

U.S. House Committee on
THE JUDICIARY
DEMOCRATS

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FACT SHEET: GOP'S ANTI-REGULATORY AGENDA IS ONLY A "BETTER WAY" FOR BIG BUSINESS, NOT WORKING AMERICANS

House Judiciary Democrats want to address the real problems facing our Nation today by:

- **Preventing Gun Violence:** Congress can no longer stand idly by while our communities are ravaged by gun violence. Americans should feel safe while in their schools, their places of worship, movie theaters and anywhere else in their communities.
- **Combating Hate Crimes:** No American should live in fear of being a target of violence because of their race, ethnicity, sexual orientation, gender identity, national origin, age, disability or sex.
- **Strengthening Voting Rights:** States across the Nation have implemented laws that disenfranchise voters and impede their ability to have their voices heard. Every American deserves equal access to the ballot box.
- **Relieving Crushing Student Loan Debt:** The class of 2015 graduated with the most student loan debt in U.S. history. Overwhelming student loan debt is preventing young Americans from purchasing homes, starting families, and contributing to our economy.
- **Helping American Consumers:** Companies should not be able to force Americans to forego their rights to seek legal redress in the courts as the result of one-sided forced arbitration agreements.

Why the Republican Anti-Regulation Agenda is Wrong:

- Federal regulations impact nearly every aspect of our lives and are critical to ensuring a broad range of critical safeguards, including public health and safety protections.¹
- House Republicans falsely claim that regulations hinder job creation and hurt our economy;² yet, there is no credible evidence supporting either contention.
- Evidence shows that regulations help our economy, not burden it. The benefits of regulation far exceed its costs by ensuring better working conditions, a cleaner environment, and safer and more innovative products.³
- Throughout President Obama's Administration, House Republicans have wasted countless taxpayer dollars and limited resources on numerous hearings and markups aimed at undermining regulatory protections safeguarding the health and safety of millions of Americans.
- Congress writes the laws and directs our federal agencies to enforce them. Unlike Congress, these agencies have the specialized expertise needed to implement these laws.
- Americans want the benefits that regulations provide. Regulations ensure civil rights, safe working conditions, a clean environment, and the conservation of natural resources for future generations. House Republicans, however, repeatedly fail to recognize the critical role regulations play in ensuring the safety of the air we breathe, the water we drink, cars we drive, and toys we give our children.
- Regulations consistently result in net benefits to the economy. The latest Office of Management and Budget report to Congress on the cost and benefits of regulations found that over the last decade, major regulations benefitted the economy between \$261 billion and \$981 billion a year at a cost of \$68 to \$103 billion.⁴
- According to the Government Accountability Office, "The public policy goals and benefits of regulations include, among other things, ensuring that workplaces, air travel, foods, and drugs

¹ CURTIS W. COPELAND, CONG. RESEARCH SERV., RL 32240, THE FEDERAL RULEMAKING PROCESS: AN OVERVIEW 1 (2005).

² See, e.g., *The Regulatory Accountability Act of 2011: Hearing on H.R. 3010 Before the H. Comm. on the Judiciary*, 112th Cong. (2011) (statement of U.S. Rep. Lamar Smith (R-TX), Chair, H. Comm. on the Judiciary) ("Standing in the way of growth and job creation is a wall of Federal regulation.").

³ Nicole V. Crain & W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, Rep. No. SBAHQ-08-M-0466 (Sept. 2010), <http://archive.sba.gov/advo/research/rs371tot.pdf>; Clyde Wayne Crews, Jr. *Ten Thousand Commandments An Annual Snapshot of the Federal Regulatory State*, COMPETITIVE ENTERPRISE INSTITUTE (2014), <http://cei.org/sites/default/files/Wayne%20Crews%20-%20Ten%20Thousand%20Commandments%202014.pdf>; Clyde Wayne Crews, Jr. *Tip of the Costberg*, COMPETITIVE ENTERPRISE INSTITUTE (2015), <http://cei.org/sites/default/files/Wayne%20Crews%20-%20Ten%20Thousand%20Commandments%202014.pdf>.

⁴ OFFICE OF MANAGEMENT AND BUDGET, DRAFT 2015 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 2, https://www.whitehouse.gov/sites/default/files/omb/inforeg/2015_cb/draft_2015_cost_benefit_report.pdf

are safe; that the nation's air, water and land are not polluted; and that the appropriate amount of taxes is collected.”

- House Republicans repeatedly cite a study by economists Mark and Nicole Crain, which claims that federal regulation imposes an annual cost of \$2 trillion on business.
 - The Crain study has been widely discredited. The nonpartisan Congressional Research Service, for example, criticized much of the Crain Study's methodology⁵ and noted that its authors acknowledged that their analysis was “not meant to be a decision-making tool for lawmakers or Federal regulatory agencies to use in choosing the ‘right’ level of regulation.”⁶

⁵ CURTIS W. COPELAND, CONG. RESEARCH SERV., R41763, ANALYSIS OF AN ESTIMATE OF THE TOTAL COSTS OF FEDERAL REGULATIONS, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS (2011).

