

118TH CONGRESS  
1ST SESSION

# H. R. 3230

To amend the Unfunded Mandates Reform Act of 1995 to provide for regulatory impact analyses for certain rules, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2023

Ms. FOXX (for herself and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on Oversight and Accountability, and in addition to the Committees on Rules, the Budget, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Unfunded Mandates Reform Act of 1995 to provide for regulatory impact analyses for certain rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unfunded Mandates  
5 Accountability and Transparency Act”.

1 **SEC. 2. REGULATORY IMPACT ANALYSES FOR CERTAIN**  
2 **RULES.**

3 The Unfunded Mandates Reform Act of 1995 (2  
4 U.S.C. 1501 et seq.) is amended—

5 (1) by striking “tribal” each place that term  
6 appears and inserting “Tribal”;

7 (2) in section 3 (2 U.S.C. 1502)—

8 (A) in paragraph (1), by striking “and” at  
9 the end;

10 (B) in paragraph (2), by striking the pe-  
11 riod at the end and inserting “and”; and

12 (C) by adding at the end the following:

13 “(3) the term ‘major rule’ means a rule, as de-  
14 fined in section 551 of title 5, United States Code,  
15 that the Administrator of the Office of Information  
16 and Regulatory Affairs determines is likely to  
17 cause—

18 “(A) an annual effect on the economy of  
19 \$100,000,000 or more, adjusted once every 5  
20 years to reflect increases in the Consumer Price  
21 Index for All Urban Consumers, as published  
22 by the Bureau of Labor Statistics of the De-  
23 partment of Labor;

24 “(B) a major increase in costs or prices for  
25 consumers, individual industries, Federal,

1 State, local, or Tribal government agencies, or  
2 geographic regions; or

3 “(C) significant adverse effects on competi-  
4 tion, employment, investment, productivity, in-  
5 novation, public health and safety, or the ability  
6 of United States-based enterprises to compete  
7 with foreign-based enterprises in domestic and  
8 export markets.”; and

9 (3) in section 202 (2 U.S.C. 1532)—

10 (A) by striking the section heading and in-  
11 sserting the following:

12 **“SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN**  
13 **RULES.”;**

14 (B) by redesignating subsections (b) and  
15 (c) as subsections (d) and (e), respectively;

16 (C) by striking subsection (a) and insert-  
17 ing the following:

18 “(a) DEFINITION OF COST.—In this section, the term  
19 ‘cost’ means the cost of compliance and any reasonably  
20 foreseeable indirect costs, including revenues lost, as a re-  
21 sult of a major rule of an agency that is subject to this  
22 section.

23 “(b) REGULATORY IMPACT ANALYSES.—

24 “(1) REQUIREMENT.—Before promulgating any  
25 proposed or final major rule, the agency promul-

1       gating the major rule shall prepare and publish in  
2       the Federal Register an initial and final regulatory  
3       impact analysis with respect to the major rule.

4               “(2) INITIAL REGULATORY IMPACT ANALYSIS.—  
5       An initial regulatory impact analysis required under  
6       paragraph (1) shall—

7                       “(A) accompany the notice of proposed  
8                       rulemaking with respect to the major rule that  
9                       is the subject of the analysis; and

10                      “(B) be open to public comment.

11               “(3) FINAL REGULATORY IMPACT ANALYSIS.—  
12       A final regulatory impact analysis required under  
13       paragraph (1) shall accompany the final major rule  
14       that is the subject of the analysis.

15       “(c) CONTENT.—Each initial and final regulatory im-  
16       pact analysis prepared and published under subsection (b)  
17       shall include, with respect to the major rule that is the  
18       subject of the analysis—

19                      “(1)(A) an analysis of the anticipated benefits  
20                      and costs of the major rule, which shall be quan-  
21                      tified to the extent feasible;

22                      “(B) an analysis of the benefits and costs of a  
23                      reasonable number of regulatory alternatives within  
24                      the range of the discretion of the agency under the

1 statute authorizing the major rule, including alter-  
2 natives that—

3 “(i) require no action by the Federal Gov-  
4 ernment; and

5 “(ii)(I) use incentives and market-based  
6 means to encourage the desired behavior;

7 “(II) provide information based upon  
8 which the public can make choices; or

9 “(III) employ other flexible regulatory op-  
10 tions that permit the greatest flexibility in  
11 achieving the objectives of the statute author-  
12 izing the major rule; and

