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110–390

REGULATORY IMPROVEMENT ACT OF 2007

OCTOBER 18, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 3564]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3564) to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States through fiscal year 2011, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The Administrative Conference of the United States (ACUS or Conference), during its existence, was an independent, nonpartisan agency devoted to analyzing the administrative law process and

providing guidance to Congress. Although reauthorized on October 30, 2004,[1] it was not appropriated funds. In light of the fact that the Conference's authorization expired on September 30, 2007, H.R. 3564, the "Regulatory Improvement Act of 2007," simply extends the authorization of appropriations for the Conference for four additional years.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

As observed by the Congressional Research Service, "Federal regulation, like taxing and spending, is one of the basic tools of government used to implement public policy."[2] Impacting on nearly every aspect of our lives, regulations[3] have significant benefits and costs as aptly summarized in the following:

> Agencies issue thousands of rules and regulations each year to implement statutes enacted by Congress. The public policy goals and benefits of regulations include, among other things, ensuring that workplaces, air travel, foods, and drugs are safe; that the Nation's air, water and land are not polluted; and that the appropriate amount of taxes is collected. The costs of these regulations are estimated to be in the hundreds of billions of dollars, and the benefits estimates are even higher. Given the size and impact of Federal regulation, it is no surprise that Congresses and Presidents have taken a number of actions to refine and reform the regulatory process within the past 25 years. One goal of such initiatives has been to reduce regulatory burdens on affected parties, but other purposes have also played a part. Among these are efforts to require more rigorous analyses of proposed rules and thus provide better information to decision makers, to enhance oversight of rule making by Congress and the President, and to promote greater transparency and participation in the process.[4]

The Constitution provides that the Government may not deprive anyone of life, liberty, or property without "due process of law."[5] This requirement of fair procedure applies to the Federal regulatory rulemaking and adjudicatory processes, the impact of which can be extensive. As Justice Jackson observed in 1952:

> The rise of administrative bodies probably has been the most significant legal trend of the last century and perhaps more values today are affected by their decisions than by those of all the courts, review of administrative decisions apart. They also have begun to have important consequences on personal rights. They have become a veritable fourth branch of the Government, which has deranged our three-branch legal theories

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[1] Federal Regulatory Improvement Act of 2004, Pub. L. No. 108–401, 118 Stat. 2255 (2004).

[2] Curtis W. Copeland, The Federal Rulemaking Process: An Overview, Congressional Research Service Report for Congress, RL 32240, at 1 (Feb. 7, 2005) [hereinafter CRS Report].

[3] The terms "regulation" and "rule" are generally used interchangeably with respect to the Federal regulatory process. In turn, "rulemaking" refers to "[t]he process by which Federal agencies develop, amend, or repeal rules." *Id.*

[4] *Regulatory Reform: Are Regulations Hindering Our Competitiveness?: Hearing Before the Subcomm. on Regulatory Affairs of the H. Comm. on Government Reform,* 109th Cong. 56 (2005) (testimony of J. Christopher Mihm, Managing Director—Strategic Issues, U.S. Government Accountability Office) (footnotes omitted) [hereinafter GAO testimony].

[5] U.S. Const. amend. XIV, § 1.

> much as the concept of a fourth dimension unsettles our three-dimensional thinking.[6]

The Administrative Procedure Act (APA),[7] enacted in 1946, establishes minimum procedures to be followed by Federal administrative agencies when they conduct business that affects the public and requires judicial review of certain administrative acts. Many agency actions, however, are not subject to the APA. As one academic noted, "Despite the presence of a written Constitution and the Administrative Procedure Act (APA), the Federal administrative process, by design and evolution, is characterized by a considerable degree of procedural flexibility and agency discretion."[8] In 1961, President John F. Kennedy observed that "the steady expansion of the Federal administrative process during the past several years has been attended by increasing concern over the efficiency and adequacy of department and agency procedures."[9]

With Federal agencies issuing "more than 4,000 final rules each year on topics ranging from the timing of bridge openings to the permissible levels of arsenic and other contaminants in drinking water,"[10] the current Federal regulatory process faces many significant challenges. In 2004, the Administrator of the Office of Information and Regulatory Affairs testified that "no one has ever tabulated the sheer number of Federal regulations that have been adopted since passage of the Administrative Procedure Act" and that "[s]ad as it is to say, most of these existing Federal rules have never been evaluated to determine whether they have worked as intended and what their actual benefits and costs have been."[11] Since 1994, the Government Accountability Office (GAO) has issued more than 60 reports critiquing various issues presented by the regulatory process. In 2005, the GAO testified before a subcommittee of the Committee on Government Reform that while cer-

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[6] *Federal Trade Commission v. Ruberoid Co.,* 343 U.S. 470, 487 (1952) (Jackson, J., dissent) (citation omitted).

[7] 5 U.S.C.A. §§ 551–59, 701–06, 1305, 3105, 3344, 5372, 7521 (2006).

[8] Gary J. Edles, *The Continuing Need for an Administrative Conference,* 50 ADMIN. L. REV. 101, 102 (1998).

[9] Exec. Order No. 10,934, 26 Fed. Reg. 3233 (Apr. 13, 1961). President Kennedy's other concerns included the following:

> WHEREAS the performance of regulatory functions and related responsibilities for the determination of private rights, privileges, and obligations by executive departments and administrative agencies of the United States Government substantially affects large numbers of private individuals and many areas of economic and business activity; and
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> WHEREAS it is essential to the protection of private and public interests and to the sustained development of the national economy that Federal administrative procedures ensure maximum efficiency and fairness in the performance of these governmental functions; and
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> WHEREAS the experience of the several groups which have examined Federal administrative procedures in recent years demonstrates that substantial progress in improving department and agency procedures can result from cooperative effort by the departments and agencies, working together with members of the practicing bar and other interested persons. . . .

