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May 16, 2017

RE: Mark-up of S. 951, the Regulatory Accountability Act of 2017

Dear Senator,

We, the undersigned consumer, small business, labor, good government, financial protection, community, health, environment, civil rights and public interest groups, strongly urge you to oppose S. 951, the Regulatory Accountability Act of 2017 (RAA).

The RAA will further paralyze the regulatory process and further tilt this process in favor of corporate interests and their deregulatory agenda. The devastating impacts of this legislation, which covers guidance documents as well as rulemakings, would be felt in every area of public interest policymaking – potentially impacting women’s health, consumer protection, civil rights, food safety, financial reform, labor, the environment, disability rights, human rights, sustainable agriculture, rural development and more.

The current rulemaking process is already plagued with lengthy delays, undue influence by regulated industries, and convoluted court challenges. The RAA will make each of these problems substantially worse. If passed, it would undermine our public protections and jeopardize public health by threatening the safeguards that ensure our access to clean air and water, safe workplaces, untainted food and drugs, and safe toys and consumer goods.

Reintroduced in this Congress, the RAA does not improve or streamline our current regulatory process. In fact, it does the exact opposite as it’s designed to block or weaken regulations that protect the public. It requires federal agencies to adopt “the most cost-effective” rule for corporations. This undefined vague term will be litigated for decades, however the intent is clear -- to prioritize corporate profits ahead of the public interest. This is a profound change and effectively creates a “super-mandate” for all actions of executive and independent agencies that would override virtually every public interest law that is implemented and enforced through regulations, including the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, and the Consumer Product Safety Improvement Act. These laws prioritize public health, safety, and economic security, not the cost concerns of regulated entities.

While the bill contains a so-called “savings clause”, this provision does nothing to clarify whether and how specific authorizing statutes would be impacted by the bill’s various onerous requirements and thus is certain to generate years of expensive and wasteful litigation.

The RAA takes a rulemaking process that is already broken due to unacceptable delays and makes it much worse. It currently takes agencies an [entire Presidential term on average](#) to produce and finalize the regulations that provide the greatest benefits to Americans. For some agencies, it takes nearly a decade to issue significant rules. The bill [adds up to 53 new analytical requirements to the Administrative Procedure Act](#). Those new requirements have already been shown to lead to significant additional delays.

The RAA reintroduces the discredited idea of “formal rulemaking” which involves the use of adversarial, trial-type hearings to resolve complex policy questions in order to inform the development of important public protections. These adversarial hearings would allow any interested person to petition the agency to hold a hearing on any "genuinely disputed" scientific or factual conclusions underlying the proposed rule. This provision would invite well-resourced industries to overwhelm agencies with tens of thousands of pages of extraneous studies, data, and testimony – all with the goal of delay, obfuscation, and distraction. Regulatory experts at the Administrative Conference of the United States (ACUS) agree that [“Congress should never require trial-type procedures for resolving questions of policy or of broad or general fact”](#).

S. 951 rigs the process so it is even more captured by corporate special interests. The numerous requirements that the RAA adds to the rulemaking process means that corporate special interest voices have even more opportunities to influence rulemakings. Adversarial hearings, at a minimum, would involve legal counsel, the identification and inclusion of witnesses and intensive cross examination. This system shuts out the public while favoring corporate lobbyists who have the resources to hire lawyers to use these new requirements to block or weaken regulations. This is designed to cut the public out of the rulemaking process and puts corporate special interests in the driver’s seat.

Complicating the process even further, the bill would expand the scope of judicial review, encouraging a dangerous move away from traditional judicial deference to agency experts toward a system in which courts are given freer rein to interfere in highly technical, expertise-driven agency decisions. Unlike federal agencies, generalist judges lack the specialized scientific or technical expertise to effectively assess the need for or impact of a rule. This new and inappropriate role for the courts is a recipe for increased litigation, endless delays, and more uncertainty for business and the public.

Finally, agency guidance documents will also be weakened and delayed, or even outright blocked, in the same way as rules under the RAA. Under the Obama Administration, agencies issued guidance that was critical to protecting the public in a wide variety of areas, including guidance to address the spreading opioid addiction epidemic; combat discrimination based on race, gender, and sexual orientation; strengthen lead testing of drinking water; and restrict debt collection practices by financial firms that harm consumers. The RAA would subject a new category of guidance documents, “major” guidance, to cost-benefit analysis, despite the guidance being non-binding. This will create significant delays in issuing new guidance to resolve regulatory uncertainty, and will lead to weaker guidance that is less protective of the public. In particular, agencies will find it more difficult to issue guidance in areas where the benefits of the guidance are difficult or impossible to quantify, such as the benefits of preventing discrimination, sexual assault on college campuses, and addiction to illicit substances such as opioids.

The costs of deregulation should be obvious by now: the Wall Street economic collapse, the Flint, Michigan water crisis, various food and product safety recalls, and numerous environmental disasters including the BP Deepwater Horizon explosion all demonstrate the need for a regulatory system that protects the public, not corporate interests. We cannot let the RAA permanently cripple federal agencies’ ability to enforce critical bedrock laws through strong and sensible safeguards that protect the public.

We strongly urge opposition to the Regulatory Accountability Act of 2017.

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Center for Responsible Lending
Center for Science in the Public Interest
Chicago Consumer Coalition
Clean Water Action
Coalition on Human Needs
Consumer Action
Consumer Assistance Council, Inc.
Consumer Federation of America
Consumers for Auto Reliability and Safety
D.C. Consumer Rights Coalition
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Empire State Consumer Project
Environment America
Farm Aid
Florida Alliance for Consumer Protection
Food & Water Watch
Free Press Action Fund
Friends of the Earth - US
Homeowners Against Deficient Dwellings
Institute for Agriculture and Trade Policy
Institute for Science and Human Values
International Corporate Accountability Roundtable
Iowa Citizens for Community Improvement
Jobs With Justice
Johns Hopkins Center for a Livable Future
League of Conservation Voters
Main Street Alliance
Massachusetts Consumer Council
National Association of Consumer Advocates
National Center for Lesbian Rights
National Center for Transgender Equality
National Consumer Law Center, on behalf of its low-income clients
National Disability Rights Network
National Education Association
National Employment Law Project
National Fair Housing Alliance
National LGBTQ Task Force Action Fund
National Women's Law Center
Natural Resources Defense Council
Network for Environmental & Economic Responsibility/UCC

Oceana
Poverty & Race Research Action Council
Privacy Rights Clearinghouse
Progressive Congress Action Fund
ProgressNow
Public Citizen
Public Justice
Public Knowledge
Reinvestment Partners
Service Employees International Union
Sierra Club
State Innovation Exchange (SIX)
The Wilderness Society
U.S. PIRG
Union of Concerned Scientists
United Steelworkers
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