

# Regulatory Accountability Act of 2017

*Promoting transparency, accountability, and common sense in the regulatory process*

*Sponsored by Senators Rob Portman and Heidi Heitkamp*

## Key Differences Between the Senate RAA and H.R. 5

### 1. Composition of Bill

The Senate RAA is a standalone bill that codifies longstanding, bipartisan executive orders that have governed the regulatory process for decades. It is the result of significant bipartisan negotiations that have focused on ensuring that the regulatory process produces smart rules that reduce burdens on businesses while protecting public health, safety, the environment.

The House version of the RAA, H.R. 5, incorporates six separate bills and one House Resolution.

### 2. Selection of Final Rule

The Senate RAA requires agencies to consider reasonable alternatives to the most expensive rules, with the consideration of three such alternatives presumed to be a reasonable number. It then requires agencies select the “most cost-effective rule,” unless the agency provides a detailed explanation of why it chose a less cost-effective rule.

H.R. 5 requires agencies to consider all reasonable alternatives to a rule and to choose the “least costly” alternative, unless the agency can explain how the additional benefits of a more expensive rule justify the additional costs, and those benefits must fall within the scope of the statutory authorization for the rule.

### 3. Judicial Review

The Senate RAA allows courts to review agencies’ compliance with rulewriting procedural requirements. It also allows courts to remand rules to agencies where appropriate. It requires courts to review factual determinations underlying high-impact rules (\$1b+ annually) using the substantial evidence standard. It replaces *Auer* deference with *Skidmore* deference, but it does not affect *Chevron* deference.

H.R. 5 also allows courts to review agencies’ compliance with rulewriting procedural requirements, but does not include a provision explicitly allowing courts to remand rules to agencies. It requires courts to decide all terms of an agency action and all relevant questions of law de novo, including agencies’ interpretations of constitutional and statutory provisions, overriding *Chevron*.

### 4. Savings Clause

The Senate RAA preserves specific authorizing laws that include rulemaking requirements or procedures that conflict with the RAA’s provisions.

The House RAA overrides those specific authorizing laws with regard to rulemaking requirements that conflict with the RAA’s provisions.