

June 4, 2025

The Honorable Lindsey Graham
Chairman
Committee on the Budget
U.S. Senate
Washington, D.C. 20510

The Honorable Tim Scott
Chairman
Committee on Banking, Housing, and Urban
Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Jeff Merkley
Ranking Member
Committee on the Budget
U.S. Senate
Washington, D.C. 20510

The Honorable Elizabeth Warren
Ranking Member
Committee on Banking, Housing, and Urban
Affairs
U.S. Senate
Washington, D.C. 20510

Subject: Dismantling the PCAOB Through Reconciliation Violates the Byrd Rule

Dear Chairmen Graham and Scott and Ranking Members Merkley and Warren:

We respectfully convey our concerns regarding the proposed elimination of the Public Company Accounting Oversight Board (PCAOB) in Sec. 50002 of the Concurrent Budget Resolution and our view that the proposal violates the Byrd Rule criteria for inclusion in a reconciliation bill.

Background

The PCAOB is a nonprofit organization, created by the Sarbanes-Oxley Act of 2002, whose mission is to oversee auditing standards and the auditing profession. To this end, the PCAOB regulates the audits of public companies and SEC-registered brokers and dealers to protect investors and further the public interest in the preparation of informative, accurate, and independent audit reports.

The organization's roughly \$400 million (2025) budget is funded through Accounting Support Fees paid by publicly listed issuers and investment companies, and fees from broker-dealers and accounting firms. The PCAOB does not receive any money directly from Congress, through the annual appropriations process or otherwise. In addition to establishing the PCAOB as a private corporation, the Sarbanes-Oxley Act states expressly that the PCAOB is not "subject to procedures in Congress to authorize or appropriate public funds," and that its accounting support fees and other receipts "shall not be considered public monies of the United States."

Sec. 50002 would dismantle the PCAOB by the end of fiscal year 2026, and transfer its work and funding from companies to the SEC.

Does Sec. 50002 meet the Byrd rule criteria for inclusion in a budget reconciliation bill?

We believe this proposal violates several of the Byrd Rule criteria for inclusion in a reconciliation bill for the following reasons:¹

1. The PCAOB is a nonprofit organization and is not funded through the federal budget.
2. The proposal would not result in a significant reduction to the federal deficit, because, per Sec. 50002 and the Congressional Budget Office (CBO), it would replace the PCAOB by establishing a new program inside the SEC that would require similar funding to carry out operations.
3. The PCAOB was created by a provision of the Sarbanes-Oxley Act of 2002, which was enacted through regular order, not through budget reconciliation. If this provision of the Act is to be overturned, that should also be accomplished through regular order rather than through budget reconciliation.
4. The non-budgetary consequences of Sec. 50002 are substantial and very large relative to any budgetary consequences, which are merely incidental.
5. The proposal relates to a specific organization and could be considered “targeting.” Targeting violates the Byrd Rule.

We provide further elaboration below for each point.

The Legal Status of the PCAOB and Its Funding

Because the PCAOB is privately funded, eliminating the PCAOB plainly cannot decrease the federal deficit. As a nonprofit organization funded by accounting support fees paid by corporations, broker-dealers and accounting firms, the PCAOB is a legal entity distinct from the federal government. As noted above, Congress specifically stated in Section 109(c)(1) of the Sarbanes-Oxley Act that PCAOB receipts are not monies of the United States. Further, Congress expressly exempted the PCAOB from the appropriations process. Section 109(j) of the Sarbanes-Oxley Act states: “Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds” Therefore, legislation affecting the PCAOB’s receipts and expenditures is outside the scope of budget reconciliation.

¹ For a deeper discussion of the history and application of the Byrd Rule, see Prof. Jonathan Gould’s (undersigned) recent articles published in the Harvard Journal on Legislation and the University of Michigan Law Review. Jonathan S. Gould, *The Senate’s Shadow Doctrine*, 61 HARV. J. ON LEGIS. 317 (2024), https://journals.law.harvard.edu/jol/wp-content/uploads/sites/86/2024/06/61_2_HarvJonLegis_317_Article_Gould.pdf; Jonathan S. Gould, *A Republic of Spending*, 123 MICH. L. REV. 209 (2024), https://repository.law.umich.edu/mlr/vol123/iss2/3?utm_source=repository.law.umich.edu%2Fmlr%2Fvol123%2Fiss2%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages.