Id.

[10] CRS Report, *supra* note 2, at 1.

[11] *What Is the Bush Administration's Record in Regulatory Reform?: Hearing Before the Subcomm. on Energy Policy, Natural Resources and Regulatory Affairs of the H. Comm. on Government Reform,* 108th Cong. 19 (2004) (prepared statement of John D. Graham, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget).

tain regulatory reform initiatives have yielded benefits, other areas needed to be "more effective."[12]

NEED FOR THE LEGISLATION

Administrative Conference of the United States

ACUS was established as a permanent independent agency in 1964 and became operational 4 years later.[13] For approximately 27 years, the Conference developed recommendations for improving procedures by which Federal agencies administer regulatory, benefit, and other government programs. Over the course of its existence, the Conference served as a "private-public think tank to do basic research on how to improve the regulatory and legal process."[14] Although its funding was terminated in 1995, the statutory provisions establishing ACUS were not repealed.[15]

The Conference's jurisdiction over administrative procedure was intentionally broad.[16] It was authorized to study "the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the United States[.]"[17] In addition, it facilitated the interchange among administrative agencies of information potentially useful in improving administrative procedure. The Conference also collected information and statistics from administrative agencies and published reports evaluating and improving administrative procedure.[18]

Over time, Congress assigned ACUS other responsibilities. Agencies seeking to implement the Government in the Sunshine Act[19] and the Equal Access to Justice Act[20] were required to consult with ACUS before promulgating rules to ensure uniformity. ACUS served as the key implementing agency for the Administrative Dispute Resolution Act,[21] the Negotiated Rulemaking Act,[22] the

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[12] GAO testimony, *supra* note 4, at 59. The areas identified by GAO as needing improvement were described as follows:

> [A]t least four recurring reasons help explain why reform initiatives have not been more effective: (1) limited scope and coverage of various requirements, (2) lack of clarity regarding key terms and definitions, (3) uneven implementation of the initiatives' requirements, and (4) a predominant focus on just one part of the regulatory process, agencies' development of rules.

Id. at 54.

[13] Administrative Conference Act of 1964, Pub. L. No. 88–499, 5 U.S.C.A. §§ 591–96 (2006). Temporary conferences were established in 1953 by President Eisenhower, *Memorandum Convening the President's Commission on Administrative Procedure,* Pub. Papers 219–22 (Apr. 29, 1953), and in 1961 by President Kennedy. Exec. Order No. 10,934, 26 Fed. Reg. 3233 (Apr. 13, 1961).

[14] *Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary,* 104th Cong. 31 (1995) (statement of C. Boyden Gray, ACUS Council Member).

[15] Pub. L. No. 104–52, 109 Stat. 468, 480 (1995) (authorizing funding for the purpose of terminating ACUS' operations).

[16] The term, "administrative procedure," for example, "is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review. . . ." 5 U.S.C.A. § 592(3) (2006).

[17] 5 U.S.C.A. § 594(1) (2006).

[18] 5 U.S.C.A. § 594 (2006).

[19] 5 U.S.C.A. § 552b(g) (2006).

[20] 5 U.S.C.A. § 504(c)(1) (2006).

[21] 5 U.S.C.A. §§ 571 et seq. (2006).

[22] 5 U.S.C.A. §§ 561 et seq. (2006).

Equal Access to Justice Act,[23] the Congressional Accountability Act,[24] and the Magnusson-Moss Warranty-Federal Trade Commission Improvement Act.[25] The Conference was authorized to examine and make recommendations regarding implementation of the Congressional Accountability Act.[26] ACUS also played a key role in the Clinton Administration's National Performance Review with respect to improving regulatory systems.[27] In general, ACUS served as a resource for Members of Congress, Congressional Committees, the Internal Revenue Service, Department of Transportation, and the Federal Trade Commission.[28] Even after its demise in 1995, Congress continued to assign ACUS various responsibilities apparently unaware of the Conference's termination.[29]

Membership and Operation. The membership of ACUS was drawn from the public and private sectors, spanning the ideological spectrum. Before his appointment to the bench, Justice Antonin Scalia served as a Conference Chair from 1972 to 1974. Justice Stephen Breyer was a Conference member and actively participated in its activities from 1981 to 1994.[30] Other members included C. Boyden Gray, who served as Counsel to President George H.W. Bush; Jack Quinn, who served as Counsel to President Bill Clinton; and Office of Information and Regulatory Affairs Administrator Sally Katzen, among other prominent civil servants and academic scholars. Justice Scalia observed that "academics who have served as consultants or members of the Conference have been a virtual Who's Who of leading scholars in the field of administrative law[.]"[31]

The Conference members were drawn from the public and private sectors.[32] Members from the public sector consisted of representatives from each executive department and agency as well as independent regulatory agencies.[33] In addition, up to 40 private

