



February 11, 2019

The Honorable Ron Johnson
Chairman
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Gary C. Peters
Ranking Member
U.S. Senate Committee on Homeland Security & Governmental Affairs
442 Hart Senate Office Building
Washington, DC 20515

RE: S. 380, the Guidance Out of Darkness (GOOD) Act

The Coalition for Sensible Safeguards (CSS), an alliance of over 175 labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, opposes S. 380, the Guidance Out of Darkness Act, in its current form.

Although we agree with the *stated* intent of the legislation in bringing more sunlight to agency guidance, we have serious concerns that the bill does not actually increase transparency but instead would facilitate the controversial usage of the Congressional Review Act (CRA) to repeal long-standing agency guidance documents. While that is not specifically authorized by the bill, some supporters are arguing that this would be the result.

In a January 23, 2018 article in the *Washington Examiner*,¹ Chairman Johnson (R-WI), stated that “[*The legislation,*] would open all kinds of mischievous types of guidance under the Obama administration to outright repeal ... all the Trump administration would have to do is finally issue the report on a guidance, and the clock would start ticking, so we have total ball control on this.” This statement is alarming and casts doubt on the claimed intent of the bill to increase transparency.

The misuse of this bill in conjunction with the CRA to attack longstanding guidance documents has only grown more plausible and concerning since its introduction, following the controversial usage of the CRA last Congress to repeal the Consumer Financial Protection Bureau’s 2013 auto lending guidance that dozens of CSS member groups strongly opposed.²

The 115th Congress used the CRA in an unprecedented fashion to repeal 16 common-sense regulations³ that protect the public, including measures to protect internet privacy, women’s health, retirement

¹ <https://www.washingtonexaminer.com/transparency-bill-could-expose-more-obama-era-rules-to-repeal>

² https://www.citizen.org/sites/default/files/sign_on_opposing_s_j_res_57_final.pdf

³ See www.rulesatrisk.org

security, workplace safety, fair pay in the workplace, the environment and clean water, and sensible gun control. Unlike the normal legislative process, the CRA gives Congress the ability to strike down regulations that protect the public on behalf of narrow special interests without any congressional hearings and virtually no floor debate. The appropriate response would be for Congress to revisit this flawed process and revise or repeal it, rather than expand it to actions that were finalized long ago.

If passed in its current form, the public databases of guidance documents created under the bill would likely serve as a menu for special interests to select potential targets on behalf of their clients for potential CRA attacks. The result would be a multiple course feast that could include guidance documents that were issued up to a decade ago.

We also maintain our previously stated concerns about the legislation's workability. Indeed, the conspicuous lack of attention to issues of workability with respect to the achievement of the bill's transparency objectives only reinforces our conviction that transparency is not the sponsors' real goal with this legislation.

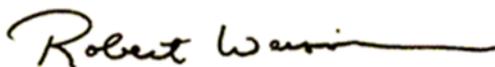
Most notable among the workability concerns is the bill's definition of guidance, which would include an extremely large universe of notices, memorandums, bulletins, directives, etc. that would be subject to S.380's transparency requirements. The sheer volume of all of these documents would defeat, rather than advance the goal of transparency. Only those corporate interests with significant financial resources at their disposal could possibly review and digest all of the documents that would suddenly be disclosed pursuant to the bill's requirements. In contrast, small businesses, public interest groups and ordinary Americans would derive little, if any, benefit.

The transparency component of the bill is important and should be preserved and refined. Agencies should be tasked with posting and maintaining current and rescinded guidance on agency websites. It is not only important for transparency, but also for accountability. However, agencies should not do so with the risk of having internal nonbinding actions become the center of political show votes in Congress.

We encourage members of Congress to continue their work to refine S.380, with a focus on preserving the transparency principle, narrowing the universe of documents to those that intend to formally communicate statutory or regulatory interpretation, and eliminating the use of the CRA on documents made publically available under the bill. The bill should be amended to make explicit that any guidance documents that comply with the transparency provisions in the bill would then be fully exempt from being repealed under the CRA.

There is a potential path here to put a good policy in place, and we stand ready to be a helpful resource in reaching a solution that will make the legislation more manageable, practical, and useful. However, for these reasons stated above, we oppose S.380 in its current form.

Sincerely,

A handwritten signature in black ink that reads "Robert Weissman". The signature is written in a cursive, flowing style.

Robert Weissman, President,
Public Citizen
Chair, Coalition for Sensible Safeguards

The Coalition for Sensible Safeguards is an alliance of consumer, labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, as well as concerned individuals, joined in the belief that our country's system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all.