The PCAOB-SEC Transfer Proposal is an Illusory Budget Solution

The proponents of Sec. 50002 rely on creative accounting rather than genuine deficit reduction to justify its inclusion in a reconciliation bill. That is, the *only* kind of savings identified in the CBO score is a feature of the CBO's methodology that has the effect of discounting the dollar value of federal revenues but not the value of the same dollar amount in privately assessed fees. This illusory difference reveals that the budget impact of the provision is merely incidental to a policy change that violates the Byrd Rule. To wit, the CBO analysis indicates that today the PCAOB's funding needs have no impact on the federal deficit.

The CBO estimates budget savings of \$771 million through a two-step process that (1) moves audit oversight operations from a nonprofit organization with no federal budget impact into the federal budget and then (2) eliminates its funding.² The projected savings stem entirely from the CBO's assumption that discontinuing the accounting support fee—which it classifies as an indirect tax—would generate additional tax receipts from corporations retaining those funds.³ However, the CBO explicitly states that “the SEC would collect fees of similar magnitude to fund those activities,” yet crucially these anticipated SEC costs are missing from their analysis and left to be provided for in future annual appropriations.⁴ This creates a misleading picture: Sec. 50002 proposes that the same audit oversight work would still be performed and funded by comparable fees imposed on the private sector. Yet, the CBO's methodology treats the elimination of nonprofit funding as budget savings, even though the nonprofit is not funded by appropriations, while ignoring the equivalent federal costs that would replace it.

Taken together, if the SEC funds the new operations transferred from the PCAOB through fees, the private sector will continue to fund audit oversight. If funded through general appropriations without charging fees, taxpayers would bear the cost, increasing the deficit. The proposal does not represent genuine fiscal reform: it merely shifts regulatory authority from an independent organization to a federal agency with similar funding requirements and operational costs. Sec. 50002 thus offers no true federal budget savings and the only substantive effect of Sec. 50002 is to transfer responsibility for audit regulation from the PCAOB to the SEC. Such substantive policymaking—not to mention establishing a new program in a federal agency—is exactly the kind of action the Byrd Rule was designed to exclude from a reconciliation bill.

The Sarbanes-Oxley Act Created the PCAOB

Financial reporting misconduct can devastate the functioning of capital markets. U.S. capital markets have been the envy of the world precisely because of the regulatory framework that has allowed these markets to develop and flourish, and to promote capital formation and employment opportunities.

The PCAOB was created by the Sarbanes-Oxley Act of 2002, which passed the House of Representatives with a vote of 423 in favor, 3 opposed, and 8 abstaining. In the Senate, the vote was 99 in favor, 0 opposed, and 1 abstaining. The creation of the PCAOB was a very intentional

² For further discussion, please see the attached Appendix.

³ https://www.cbo.gov/system/files/2025-05/HFS_Reconciliation2025.pdf.

⁴ <https://www.everycrsreport.com/reports/IN12551.html>.

element of this legislation, to address the shortcomings of audits that contributed to substantial financial reporting misconduct in the early 2000s, resulting in the bankruptcy and collapse of major companies and Arthur Andersen, an accounting firm.

Notably, the Sarbanes-Oxley Act devoted more than 20 pages to the organization and operation of the PCAOB, TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD. Sec. 50002 fails to address how the SEC will carry out its oversight, how it will save taxpayer dollars, or how it will assure effective oversight.

The Budgetary Consequences Are Merely Incidental to the Non-budgetary Consequences—Which Are Substantial

We elaborate on several of the key non-budgetary consequences here.

1. Letters to Congress and articles expressing concern about the non-budgetary consequences of this proposal have been written by accounting and legal scholars, the AARP, the CFA Institute, the Council of Institutional Investors, former CFOs, former FASB, PCAOB, and SEC officials, former audit partners, former Enron and WorldCom executives and whistleblowers and the International Corporate Governance Network, among others. They raise the concern that Sec. 50002 risks substantial damage to the credibility of audits, the liquidity of our capital markets and their ability to contribute to capital formation, job growth and overall financial stability.⁵ Indeed, reducing audit quality will only increase the need for new outlays to the SEC to combat