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[23] 5 U.S.C.A. § 504 (2006).
[24] Pub. L. No. 104–1, 109 Stat. 3 (1995).
[25] Pub. L. No. 93–637, 88 Stat. 2183 (1975).
[26] Pub. L. No. 104–1, § 230, 109 Stat. 3, 23 (1995).
[27] *See, e.g.,* Letter from Elaine Kamark, Senior Policy Advisor to the Vice President, to Rep. Steny H. Hoyer, Chair, Subcomm. on Treasury, Post Service, and General Government of the H. Appropriations Comm. (Mar. 7, 1994) (citing the Conference's "valuable assistance" to the National Performance Review).
[28] *See* Marshall J. Breger, *The Administrative Conference of the United States: A Quarter Century Perspective,* 53 U. PITT. L. REV. 813, 835–37 (1992); Toni Fine, *A Legislative Analysis of the Demise of the Administrative Conference of the United States,* 30 ARIZ. ST. L. J. 19, 46–47 (1998).
[29] *See, e.g.,* S. 849, the "OPEN Government Act of 2007," 110th Cong., § 11 (2007) (establishing an Office of Government Information Services in ACUS); H.R. 867, the "OPEN Government Act of 2005," 109th Cong., § 11 (2005) (establishing an Office of Government Information Services in ACUS); S. 1370, the "Common Sense Medical Malpractice Reform Act of 2001," 107th Cong., § 12(b) (2001) (requiring the Attorney General and the Secretary of Health and Human Services to consult with the Conference with respect to developing guidelines for alternative dispute resolution mechanisms); S. 1613, the "Equal Access to Justice Reform Amendments of 1998," 105th Cong., § 1(g) (1998) (requiring the Conference to report to Congress on the frequency of fee awards paid by certain Federal agencies); S. 886, the "Health Care Liability Reform and Quality Assurance Act of 1997," 105th Cong., § 111 (1997) (requiring the Attorney General and the Secretary of Health and Human Services to consult with the Conference with respect to developing guidelines for alternative dispute resolution mechanisms).
[30] Letter from Justice Stephen Breyer to Sen. Charles E. Grassley, Chair, Subcomm. on Administrative Oversight and the Courts of the S. Comm. on the Judiciary (Aug. 21, 1995) (on file with the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary).
[31] Letter from Justice Antonin Scalia to Sen. Charles E. Grassley, Chair, Subcomm. on Administrative Oversight and the Courts of the S. Comm. on the Judiciary (July 31, 1995) (on file with the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary).
[32] The statute provides that the Conference can have not less than 75 members, but not more than 101 members. 5 U.S.C.A. § 593(a) (2006).
[33] 5 U.S.C.A. § 593(b)(2), (3) (2006).

sector members could be appointed for 2-year terms, providing the number of private sector members was not less than one-third nor more than two-fifths of the total number of Conference members. The private sector members were required to be "scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative

procedure" and had to selected in a manner to ensure "broad representation of the views of private citizens and utilize diverse experience."[34]

The day-to-day operations of ACUS were directed by the Conference chair, who was appointed for a 5-year term by the President on advice and consent of the Senate. Only the Conference's chair and employees were compensated for their services.[35] As the Conference's chief executive, the chairman was the official spokesman for the Conference and had the responsibility to encourage Federal agencies to carry out the recommendations of the Conference.[36] As of 1995, the Conference was staffed by 18 full-time employees and operated with a budget of approximately $ 1.8 million.[37] Statutorily required to be headquartered in Washington, DC, the Conference was permitted to accept volunteered services and was exempt from the anti-gift ban.[38]

The Conference was organized around six standing committees: Adjudication (agency adjudicatory processes), Administration (alternative dispute resolution and other procedures utilized by Federal agencies to implement assistance, procurement, and other administrative programs), Government Process (techniques used by Federal agencies to implement Federal programs), Regulation (administrative procedures applicable to oversight of private economic activities), Rulemaking (processes used by Federal agencies to issue rules and regulations), and Judicial Review (aspects of administrative law or practice relating to the availability and effectiveness of judicial review of agency decisions).[39]

Accomplishments. Many viewed ACUS as a unique agency. In support of this observation, they cite the Conference's: (1) public/private sector membership; (2) direct ties to the President, Congress, and the judiciary; (3) non-partisan, unbiased approach to issues; (4) permanent career staff; (5) ability to attract the active participation of the Federal judiciary; and (6) exclusive focus on administrative procedure.[40] As the Congressional Research Service

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[34] 5 U.S.C.A. § 593(b)(6) (2006).

[35] 5 U.S.C.A. § 593(a), (c) (2006). Private sector members were entitled to reimbursement for travel expenses. 5 U.S.C. § 593(c) (2006).

[36] 5 U.S.C.A. § 595(c)(2) (2006).

[37] Administrative Conference of the United States, Justification for Appropriations Fiscal Year 1996, at 11, 33 (Feb. 1995). This level of funding, however, was less than previous years. In fiscal year 1993, for example, ACUS was appropriated $2.314 million. For fiscal years 1994 and 1995, its funding was $1.8 million. Id. at 10.

[38] 5 U.S.C.A. § 585(c)(11)–(12) (2006).

[39] See Marshall J. Breger, *The Administrative Conference of the United States: A Quarter Century Perspective,* 53 U. PITTS. L. REV. 813, 826 (1992).

