Consumer Federation of America

February 1, 2012

RE: OPPOSE LEGISLATION TO UNDERMINE CRUCIAL CONSUMER PROTECTION REGULATIONS: S. 299, S. 1606, and S. 1938

Dear Senator:

The Consumer Federation of America (CFA)[1] writes to express our strong opposition to three bills that will undermine important consumer protections. S. 299, the Regulations from the Executive in Need of Scrutiny Act (the REINS Act), S. 1606, the Regulatory Accountability Act (RAA), and S. 1938, the Regulatory Flexibility Improvements Act would undercut the ability of federal agencies to protect consumers from unsafe food, predatory financial products and schemes, and dangerous consumer products. The federal rulemaking process is already lengthy and difficult. These bills will make it even more time-consuming, expensive, and burdensome for federal agencies to propose consumer protection measures. The end result will be harm to American consumers.

The REINS Act (S. 299) requires that any agency that issues a major rule obtain approval from both Houses of Congress of the entire rule without changes, within 70 legislative days of the rule being received by Congress. This would affect all major rules; even the many that are not controversial. With few exceptions, if Congress fails to act in the allotted time, the rule would not be implemented and could not be brought up again until the next Congress. This hurdle would be virtually impossible for important consumer protection rules to jump. The bill strips away the authority of federal agencies that Congress created to develop expertise on how to protect American consumers from dangerous products, tainted food, and deceptive financial services products. Most agencies will simply give up trying to protect consumers. If an agency does persist in its efforts, it faces the prospect of squandering enormous resources to research, write, and evaluate an important consumer protection rule, because well-funded special interests have been able to bottle it up in a single House of Congress in a short period of time.

In the Dodd-Frank Act, the Consumer Product Safety Improvement Act, and the Food Safety Modernization Act, for example, Congress delegated rulemaking authority to regulatory agencies precisely because it lacked the time and expertise to craft and adopt rules in the highly technical areas governed by each bill. If Congress were to now reverse course and put itself into the role of approving all new rules, the result would be regulatory gridlock.

[1] CFA is an association of nearly 300 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Member organizations include local, state, and national consumer advocacy groups, senior citizen associations, consumer cooperatives, trade unions, and food safety organizations.

The Regulatory Accountability Act (S. 1606) would also handcuff all federal agencies in their efforts to protect consumers. S. 1606 amends the Administrative Procedures Act (APA), which has guided federal agencies for many decades. 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 that protect consumers from unfair and deceptive financial services, unsafe food, and unsafe consumer products.

For example, such a law 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 cost" options that were considered.

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.[2] But such benefits are impossible to quantify before a rule is enacted.

Further, had the RAA been in effect the necessary child safety protections required by the Consumer Product Safety Improvement Act of 2008 (CPSIA) would have never been implemented. For example, since 2007 the Consumer Product Safety Commission (CPSC) has recalled 11 million dangerous cribs. These recalls followed 3,584 reports of crib incidents, which resulted in 1,703 injuries and 153 deaths.[3] 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 would have been delayed for years or never promulgated at all.

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 impacts; and expand the powers of OMB's Office of Information and Regulatory Affairs to throw up numerous rulemaking roadblocks, including requiring them to establish guidelines for

[2] http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6022a5.htm?s_cid=mm6022a5_w
[3] http://www.consumerfed.org/pdfs/crib-standards-press-release-6-28-11.pdf

conducting cost-benefit analysis. This would further delay or prevent the promulgation of much needed consumer protections.

The Regulatory Flexibility Improvements Act (S. 1938) is a broad bill that would affect protections that would have even an *indirect* impact on small businesses. Almost all agency proposals would be required to go through a time-consuming and resource-intensive process to conduct many new and expensive analyses. Once again, this process would likely prevent these agencies from proposing safeguards to make the marketplace safer or more transparent. This legislation also would significantly increase the authority of the Chief Counsel for Advocacy of the Small Business Administration over proposed safeguards and would subject agencies to review by both the Office of Management and Budget and the Chief Counsel, delaying the promulgation of necessary protections. Existing laws already require federal agencies to consider the impact of proposed rules on small businesses and other entities, rendering this legislation not only an impediment to the promulgation of important consumer safeguards but also duplicative of existing legal requirements.[4]

We urge you to oppose the "triple threat" to consumer protection, health, and safety posed by S. 299, S. 1606, and S. 1938. If adopted, these proposals would waste federal resources, minimize the ability of federal agencies to do their jobs to protect the public, and ultimately harm American consumers. As the 2008 financial crisis, the 2007 "year of the recall" of consumer products, and recent outbreaks of foodborne illness from tainted foods have shown, impediments to regulation can also come back to haunt the very industry groups that fight hardest to avoid regulation.

We strongly urge you to oppose these three harmful bills.

Sincerely,

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[4] *See* Regulatory Flexibility Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Small Business Regulatory Enforcement Fairness Act.