13 “(C) an explanation of how the major rule com-  
14 plies with the requirements of section 205;

15 “(2) an assessment of the extent to which—

16 “(A) the costs to State, local, and Tribal  
17 governments may be paid with Federal financial  
18 assistance (or otherwise paid for by the Federal  
19 Government); and

20 “(B) Federal resources are available to  
21 carry out the major rule;

22 “(3) estimates of—

23 “(A) any disproportionate budgetary ef-  
24 fects of the major rule upon any particular—

25 “(i) regions of the United States;

1                   “(ii) State, local, or Tribal govern-  
2                   ments;

3                   “(iii) types of communities, including  
4                   urban or rural communities; or

5                   “(iv) segments of the private sector;  
6                   and

7                   “(B) the effect of the major rule on job  
8                   creation or job loss, which shall be quantified to  
9                   the extent feasible; and

10                  “(4)(A) a description of the extent of the prior  
11                  consultation of the agency under section 204 with  
12                  elected representatives of each affected State, local,  
13                  or Tribal government;

14                  “(B) a summary of the comments and concerns  
15                  that were presented to the agency orally or in writ-  
16                  ing by State, local, or Tribal governments; and

17                  “(C) a summary of the evaluation by the agen-  
18                  cy of the comments and concerns described in sub-  
19                  paragraph (B).”;

20                  (D) in subsection (d), as so redesignated,  
21                  by striking “a statement under subsection (a) is  
22                  required, the agency shall include in the pro-  
23                  mulgation a summary of the information con-  
24                  tained in the statement” and inserting “an  
25                  analysis under subsection (b) is required, the

1 agency promulgating the major rule shall in-  
2 clude in the promulgation a summary of the in-  
3 formation contained in the analysis”; and

4 (E) in subsection (e), as so redesignated,  
5 by striking “any statement required under sub-  
6 section (a) in conjunction with or as a part of  
7 any other statement or analysis, provided that  
8 the statement or analysis satisfies the provi-  
9 sions of subsection (a)” and inserting “any  
10 analysis required under subsection (b) in con-  
11 junction with, or as a part of, any other state-  
12 ment or analysis if the other statement or anal-  
13 ysis satisfies the requirements of subsections  
14 (b) and (c)”.

15 **SEC. 3. ENHANCED STAKEHOLDER CONSULTATION.**

16 Section 204 of the Unfunded Mandates Reform Act  
17 of 1995 (2 U.S.C. 1534) is amended—

18 (1) in the section heading, by inserting “**AND**  
19 **PRIVATE SECTOR**” before “**INPUT**”;

20 (2) in subsection (a)—

21 (A) by inserting “, and impacted parties  
22 within the private sector (including small busi-  
23 nesses),” after “on their behalf”; and

1 (B) by striking “Federal intergovernmental  
2 mandates” and inserting “Federal mandates”;  
3 and

4 (3) by amending subsection (c) to read as fol-  
5 lows:

6 “(c) GUIDELINES.—For appropriate implementation  
7 of subsections (a) and (b) consistent with applicable laws  
8 and regulations, the following guidelines shall be followed:

9 “(1) Consultations shall take place as early as  
10 possible, before issuance of a notice of proposed rule-  
11 making, continue through the final rule stage, and  
12 be integrated explicitly into the rulemaking process.

13 “(2) Agencies shall consult with a wide variety  
14 of State, local, and Tribal officials and impacted  
15 parties within the private sector (including small  
16 businesses). Geographic, political, and other factors  
17 that may differentiate varying points of view should  
18 be considered.

19 “(3) Agencies should estimate benefits and  
20 costs to assist with these consultations. The scope of  
21 the consultation should reflect the cost and signifi-  
22 cance of the Federal mandate being considered.

23 “(4) Agencies shall, to the extent practicable—

24 “(A) seek out the views of State, local, and  
25 Tribal governments, and impacted parties with-

1 in the private sector (including small busi-  
2 nesses), on costs, benefits, and risks; and

3 “(B) solicit ideas about alternative meth-  
4 ods of compliance and potential flexibilities, and  
5 input on whether the Federal regulation will  
6 harmonize with and not duplicate similar laws  
7 in other levels of government.

8 “(5) Consultations shall address the cumulative  
9 impact of regulations on the affected entities.

