



January 5, 2016

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Robert Glicksman
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The Honorable Paul Ryan
The Honorable Nancy Pelosi
U.S. House of Representatives

Re: Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2016

Advisory Council

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Sally Greenberg
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Dear Representative Ryan and Representative Pelosi,

We are writing, as individual academics who specialize in administrative law and regulatory policy, to express our strong opposition to the Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2016 (Rules Committee Print 114-37).

This legislation combines three separate bills into a single legislative package. In particular, we are concerned about its inclusion of the Sunshine for Regulatory Decrees and Settlements Act of 2015 (H.R. 712), which comprises Title I of the bill, and the All Economic Regulations are Transparent Act of 2015 (or the ALERT Act of 2015, H.R. 1759), which comprises Title II of the bill.

H.R. 712 would introduce several wasteful procedural requirements that would make it more difficult for the public to hold agencies accountable for failing to carry out their mandatory statutory responsibilities according to the clear commands of Congress. A January 2015 Government Accountability Office (GAO) report¹ confirms that the bill's requirements are unnecessary. First, the GAO report found that even successful suits do not dictate the substance of agency policymaking, since these matters have already been determined by the agency's authorizing statute. Instead, the purpose of these suits is to set a judicially enforceable schedule for an agency to carry out a non-discretionary duty, which it has already failed to carry out.

Second, the GAO report found that the Environmental Protection Agency (EPA), the agency that was the subject of the report, routinely allows the public to comment on any draft pending settlement agreements that emerge from these citizen enforcement suits. In addition, any rulemakings that emerge from these agreements must separately abide by all applicable rulemaking procedures and requirements, including those established by the Administrative Procedure Act (APA). In short, both the citizen enforcement process and any rulemakings that emerge from it are already subject to effective and meaningful transparency and public participation mechanisms.

¹ GAO-15-34, available at <http://www.gao.gov/products/GAO-15-34>.

H.R. 1759 would impose on agencies several new burdensome reporting requirements regarding their pending regulatory agendas. Taken together, these reporting requirements would not only waste scarce agency resources; they would also have the perverse effect of undermining transparency by inundating the public with irrelevant and misleading data concerning agencies' pending regulatory actions.

Specifically, H.R. 1759 would require agencies to issue complex and detailed reports about all of their pending rules *every month*. Only the largest corporate interests would have the resources and personnel necessary to review and understand all of the data contained in the reports. In contrast, these reports would be of little use to small businesses or ordinary citizens. In addition, the reports required by H.R. 1759 are almost exclusively focused on regulatory costs with little attention paid to the significant public health, safety, and environmental benefits that these rules produce. As a result of this highly biased and one-sided presentation, even the most beneficial of agency rulemakings would appear to be a huge loss for society.

In addition, H.R. 1759 would needlessly add more delay to the rulemaking process by blocking a rule from taking effect until the required information for the final version of that rule has been published on the internet for at least six months. This new default six-month delay would come on top of the years of delay that already plagues the rulemaking process.

Thank you for attention to these criticisms of the bill discussed above. At your request, we would be happy to discuss these views with you further.

Sincerely,

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CC: The Honorable Bob Goodlatte
The Honorable John Conyers, Jr.
The Honorable Jason Chaffetz
The Honorable Elijah Cummings