⁵ John Coates, John C. Coffee, Jr., James D. Cox, Jill E. Fisch, Merritt B. Fox and Joel Seligman, *Shadow SEC: The PCAOB Should Be Carefully Reviewed, Not Hastily Abolished*, THE CLS BLUE SKY BLOG (May 14, 2025), <https://clsbluesky.law.columbia.edu/2025/05/14/shadow-sec-the-pcaob-should-be-carefully-reviewed-not-hastily-abolished/>. Cynthia Cooper & Sherron Watkins, *We Exposed Fraud at Enron and WorldCom. Don't Let History Repeat Itself*, NEW YORK TIMES (May 27, 2025), <https://www.nytimes.com/2025/05/27/opinion/enron-worldcom-fraud-pcaob.html>. Karthik Ramanna & Nemit Shroff, *Don't Dismantle America's Audit Regulator—It's a Strategic Asset Against China*, PROMARKET (June 2, 2025), <https://www.promarket.org/2025/06/02/dont-dismantle-americas-audit-regulator-its-a-strategic-asset-against-china/>. Academics, *Letter to Congress on Concerns Regarding Section 50002 of the Committee Print to Eliminate the PCAOB* (May 15, 2025), https://docs.google.com/document/d/1qjP92pYD_tuu51fQHqoMVqnFfGtd77QtgHV-uNq8gSY/edit?tab=t.0; https://docs.google.com/spreadsheets/d/1PoqbQNKpZhLJ1klxhb7mcNAoMkDe_1tUcs8oVlsBAfE/edit?gid=895643012#gid=895643012. AARP, *Letter to the U.S. House Committee on Financial Services* (April 29, 2025), <https://www.aarp.org/content/dam/aarp/politics/advocacy/2025/04/hfsc-reconciliation-letter.pdf>. *Fact Sheet on the Dangers of Folding the PCAOB into the SEC*, BETTER MARKETS (April 29, 2025), <https://bettermarkets.org/newsroom/fact-sheet-the-dangers-of-folding-the-pcaob-into-the-sec/>. CFA Institute, *Letter to U.S. Congress on PCAOB and Reconciliation Bill* (April 29, 2025), https://rpc.cfainstitute.org/sites/default/files/docs/comment-letters/cfa-institute-letter-to-hfs-sbc-re-pcaob_final_final.pdf. Council of Institutional Investors, *Letter to the House Committee on Financial Services on SEC 5002 of the Financial Services Committee Print, Providing for reconciliation pursuant to H.Con.Res. 14, the Concurrent Resolution on the Budget for Fiscal Year* (April 30, 2025), https://www.cii.org/files/issues_and_advocacy/correspondence/2025/April%2030,%202025,%20Letter%20to%20Committee%20on%20Financial%20Services.pdf; https://www.cii.org/files/issues_and_advocacy/correspondence/2025/Attachment.pdf. Dave Sullivan & Dan Sunderland, *Letter to U.S. Congress on PCAOB and Reconciliation Bill*. Former PCAOB Board Members, *Letter to the U.S. House of Representatives Re: Eliminating the PCAOB Would Cause Significant Harm to U.S. Financial Markets/House Concurrent Resolution 14* (May 8, 2025), https://www.auditupdate.com/_files/ugd/6ebb47_26c8f40f57184b9c9ba33b6a41a10236b.pdf?index=true. International Corporate Governance Network, *Letter to the US Congress on PCAOB* (May 6, 2025), <https://www.icgn.org/letters/section-50002-house-budget-reconciliation-bill-us-congress>. Daniel Goelzer, *Save the PCAOB*, THE AUDIT BLOG (May 1, 2025), <https://medium.com/the-audit-blog/save-the-pcaob-f86e32cd47e4>.

financial fraud and protect U.S. capital markets through government enforcement in the absence of high quality, independent auditing.

Notably, all these commentators see Sec. 50002 as harmful to investors, businesses, employees, and retirees through less effective audit oversight. As Supreme Court Justice Louis Brandeis famously observed, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”⁶ It is the PCAOB’s effectiveness in inspections that keeps the “electric light” on, motivating greater auditor effort and higher quality audits and financial reporting. Importantly, even a small reduction in investor confidence can reduce U.S. capital market valuations, which presently amount to more than \$50 trillion.⁷ For this reason, while there is no budget savings, the magnitude of potential harm to investors, employees, retirees and businesses is vast.

