

AFL-CIO

LEGISLATIVE ALERT

January 10, 2017

Dear Representative:

On behalf of the AFL-CIO, I am writing to express our strong opposition to H.R. 5, the Regulatory Accountability Act of 2017. This sweeping bill, which packages six anti-regulatory measures passed by the House in the last Congress, would upend 40 years of labor, health, safety and environmental laws, threaten new needed protections leaving workers and the public in danger. The AFL-CIO urges you to oppose this harmful legislation.

The Regulatory Accountability Act (RAA) is drafted as an amendment to the Administrative Procedure Act (APA), but it goes far beyond establishing procedures for rulemaking. The RAA acts as a “super mandate” overriding the requirements of landmark legislation such as the Occupational Safety and Health Act and Mine Safety and Health Act. The bill would require agencies to adopt the least costly rule, instead of the most protective rule as is now required by the OSH Act and MSH Act. It would make protecting workers and the public secondary to limiting costs and impacts on businesses and corporations.

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, adding years to an already slow process. The development of major workplace safety rules already takes 8 – 10 years or more, even for rules where there is broad agreement between employers and unions on the measures that are needed to improve protections. OSHA’s silica standard to protect workers from deadly silica dust took nearly 19 years and the beryllium standard 15 years. The RAA will further delay needed rules and cost workers their lives.

The RAA substitutes formal rulemaking for the current procedures for public participation for high impact rules and other major rules upon request. These formal rulemaking procedures will make it more difficult for workers and members of the public to participate, and give greater access and influence to business groups that have the resources to hire lawyers and lobbyists to participate in this complex process. For agencies that already provide for public hearings, such as OSHA and MSHA, the bill would substitute formal rulemaking for the development of all new rules, overriding the effective public participation processes conducted by these agencies.

H.R. 5 would subject all agencies – including independent agencies like the Securities and Exchange Commission, the National Labor Relations Board (NLRB), Consumer Product Safety Commission (CPSC), and the Consumer Financial Protection Bureau (CFPB) to these new analytical and procedural requirements. It would be much more

difficult for agencies to develop and issue new financial reform rules and consumer protection rules required under recently enacted legislation.

This radical legislation doesn't just apply to regulations; it would also require agencies to analyze the costs and benefits of major guidance documents, even though these documents are non-binding and have no legal force. Guidance documents are an important tool for agencies to disseminate information on significant issues and hazards quickly in order to protect the public and workers. For example, in response to the Ebola virus threat, the Centers for Disease Control (CDC) issued critical guidance documents in order to prevent the spread of disease, including recommendations for infection control and protections for healthcare workers and emergency responders. Similar guidance was issued to prevent transmission of the Zika virus. Under the RAA's provisions, CDC would be required to assess the costs and benefits of these major guidance documents, making it virtually impossible to provide information and recommendations in a timely manner.

H.R. 5 also includes a grab bag of other harmful anti-regulatory measures that thwart, weaken and undermine protections. The Separation of Powers Restoration Act abolishes judicial deference to agencies' statutory interpretations in rulemaking requiring a court to decide all relevant questions of law *de novo*, allowing courts to substitute their own policy judgments for the agencies' expert policy determinations. The Small Business Regulatory Flexibility Improvements Act (SBRFIA) imposes numerous unnecessary new analytical and procedural requirements on all agencies. It gives the Chief Counsel of the Small Business Administration's (SBA) Office of Advocacy, which in practice operates largely as a mouthpiece for large business interests, new broad powers to second guess and challenge agency rules. The Require Evaluation before Implementing Executive Wishlists Act (REVIEW Act) would automatically stay the implementation of any rule with an estimated annual cost of \$1 billion that has been challenged, precluding courts from making this decision, and delaying protections. Other titles add even more unnecessary requirements to the rulemaking process.

The Regulatory Accountability Act would gut the nation's safety, health and environmental laws, stripping away protections from workers and the public. It would tilt the regulatory process solidly in favor of business groups and others who want to stop regulations and make it virtually impossible for the government to issue needed safeguards. The AFL-CIO strongly opposes H.R. 5 and urges you to vote against this dangerous legislation.

Sincerely,



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American Federation of Labor and Congress of Industrial Organizations

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