[40] *See, e.g., Regulatory Improvement Act: Hearing on H.R. 3564 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 110th Cong. (2007) (prepared statement of Curtis Copeland, Specialist in American National Government, Congressional Research Service) (citing various recent issues where the Conference's expertise would have been useful, including e-rulemaking and civil penalties); *Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 104th Cong. 6 (1995) (statement of Thomasina V. Rogers, ACUS Chair) (stating ACUS is a "unique public-private partnership"); *Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Administrative*

observed at a hearing on H.R. 3564 held by the Subcommittee on Commercial and Administrative Law:

> ACUS' past accomplishments in providing nonpartisan, nonbiased, comprehensive, and practical assessments and guidance with respect to a wide range of agency processes, procedures, and practices are well documented. . . . ACUS evolved a structure to develop objective, nonpartisan analyses and advice, and a meticulous vetting process, which gave its recommendations credence."[41]

Likewise, Justice Breyer expounded upon the Conference's uniqueness:

> The Administrative Conference is unique in that it develops its recommendations by bringing together at least four important groups of people: top-level agency administrators; professional agency staff; private (including "public interest") practitioners; and academicians. The Conference will typically commission a study by an academician, say, a law professor, who often has the time to conduct the study thoughtfully, but may lack first-hand practical experience. The professor will spend time with agency staff, which often has otherwise unavailable facts and experience, but lack the time for general reflection and comparisons with other agencies. The professor's draft will be reviewed and discussed by private practitioners, who bring to it a critically important practical perspective, and by top-level administrators such as agency heads, who can make inter-agency comparisons and may add special public perspectives. The upshot is likely to be a work-product that draws upon many different points of view, that is practically helpful and that commends general acceptance.[42]

Law and Governmental Relations of the House Comm. on the Judiciary, 103d Cong. 49 (1994) (statement of Prof. Thomas O. Sargentich, American University Washington College of Law) (noting the need for ACUS and its "special uniqueness"); *id.* at 71 (statement of Thomas M. Susman on behalf of the American Bar Ass'n) (noting that the Conference "is unique in combining the perspectives and experience and capabilities of both the government and the private sectors") Gary J. Edles, *The Continuing Need for an Administrative Conference,* 50 ADMIN. L. REV. 101, 121 (citing various accomplishments, including the Conference's efforts to stem the growing tide of administrative litigation") (1998); Jeffrey Lubbers, *"If It Didn't Exist, It Would Have To Be Invented"—Reviving the Administrative Conference,* 30 ARIZ. ST. L. J. 147, 149 (1998); Toni Fine, *A Legislative Analysis of the Demise of the Administrative Conference of the United States,* 30 ARIZ. ST. L. J. 19, 46 (1998) ("Numerous commentators have described the many accomplishments of ACUS—from the publication of time-saving books and other resources to the urging of important legislative reforms of administrative procedure."); Marshall J. Breger, *The Administrative Conference of the United States: A Quarter Century Perspective,* 53 U. PITTS. L. REV. 813, 831–41 (1992) (citing various ACUS recommendations that have had "a significant effect on the workings of the Federal Government" and the Conference's contribution "to promoting administrative law scholarship").

[41] *Regulatory Improvement Act: Hearing on H.R. 3564 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 110th Cong. (2007) (prepared statement of Mort Rosenberg, Specialist in American Public Law, Congressional Research Service).

[42] Letter from Justice Stephen Breyer to Sen. Charles E. Grassley, Chair, Subcomm. on Administrative Oversight and the Courts of the Senate Committee on the Judiciary (Aug. 21, 1995) (on file with the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary).

Another explanation of ACUS' unique qualities is the following:

> [T]here is a special uniqueness about it. If you compare the Administrative Conference to other governmental bodies, one can see how different it is. It represents a balanced group of private and public members. There is no agency of government that can take this kind of reflective view of the administrative process. Each agency has its own mandate, of course, and will come at administrative process issues from its own perspective. You see this in discussion on the floor of the plenary session where agency members

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Over the course of its existence, the Conference promulgated approximately 200 recommendations to improve the administrative process, many of which were implemented.[43] Among its "most influential government-wide recommendations" was the Conference's proposals facilitating judicial review of agency decisions and eliminating various technical impediments to such review.[44] It recommended a model administrative civil penalty statute that has served as the basis for "dozens of pieces of legislation."[45] In addition, ACUS developed and promoted procedures implementing the Negotiated Rulemaking Act[46] to encourage consensual resolution in a process that takes into account the needs of various affected interests.[47]

The Conference is also credited with playing an important role in improving the Nation's legal system by issuing recommendations designed "to eliminate excessive litigation costs and long delays."[48] For example, Congress, in response to an ACUS recommendation, passed the Administrative Dispute Resolution Act in 1990, which established a framework for agencies to resolve administrative litigation through alternative dispute resolution.[49] As a former ACUS member explained:

> Half of the budget of ACUS is devoted to trying to find ways to reduce, or eliminate government litigation within and by the Government. For example, ACUS, along with the Office of Federal Procurement Policy, convinced successfully some 24 agencies to initiate ADR and to try to use it in disputes with private sector companies and government contracts. Given the fact that you have $200 billion going into the Government procurement program every year, the potential savings in that one program are simply enormous.[50]

From a systemic perspective, the Conference also helped to focus attention on the need for the Federal Government to be made more efficient, less big, and more accountable. It was viewed as one of the leading Federal proponents of practical ways to reduce administrative litigation. In this regard, the Conference actively promoted information-technology initiatives, such as developing methods by which the public could participate electronically in agency

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will frequently give an agency's view, but there is no entity that can give a general view such as the Administrative Conference. It is quite unique.

Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 103d Cong. 49 (1994) (statement of Prof. Thomas O. Sargentich, American University Washington College of Law).

[43] American Bar Ass'n Administrative Procedure Database Site Specific Digital Texts: Recommendations of the Administrative Conference *at* http://www.law.fsu.edu/library/admin/acus/acustoc.html; *see* Toni Fine, *A Legislative Analysis of the Demise of the Administrative Conference of the United States,* 30 ARIZ. ST. L. J. 19, 46 n. 102 (1998) (noting that "[i]t has been estimated that 75%" of ACUS' legislative proposals "were adopted in whole or in part").