2. The PCAOB’s nonprofit status was essential in reaching agreements for audit inspections internationally in 58 jurisdictions, including China.⁸ If the proposed elimination of the PCAOB proceeds, these agreements are certain to be disrupted and unlikely to be reinstated by many countries, such as China. This would result in diminished oversight of financial reporting and auditing quality and visibility into the reporting of key parties in global supply chains. This diminution would affect the quality of audit oversight for the largest U.S. multinational corporations as well as international corporations publicly listed in U.S. markets.

As some of us wrote in a recent letter to Congress,

In 2024, the PCAOB inspected 78 non-U.S. accounting firms, covering portions of 221 audits of U.S. publicly traded companies. In a significant number of those inspections, the PCAOB uncovered audit deficiencies that would not otherwise have been detected.

The SEC does not have agreements that enable it to inspect accounting firms in other countries. If the PCAOB’s functions were transferred to the SEC, it would be unlikely that the SEC could negotiate new agreements with the required jurisdictions in time to avoid mandatory delisting of many companies. Even if Congress repealed the HFCAA to avoid delisting, without the deterrent effect of inspections, non-U.S. audit work would undoubtedly weaken again, increasing the risk of material errors and fraud in financial statements on which U.S. investors rely.⁹

Accounting professors Ramanna and Shroff stress the strategic importance of these relationships:

The government must think carefully before unraveling a structure that works.
The PCAOB is a rare bipartisan success story—an oversight body that serves

⁶ Louis D. Brandeis, *Other People’s Money and How the Bankers Use It* 92 (1914).

⁷ SIFMA Capital Markets Fact Book, July 2024.

⁸ <https://pcaobus.org/oversight/international/international/pcaob-inspections-of-registered-non-u-s--firms>.

⁹ Letter from Former PCAOB Board Members to House of Representatives Members, May 8, 2025.

American investors. Eliminating the PCAOB would mean surrendering one of America's few tools for holding powerful foreign firms to our standards. That's not streamlining. It's a strategic error.¹⁰

These agreements serve the American people well. Eliminating the PCAOB would unnecessarily relinquish a critical mechanism for holding foreign audit firms to our standards.

3. The staff required to carry out the PCAOB's inspection program has taken many years to train and develop, and the SEC has no comparable experience in carrying out such operations. While Sec. 50002 permits the SEC to hire PCAOB staff, it will do so only on the government pay scale, which is unlikely to attract senior and mid-level professionals at the PCAOB. The outside labor market for their services is likely to be very attractive given the well-documented shortage of accounting talent and concerns that the gap between supply and demand will only grow. A common remedy for this, higher wages, is explicitly precluded by Sec. 50002.

4. In addition, the PCAOB's Office of Economic and Risk Analysis has developed substantial research capability and connections with the broader academic community to evaluate the evidence concerning PCAOB standard-setting, inspections and communications. This has generated substantial knowledge that directly informs the PCAOB's work and contributes to its effectiveness.¹¹ Based on this research, as well as studies based solely on public data sources, we know that the economic benefits of the PCAOB are both quantifiable and significant, benefits which would be at risk of loss if the PCAOB were dismantled.

5. We also note that the SEC currently has extensive authority over the PCAOB. This includes their ability to appoint and remove members of the PCAOB at will, approval of rules and budget, oversight of operations, and adjudication of appeals from PCAOB decisions. The SEC therefore already has the ability to achieve any budgetary goal through their approval process. This further illustrates that the motivation for Sec. 50002 is not fiscal concerns but policy goals.

The Proposal Targets the PCAOB

As we believe the foregoing discussion amply demonstrates, the proposal to eliminate the PCAOB is motivated by broader political and ideological objectives rather than by purely fiscal considerations.

* * *

In conclusion, dismantling the PCAOB offers no budgetary savings, risks substantial harm to the financial security of millions of Americans, and does not meet the Byrd Rule criteria for inclusion in budget reconciliation. The Senate does its policymaking in regular order through its committee structure for a reason. The committee structure enhances the quality of policymaking, and general order permits development of an evidentiary basis for lawmaking and consideration of alternative approaches and their relative costs and benefits to the American people. We urge

¹⁰ "Don't Dismantle America's Audit Regulator—It's a Strategic Asset Against China,"

<https://www.promarket.org/2025/06/02/dont-dismantle-americas-audit-regulator-its-a-strategic-asset-against-china/>.

