

**Alaska Wilderness League \* American Association for Justice \* American Bird Conservancy \* American Federation of Teachers \* American Sustainable Business Council \* Americans for Financial Reform \* Center for American Progress Action Fund \* Center for Biological Diversity \* Center for Progressive Reform \* Center for Responsible Lending \* Citizens' Environmental Coalition \* Clean Water Action \* Coalition on Human Needs \* Communications Workers of America (CWA) \* Conservation Lands Foundation \* Consumer Action \* Consumer Federation of America \* Consumers for Auto Reliability and Safety \* Defenders of Wildlife \* Earthjustice \* EarthRights International \* Endangered Species Coalition \* Environmental Working Group \* Family Equality Council \* Food & Water Watch \* Institute for Agriculture and Trade Policy \* Interfaith Center on Corporate Responsibility \* International Corporate Accountability Roundtable \* League of Conservation Voters \* NAACP \* National Association of Consumer Advocates \* National Association of Social Workers \* National Audubon Society \* National Black Justice Coalition \* National Center for Lesbian Rights \* National Center for Transgender Equality \* National Consumer Law Center (on behalf of its low income clients) \* National Employment Law Project \* National Law Center on Homelessness & Poverty \* National LGBTQ Task Force Action Fund \* National Organization for Women \* National Women's Law Center \* Natural Resources Defense Council \* Network for Environmental & Economic Responsibility of United Church of Christ \* Northcoast Environmental Center \* Progressive Congress Action Fund \* Public Citizen \* Publish What You Pay – US \* Safe Alternatives for our Forest Environment \* Soda Mountain Wilderness Council \* South Umpqua Rural Community Partnership \* Tennessee Citizen Action \* Texas Appleseed \* The Center for Auto Safety \* The Lands Council \* The Wilderness Society \* U.S. PIRG \* Umpqua Watersheds \* Inc. \* Union of Concerned Scientists \* United Steelworkers \* Western Environmental Law Center \* WildEarth Guardians \* Woodstock Institute \* Young Invincibles**

April 16, 2018

The undersigned organizations are strongly united in opposition to S.J. Resolution 57, sponsored by Sen. Moran (R-KS), which attempts to use the Congressional Review Act (CRA) to target regulatory actions by federal agencies that were issued well in the past and have been in effect for years or potentially even decades. We vigorously oppose any attempt by the Senate to subject the “Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act” -- issued by the Consumer Financial Protection Bureau (CFPB) in 2013 -- to a vote under the CRA. Many of us oppose repealing this important guidance on substantive grounds, but we join together today to focus instead on the procedural issue of using the CRA against a guidance that has been in place for years.

We oppose such a vote, as it would contravene the clear intent of the CRA to allow Congress to review and challenge *recently* finalized agency actions. This would set a dangerous precedent that would open the door for Congress to stretch the CRA to challenge a wide variety of settled agency actions that have been in effect for years or decades, particularly “guidance documents” that are not only crucial to protecting workers, consumers, minorities, the environment, and the economy but also to providing regulatory certainty for businesses and the public. Using the CRA, rather than regular legislative order, to attack years-old established guidance would be an extraordinary and egregious abuse of normal process – exactly the kind of rigged action on behalf of narrow corporate insiders that so infuriates Americans of all political stripes.

This Congress has already used the CRA in unprecedented fashion to repeal fourteen common-sense, carefully developed regulations that protect the public, including measures to protect internet privacy, women’s health, retirement security, workplace safety, fair pay in the workplace, the environment and clean water, anti-corruption safeguards, and sensible gun control. Unlike the normal legislative process, the CRA is already problematic legislation which 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 rather than expand it to undermine policies that were finalized long ago.

