Consumer Federation of America

February 25, 2014

RE: OPPOSE LEGISLATION TO UNDERMINE CRUCIAL CONSUMER PROTECTION REGULATIONS:

Dear Representative,

The Consumer Federation of America (CFA)[1] writes to express our strong opposition to a package of anti-consumer-protection bills that will be on the House floor this week. H.R. 2804 is made up of four bills: H.R. 2122, the Regulatory Accountability Act (RAA); H.R. 2408, the All Economic Regulations are Transparent ("ALERT") Act; H.R. 2542, the Regulatory Flexibility Improvements Act (RFIA); and H.R. 1493, the Sunshine for Regulatory Decrees and Settlements Act. We similarly oppose H.R. 899, the Unfunded Mandates Information and Transparency Act which will be on the House floor this week as well.

Taken together, these bills would undercut or entirely thwart the ability of federal agencies to protect consumers from unsafe food, predatory financial products, systemically risky financial practices, and dangerous consumer products. The federal rulemaking process is already lengthy and difficult and, too often, subject to undue industry influence. These bills would make it even more time-consuming, expensive, burdensome or impossible for federal agencies to implement reasonable and much needed consumer protection measures. The end result will be harm to American consumers and harm to the U.S. economy.

H.R. 2122, the Regulatory Accountability Act (RAA) would handcuff all federal agencies in their efforts to protect consumers. H.R. 2122 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 to 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-

[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.

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

H.R. 2408, the All Economic Regulations are Transparent ("ALERT") Act, would add unnecessary delays and reporting requirements to the already time consuming process of promulgating important consumer protections. Of great concern is section 652(a) that would delay essential consumer protection rules until six months after information supplied by agency heads is posted on the Internet by the Administrator of the Office of Information and Regulatory Affairs (OIRA) unless such rules meet certain limited exemptions. Slowing the ability of agencies to respond to dangerous and harmful practices does not serve the public interest.

The Regulatory Flexibility Improvements Act (**H.R. 2542**) 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

[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

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]

H.R. 1493, the "Sunshine for Regulatory Decrees and Settlements Act" allows individuals who want the federal government to continue breaking the law for their own benefit to obstruct and delay requirements to follow federal law. Under current law, if a federal agency commits a gross violation of a federal law and a state, for example, challenges that law-breaking in court, the state and federal agency have the ability to promptly resolve that legal violation through a consent decree or settlement agreement. This process ensures that federal law is upheld and that states' valid legal interests are safeguarded without wasting precious judicial resources. This bill undermines that process by granting third parties that support the perpetuation of the unlawful behavior, such as a polluting company, the ability to obstruct and delay the consent decree process. By interfering with a court's ability to oversee consent decrees and the ability of parties to enter into settlements, this bill would cause delay, greatly increase the costs of litigation, and impede meaningful resolution of litigation.

H.R. 899, the Unfunded Mandates Information and Transparency Act would make the regulatory process more unfair and less transparent by allowing certain interests, business interests, to obtain advanced notice of proposed rules, and provide them with an opportunity to comment on those rules while excluding others from this process. This would greatly exacerbate the ability of business interests to exert undue influence on the regulatory process and influence regulatory proposals before they ever enter the public comment process. Further, H.R. 899 weakens the authority of independent agencies seeking to protect consumers. Like other flawed bills under consideration, it also requires agencies to prioritize the least expensive safeguard, rather than the most effective.

We urge you to oppose the "mega threat" to consumer safety, health, and financial security that these bills pose. If adopted, these proposals would waste federal resources, minimize the ability of federal agencies to do their jobs to protect the public, reduce the transparency of the regulatory process and the public accountability of the regulatory agencies, and ultimately harm American consumers.

At a time when the implementation of necessary food safety laws are being thwarted by already existing regulatory hurdles, when new problems and abuses in our financial sector are being unearthed every week, and when consumers continue to unwittingly purchase unsafe products that harm their families, this bill only adds to existing delay or entirely prevents consumer protections from final implementation. As the 2008 financial crisis, the 2007 "year of

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

the recall" of consumer products, and recent outbreaks of foodborne illness from tainted foods all have shown, impediments to regulation can also come back to haunt the very industry groups that fight hardest to avoid regulation.

For all of these reasons, we strongly urge you to oppose these bills.

Sincerely,

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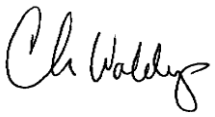

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