### Background
- 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

### Application
- Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA, NCUA
- All Executive and Independent Agencies
- SEC
- CFTC
- Federal Reserve

### Cost-Benefit Analysis Standard
- May not adopt a regulation if agency determines that quantified costs outweigh quantified benefits
- Congress may waive this requirement by joint resolution
- May propose or adopt a regulation only upon a reasoned determination that the benefits justify the costs
- May propose or adopt a regulation only upon a reasoned determination that benefits justify costs
- Must assess and publish analysis of the costs and benefits (both quantitative and qualitative) of the proposed or adopted regulation
- May propose or adopt a regulation only upon a reasoned determination that the benefits outweigh the costs

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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).
## Cost-Benefit Analysis: Comparison of Key Bills

### Alternatives and Judicial Review of Cost-Benefit Analysis

<table>
<thead>
<tr>
<th>CHOICE Act</th>
<th>Regulatory Accountability Act</th>
<th>SEC Regulatory Accountability Act</th>
<th>Commodity End User Relief Act</th>
<th>FORM Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must identify and analyze all available alternatives and explain why the regulation meets the objectives of the regulation more effectively than the alternatives</td>
<td>Must consider reasonable alternatives and adopt the least costly alternative, unless additional benefits of a more costly rule justify additional costs and the agency explains its reasons in the interests of public health, safety or welfare relevant under the authorizing statute</td>
<td>Must assess costs and benefits of available regulatory alternatives and choose approach that maximizes net benefits</td>
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<td>Must assess costs and benefits of available regulatory alternatives and choose approach that maximizes net benefits</td>
<td>Must consider available alternatives to direct regulation</td>
<td>Must consider which approaches, among alternative regulatory approaches, will maximize net benefits</td>
<td>Must evaluate whether the regulation is tailored to impose the least impact on the availability of credit and economic growth, and to impose the least burden on society</td>
</tr>
<tr>
<td>Default to general APA judicial review principles</td>
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<td>Must consider available alternatives to direct regulation</td>
<td>Court shall affirm CFTC’s assessment of costs and benefits, unless it finds an “abuse of discretion”</td>
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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)).
### Cost-Benefit Analysis: Comparison of Key Bills

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

**As of January 16, 2017**

<table>
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<td>Agency Look Back Review of Each Promulgated Rule</td>
<td>Review of all rules required five years after their adoption</td>
<td>Must review each major, high-impact, and negative-impact on jobs and wages rules (as defined in bill) no less than every ten years (^2)</td>
<td>Review of major rules (as defined in bill) required no later than two years after adoption</td>
<td>N/A</td>
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<tr>
<td></td>
<td>Must be submitted to Congressional Committees and published on agency website</td>
<td>For every major rule (as defined in the bill), a report on the costs and benefits to regulated entities must be revised every five years</td>
<td>After assessment, SEC must propose to amend or rescind rule, or publish notice that no change is necessary (reviewable as final agency action)</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Within one year of enactment of the bill and every five years thereafter, the agencies must review their rules and develop a plan to amend or rescind existing regulations so as to make the regulatory program of the agency more effective or less burdensome (^1)</td>
<td>N/A (^2)</td>
<td>Within one year of enactment of the bill and every five years thereafter, SEC must review its rules and amend or rescind outmoded, ineffective or excessively burdensome regulations</td>
<td>N/A</td>
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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 114\(^{th}\) Congress)).