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in the Marketplace for All

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January 10, 2017

Representative
U.S. House of Representatives
Washington, DC 20515

RE: H.R. 5, the Regulatory Accountability Act of 2017 (oppose)

Dear Representative:

The National Consumer Law Center® (NCLC®), on behalf of its low income clients, strongly opposes H.R. 5, the Regulatory Accountability Act of 2017 (RAA), which will be voted on this week. Since 1969, the nonprofit NCLC has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

H.R. 5 is a compilation of radical and harmful legislative proposals that will permanently cripple Congress' ability to protect the public. The bill rigs the system against new safeguards in favor of paralysis and elimination of important protections. The bill is just as dangerous and extreme as the REINS Act (H.R. 26) and the Midnight Rules Relief Act (H.R. 21), which we also oppose.

All of these bills are designed to make it as difficult as possible for federal agencies to implement existing or new laws to protect the public from dangerous financial products, pollutants in our air and water, hazards in the workplace, tainted food and drugs, or unsafe toys and consumer goods. On the other hand, deregulatory actions that repeal existing protections are exempt by virtue of the legislation's myopic focus on "costs" to corporate special interests instead of "benefits" to the public. In short, the legislation will create a double standard in our system that favors industry calls for deregulation over new public protections, "fast-tracking" the repeal of rules while paralyzing the creation of new ones.

The new version of the RAA, introduced in this Congress, takes the previous RAA legislation and folds in several destructive pieces of other so-called regulatory reform bills including: the misnamed Small Business Regulatory Flexibility Act, the Require Evaluation before Implementing Executive Wishlists Act (REVIEW Act), the All Economic Regulations are Transparent Act (ALERT Act), the Separation of Powers Restoration Act and the Providing Accountability Through Transparency Act. These pieces of other bills seek to worsen an already destructive bill and add several more corrosive layers seeking to dismantle our public protections. The current rulemaking process is already plagued with lengthy delays, undue influence by regulated industries, and convoluted court challenges.

Title I of this bill would make each of these problems substantially worse. It adds 74 new bureaucratic analytical requirements to the Administrative Procedure Act and requires federal agencies to conduct estimates of all the “indirect” costs and benefits of proposed rules and all potential alternatives without providing any definition of what constitutes, or more importantly, does not constitute an indirect cost. The legislation would significantly increase the demands on already constrained agency resources to produce the analyses and findings that would be required to finalize any new rule. Thus, the RAA is designed to further obstruct and delay rulemaking rather than improve the regulatory process.

This legislation creates even more hoops for “major” or “high-impact” rules – i.e., rules that provide society with the largest health and safety benefits. It would allow any interested person to petition the agency to hold a public hearing on any "genuinely disputed" scientific or factual conclusions underlying the proposed rule. This provision would give regulated industries multiple opportunities to challenge agency data and science and thus further stretch out the already lengthy rulemaking process.

H.R. 5 would also create a restrictive mandate of a “one-size-fits-all” presumption that every federal agency must adopt the “least costly” alternative. This is a profound change that prevents agencies from adopting the most effective and appropriate way of protecting the public.

Title II of H.R. 5 is the Separation of Powers Restoration Act piece which seeks to destroy the Chevron deference principal. It would remove the judicial deference that agencies are granted when their regulations are challenged in court. This would be a radical change that upends one of the fundamental principles in administrative law, namely that courts should not second-guess agency expertise. Overly intrusive judicial review is one of the primary reasons for regulatory delay and paralysis and this legislation would make those problems much worse.

The misnamed Small Business Regulatory Flexibility Improvements Act piece of H.R. 5 (Title III) is a Trojan horse that would expand the reach and scope of regulatory review panels, increase unnecessary regulatory delays, increase undue influence by regulated industries and encourage convoluted court challenges –all in the name of helping “small business,” but so expansively applied that mostly big businesses would benefit. Because the bill mandates that these panels look at ‘indirect costs,’ which are defined very broadly, it could be applied to virtually any agency action to develop public protections.

The REVIEW Act segment of H.R. 5 (Title IV) would make our system of regulatory safeguards weaker by requiring courts reviewing “high-impact” regulations to automatically “stay” or block the enforcement of such regulations until all litigation is resolved, a process that takes many years to complete. It would add several years of delay to an already glacially slow rulemaking process, invite more rather than less litigation, and rob the American people of many critical upgrades to science-based public protections, especially those that ensure clean air and water, safe food and consumer products, safe workplaces, and a stable, prosperous economy.

The ALERT Act portion of H.R. 5 (Title V) is designed to impede the government's ability to implement critical new public health and safety protections by adding a six-month delay. This amounts to a six-month regulatory moratorium, even after the often lengthy period required for developing and finalizing these regulations. Such delays could extend well beyond that initial six-month period should the OIRA Administrator fail to post the required information in a timely manner.

This new version of the RAA would override and threaten decades of public protections. The innocuous-sounding act is, in reality, the biggest threat to financial reform regulations, environmental standards, workplace safety rules and public health to appear in decades.

We strongly urge opposition to H.R. 5, the Regulatory Accountability Act of 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Saunders", with a long horizontal flourish extending to the right.

Lauren Saunders
Associate Director