



## Consumer Federation of America

January 10, 2017

**RE: *OPPOSE LEGISLATION ON HOUSE FLOOR TO UNDERMINE CRUCIAL CONSUMER PROTECTIONS: H.R. 5***

Dear Representative:

The Regulatory Accountability Act of 2017 (H.R. 5) would handcuff all federal agencies in their efforts to protect consumers. H.R. 5 is a vastly expanded version of previous versions of the Regulatory Accountability Act (RAA). H.R. 5 not only significantly and problematically amends the Administrative Procedures Act (APA) which has guided federal agencies for many decades but also now incorporates five additional bills that thwart the regulatory process: the Small Business Regulatory Flexibility Improvement 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 titles make an already damaging bill even worse.

Specifically, the RAA would require all agencies, regardless of their statutorily mandated missions, to adopt the least costly rule, without consideration of the impact on public health and safety or the impact on our financial marketplace. As such, the RAA would override important bipartisan laws that have been in effect for years, as well as more recently enacted laws to protect consumers from unfair and deceptive financial services, unsafe food and unsafe consumer products.

For example, the RAA would likely have prevented the Federal Reserve from adopting popular credit card rules under the Truth in Lending Act in 2008 that prevented card companies from unjustifiably increasing interest rates and fees on consumers. This is because these far-reaching changes to abusive practices that were widespread in the marketplace were not the “least costly” options that were considered, although they were arguably the most cost-effective.

The RAA would have a chilling impact on the continued promulgation of important consumer protections. Had it been in effect, for example, the RAA would have severely hampered the implementation of essential and long-standing food safety regulations, such as those requiring companies to prevent contamination of meat and poultry products with deadly foodborne pathogens. In fact, the Centers for Disease Control and Prevention has credited the implementation of regulations prohibiting contamination of ground beef with *E. coli* O157:H7 as one of the factors contributing to the recent success in reducing *E. coli* illnesses among U.S. consumers.<sup>1</sup> But such benefits are impossible to quantify before a rule is enacted.

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<sup>1</sup> [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6022a5.htm?s\\_cid=mm6022a5\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6022a5.htm?s_cid=mm6022a5_w)

Further, had the RAA been in effect the necessary child safety protections required by the Consumer Product Safety Improvement Act of 2008 (CPSIA) may have never been implemented. For example, between 2007 and 2011 the Consumer Product Safety Commission (CPSC) recalled 11 million dangerous cribs. These recalls followed 3,584 reports of crib incidents, which resulted in 1,703 injuries and 153 deaths.<sup>2</sup> As a direct result of the CPSIA, CPSC promulgated an effective mandatory crib standard that requires stronger mattress supports, more durable hardware, rigorous safety testing, and stopped the manufacture and sale of drop-side cribs. If the RAA were implemented, such a life saving rule could have been delayed for years or never promulgated at all, at countless human and financial cost.

The RAA also would add dozens of additional substantive and procedural analyses, as well as judicial review to the rulemaking process for every major rule. It would: expand the kind of rules that must go through a formal rulemaking process; require agencies to determine “indirect costs” without defining the term; require an impossible-to-conduct estimation of a rule’s impact on jobs, economic growth, and innovation while ignoring public health and safety benefits; and expand the powers of the White House’s Office of Management and Budget’s Office of Information and Regulatory Affairs to throw up numerous rulemaking roadblocks, including requiring them to establish guidelines for conducting cost-benefit analysis. This would further delay or prevent the promulgation of much needed consumer protections.

The new titles of H.R. 5 also add numerous roadblocks to the promulgation of necessary consumer protections. The Separation of Powers Restoration Act (Title II) eliminates judicial deference that agencies are granted when rules are challenged in court. This allows judicial activism and political considerations to trump agency expertise. The Small Business Regulatory Flexibility Improvement Act (Title III) would increase regulatory delays and create new opportunities for court challenge to regulations. The Require Evaluation before Implementing Executive Wishlists Act (REVIEW Act) (Title IV) would encourage frivolous legal challenges and infuse the regulatory process with years of delay by requiring courts reviewing “high-impact” regulations to automatically “stay” or block the enforcement of such regulations until all litigation is resolved. The All Economic Regulations are Transparent Act (ALERT Act) (Title V) would also blatantly and purposefully lengthen the regulatory process by requiring a six-month delay in the development of regulations.

We urge you to oppose this significant threat to consumer protection, a fair marketplace, health, and safety posed by H.R. 5. If adopted, this proposal would waste federal resources, minimize the ability of federal agencies to do their jobs, grind the regulatory process to a halt, and infuse the regulatory process with roadblocks preventing the protection of the public and ultimately putting American consumers at risk.

We strongly urge you to oppose this harmful bill.

Sincerely,

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<sup>2</sup> <http://www.consumerfed.org/pdfs/crib-standards-press-release-6-28-11.pdf>



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