

107TH CONGRESS
2^D SESSION

H. R. 3795

To establish a Federal Bureau of Audits within the Securities and Exchange Commission to conduct audits of all publicly registered companies.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2002

Mr. KUCINICH (for himself, Mr. SANDERS, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish a Federal Bureau of Audits within the Securities and Exchange Commission to conduct audits of all publicly registered companies.

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 “Investor, Shareholder,
5 and Employee Protection Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The failure of accounting firms to provide
9 accurate audits of its clients is not a new or isolated
10 problem.

1 (2) Accounting firms have been implicated in
2 failed audits that have cost investors billions of dol-
3 lars when earnings restatements sent stock prices
4 tumbling.

5 (3) Auditors have an inherent conflict of inter-
6 est. They are hired, and fired, by their audit clients.

7 (4) This conflict of interest pressures auditors
8 to sign off on substandard financial statements rath-
9 er than risk losing a large client.

10 (5) Auditing a public company for the benefit
11 of small as well as large investors requires independ-
12 ence.

13 (6) Therefore the only truly independent audit
14 is one by a governmental agency.

15 (7) The Federal Bureau of Audits, closely regu-
16 lated by the Commission, will provide honest audits
17 of all publicly traded companies.

18 **SEC. 3. ESTABLISHMENT OF BUREAU.**

19 (a) ESTABLISHMENT.—There is hereby established
20 within the Commission an independent regulatory agency
21 to be known as the Federal Bureau of Audits.

22 (b) FUNCTION OF THE BUREAU.—The Bureau shall
23 conduct an annual audit of the financial statements that
24 are required to be submitted by reporting issuers and to

1 be certified under the securities laws or the rules or regu-
2 lations thereunder.

3 (c) OFFICERS.—

4 (1) BUREAU HEAD.—The head of the Bureau
5 shall be a Director, who shall be appointed by the
6 President, by and with the advice and consent of the
7 Senate.

8 (2) ADDITIONAL OFFICERS.—There shall also
9 be in the Bureau a Deputy Director and an Inspec-
10 tor General, each of whom shall be appointed by the
11 President, by and with the advice and consent of the
12 Senate.

13 (3) TERMS.—The Director, Deputy Director,
14 and Inspector General shall be appointed for terms
15 of 12 years, except that—

16 (A) the first term of office of the Deputy
17 Director shall be eight years; and

18 (B) the first term of office of the Inspector
19 General shall be 4 years.

20 (d) INDEPENDENCE.—Except as provided in sections
21 4 and 5, in the performance of their functions, the officers,
22 employees, or other personnel of the Bureau shall not be
23 responsible to or subject to the supervision or direction
24 of any officer, employee, or agent of any other part of the
25 Commission.

1 (e) ADMINISTRATIVE SUPPORT.—The Commission
2 shall provide to the Bureau such support and facilities as
3 the Director determines it needs to carry out its functions.

4 (f) RULES.—The Bureau is authorized to establish
5 such procedural and administrative rules as are necessary
6 to the exercise of its functions, but the Bureau may not
7 establish any auditing standards within the jurisdiction of
8 the Commission under sections 4 and 5.

9 (g) ADDITIONAL AUTHORITY.—In carrying out any
10 of its functions, the Bureau shall have the power to hold
11 hearings, sign and issue subpoenas, administer oaths, ex-
12 amine witnesses, and receive evidence at any place in the
13 United States it may designate. The Bureau may, by one
14 or more of its officers or by such agents as it may des-
15 ignate, conduct any hearing or other inquiry necessary or
16 appropriate to its functions, except that nothing in this
17 subsection shall be deemed to supersede the provisions of
18 section 556 of title 5, United States Code relating to hear-
19 ing examiners.

20 (h) CONFLICT OF INTEREST PROVISIONS.—A person
21 previously employed by the Bureau may not accept em-
22 ployment or compensation from an issuer audited by the
23 Bureau or an accountant that provides audit related serv-
24 ices to an issuer audited by the Bureau for 10 years after
25 the last day of employment at the Bureau. Any current

1 employee of the Bureau shall be required to place all in-
2 vestments in a blind trust, in accordance with regulations
3 prescribed by the Commission. The employees of the Bu-
4 reau who conduct the audits shall be exempt from the civil
5 service pay system under section 4802 of title 5, United
6 States Code, and shall be paid salaries that are competi-
7 tive with similar private sector employment.

8 (i) **LEGAL REPRESENTATION.**—Except as provided in
9 section 518 of title 28, United States Code, relating to
10 litigation before the Supreme Court, attorneys designated
11 by the Director of the Bureau may appear for, and rep-
12 resent the Bureau in, any civil action brought in connec-
13 tion with any function carried out by the Bureau pursuant
14 to this Act or as otherwise authorized by law.

15 **SEC. 4. ASSUMPTION OF AUTHORITY BY COMMISSION OVER**
16 **AUDITING STANDARDS.**

17 (a) **ASSUMPTION OF AUTHORITY.**—Pursuant to its
18 authority under the securities laws to require the certifi-
19 cation, in accordance with the rules of the Commission,
20 of financial statements and other documents of reporting
21 issuers of securities, the Commission shall, by rule, estab-
22 lish and revise as necessary auditing standards for audits
23 of such financial statements.

