COALITION FOR SENSIBLE SAFEGUARDS

February 28, 2017

RE: Floor vote on H.R. 1009, the OIRA Insight, Reform and Accountability Act

Dear Representative:

The Coalition for Sensible Safeguards (CSS), an alliance of over 150 labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, **strongly opposes H.R. 1009, the OIRA Insight, Reform, and Accountability Act.**

H.R. 1009 would further enable the radical and dangerous antiregulatory agenda that puts corporate profits ahead of protecting working Americans, small businesses, and consumers. This agenda seeks to thwart the effective enforcement of such public interest laws as the Clean Air Act, the Clean Water Act, and the Federal Food, Drug, and Cosmetic Act – all of which enjoy widespread public support.

Some have portrayed H.R. 1009 as a mere codification of previous Executive Orders, but this is precisely what makes this bill so dangerous. Many of the requirements contained in these orders are at best burdensome to carry out and at worst are biased against protecting the public, vague, and in some cases mutually inconsistent. For example, one requirement demands that agencies design their rules to be the "most cost-effective manner to achieve their regulatory objective," while another directs agencies to "tailor[] the regulatory action to impose the least burden on society" – simultaneous compliance with these requirements is conceptually and practically impossible.

Other requirements of H.R. 1009 would prove impossible for agencies to satisfy when applied to actual rulemakings. For example, Section 3523(a)(1))[1] of the bill would require the Administrator to ensure that regulations do not conflict with other agencies' policies. It is unclear, though, how this requirement would be met for rules affecting the Interior Department's statutory and regulatory policies to expand multiple uses of public lands. Rules to address air or water pollution on Interior lands or to implement the National Environmental Policy Act would arguably conflict with the Interior's policy to expand the exploitation of mineral resources.

Similarly, rules that require neighbors to be notified when a road is planned to go through a community or that require the Department of Transportation to consider less destructive alternatives would likely conflict with an existing transportation policy that demands that roads be built roads as economically as possible. Or requirements establishing speed limits on interstate highways would likely conflict with the policy of making commercial shipments faster. In cases like these, different agencies policies inherently conflict, but the bill offers no guidance for how OIRA or the relevant rulemaking agencies should resolve these conflicts to achieve compliance with the bill's requirements.

Yet, by codifying these requirements, H.R. 1009 would have the disastrous effect of making compliance subject to judicial review. Legal challenges against rules would effectively be rigged in the favor of industry opponents, as the predicable failure of agencies to satisfy these requirements would potentially provide grounds for striking the rule down, despite the agency's good faith efforts.

Nor is H.R. 1009 a straightforward codification of the existing Orders. In key areas, the legislation removes flexibility in the Executive Orders with narrower, inflexible language. The result is to make the bill even more onerous than Orders it purports to replace.

Particularly concerning, H.R. 1009 would in effect rewrite dozens of public interest laws containing congressional mandates that require agencies to prioritize public health and safety and the preservation of the environment, clean air,

[1] H.R. 1009 (Section 3523(a)(1)) IN GENERAL.—The Administrator shall conduct a Government wide coordinated review of significant regulatory actions to ***ensure*** that such regulations are consistent with applicable law and that a regulatory action by one agency does not conflict with a policy or action taken or planned by another agency.

and clean water over concerns for industry profits. This consequence flows from another key difference between H.R. 1009 and the Executive Orders it purports codify: Whereas the Orders impose their requirements only to the extent consistent with applicable laws, H.R. 1009 recognizes no such limitations. By definition, Executive Orders cannot amend existing laws, but H.R. 1009 is drafted to have this precise effect.

H.R. 1009 also would make federal agency science much more vulnerable to judicial review. It would create enormous uncertainty for the public and corporate stakeholders by leading to more lawsuits challenging regulations once finalized.

The bill would effectively undermine congressionally chartered independent agencies by putting them under the influence of the Office of the President and would make it harder for them to do their work free from political interference. It would give the President the power to impose multiple new analytical requirements on independent agencies and to engage in unprecedented interference with their regulations, through intrusive reviews by the Office of Information and Regulatory Affairs (OIRA).

In unprecedented fashion, independent agency rulemakings would be reviewed by OIRA in order to ensure that such rulemakings align with Presidential policy preferences and could be vetoed by OIRA if that is not the case. This bill would render the independence of these agencies meaningless, and make agencies critical to protecting consumers and holding Wall Street accountable, such as the Consumer Financial Protection Bureau, the Consumer Product Safety Commission, the Federal Communications Commission, and the Federal Trade Commission, independent in name only.

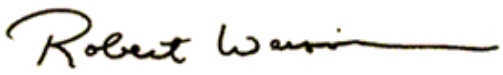
We encourage Congressional members that expressed strong concerns about the perceived lack of independence of certain independent agencies from President Obama to continue supporting the important principle of keeping these agencies independent of President Trump's influence.[2]

Finally, while the legislation offers long sought after reforms to OIRA in areas that have been longstanding concerns to the CSS, namely increasing transparency at OIRA and reducing chronic regulatory delays related to OIRA review, such reforms should be pursued separately and not in conjunction with other harmful provisions. The CSS would be happy to work with you on developing such essential legislative reforms.

Numerous Government Accountability Office studies reviewing OIRA compliance with Executive Order requirements have clearly shown that OIRA has little trouble complying with the analytical and cost-benefit provisions in Executive Orders yet is unable or unwilling to comply with Executive Order provisions that require OIRA to be transparent about changes it makes to rules it reviews and abide by specified time periods for reviewing rules.[3]

We strongly urge opposition to H.R. 1009, the OIRA Insight, Reform and Accountability Act.

Sincerely,



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.

[2] http://www.latimes.com/business/la-fi-net-neutrality-fcc-chaffetz-probe-20150209-story.html
[3] http://www.gao.gov/products/GAO-16-505T