Applying the CRA to settled agency actions from the past would violate the clear intent and spirit of the law. The legislative history of the CRA makes plain its purpose: “this legislation establishes a government wide congressional review mechanism for most new rules.”<sup>1</sup> As a procedural matter, Congress could have, and more appropriately should have, reviewed the guidance at issue here back in 2013 when it was issued by the CFPB, requested a GAO opinion at that time to determine its eligibility under the CRA and potentially used the CRA to challenge such guidance shortly after its issuance in 2013. Indeed, Congress has made multiple GAO requests regarding the applicability of the CRA to guidance documents *when the guidance was originally issued or shortly thereafter*.<sup>2</sup> Subjecting these actions to the CRA now would fly in the face of congressional intent and stretch the law in ways that were neither anticipated nor expected by those who voted for it. Moreover, it raises suspicions that this CRA challenge is being undertaken now, rather than following the issuance of the guidance in 2013, because there is a higher chance of success given the makeup of this Congress.

Further, applying the CRA to long-established guidance would be, simply put, wrongheaded. Guidance documents are often specifically requested by regulated entities and industry stakeholders in order to resolve uncertainties in the application of regulations to stakeholder business practices, including in the form of so-called “No Action Letters”. Using the CRA to repeal guidance documents would imperil numerous past guidance documents that were not submitted to Congress under the CRA, including many that were specifically requested by regulated entities or stakeholders. Congress should act with caution, if at all, in using the CRA on guidance documents, but applying the CRA to longstanding guidance would be misguided.

Long-established guidance is not locked into place; when appropriate, it is a relatively simple matter for agencies to revise or repeal longstanding guidance. In fact, agencies have already begun the process of revising or repealing another guidance document that was the subject of a recent GAO opinion, the so-called “leveraged lending” guidance which ensures that big banks do not engage in risky lending practices that threaten the financial system, without any need for a CRA vote.

Given the long and growing list of legislative issues that need to be addressed by the Senate on an urgent and expedited basis, it is difficult to fathom why the Senate would choose to spend valuable floor time to repeal guidance under the CRA when such guidance could be effectively revisited, and if appropriate, repealed by the agency that issued it in short order and with limited procedural requirements. By bringing this vote to the Senate floor, it sends a message to the public that Congress is more interested in giving narrow handouts to special interests rather than addressing the real issues that impact hard-working Americans and their families.

We, the under-signed groups, strongly urge Senators to reject abusing the CRA to attack guidance documents that were issued years ago, and get back to solving real problems on behalf of the American public. We strongly urge you to reject S.J. Resolution 57.

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Center for Progressive Reform  
Center for Responsible Lending  
Citizens' Environmental Coalition  
Clean Water Action  
Coalition on Human Needs

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<sup>1</sup> Joint Explanatory Statement of House and Senate Sponsors, 142 Cong. Rec. 6922, 6926 (1996)(Legislative History).

<sup>2</sup> See e.g. <https://www.gao.gov/products/D02996>

Communications Workers of America (CWA)  
Conservation Lands Foundation  
Consumer Action  
Consumer Federation of America  
Consumers for Auto Reliability and Safety  
Defenders of Wildlife  
Earthjustice  
EarthRights International  
Endangered Species Coalition  
Environmental Working Group  
Family Equality Council  
Food & Water Watch  
Institute for Agriculture and Trade Policy  
Interfaith Center on Corporate Responsibility  
International Corporate Accountability Roundtable  
League of Conservation Voters  
NAACP  
National Association of Consumer Advocates  
National Association of Social Workers  
National Audubon Society  
National Black Justice Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Consumer Law Center (on behalf of its low income clients)  
National Employment Law Project  
National Law Center on Homelessness & Poverty  
National LGBTQ Task Force Action Fund  
National Organization for Women  
National Women's Law Center  
Natural Resources Defense Council  
Network for Environmental & Economic Responsibility of United Church of Christ  
Northcoast Environmental Center  
Progressive Congress Action Fund  
Public Citizen  
Publish What You Pay - US  
Safe Alternatives for our Forest Environment  
Soda Mountain Wilderness Council  
South Umpqua Rural Community Partnership  
Tennessee Citizen Action  
Texas Appleseed  
The Center for Auto Safety  
The Lands Council  
The Wilderness Society  
U.S. PIRG  
Umpqua Watersheds, Inc.  
Union of Concerned Scientists  
United Steelworkers  
Western Environmental Law Center  
WildEarth Guardians  
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