10 “(6) Agencies may accept electronic submis-  
11 sions of comments by relevant parties but may not  
12 use those comments as the sole method of satisfying  
13 the guidelines in this subsection.”.

14 **SEC. 4. MAXIMIZE NET BENEFITS OR PROVIDE EXPLA-**  
15 **NATION.**

16 Title II of the Unfunded Mandates Reform Act of  
17 1995 (2 U.S.C. 1531 et seq.) is amended by striking sec-  
18 tion 205 (2 U.S.C. 1535) and inserting the following:

19 **“SEC. 205. MAXIMIZE NET BENEFITS.**

20 “(a) **DEFINITION OF COST.**—In this section, the term  
21 ‘cost’ has the meaning given the term in section 202(a).

22 “(b) **REQUIREMENT.**—Before promulgating any pro-  
23 posed or final major rule for which a regulatory impact  
24 analysis is required under section 202, an agency shall  
25 from the alternatives identified and considered under sec-

1 tion 202(e)(1)(B), select the alternative that maximizes  
2 net benefits, taking into consideration only the costs and  
3 benefits that arise within the scope of the statutory provi-  
4 sion that authorizes the rulemaking.

5 “(c) EXCEPTIONS.—An agency may adopt an alter-  
6 native other than as required under subsection (b) only  
7 if—

8 “(1) the Administrator of the Office of Infor-  
9 mation and Regulatory Affairs approves the adop-  
10 tion by the agency of the alternative; and

11 “(2) the alternative is adopted to—

12 “(A) account for costs or benefits that can-  
13 not be quantified, including costs or benefits re-  
14 lated to constitutional or civil rights, provided  
15 that the agency identifies all such costs and  
16 benefits and explains why those costs and bene-  
17 fits justify the adoption of the alternative; or

18 “(B) achieve additional benefits or cost re-  
19 ductions, provided that the agency—

20 “(i) identifies—

21 “(I) all such additional benefits  
22 and the associated costs of those ben-  
23 efits; and

1                   “(II) all such cost reductions and  
2                   the associated benefits of those cost  
3                   reductions; and

4                   “(ii) explains why—

5                   “(I) the additional benefits jus-  
6                   tify the additional costs; or

7                   “(II) the additional cost reduc-  
8                   tions justify any benefits foregone.”.

9   **SEC. 5. NEW AUTHORITIES AND RESPONSIBILITIES FOR OF-**  
10                   **FICE OF INFORMATION AND REGULATORY**  
11                   **AFFAIRS.**

12           Section 208 of the Unfunded Mandates Reform Act  
13 of 1995 (2 U.S.C. 1538) is amended to read as follows:

14   **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**  
15                   **FAIRS RESPONSIBILITIES.**

16           “(a) IN GENERAL.—The Administrator of the Office  
17 of Information and Regulatory Affairs (in this section re-  
18 ferred to as the ‘Administrator’) shall provide meaningful  
19 guidance and oversight so that the major rules of an agen-  
20 cy for which a regulatory impact analysis is required under  
21 section 202—

22                   “(1) are consistent with the principles and re-  
23                   quirements of this title, as well as other applicable  
24                   laws; and

1           “(2) and do not conflict with the policies or ac-  
2           tions of another agency.

3           “(b) NOTIFICATION.—If the Administrator deter-  
4           mines that the major rules of an agency for which a regu-  
5           latory impact analysis is required under section 202 do  
6           not comply with the principles and requirements of this  
7           title, are not consistent with other applicable laws, or con-  
8           flict with the policies or actions of another agency, the  
9           Administrator shall—

10           “(1) identify areas of noncompliance;

11           “(2) notify the agency; and

12           “(3) request that the agency comply before the  
13           agency finalizes the major rule concerned.

14           “(c) ANNUAL STATEMENTS TO CONGRESS ON AGEN-  
15           CY COMPLIANCE.—The Administrator shall submit to  
16           Congress, including the Committee on Homeland Security  
17           and Governmental Affairs of the Senate and the Com-  
18           mittee on Oversight and Reform of the House of Rep-  
19           resentatives, an annual written report that, for the 1-year  
20           period preceding the report—

21           “(1) details compliance by each agency with the  
22           requirements of this title that relate to major rules  
23           for which a regulatory impact analysis is required by  
24           section 202, including activities undertaken at the

1 request of the Administrator to improve compliance;  
2 and

3 “(2) contains an appendix detailing compliance  
4 by each agency with section 204.”.

