



Consumer Federation of America

November 2, 2012

The Honorable Joseph Lieberman
Chairman
U.S. Senate Committee on
Homeland Security and Government Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
U.S. Senate Committee on
Homeland Security and Government Affairs
344 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Lieberman and Ranking Member Collins:

Consumer Federation of America strongly oppose S. 3468, the Independent Agency Regulatory Analysis Act of 2012. This bill would significantly curtail the ability of independent federal agencies such as the Consumer Financial Protection Bureau (CFPB), the Consumer Product Safety Commission (CPSC), the Securities and Exchange Commission (SEC), and the Federal Trade Commission (FTC) to protect consumers from abusive financial schemes, dangerous consumer products, fraud, and costly, anti-competitive and unfair practices. At the very least, before you rush to mark up this bill, we urge you to conduct a legislative hearing to thoroughly examine the effect of the bill on the many crucial consumer protection efforts that independent agencies are currently undertaking. We are convinced that a careful analysis of the legislation will make clear that this bill creates significant barriers to the effective promulgation of necessary consumer protections.

S. 3468 would undermine the independence of these agencies to act on behalf of consumers by requiring the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget to conduct a detailed review of significant policies (not just rules) proposed by independent agencies. Congress establishes independent agencies in order to insulate them from undue political pressure from an Administration, whether Republican or Democratic. This measure would single-handedly eliminate that independence and hand special interests another tool that they can use to stop or delay urgently needed protections. Authorizing OIRA to conduct its own analysis would not only add pressure from the executive branch, and add time and expense to the already slow and costly regulatory process, it would also give special interests seeking to quash a safety measure yet another avenue to prevent a rule from being promulgated. Because the increased threat of judicial review after a negative OIRA assessment of a rule would almost certainly send most agencies back to the drawing board, decisions by this political agency would effectively overrule those by the agencies with direct expertise in the issues addressed by the rule.

S. 3468 also imposes duplicative and time-consuming requirements on independent agencies to conduct cost-benefit analyses of proposed protections. The Dodd-Frank Act already requires the CFPB to perform a cost-benefit analysis of all proposed rules, consider the effects of rules on small financial institutions and rural consumers, and conduct a lengthy assessment of the impact of rules on small businesses (under the Small Business Regulatory Enforcement Fairness

Act). The Magnusson-Moss Act already requires the FTC to meet extraordinarily burdensome rulemaking requirements that can require the agency to take a decade to finalize a rule. The CPSC is already required to conduct cost-benefit analysis for many of its rulemaking proceedings. In fact, the CPSC's inability to promulgate mandatory standards that would effectively protect consumers from product hazards led to the passage of the Consumer Product Safety Improvement Act (CPSIA). The SEC is already subject to a whole host of requirements designed to minimize the economic impact of its rules, including an obligation under federal securities laws to consider, in addition to the protection of investors, whether the proposed rule will promote efficiency, competition, and capital formation. The courts have set a very high bar in enforcing that standard.

This bill authorizes the President to issue an executive order requiring the CFPB and other independent agencies to conduct 13 additional cost-benefit analyses. Such burdensome requirements will simply undermine the ability of agencies like the CFPB, the FTC, the SEC, and the CPSC to fulfill their consumer protection missions in a timely and effective fashion. This delay means that consumers will be without needed consumer protections indefinitely or for longer periods of time, further exposing them to abusive financial schemes, dangerous consumer products, fraud, and costly, anti-competitive and unfair practices.

The federal rulemaking process is already lengthy and subject to undue influence by powerful special interests with prominent political patrons. One result can be seen in the slow implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. More than two years after it was enacted, the majority of rules implementing the act have still not been finalized. A major factor impeding effective implementation of the law is the threat of litigation by powerful industry groups. S. 3468 would further institutionalize this type of regulatory paralysis by making it even more arduous for independent agencies to propose and implement necessary consumer protection measures, even when they are mandated by Congress, while giving deep-pocketed opponents of such reforms yet another way to derail them.

If this legislation is adopted, the end result will inevitably be further harm to American consumers already suffering the effects of the worst economic crisis since the Great Depression, the worst environmental disaster in our nation's history, the worst mining disaster in decades, and a devastating series of deaths, illnesses, and injuries from unsafe products and contaminated foods. Making it harder for independent regulatory agencies to fulfill their obligations is precisely the wrong prescription for our regulatory problems. We urge you to oppose this misguided legislation.

Sincerely,

Rachel Weintraub
Legislative Director and Senior Counsel
Consumer Federation of America

Susan Grant
Director of Consumer Protection
Consumer Federation of America

Tom Feltner
Director of Financial Services
Consumer Federation of America

Barbara Roper
Director of Investor Protection

Consumer Federation of America

Cc: Members of Senate Homeland Security and Governmental Affairs Committee