-style-type: none"> Court shall <u>affirm</u> CFTC’s assessment of costs and benefits, <u>unless</u> it finds an “abuse of discretion” 	<ul style="list-style-type: none"> Default to general APA judicial review principles

1. Other provisions of the CHOICE Act and the Regulatory Accountability Act attempt to eliminate *Chevron* and *Auer* deference to agencies on questions of law. Such provisions would not alter the application of arbitrary and capricious review of final agency action (under the Administrative Procedure Act) to agency *determinations* made under the applicable CBA standard.

2. The Regulatory Accountability Act also contains provisions that require an agency to defer the effective date of a high-impact rule until the final disposition of all actions seeking judicial review of the rule. While related to cost-benefit analysis, these provisions are separable and appear independent of cost-benefit analysis provisions in other bill proposals (e.g., the Require Evaluation Before Implementing Executive Wishlists (“REVIEW”) Act of 2017 (introduced in the 115th Congress)).

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Look Back Review of Each Promulgated Rule and Review of Existing Regulations

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	<u>CHOICE Act</u>	<u>Regulatory Accountability Act</u>	<u>SEC Regulatory Accountability Act</u>	<u>Commodity End User Relief Act</u>	<u>FORM Act</u>
Agency Look Back Review of Each Promulgated Rule	<ul style="list-style-type: none"> Review of <u>all</u> rules required <u>five years</u> after their adoption Must be submitted to Congressional Committees and published on agency website 	<ul style="list-style-type: none"> Must review each <u>major, high-impact, and negative-impact on jobs and wages rules</u> (as defined in bill) no less than <u>every ten years</u>² For every <u>major</u> rule (as defined in the bill), a report on the costs and benefits to regulated entities must be revised <u>every five years</u> 	<ul style="list-style-type: none"> Review of <u>major</u> rules (as defined in bill) required no later than <u>two years</u> after adoption After assessment, SEC must propose to <u>amend or rescind</u> rule, or <u>publish notice that no change</u> is necessary (reviewable as final agency action) 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Review of <u>major</u> rules (as defined in the bill) required no later than <u>two years</u> after adoption After assessment, Federal Reserve must propose to <u>amend or rescind</u> rule, or <u>publish notice that no change</u> is necessary (reviewable as final agency action)
Agency Review of Existing Regulations	<ul style="list-style-type: none"> Within one year of enactment of the bill and every five years thereafter, the agencies must review their rules and <u>develop a plan to amend or rescind</u> existing regulations so as to make the regulatory program of the agency more effective or less burdensome¹ 	<ul style="list-style-type: none"> N/A² 	<ul style="list-style-type: none"> Within one year of enactment of the bill and every five years thereafter, SEC must review its rules and <u>amend or rescind</u> outmoded, ineffective or excessively burdensome regulations 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A

1. A second agency review provision in a separate section of the CHOICE Act would require agencies to review all regulations adopted in the five years prior to the enactment of the bill along criteria that are related to cost-benefit analysis.

2. Other provisions of the Regulatory Accountability Act amending the Regulatory Flexibility Act of 1980 would require agencies to assess existing and new rules that the head of the agency determines have a significant economic impact on a substantial number of small entities. While related to cost-benefit analysis, these provisions are separable and appear independent of cost-benefit analysis provisions in other bill proposals (e.g., the Small Business Regulatory Flexibility Improvements Act of 2015 (introduced in 114th Congress)).