⁶ MAEVE CAREY, CONG. RESEARCH SERV., R44348, METHODS OF ESTIMATING THE TOTAL COST OF FEDERAL REGULATIONS 1 (2016).

H.R. 5 Anti-Regulatory Package Jeopardizes Public Health and Safety

H.R. 5 is a sweeping revision of the Administrative Procedure Act (“APA”) that adds *more than 60 new analytical requirements* to the agency rulemaking process, establishes a six-month moratorium on new regulatory protections, and raises separation of powers and judicial activism concerns by overriding the Supreme Court’s long-recognized principle of judicial deference to agencies’ statutory interpretations, among other things. In sum, the bill would grind the rulemaking system to a halt while inviting regulatory capture through increased input from corporate interests, waste agency resources and taxpayer dollars, and do nothing to directly help small businesses. In doing so, H.R. 5 would seriously undermine critical protections across every regulated industry, including consumers’ health and product safety, environmental protections, workplace safety, and consumer financial protections.

- **Title I, the Regulatory Accountability Act**, imposes *more than 60 new rulemaking requirements* on agencies, which will have the cumulative effect of preventing agencies from issuing rules protecting public health and safety. For example, the bill requires “formal rulemaking,” a long-debunked, inefficient rulemaking process that can take as long as a decade to complete. Title I of H.R. 5 also jeopardizes public health and safety by prioritizing cost-cutting over such protections. It does this by overriding existing statutes such as the Clean Air Act, the Clean Water Act, and the Occupational Safety and Health Act. Finally, the Regulatory Accountability Act would allow industry to delay and possibly prevent agencies from issuing regulations. The bill does this by creating numerous opportunities for industries to intervene in the rulemaking process and to burden agencies through litigation and document production demands.
- **Title II, the Separation of Powers Restoration Act**, would abolish judicial deference to agency rulemaking determinations that will delay and possibly derail the ability of agencies to safeguard public health and safety. Without any constraints on judicial review, the bill would incentivize judicial activism by allowing a reviewing court to substitute its policy preferences for those of the agency. In effect, this proposal would empower a generalist court lacking the expertise, resources, and public input to nullify agency action solely on policy grounds. As a result of the heightened review standard imposed by the bill, the rulemaking process would become even more costly and time-consuming because it would force agencies to adopt even more detailed factual records and explanations, which would further delay the promulgation of critical rules safeguarding public health, safety, and the environment.
- **Title III, the Small Business Regulatory Flexibility Improvements Act**, amends the Regulatory Flexibility Act (RFA) in ways that will significantly hinder the promulgation of critical public health and safety rules by federal administrative agencies. The bill expands the scope of rules that are subject to the increased review of the RFA, while imposing numerous new procedural and analytical requirements on agencies whenever a rule has virtually any economic impact on even unregulated entities. The bill also repeals agencies’ existing authority to respond to emergencies, preventing the quick and effective response to public health and safety crises by the federal government. Lastly, title III requires agencies to conduct time-consuming review panels for every rulemaking that has virtually any economic impact on small entities, greatly lengthening the process for rulemaking. The cumulative effect of these changes will be to create a more cumbersome and time consuming process for regulatory agencies.

- **Title IV, the Require Evaluation before Implementing Executive Wishlists (REVIEW) Act**, would automatically stay the implementation of any rule that imposes an annual cost of more than \$1 billion on the economy if any entity files a lawsuit, no matter how frivolous, within certain time-frames. The bill is essentially an open invitation to anyone who opposes a proposed regulation to stay its implementation by seeking judicial review. As drafted, title IV applies to both substantive rules and rules that are purely administrative and involve the transfer of billions of dollars to the public. These rules merely implement the budgetary programs that Congress has expressly authorized. Because this provision fails to exempt these transfer rules, any entity could file a frivolous claim to effectively postpone the transfers of programmatic funds to millions of Americans.
- **Title V, the All Economic Regulations are Transparent (ALERT) Act**, would delay or completely stop the federal rulemaking process by prohibiting regulatory protections from taking effect until the Office of Information and Regulatory Affairs (OIRA) has posted online information required by title V for at least six months. This arbitrary moratorium would slow the ability of agencies to issue critical regulations.
- **Title VI, the Providing Accountability through Transparency Act**, would require an additional notice requirement for proposed rules, overlooking the numerous existing requirements that already direct a notice of a proposed rulemaking to include a plain-language summary of the rule, and subjecting agencies' compliance with this new requirement to judicial review and thereby delay the finalization of a proposed rule.