[44] Gary J. Edles, *Lessons from the Administrative Conference of the United States,* 2 EUR. PUB. L. 571, 584 (1996).

[45] *Id.* at 588.

[46] 5 U.S.C.A. §§ 561 *et seq.* (2006).

[47] *See* Gary J. Edles, *Lessons from the Administrative Conference of the United States,* 2 EUR. PUB. L. 571, 590–91 (1996).

[48] *Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 104th Cong. 44 (1995) (statement of Richard E. Wiley).

[49] Pub. L. No. 101–552, 104 Stat. 2736 (1990).

[50] *Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 104th Cong. 44 (statement of Richard E. Wiley).

rulemaking proceedings to increase public access to government information and foster greater openness in government operations.[51]

Although the Conference's annual appropriation at the time it ceased operations was only $1.8 million, it has been estimated that ACUS saved the Federal Government and the private sector many multiples of that expenditure over the years it was in operation.[52] For example, an ACUS recommendation to change the Social Security Administration's appeals process was estimated to save that agency approximately $85 million annually.[53] ACUS helped Federal agencies to implement the Administrative Dispute Resolution Act of 1990 and the Negotiated Rulemaking Act,[54] programs which Senator Charles Grassley (R-IA) stated saved "millions of taxpayers" dollars annually by avoiding costly and protracted litigation.[55] The President of the American Arbitration Association asserted that ACUS' encouragement of ADR saved "millions of dollars that would otherwise be frittered away in litigation costs."[56] Accordingly, as one public interest group observed, "It would be penny-wise and pound-foolish not to reauthorize ACUS."[57]

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[51] *See, e.g.,* 305.69–3 Publication of a "Guide to Federal Reporting Requirements" (Recommendation No. 69–3); 305.69–6 Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies (Recommendation No. 69–6); 305.71–6 Public Participation in Administrative Hearings (Recommendation No. 71–6); 305.74–4 Preenforcement Judicial Review of Rules of General Applicability (Recommendation No. 74–4); 305.76–2 Strengthening the Informational and Notice-Giving Functions of the "Federal Register" (Recommendation No. 76–2); 305.76–3 Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking (Recommendation No. 76–3); 305.78–4 Federal agency interaction with private standard-setting organizations in health and safety regulation (Recommendation No. 78–4); 305.79–4 Public Disclosure Concerning the use of Cost-Benefit and Similar Analyses in Regulation (Recommendation No. 79–4); 305.80–6 Intragovernmental Communications in Informal Rulemaking Proceedings (Recommendation No. 80–6); 305.82–4 Procedures for Negotiating Proposed Regulations (Recommendation No. 82–4); 305.82–7 Judicial Review of Rules in Enforcement Proceedings (Recommendation No. 82–7); 305.84–5 Preemption of State Regulation by Federal Agencies (Recommendation No. 84–5); 305.85–1 Legislative Preclusion of cost/benefit analysis (Recommendation No. 85–1); 305.85–2 Agency procedures for performing regulatory analysis of rules (Recommendation No. 85–2); 305.88–7 Valuation of Human Life in Regulatory Decisionmaking (Recommendation No. 88–7); 305.90–2 The Ombudsman in Federal Agencies (Recommendation No. 90–2); 305.93–4 Improving the Environment for Agency Rulemaking (Recommendation No. 93–4); 305.94–1 Use of Audited Self-Regulation as a Regulatory Technique (Recommendation No. 94–1); 305.95–4 Procedures for Noncontroversial and Expedited Rulemaking (Recommendation 95–4).

[52] *See, e.g., Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary,* 104th Cong. 41 (1995) (statement of David C. Vladeck, Director of Public Citizen Litigation Group) (noting that "no other institution of government more effectively leverages the tax dollar" and that "[e]very dollar spent on ACUS brings . . . at least a ten-fold saving in terms of enhanced government efficiency"); Toni Fine, *A Legislative Analysis of the Demise of the Administrative Conference of the United States,* 30 ARIZ. ST. L. J. 19, 50 (1998) ("Nearly everyone who commented on ACUS noted its efficiency as an agency that pays for itself many times over through cost saving legislation, publications, and other innovations."); *ABA Section of Administrative Law & Regulatory Practice Program: The Administrative Conference of the U.S.—Where Do We Go From Here?,* 8 THOMAS M. COOLEY L. REV. 147, 160 (1991) (including comments by Philip D. Brady, Assistant to the President and Deputy to the Chief of Staff, that "given the reality of the Administrative Conference's minuscule budget of only some $2 million, it's hard to imagine a better value in the Federal Government").

[53] Administrative Conference of the United States, Four Reasons That the Administrative Conference's Funding Should Be Restored (undated) (on file with the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary).

[54] 5 U.S.C.A. §§ 571 *et seq.* (2006).

[55] Letter from Senators Charles E. Grassley & Howell Heflin to Senator Richard Shelby, Chair, Subcomm. on Treasury, Postal Service and General Government of the S. Comm. on Appropriations (July 19, 1995) (on file with the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary); *see, e.g.,* Gary J. Edles, *Lessons from the Administrative Conference of the United States,* 2 EUR. PUB. L. 571, 592–93 (1996).

[56] Toni Fine, *A Legislative Analysis of the Demise of the Administrative Conference of the United States,* 30 ARIZ. ST. L. J. 19, 52 (1998) (quoting Robert Coulson, President, American Arbitration Ass'n).

