



POLICY & ACTION FROM CONSUMER REPORTS

May 16, 2017

U.S. Senate Committee on Homeland Security and Governmental Affairs
The Honorable Ron Johnson, Chairman
The Honorable Claire McCaskill, Ranking Member
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson, Ranking Member McCaskill, and Members of the Committee:

Consumers Union, the policy and mobilization arm of Consumer Reports, writes regarding this week's Committee business meeting. We strongly oppose, as written, four misleadingly named bills that would severely undermine the federal government's ability to protect consumers in the marketplace. We urge you to **vote no** on these bills for the reasons addressed below.

S. 34 – Midnight Rules Relief Act of 2017

S. 34, the “Midnight Rules Relief Act,” would allow Congress to override rules *en masse* when the political winds shift, and subject rules created through the orderly process of public rulemaking to a rushed and secretive process driven by special interests. The bill would duplicate and amplify the impact of the ill-considered Congressional Review Act (CRA), which permits Congress to hastily undo public protections that have been developed with years of careful, open deliberation, and with broad input from experts, businesses, regulated interests, and the public.

S. 34 would negate a key remaining safeguard in the current CRA process by allowing multiple regulations to be bundled together for a combined vote. Members of Congress and the President could evade public accountability for what may be imprudent, politically motivated decisions resulting in harmful consequences. No Member would ever have to be on record about a specific rule being erased, and any Member who wants to vote more selectively—for instance, to erase certain regulations but not others—would be unable to do so.

S. 951 – Regulatory Accountability Act of 2017

S. 951, the “Regulatory Accountability Act” (RAA), is an imprecise and dangerous proposal that would severely hamstring federal agencies in their work to protect consumers from threats such as tainted food, hazardous products, dirty air and water, and predatory financial schemes. Instead of streamlining the regulatory process, the RAA would wrap federal watchdogs in red tape, and effectively shut down their ability to set new rules with a major impact on the marketplace.

Federal agencies already can only issue regulations under the authority granted to them by Congress, and are required to allow a full opportunity for public input—including by regulated industries. Nevertheless, S. 951 would require agencies to undertake numerous costly and unnecessary additional analyses that collectively would create extensive delays, waste taxpayer dollars, increase litigation, and prevent the Executive Branch from keeping regulations up to date with the rapidly changing modern economy.

Making matters worse, S. 951 appears to force federal agencies to prioritize corporate compliance costs over the health, safety, and well-being of consumers. The bill generally directs agencies to identify and adopt the “most cost-effective” alternative of a rule being considered, but fails to define the term at all, much less in a way that would ensure final rules maximize net benefits for the public. While one component of a rule’s effectiveness is whether it minimizes unnecessary costs, considerations of cost should not compromise the rule’s overriding protective purposes—something that could all too easily occur under this vague requirement, particularly given the difficulty under the bill for an agency to opt for a more expensive version of a rule that is more effective at protecting consumers from harm.

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

S. 21, the REINS Act, would require all “major rules” to receive the approval of both the House and Senate within 70 session 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.

S. 21 would halt the implementation of existing statutes simply through congressional inaction, and empower either chamber to unilaterally and silently stop a rule, no matter how sensible, important, urgent, and uncontroversial the rule is. It would unjustifiably obstruct the President’s constitutional duty to “take care that the laws be faithfully executed.” Ultimately, it would create gridlock and dysfunction on a scale unprecedented in our country in modern times.

S. 584 – Small Business Regulatory Flexibility Improvements Act

S. 584, the “Small Business Regulatory Flexibility Improvements Act,” also would broadly hamstring federal agencies from effectively protecting the public. Despite its name, S. 584 is not tailored narrowly to the needs of actual small businesses. The bill would burden agencies with requirements to undertake several unnecessary analyses that would significantly hinder their ability to finalize rules. It would give companies—including large corporations captured under a statutory definition of “small entities” that is far too broad—advance notice and inside information into rulemakings, and provide them with the ability to force changes to a rule even before a proposal becomes public. Vast powers over agencies’ rulemaking processes would be turned over to the Small Business Administration’s Chief Counsel for Advocacy, elevating industry interests above the broader public interest. The kinds of businesses that could qualify as “small entities,” and the kinds of “impacts” that could be used to hold up a rule, are so broad as to be virtually unlimited.

Agencies would be required to consider and discuss any alternative approaches suggested by industry, even when they would not accomplish the statute’s objectives. In addition, agencies also would be required to look for ways to “maximize beneficial significant economic impacts”

on companies, thus inviting industry efforts to divert the proposed rule from its primary public purpose. An important exception that allows quicker action by agencies responding to emergencies also would be deleted.

These same onerous procedures would be imposed on new, mandatory periodic reviews of all existing rules, along with an additional requirement that the agency consider and explain “[t]he contribution of the rule to the cumulative economic impact of all Federal rules on the class of small entities affected by the rule.” This sweeping and unrealistic assessment would go far beyond an agency’s own expertise, requiring an inordinate expenditure of agency resources and opening a rulemaking even further to corporate interference and challenge.

Conclusion

Consumers Union recognizes the importance of reducing delays and costs in the regulatory process, while also promoting and preserving important public protections. Regulations should be smart, clear, and reasonable. But the bills we address would not accomplish this goal. Instead, they would make the development and implementation of important federal rules more costly, more uncertain, and more prone to undue political interference. We therefore strongly urge you to **vote no** on **S. 34**, **S. 951**, **S. 21**, and **S. 584**.

Respectfully,



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