

August 16, 2017

Senator John Cornyn
Member, Senate Judiciary Committee
517 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cornyn,

As advocates of open government, we are writing to you to express our opposition to provisions of the *Building America's Trust Act* (S.1757) that would enshroud a vast array of immigration and national security-related government activities in secret. In the past, you have been a strong ally of the open government community's efforts to reform the Freedom of Information Act (FOIA) and improve public access to information. We ask that you maintain your leadership on this issue, and remove from S.1757 the provisions that would exempt implementation of the entire Act from the Administrative Procedure Act (APA) and Paperwork Reduction Act (PRA).

The *Building America's Trust Act* would have enormous implications for the economic and security concerns of millions of Americans, yet they would have virtually no access to information about its implementation. That's because Sections 702 and 703 would exempt the Act, in its entirety, from the APA and the PRA, two of the most fundamental tools for access to information and public engagement with government.

As you know, the APA and PRA were intended to keep the public informed about the federal rules and information collections that impact their lives, as well as provide crucial oversight mechanisms. Importantly, the APA also encompasses the FOIA and the Privacy Act, meaning that the Act could exempt major government activities related to border security and immigration enforcement from statutory requirements to release information to the public and uphold privacy protections.

Section 702 of the current bill specifically exempts any actions implementing the act from "publication in the *Federal Register*[".] That means that the public will not even know when provisions of the Act, should it become law, are implemented. Even if this Act exempted implementing actions from the notice-and-comment provisions to speed implementation, an exemption we also oppose, *Federal Register* publication is a hallmark of American administrative law and transparent government. It should not be so easily cast aside.

Section 702 relies on the need to ease "the expeditious implementation of this Act" as the justification for the APA exemption. But the APA already contains a good cause exemption from the notice-and-comment procedures.¹ We should not be creating new exemptions from the APA's procedures.

¹ 5 U.S. Code § 553

As it stands, S.1757 is fundamentally at odds with the principles of open and accountable government. We ask that you remove these exemptions immediately, and ensure that the Act contains no other impediments to public oversight and access to information.

If you have any questions or would like to discuss this issue further, please contact Lisa Rosenberg, Executive Director of OpenTheGovernment, at lrosenberg@openthegovernment.org or 202-332-6736.

Sincerely,

Cause of Action Institute
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Project On Government Oversight