[57] *See, e.g., Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Administrative Law and Governmental Relations of the H. Comm. on the Judici-*

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Another strength of ACUS was its supporters, who represented a broad, bipartisan political spectrum of interests. Congressional proponents included Senators Charles Grassley (R-IA), Orrin Hatch (R-UT), Carl Levin (D-MI), and Herb Kohl (D-WI).[58] Academics from Rochester Institute of Technology, University of Iowa, Catholic University of America, Boston University School of Law, Columbia University School of Law, George Mason University, Georgetown University, Northwestern University School of Law, University of Cincinnati, and Arizona State University and groups such as Citizens for a Sound Economy, the Public Citizen Litigation Group, the American Bar Association, Paralyzed Veterans of America, and the National Resources Defense Council argued for continued funding for ACUS.[59] In addition, private industry groups such as the American Automobile Association, American Arbitration Association, and the Generic Pharmaceutical Industry Association also actively supported the Conference.[60] C. Boyden Gray observed, "As long as there is a need for regulatory reform, there is a need for something like the Administrative Conference."[61]

In a rare appearance before Congress on a matter other than one involving judicial appropriations or resource needs, two Justices of the Supreme Court testified at a Subcommittee on Commercial and Administrative Law hearing held in 2004 in support of ACUS. At the hearing, Justice Antonin Scalia, a former ACUS Chair, described the Conference as "a worthwhile organization" that offered "a unique combination of talents from the academic world, from within the executive branch . . . and, thirdly, from the private bar, especially lawyers particularly familiar with administrative law."[62] He observed, "I did not know another organization that so effectively combined the best talent from each of those areas." In addition, he said that ACUS was "an enormous bargain."[63]

Likewise, Stephen Justice Breyer testified about the "huge" savings to the public that resulted from ACUS's recommendations.[64] Noting that ACUS was "a matter of good Government," he stated, "I very much hope you reauthorize the Administrative Con-

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ary, 103d Cong. 37 (1994) (statement of David C. Vladeck, Director of Public Citizen Litigation Group).

[58] *See, e.g.,* Letter from Sen. Charles E. Grassley *et al.* to Sen. Richard C. Shelby, Chair, Treasury, Postal Service and General Government Subcomm. of the Senate Comm. on Appropriations (Sept. 8, 1995) (expressing "strong support" for continued funding for ACUS and observing that the Conference "achieves concrete results that save both the government and the private sector money") (on file with the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary). Other signatories to this letter included, Senators Howell Heflin, Orrin Hatch, John Glenn, William Roth, Jr., Carl Levin, William Cohen, and Herb Kohl. *Id.*

[59] *See, e.g., Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary,* 103d Cong. 66–73 (1994) (statement of Thomas M. Susman on behalf of the American Bar Association); Letter from Joseph A. Morris et al. to Senators Richard C. Shelby, Chair, & J. Robert Kerry, Ranking Member, Subcomm. on Treasury, Postal Service and General Government of the Senate Committee on Appropriations (July 20, 1995) (on file with the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary).

[60] *See, e.g.,* Letter from Susan Au Allen et al.on behalf of the Concerned Friends of the Administrative Conference to Rep. Steny H. Hoyer (Aug. 2, 1994); Toni Fine, *A Legislative Analysis of the Demise of the Administrative Conference of the United States,* 30 ARIZ. ST. L. J. 19, 52 (1998).

[61] *Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 104th Cong. 31 (1995) (statement of C. Boyden Gray).

[62] *Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary,* 108th Cong. 10 (2004).

[63] *Id.* at 21.

[64] *Id.* at 22.

ference."[65] Both Justices agreed that there were various matters that a reauthorized ACUS could examine. These included assessing the value of having agencies use teleconferencing facilities and developing a consensus range regarding the use of science in the regulatory process.[66]

The Conference was "repeatedly reauthorized funding"[67] by the Congress every 4 years until fiscal year 1996, when its funding was limited to terminating and winding up its operations.[68] Although there appears to be no one reason why ACUS' funding was terminated,[69] various factors apparently contributed to its demise. One cause may have been ACUS' "invisibility factor," that is, it generally played a low-profile role and was possibly viewed as not doing "anything that is visible to most legislators or their constituents."[70] ACUS was viewed as being a "tiny, obscure agency" that simply failed to survive "budget-slashing times."[71] Based on these perceptions, the defunding of ACUS may have been simply the result of a much bigger effort to eliminate Federal agencies perceived to be unnecessary.[72] In the wake of the Conference's demise and the failure to assign its responsibilities to other entities, however, a "fragmented approach to administrative law reform" has resulted.[73]

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[65] *Id.* at 15.

[66] *Id.* at 25–26.

[67] *Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary,* 103d Cong. 1 (1994) (statement of Rep. John Bryant (D-TX), Subcomm. Chair).

[68] Pub. L. No. 104–52, 109 Stat. 468, 480 (1995) (authorizing funding for the purpose of terminating ACUS' operations).

[69] *See, e.g.,* Gary J. Edles, *Lessons from the Administrative Conference of the United States,* 2 EUR. PUB. L.571, 599 (1996) ("A confluence of factors contributed to the agency's demise."); Toni Fine, *A Legislative Analysis of the Demise of the Administrative Conference of the United States,* 30 ARIZ. ST. L. J. 19, 90 (1998) ("While the legislative history of the elimination of the Administrative Conference reveals some fascinating debate about its demise, no single factor can explain why the Conference was zero-funded").