¹¹ <https://pcaobus.org/oversight/standards/economic-analysis>.

you to remove this deeply flawed proposal from the Concurrent Resolution on the Budget for Fiscal Year 2025.

Respectfully submitted,

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Letter Regarding the Byrd Rule Application to Dismantling the PCAOB

June 4, 2025

Page 8

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Appendix: Details of Budget Score Analysis

There are two key steps in the CBO scoring calculation.

First, the CBO assumes that the Board's authorities would be transferred to the SEC around the end of fiscal year 2026 and that, starting in 2027, accounting support fees would no longer be collected and spent. Notably, for fiscal years 2025 and 2026, the CBO spreadsheet in HFStable2_0 projects \$0 for Estimated Outlays and \$0 Estimated Revenues in 2025 and 2026, making clear that PCAOB funding and operations have no effect on the deficit.

Thus, if the PCAOB's authorities are not transferred to the SEC, their operations will continue to have no effect on the federal deficit, making the PCAOB's elimination inappropriate for a reconciliation bill under the Byrd Rule.

Second, the funding provided by issuers, broker-dealers and accounting firms to the PCAOB, a nonprofit organization, is moved from outside the federal budget to the federal budget through the assumed transfer of the PCAOB to the SEC. This step creates the appearance of an impact on the deficit that is solely due to the CBO's scoring methodology. Specifically, beginning in 2028, it is assumed that discontinuing spending by the PCAOB reduces federal outlays by \$372 million but that federal revenues are reduced by only \$275 million, rather than by the total accounting support fee, due to an assumed indirect offset. It is this assumed offset that creates the appearance of a deficit reduction of approximately \$97 million. The offset is applied by the CBO because they assume that the accounting support fee is an indirect tax, and that by reversing the support fee and leaving those funds with corporations, they will pay for investment and salaries that will generate tax receipts. They further assume the difference between revenues and annual expenditures foregone increases slightly in 2029-2035 from the \$97 million amount in 2028, to arrive at an estimate of \$771 million in "deficit reduction." Crucially, this estimate stems from their scoring method, which estimates indirect economic consequences of the reversal of accounting support fees rather than an effect due to any directly identified budget revenues or expenditures. This implicit preference for federal funding versus private funding masks what would really be happening—that private-sector regulatory oversight which does not contribute to the federal deficit today would start drawing on federal funds (through new, not yet legislated fees or through expansion of the SEC's existing appropriations) and increase the deficit.

Notably, the scoring methodology does not recognize the initial effect on the deficit that would have been recognized if the PCAOB were added to the federal books, and by scoring the elimination but not the initial addition of the PCAOB to the federal budget, the score shows deficit reduction rather than "no effect." In reality, of course, the transfer of responsibility to assess fees from the PCAOB to the SEC is, at best, a deficit-neutral wash. We therefore believe this approach does not provide a basis for avoiding the Byrd Rule.

Furthermore, omitted in the CBO budget spreadsheet is any forecast of the budget and funding of audit oversight as it would be carried out by the SEC. Rather, the discussion of CBO scoring of Sec. 50002 notes that:

Although CBO anticipates that the SEC would collect fees of similar magnitude to fund those activities, the collection and spending of fees

imposed by the SEC are contingent on annual appropriations providing that authority to the agency. CBO has not reviewed this legislation for effects on spending subject to appropriation, so any costs for the SEC to implement the legislation are not included in this estimate. (Congressional Budget Office Cost Estimate May 7, 2025)

The proposal thus suggests that expenditures for audit oversight by the SEC would be of similar magnitude to those that would otherwise be carried out by the PCAOB, and that a similar magnitude of fees would be collected to achieve budget neutrality. Although the funding sources for these fees would be the private sector, just as with current PCAOB funding, we note that if audit oversight operations were not funded by some form of fee, they would need to be funded by taxpayers. Lastly, there is the possibility of substantially less funding for audit oversight. That alternative would pose a serious concern for all stakeholders of financial statements and well-functioning capital markets.

In conclusion, genuine budget savings do not emerge from this proposal. Furthermore, the lack of clarity regarding the 2025-2035 budget for audit oversight under the SEC underscores that the motivation for Sec. 50002 is not budgetary.