In recognition of these concerns, numerous administrative law experts, consumer organizations and environmental groups oppose this dangerous legislation. The Coalition for Sensible Safeguards—an alliance of more than 150 consumer, labor, research, faith, and other public interest groups—strongly opposes this legislation, states that the bill will “cripple” the federal rulemaking process and “grind to a halt the rulemaking process at the core of implementing the nation’s public health, workplace safety, and environmental standards.” With respect to largely identical legislation considered in prior Congresses, dozens of leading administrative law academics and the Administrative Law Section of the American Bar Association have “strenuously” urged opposition to the bill. Finally, in the context of veto threats of prior versions of this legislation, the Obama Administration has cautioned that the bill would “create needless regulatory and legal uncertainty and further impede the implementation protections for the American public,” while making the rulemaking system “more expensive, less flexible, and more burdensome—dramatically increasing the cost of regulation for the American taxpayer and working class families.”

OPPOSITION TO H.R. 5

NATURAL RESOURCES DEFENSE COUNCIL: “This is a bill designed to prevent the regulatory system from working, not to improve its operation. The practical impact of H.R. 5 would be to make it difficult if not impossible to put in place any new safeguards for the public, no matter what the issue.”

PUBLIC CITIZEN: “If passed, this legislation would rob the American people of many critical upgrades to public health and safety standards, especially those that ensure clean air and water, safe food and consumer products, safe workplaces, and a stable, prosperous economy. By further enabling the phenomenon of ‘paralysis by analysis’ at federal agencies, this legislation would be more appropriately termed the ‘Regulatory Paralysis Act.’”

CONSUMER FEDERATION OF AMERICA: H.R. 5 “would handcuff all federal agencies in their efforts to protect consumers” and it “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.”

AFL-CIO: “The RAA will not improve the regulatory process; it will cripple it. The bill adds dozens of new analytical and procedural requirements to the rulemaking process, which will add years to the process. The development of major workplace safety rules already takes 6 - 10 years, even for rule where there is broad agreement between employers and unions on the measures that are needed to improve protections. The RAA will further delay these rules and cost workers their lives.”

U.S. PRIG: “The Regulatory Accountability Act unnecessarily burdens our already convoluted rule-making process. This bill would exacerbate the lengthy delays, undue influence by regulated industries and court challenges that already hamstringing the way our regulatory agencies operate.

CENTER FOR RESPONSIBLE LENDING: “H.R. 5 raises a number of serious concerns for families and taxpayers and a well-functioning financial services marketplace. . . . The bill is an extreme measure that adds unnecessary bureaucracy to efforts to protect the public from unfair, abusive and deceptive financial practices.”

AMERICANS FOR FINANCIAL REFORM: “This legislation could instead be entitled the “End Wall Street Accountability Act of 2015”, since this would be one of its major effects. . . . It would paralyze the ability of regulators to protect consumers from financial exploitation and prevent another catastrophic financial crisis.”

UNITED STEELWORKERS: “An additional danger included in this bill is the mandate to agencies to use the ‘least costly’ rule as opposed to the most protective rule. This is in direct conflict with important existing statutes such as the Occupational Safety and Health Act, the Clean Air Act, and the Consumer Product Safety Act.

CONSUMERS UNION: “This bill is a dangerous proposal that would do severe damage to a wide array of consumer protections.”

OPPOSITION TO H.R. 5

The Coalition for Sensible Safeguards, consisting of over 150 labor, consumer, and environmental organizations, including:

AFL-CIO	Center for Progressive Reform	Partnership for Working
Alliance for Justice	Center for Responsible Lending	Public Citizen
American Association of University Professors	Consumer Federation of America	Reproductive Health Technologies Project
American Federation of State, County and Municipal Employees	Consumers Union	Sciencecorps
American Federation of Teachers	Demos	Service Employees International Union
American Forum	Earthjustice	Sierra Club
American Lung Association	Economic Policy Institute	STOP Foodborne Illness
American Rivers	Environment America	The Arc of the United States
American Sustainable Business Council	Farmworker Justice	U.S. PIRG
Americans for Financial Reform	Free Press	Union of Concerned Scientists
BlueGreen Alliance	International Brotherhood of Teamsters	Union Plus
Campaign for Contract Agriculture Reform (CCAR)	International Center for Technology Assessment	United Food and Commercial Workers Union
Center for American Progress	International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)	United Steelworkers
Center for Biological Diversity	League of Conservation Voters	Voices for Progress
Center for Digital Democracy	Main Street Alliance	Waterkeeper Alliance
Center for Food Safety	Media Matters for America	Worksafe
Center for Foodborne Illness Research & Prevention	National Association of Consumer Advocates	
Center for International Environmental Law	National Consumers League	
	National Employment Law Project	
	National Family Farm Coalition	
	National Women's Health Network	
	National Women's Law Center	
	Natural Resources Defense Council	

The American Sustainable Business Council, which represents over 200,000 businesses, including:

Ben & Jerry's	ABC carpet & home	Marstel-Day, LLC
Clif Bar	American Income Life	1% for the Planet
Earth Friendly Products	Better World Club	1worker1vote.org
Naturepedic	BetterWorld Telecom	Alliance for Affordable Energy
Patagonia	Busboys and Poets	American Independent Business Alliance (AMIBA)
Seven Generation	Domini Social Investments	American Made Alliance
Perlman & Perlman Vision	Etsy	