[70] Jonathan Groner, *ACUS Fracas—Last Rights for Administrative Conference,* LEGAL TIMES, Sept. 25, 1995, at 1, 15; *See* Marshall J. Breger, *The Administrative Conference of the United States: A Quarter Century Perspective,* 53 U. PITT. L. REV. 814, 846 (1992) (noting that "[b]eyond the Judiciary committees, where the Conference does a great deal of its work, there is a general lack of information among congressional staff about [ACUS]").

> A witness testifying on behalf of the American Bar Association in support of ACUS observed:
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> Part of the problem . . . is that much of the work of the Conference is not very exciting. Race to the courthouse. Even ADR. Very, very important. Worth a great deal of money to agencies. But not the stuff that you read in the newspapers, and not the stuff that people, unless they have some interest in it or have worked on it, are likely to study unless given the additional encouragement.

Reauthorization of the Administrative Conference of the United States Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 103d Cong. 67 (1994) (statement of Thomas M. Susman on behalf o f the American Bar Association); see id. at 71 (noting that "administrative procedure, simply stated, is not sexy stuff"); *ABA Section of Administrative Law & Regulatory Practice Program: The Administrative Conference of the U.S.—Where Do We Go From Here?,* 8 THOMAS M. COOLEY L. REV. 147, 163 (1991) (noting that in "Congress, there is unfortunately a great deal of ignorance of the Conference").

[71] Alexis Simendinger, *Administrative Conference Near Demise Under House, Senate Appropriations Ax,* BNA DAILY REP. FOR EXECUTIVES, July 27, 1995, at A–26.

[72] *See, e.g.,* James Warren, *Sunday Watch: Congress Eliminates a Department That Actually Worked,* CHI. TRIB., Nov. 12, 1995, at 2; Colman McCarthy, *Mourning an Agency Mugged by Congress,* WASH. POST, Nov. 7, 1995, at E11; Mike Causey, *The Federal Diary: Signs of Cuts to Come,* WASH. POST, Nov. 1, 1995, at D2; William Funk, *R.I.P. A.C.U.S.,* American Bar Ass'n Network Administrative & Regulatory News, at http://www.abanet.org/adminlaw/news/vol21no2/acus—rip.html

[73] Jeffrey Lubbers,*"If It Didn't Exist, It Would Have To Be Invented"—Reviving the Administrative Conference,* 30 ARIZ. ST. L. J. 147, 150 (1998).

Administrative Law, Process and Procedure Project for the 21st Century

The Judiciary Committee, in an effort to identify issues that a reauthorized and appropriated ACUS could examine, established the Administrative Law, Process and Procedure Project for the 21st Century. The Project was initially approved by the Committee on January 26, 2005 as part of its Oversight Plan for the 109th Congress[74] and continued as part of the Committee's Oversight Plan for the 110th Congress.[75] The Project was intended to underscore the need to reauthorize and fund ACUS. To that end, Project conducted a nonpartisan, academically credible analysis of administrative law, process and procedure. As part of this Project, the Subcommittee on Commercial and Administrative held seven hearings, participated in three symposia, and sponsored three empirical studies.[76]

A detailed report with recommendations for legislative proposals and suggested areas for further research and analysis to be considered by ACUS was issued in December 2006.[77] The report addressed the following principal areas:

- the agency adjudicatory process;
- public participation in the rulemaking process;
- the role of science in the regulatory process;
- the utility of regulatory analysis and accountability requirements; and
- Congressional, Presidential and judicial review of agency rulemaking.

With respect to the Project's empirical research projects, one was devoted to examining how agencies develop proposed rules. Conducted by Professor William West of the Bush School of Government and Public Services at Texas A&M University, this research particularly focused on how the agencies manage the rulemaking process during the pre-notice phase.[78] It also considered how and to what extent the public has the opportunity to participate during

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[74] Committee on the Judiciary, Oversight Plan for the 109th Congress, at 5 (Jan. 26, 2005) *at* http://judiciary.house.gov/media/pdfs/printers/109th/109th%20Oversight%20Plan.pdf.

[75] Committee on the Judiciary, Oversight Plan for the 110th Congress, at 2 (Jan. 24, 2007), *at* http://www.judiciary.house.gov/media/pdfs/110-Oversight.pdf

[76] With respect to symposia, the Subcommittee sponsored three. On December 5, 2005, the Subcommittee convened a symposium on e-rulemaking. Representatives from the legislative and executive branches as well as from academia and the private sector discussed whether e-rulemaking improves the regulatory process and encourages public participation. It also examined how advances in information technology may impact administrative rulemaking.

On May 9, 2006, the Subcommittee sponsored a symposium that focused on the role that science plays in the rulemaking process. This program, which was held at American University, involved representatives from the public and private sectors who debated what the appropriate role of science should be.

The third symposium, held on September 11, 2006, considered Congressional, Presidential and Judiciary review of agency rulemaking. This program, hosted by CRS, also examined conflicting claims of legal authority over rulemaking by the Congressional and Executive branches.

Verbatim transcripts of the second and third symposia are included in the Project Report issued in December 2006. Interim Report on the Administrative Law, Process and Procedure Project for the 21st Century, Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 109th Cong. (2006), *at* http://judiciary.house.gov/Media/PDFS/Printers/110th/31505.pdf

[77] *Id.*

[78] The results of this study were considered over the course of an oversight hearing before the Subcommittee on Commercial and Administrative Law marking the 60th anniversary of the Administrative Procedure Act. *The 60th Anniversary of the Administrative Procedure Act: Where Do We Go From Here?: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary,* 109th Cong. (2006).

this important time period when proposed regulations are still being formulated.