5 **SEC. 6. INITIATION OF RULEMAKING.**

6 The Unfunded Mandates Reform Act of 1995 (2  
7 U.S.C. 1501 et seq.) is amended—

8 (1) by redesignating section 209 (2 U.S.C.  
9 1531 note) as section 210; and

10 (2) by inserting after section 208 (2 U.S.C.  
11 1548) the following:

12 **“SEC. 209. INITIATION OF RULEMAKING FOR MAJOR RULES.**

13 “When an agency determines to initiate a rulemaking  
14 that may result in a major rule, the agency shall—

15 “(1) establish an electronic docket for that rule-  
16 making, which may have a physical counterpart; and

17 “(2) publish a notice of initiation of rulemaking  
18 in the Federal Register, which shall—

19 “(A) briefly describe the subject and objec-  
20 tives of, and the problem to be solved by, the  
21 major rule;

22 “(B) refer to the legal authority under  
23 which the major rule would be proposed, includ-  
24 ing the specific statutory provision that author-  
25 izes the rulemaking;

1           “(C) invite interested persons to propose  
2 alternatives and other ideas regarding how best  
3 to accomplish the objectives of the agency in  
4 the most effective manner;

5           “(D) indicate how interested persons may  
6 submit written material for the docket; and

7           “(E) appear in the Federal Register not  
8 later than 90 days before the date on which the  
9 agency publishes a notice of proposed rule-  
10 making for the major rule.”.

11 **SEC. 7. INCLUSION OF APPLICATION TO INDEPENDENT**  
12 **REGULATORY AGENCIES.**

13       (a) IN GENERAL.—Section 421(1) of the Congres-  
14 sional Budget Act of 1974 (2 U.S.C. 658(1)) is amended  
15 by striking “, but does not include independent regulatory  
16 agencies”.

17       (b) EXEMPTION FOR MONETARY POLICY.—The Un-  
18 funded Mandates Reform Act of 1995 (2 U.S.C. 1501 et  
19 seq.) is amended by inserting after section 5 the following:

20 **“SEC. 6. EXEMPTION FOR MONETARY POLICY.**

21       “Nothing in title II, III, or IV shall apply to rules  
22 that concern monetary policy proposed or implemented by  
23 the Board of Governors of the Federal Reserve System  
24 or the Federal Open Market Committee.”.

1 **SEC. 8. JUDICIAL REVIEW.**

2 Title IV of the Unfunded Mandates Reform Act of  
3 1995 is amended by striking section 401 (2 U.S.C. 1571)  
4 and inserting the following:

5 **“SEC. 401. JUDICIAL REVIEW.**

6 “(a) IN GENERAL.—A person that is aggrieved by  
7 final agency action in adopting a major rule that is subject  
8 to section 202 is entitled to judicial review of whether the  
9 agency complied with section 202(b), 202(c)(1), or 205  
10 with respect to the rule.

11 “(b) SCOPE OF REVIEW.—Chapter 7 of title 5,  
12 United States Code, shall govern the scope of judicial re-  
13 view under subsection (a).

14 “(c) JURISDICTION.—Each court that has jurisdic-  
15 tion to review a rule for compliance with section 553 of  
16 title 5, United States Code, or under any other provision  
17 of law, shall have jurisdiction to review a claim brought  
18 under subsection (a).

19 “(d) RELIEF AVAILABLE.—In granting relief in an  
20 action under this section, a court shall order the agency  
21 that promulgated the major rule that is under review to  
22 take remedial action consistent with chapter 7 of title 5,  
23 United States Code.”.

1 **SEC. 9. APPLYING SUBSTANTIVE POINT OF ORDER TO PRI-**  
2 **VATE SECTOR MANDATES.**

3 Section 425(a)(2) of the Congressional Budget Act  
4 of 1974 (2 U.S.C. 658d(a)(2)) is amended—

5 (1) by striking “Federal intergovernmental  
6 mandates” and inserting “Federal mandates”; and

7 (2) by striking “section 424(a)(1)” and insert-  
8 ing “subsection (a)(1) or (b)(1) of section 424”.

9 **SEC. 10. EFFECTIVE DATE.**

10 Sections 3, 4, 5, and 7 of this Act and the amend-  
11 ments made by those sections shall take effect on the date  
12 that is 120 days after the date of enactment of this Act.

○