COALITION FOR SENSIBLE SAFEGUARDS

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

The Honorable Gary C. Peters
Ranking Member
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20515

May 14, 2019

Dear Chairman Johnson and Ranking Member Peters,

The Coalition for Sensible Safeguards, an alliance of more than 160 consumer, small business, labor, scientific, environmental, health and public interest groups representing millions of people across the country, opposes S. 1419, The Early Participation in Regulations Act of 2019, and S.1420, The Setting Manageable Analysis Requirements in Text Act of 2019 – both of which the Homeland Security and Government Affairs Committee will consider on May 15th. We urge you to vote against these damaging bills, each of which threatens the nation's vital health, safety, environmental and financial protections.

The effect of these two bills is to make it harder for our protector agencies, such as the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the U.S. Consumer Financial Protection Bureau and the U.S. Food and Drug Administration, to carry out their congressionally mandated mission of safeguarding the public interest. These bills will not increase public accountability in the rulemaking process nor encourage better regulatory decision-making. Rather, if enacted, these bills would help to "lock in" the roll backs of hundreds of critical public protections under this administration.

S. 1419, The Early Participation in Regulations Act would require all agencies, including independent agencies, to issue an advanced notice of proposed rulemaking (ANPRM) for major rules. This requirement ignores that agencies already provide the public with a meaningful opportunity to shape regulations early in this process consistent with their statutory authority. Some agencies ask the public to comment on several "co-proposals" as part of their notices of proposed rulemaking (NPRM), while others freely use ANPRMs and other pre-proposal procedures as appropriate. In addition, agencies must conduct extensive outreach to specific types of stakeholders under the Small Business Regulatory Enforcement Fairness Act (SBREFA) as well as the Unfunded Mandates Reform Act (UMRA) when developing NPRMs. S. 1419

disregards this reality and instead imposes a one-size-fits-all mandate that will impede agency action and waste scarce resources without improving the quality of regulatory decision-making.

Indeed, empirical studies have shown that the addition of ANPRMs to the rulemaking process would result in substantial additional delay on a rulemaking process that is already too slow and cumbersome. In 2016, Public Citizen issued a report that analyzed the thousands of rulemaking listed in the Unified Agenda over the previous 20 years to determine average rulemaking lengths. The report found that while the average length of rulemakings for all economically significant rules is 2.4 years, economically significant rules that began with an ANPRM took on average 4.4 years to complete – almost twice as long as economically significant rules without ANPRMs. This directly contradicts claims by supporters of S. 1419 that the bill will only add 90 days to the rulemaking process.

Even the most important public protections issued by federal agencies would be caught up in the delays that result from the bill's required ANPRMs. For example, the bill potentially would apply to pending and future rulemakings related to lead in drinking water; drinking water limits on toxic PFAS chemicals; food safety standards; automobile, train and aviation safety standards; student debt protections; anti-discrimination rules; workplace safety standards; women's health protections; offshore oil drilling safety standards; consumer financial protections; climate change actions, and many others.

Further, despite the delays it would create, the bill makes no exceptions for major rules needed to comply with statutory deadlines. Already, federal agencies meet rulemaking deadlines set by Congress only about half of the time, a disturbingly high rate of non-compliance that should be concerning to every member of Congress. This bill will make it harder, not easier, for agencies to meet deadlines set by Congress.

Likewise, S. 1420**,** The Setting Manageable Analysis Requirements in Text Act of 2019, is little more than a solution in search of a problem. Federal agencies already engage in frequent retrospective review of their rules, either through specific statutory requirements or through voluntary undertakings. A recent empirical analysis of hundreds of rules across three agencies found that almost three-fourths of rules underwent some form of retrospective review, as those agencies had reviewed and revised 73 percent of their rules after promulgation.

To make matters worse, the bill would add wasteful redundancy to a regulatory process that already includes substantial retrospective review without guaranteed funding for these new responsibilities. As such, the bill threatens to prevent agencies from fulfilling their congressional mandates to adopt needed new standards to protect the American people by imposing on them a blanket one-size-fits-all obligation to do retrospective reviews without providing them the necessary resources for doing so.

There is much that is wrong with the current regulatory system that cries out for attention from this committee. Regulatory agencies under President Donald Trump have defied the missions that Congress set out for them in landmark environmental, workplace safety, consumer protection, and civil rights laws. Rollbacks of public protections have occurred with a blatant disregard for independent scientific and technical analysis. For example, agencies have

deliberately hidden evidence from the public that cuts against their preferred policy outcomes, removed references to harms or risks to the public in order to rationalize rollbacks of protections designed to address those risks and harms, and manipulated cost-benefit analyses in order to justify deregulation.

The Coalition for Sensible Safeguards urges the Homeland Security and Government Affairs Committee to oppose these dangerous bills and, instead, take the lead in bringing meaningful congressional oversight of the Trump administration's attack on evidence-based public protections and safeguards.

Sincerely,

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

Jack Gillis
Executive Director, Consumer Federation of America
Co-chair, Coalition for Sensible Safeguards