The second study examined the area of judicial review of rulemaking. Over the years, there have been informal conjectures that a significant portion of rules are ultimately overturned by the courts. Conducted by Professor Jody Freeman of Harvard Law School, this study reviewed 3,075 cases drawn from an initial database of more than 10,000 cases issued over a 9-year period.[79]

The third study, conducted by Professor Stuart Brettschneider of the Maxwell School of Public Administration of Syracuse University, examined how many science advisory committees currently exist, how their members are selected, how issues of neutrality and conflicts of interest are resolved, and how issues are selected for review, among other matters.

Notwithstanding the fact that these studies were conducted under the auspices of the Judiciary Committee with the assistance of the Congressional Research Service (CRS), experience with two of these studies "was disappointing," according to CRS.[80] With respect to Professor West's study on public participation at the development stage of a rulemaking proceeding, for example, most of the agencies were reluctant provide information vital to the study. According to CRS, Professor West's requests for information "were often met with reluctance and suspicion and his most valuable contacts with knowledgeable officials were on deep background." [81]

Based on that experience, CRS sought to encourage agency cooperation with respect to a subsequent study by Syracuse University's Maxwell School of Public Administration of science advisory panels. This study would have determined, inter alia, how many are there, how are members selected, how issues of neutrality and conflict of interest are handled, and the impact of advisory body recommendations on agencies decisionmaking. To that end, CRS prepared letters of introduction for the researchers from the Director of CRS and the Chairman and Ranking Minority Member of this Subcommittee "to assure agency officials of their bona fides and neutral academic purposes." [82] That effort, however, "was of no avail and entree to the agencies with the most advisory bodies, such as Health and Human Services, 'closed their doors,' refusing to respond to e-mail surveys and requests for personal interviews." [83] As a result, the study relied mostly on public documents which provided few insights with which to assess the workings of such important bodies.

If ACUS conducted these studies, it is less likely that the agencies would fail to cooperate. As CRS noted:

> This was not the usual ACUS experience where agency cooperation was generally the rule. ACUS researchers were often

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[79] The results of this study were considered over the course of a legislative hearing before the Subcommittee on Commercial and Administrative Law on H.R. 3564, the "Regulatory Improvement Act of 2007." *Regulatory Improvement Act of 2007: Hearing on H.R. 3564 Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary,* 110th Cong. (2007).

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.*

welcomed because the results of their studies redounded to the benefit of the agency.[84]

On September 18, 2007, Subcommittee on Commercial and Administrative Law Ranking Member Chris B. Cannon (R-UT) (for himself and with Subcommittee Chairwoman Linda Sánchez (D-CA)) introduced H.R. 3564, the "Regulatory Improvement Act of 2007," which would authorize appropriations ACUS for four additional years.

HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held 1 day of hearings on H.R. 3564, on September 19, 2007. Testimony was received from Professor Jody Freeman, Harvard Law School; Mort Rosenberg, Congressional Research Service; Curtis Copeland, Congressional Research Service; and Professor Jeffrey S. Lubbers, Washington College of Law, American University, with additional material submitted by the American Bar Association, and correspondence from Justices Stephen Breyer and Antonin Scalia.

COMMITTEE CONSIDERATION

On September 19, 2007, the Subcommittee on Commercial and Administrative Law met in open session and ordered the bill, H.R. 3564, favorably reported without amendment by voice vote, a quorum being present. On October 10, 2007, the Committee met in open session and ordered the bill, H.R. 3564, favorably reported without amendment by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 3564.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to

[84] Id.

the bill, H.R. 3564, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2007.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3564, the Regulatory Improvement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 3564—Regulatory Improvement Act of 2007.

SUMMARY

H.R. 3564 would authorize the appropriation of about $11 million over fiscal years 2008 through 2011 for the Administrative Conference of the United States, an independent advisory agency that would assist the Federal Government in developing and implementing regulations. Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost $11 million over the 2008–2012 period. Enacting H.R. 3564 would not affect direct spending or revenues.

H.R. 3564 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3564 is shown in the following table. For this estimate, CBO assumes that the amounts authorized by the bill will be appropriated near the start of each fiscal year and that outlays will follow the historical rate of spending for similar activities. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	1	3	3	4	0
Estimated Outlays	1	3	3	4	*

Note: * = less than $500,000.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3564 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3564 would reauthorize the Administrative Conference of the United States, which is credited with making recommendations with respect to Federal agency regulatory processes that have saved millions in taxpayer dollars.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 14 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3564 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the "Regulatory Improvement Act of 2007."

Sec. 2. Authorization of Appropriations. Section 2 amends section 596 of title 5 of the United States Code to authorize appropriations to the Administrative Conference of the United States. For fiscal year 2008, section 2 authorizes $1 million. For fiscal year 2009, section 2 authorizes $3.3 million. For fiscal year 2010, section 2 authorizes $3.4 million. For fiscal year 2011, section 2 authorizes $3.5 million. Section 2 further provides that not more than $2,500 may be used in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

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SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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[§ 596. Authorization of appropriations

[There are authorized to be appropriated to carry out this subchapter not more than $3,000,000 for fiscal year 2005, $3,100,000 for fiscal year 2006, and $3,200,000 for fiscal year 2007. Of any amounts appropriated under this section, not more than $2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.**]**

§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter not more than $1,000,000 for fiscal year 2008, $3,300,000 for fiscal year 2009, $3,400,000 for fiscal year 2010, and $3,500,000 for fiscal year 2011. Of any amounts appropriated under this section, not more than $2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

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