

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

March 15, 2017

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs
344 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

Consumers Union, the policy and mobilization arm of Consumer Reports, writes regarding this week's Committee business meeting. We strongly oppose, as written, bills scheduled for markup that would severely undermine the ability of our government to protect the public from safety, health, and marketplace hazards. We urge you to **vote no** on these two bills: **S. 34**, the "Midnight Rules Relief Act of 2017," and **S. 21**, the "Regulations from the Executive in Need of Scrutiny (REINS) Act of 2017."

S. 34 – Midnight Rules Relief Act of 2017

S. 34, the so-called "Midnight Rules Relief Act," would allow Congress to override rules *en masse* whenever the political winds shift and subject the orderly process of public rulemaking to a secretive process driven by special interests.

It is completely unneeded, as the Congressional Review Act (CRA) already permits Congress to undo important public protections that have been developed with years of careful, open deliberation, and with broad input from experts, businesses, regulated interests, and the public. This is more than enough authority to erase rules—in our view, it is already excessive and ill-conceived authority. As we have seen in the attack on the prepaid card rule and other safeguards, the CRA provides for a rushed process driven by narrow, private special interests at the expense of the public interest. However, Congress at least must consider CRA disapproval resolutions one rule at a time, and must provide an opportunity for concerned Members to insist on a clear vote, on the public record, about the rule being revoked. The President also is required to consider and decide whether to approve each proposed erasure of a rule separately.

We have voiced our own strong concerns about the CRA's use this year, including in attempts to rescind important rules designed to protect consumers against unsafe products, dishonest business dealings, and other hazards in the marketplace that place their health, safety, or well-being at risk. They include rules in which we—along with other stakeholders, including regulated entities—had invested much time and effort in helping the agencies arrive at an appropriate final regulation.

S. 34 would jettison the few accountability requirements in the current CRA process, allowing multiple regulations to be bundled together for a combined vote, in a process utterly lacking in transparency. Members of Congress and the President could evade public accountability for what may be ill-considered, politically motivated decisions that result in devastating consequences. Under the bill, no Member would ever have to be on record regarding any specific regulation being erased. In fact, any Member who actually wants to cast a more selective, considered vote—for instance, to erase certain regulations but not others—would be unable to do so.

S. 21 – Regulations from the Executive in Need of Scrutiny (REINS) Act of 2017

S. 21, the so-called “Regulations from the Executive in Need of Scrutiny (REINS) Act,” would severely hamstring federal agencies in their work to protect consumers from dangers such as tainted food, dirty air and water, invasions of privacy, and predatory financial schemes. It would recklessly undermine existing laws and further paralyze the government’s ability to protect the public.

S. 21 would require all “major rules” to receive the approval of both the House and Senate within 70 legislative days in order to take effect. With few exceptions, if Congress failed to act in time, the rule could not be brought up again until the next Congress. This requirement would delay or halt the implementation of existing federal statutes simply through congressional inaction. It would unjustifiably obstruct the President’s constitutional duty to “take care that the laws be faithfully executed.” Federal agencies issuing rules responsibly follow numerous procedural requirements established by Congress and the Constitution, exercising authority Congress has granted them. This bill would create gridlock and dysfunction on a scale unprecedented in our country in modern times.

S. 21 would empower either chamber to unilaterally and silently stop a rule, no matter how sensible, important, urgent, and uncontroversial it is. A rule could be placed indefinitely on hold, even if Congress has required the agency to issue that particular rule. Science and expertise would not be the driver of regulatory outcomes, and congressional gridlock could waste important resources that should be used in performing the agency’s mission.

Conclusion

As our work on behalf of consumers throughout Consumers Union’s 80-year history demonstrates, we recognize the importance of reducing delays and costs in the regulatory process. We have supported constructive efforts to achieve these objectives, while also promoting and preserving important public protections.

Efforts to respond to concerns raised by industry should not lose sight of the strong interest all companies share in a transparent and accountable marketplace. Companies benefit every day when consumers have confidence that there are effective safeguards behind the products and services they encounter in the modern-day marketplace. A loss of that confidence would create uncertainty and concern that would undermine the engine that drives our

economy—the faith of American consumers that their marketplace is essentially fair and safe, and that their government is working on their behalf to ensure that it is.

We look forward to working with you to address issues that affect the fairness and effectiveness of the regulatory process, including regulatory capture, unreasonable delays, and inadequate funding for agencies’ missions, as well as unnecessary costs. But these two bills—the “Midnight Rules Relief Act” and the “REINS Act”—would not help achieve our shared goals. Instead, they would make the development of important regulatory protections more costly, more uncertain, and more prone to undue political interference. We urge you to **vote no** on both **S. 34** and **S. 21**.

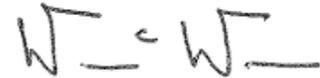
Respectfully,



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cc: Members, Senate Committee on Homeland Security and Governmental Affairs