July 27, 2015

The United States Senate
Washington, D.C. 20510

Dear Senator:

We are writing, as individual academics who specialize in administrative law and regulatory policy, to express our strong opposition to S. 1607, the Independent Agency Regulatory Analysis Act of 2015.

S. 1607 is a broad and complex bill that would significantly inhibit the ability of all independent regulatory agencies—including the Securities and Exchange Commission (SEC), the newly created Consumer Financial Protection Bureau (CFPB), the Equal Employment Opportunity Commission (EEOC), the Consumer Product Safety Commission (CPSC) and the Nuclear Regulatory Commission (NRC)—to carry out their mission of protecting people and the environment. Every day, millions of Americans depend on these agencies to protect them from improperly handled or disposed radioactive waste, unreasonably dangerous consumer products, and predatory lending practices. Congress deliberately created these agencies to be independent, because it recognized that their respective missions were far too important to be left vulnerable to political and corporate interference.

To an unprecedented degree, S. 1607 would authorize White House influence over independent agencies' regulatory decision-making, potentially empowering future presidents to block or dilute the work of independent agencies they oppose. Yet, Congress explicitly designed independent regulatory agencies to be institutionally insulated from excessive political interference from the president. Subjecting these agencies to executive order requirements—especially oversight by the White House Office of Information and Regulatory Affairs (OIRA), which is without question the most potent conduit for presidential influence over new rules— would thoroughly undermine Congress's careful and deliberate institutional design.

Independent regulatory agencies oversee some of the most important and complex aspects of the U.S. economy, including guarding against banking abuses and protecting consumers against unsafe products. By designing independent regulatory agencies to be insulated from undue political pressure, Congress also sought to ensure that these agencies would be able to use their unique expertise on policy matters to develop the best solutions to the social problems that Congress meant for them to address. S. 1607 defeats the purpose of this design by allowing

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the White House to use the occasion of OIRA review as leverage to weaken rules under development by independent agencies in responsible to lobbying from business interests.

S. 1607 would also subject independent regulatory agencies to several new time-consuming and resource-intensive analytical requirements that are irrelevant to protecting the public interest and will needlessly delay critical safeguards. Independent regulatory agencies operate under a wide variety of statutory mandates, which, while different in their specifics, are all oriented toward protecting people. In contrast, S. 1607 would require that the significant agency rules undergo a highly subjective and politicized analytical test known as quantitative cost-benefit analysis, which focuses on protecting the profits of regulated entities, before being finalized.

These are our broad concerns with S. 1607.

Just as distressing are a number of more specific concerns about how S. 1607 would actually be implemented, which no one appears to have yet considered, much less resolved. For example, when reviewing independent agency rule under S. 1607, will OIRA be permitted to meet with interested parties outside of the federal government as it does now under Executive Order 12866? If so, what, if any, transparency requirements would govern these meetings? How will the analyses that OIRA and the independent regulatory agencies produce under S. 1607 be used by reviewing courts? Will the findings that independent agency make in these analyses be accorded any judicial deference? What if these findings differ from those made by OIRA in its analysis?

Unless and until these concerns can be resolved, S. 1607 would likely lead to increased litigation and regulatory uncertainty. That result would be inconsistent with safeguarding the public against unnecessary risks, and it certainly would not be good for the struggling economy.

For these reasons, we oppose passage of S. 1607. Thank you for consideration of our views.

Sincerely,

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