24 (b) **INCORPORATION OF CURRENT STANDARDS.**—In
25 adopting auditing standards under this section, the Com-

1 mission shall incorporate generally accepted auditing
2 standards in effect on the date of enactment of this Act,
3 with such modifications as the Commission determines are
4 necessary and appropriate in the public interest and for
5 the protection of investors.

6 (c) **ADDITIONAL REQUIREMENTS FOR RULES.**—The
7 rules prescribed by the Commission under subsection
8 (a)—

9 (1) shall be available for public comment for
10 not less than 90 days;

11 (2) shall be prescribed not less than 180 days
12 after the date of enactment of this Act; and

13 (3) shall be effective on the first January 1 that
14 occurs after the end of such 180 days.

15 **SEC. 5. FEES FOR THE RECOVERY OF COSTS OF OPER-**
16 **ATIONS.**

17 (a) **IN GENERAL.**—The Commission shall in accord-
18 ance with this section assess and collect a fee on each re-
19 porting issuer whose financial statements are audited by
20 the Bureau. This section applies as of the first fiscal year
21 that begins after the date of enactment of this Act (re-
22 ferred to in this section as the “first applicable fiscal
23 year”).

24 (b) **TOTAL FEE REVENUES; INDIVIDUAL FEE**
25 **AMOUNTS.**—The total fee revenues collected under sub-

1 section (a) for a fiscal year shall be the amounts appro-
2 priated under subsection (d)(2) for such fiscal year. Indi-
3 vidual fees shall be assessed by the Commission on the
4 basis of an estimate by the Commission of the amount
5 necessary to ensure that the sum of the fees collected for
6 such fiscal year equals the amount so appropriated.

7 (c) FEE WAIVER OR REDUCTION.—The Commission
8 shall grant a waiver from or a reduction of a fee assessed
9 under subsection (a) if the Commission finds that the fee
10 to be paid will exceed the anticipated present and future
11 costs of the operations of the Bureau.

12 (d) CREDITING AND AVAILABILITY OF FEES.—

13 (1) IN GENERAL.—Fees collected for a fiscal
14 year pursuant to subsection (a) shall be credited to
15 the appropriation account for salaries and expenses
16 of the Bureau and shall be available until expended
17 without fiscal year limitation.

18 (2) APPROPRIATIONS.—

19 (A) FIRST FISCAL YEAR.—For the first ap-
20 plicable fiscal year, there shall be available for
21 the salaries and expenses of the Bureau
22 \$5,150,000,000.

23 (B) SUBSEQUENT FISCAL YEARS.—For
24 each of the four fiscal years following the first
25 applicable fiscal year, there shall be available

1 for the salaries and expenses of the Bureau an
2 amount equal to the amount made available by
3 paragraph (1) for the first applicable fiscal
4 year, multiplied by the adjustment factor for
5 such fiscal year (as defined in subsection (f)).

6 (e) COLLECTION OF UNPAID FEES.—In any case
7 where the Commission does not receive payment of a fee
8 assessed under subsection (a) within 30 days after it is
9 due, such fee shall be treated as a claim of the United
10 States Government subject to subchapter II of chapter 37
11 of title 31, United States Code.

12 (f) DEFINITION OF ADJUSTMENT FACTOR.—For
13 purposes of this section, the term “adjustment factor” ap-
14 plicable to a fiscal year is the lower of—

15 (1) the Consumer Price Index for all urban con-
16 sumers (all items; United States city average) for
17 April of the preceding fiscal year divided by such
18 Index for April of the first applicable fiscal year; or

19 (2) the total of discretionary budget authority
20 provided for programs in categories other than the
21 defense category for the immediately preceding fiscal
22 year (as reported in the Office of Management and
23 Budget sequestration preview report, if available, re-
24 quired under section 254(c) of the Balanced Budget
25 and Emergency Deficit Control Act of 1985) divided

1 by such budget authority for the first applicable fis-
2 cal year (as reported in the Office of Management
3 and Budget final sequestration report submitted for
4 such year).

5 For purposes of this subsection, the terms “budget au-
6 thority” and “category” have the meaning given such
7 terms in the Balanced Budget and Emergency Deficit
8 Control Act of 1985.”.

9 **SEC. 5. DEFINITIONS.**

10 As used in this Act:

11 (1) COMMISSION.—The term “Commission”
12 means the Securities and Exchange Commission.

13 (2) SECURITIES LAWS.—The term “securities
14 laws” means the Securities Act of 1933 (15 U.S.C.
15 77a et seq.), the Securities Exchange Act of 1934
16 (15 U.S.C. 78a et seq.), the Trust Indenture Act of
17 1939 (15 U.S.C. 77aaa et seq.), the Investment
18 Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the
19 Investment Advisers Act of 1940 (15 U.S.C. 80b et
20 seq.), and the Securities Investor Protection Act of
21 1970 (15 U.S.C. 78aaa et seq.).

22 (3) REPORTING ISSUER.—The term “reporting
23 issuer” means any registrant under section 12 of the
24 Securities Exchange Act of 1934 (15 U.S.C. 78l) or
25 any other issuer required to file periodic reports

1 under section 13 or 15 of such Act (15 U.S.C. 78m,
2 78o).

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