CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 20, 2012

H.R. 4078
Regulatory Freeze for Jobs Act of 2012

As ordered reported by the House Committee on Oversight and Government Reform on April 26, 2012

SUMMARY

H.R. 4078 would prohibit most federal agencies from taking most final significant regulatory actions until either the unemployment rate falls to 6.0 percent or less or two years pass after enactment of the legislation. The legislation would affect many regulatory actions that vary greatly in nature and scope. CBO and the staff of the Joint Committee on Taxation (JCT) cannot determine the budgetary effects of delaying final significant regulatory actions, but we expect that enacting H.R. 4078 would have effects on both direct spending and revenues. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO expects that implementing H.R. 4078 also could have a significant impact on spending subject to appropriation, although we cannot determine the magnitude of that effect.

CBO expects that the provisions of H.R. 4078 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Background

H.R. 4078 would prohibit agencies from taking final significant regulatory actions until the earlier of: (1) the date on which the national unemployment rate is 6.0 percent or less, or (2) two years after the enactment of the legislation. If an agency were to pursue a final significant regulatory action in violation of H.R. 4078, any party adversely affected by that action would be entitled to judicial review.

H.R. 4078 includes several exemptions. The legislation would exempt final significant regulatory actions taken by the Federal Election Commission, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and United States Postal Service. Further, H.R. 4078 would exempt certain final significant regulatory actions related to the health and safety of members of the Armed Forces or veterans, equal protection and civil rights, and the repeal of existing rules. Finally, H.R. 4078 would exempt final significant regulatory actions that the President determines are necessary for one of four reasons: (1) to respond to an imminent threat to health or safety, (2) to enforce criminal laws, (3) to protect national security, or (4) to implement an international trade agreement.

H.R. 4078 defines a *final significant regulatory action* as the promulgation of any major rule or the issuance of any major guidance that the Office of Management and Budget (OMB) finds is likely to result in:

- An annual effect on the economy of $100,000,000 or more;

- A major increase in costs or prices for consumers; individual industries; federal, state, or local government agencies; or geographic regions; or

- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[1]

Looking to recent major rules as a way to estimate the number of future final significant regulatory actions that would be affected by H.R. 4078 is difficult because the legislation applies to guidance in addition to rules, some major rules would fall under one of the exemptions listed above, and agencies might change course following the enactment of the bill. However, historical data shows that federal agencies published 80 major rules in 2011 and 84 major rules, on average, for the past five full calendar years.[2] Examples of major rules published in 2011 include: required warnings for cigarette packages and advertisements, Medicare payment rates for inpatient psychiatric facilities, and national emission standards for hazardous air pollutants from industrial, commercial, and institutional boilers.

H.R. 4078 would delay final significant regulatory actions until either two years pass following enactment of the legislation or the unemployment rate is 6.0 percent or lower. Under CBO's most recent economic forecast based on current law, the unemployment

---

1. H.R. 4078 adopts the definition of major rule originally set by the Congressional Review Act of 1996 (see 5 USC § 804(2)) and defines major guidance using the same criteria.

2. See GAO Federal Rules Database, http://www.gao.gov/legal/congressact/fedrule.html

rate would remain above 6.0 percent until late 2016.[3] Therefore, under CBO's current projections, final significant regulatory actions would be delayed for two years after enactment of the legislation (assuming enactment later this year). However, final significant regulatory actions could be delayed by less than two years if the unemployment rate drops much more rapidly than CBO projects.

Impact on Direct Spending

The budgetary consequences of delaying final significant regulatory actions, as defined by H.R. 4078, would vary tremendously because the budgetary impact of different rules varies considerably. For example, of the three rules mentioned above, only one—Medicare payment rates for inpatient psychiatric facilities—has a significant federal budgetary impact.

Delaying or preventing some final significant regulatory actions would result in costs to the federal government, while delaying or preventing others would result in savings. On net, CBO estimates that enacting H.R. 4078 would have a significant effect on direct spending, but we cannot determine the magnitude or sign of those changes. Short-term effects would be driven by: (1) preventing annual updates to payment schedules for certain Medicare services and other routine revisions to aspects of selected government programs, including payment rate reductions scheduled to take place under the Medicare physician fee schedule, and (2) altering the implementation of new federal programs with substantial budget effects.

Routine Updates to Government Programs. Many final significant regulatory actions that occur routinely are health-related and in particular pertain to Medicare. Some examples include rules that establish annual updates to payment rates for services provided by hospitals, physicians, and other Medicare providers. Enacting H.R. 4078 would freeze payment structures for those providers at current levels. Similarly, payment rates (such as the annual benefit amount for each individual) under some other federal programs might also be temporarily frozen under the bill. CBO cannot estimate the net impact of all such changes.

Many programs, such as Social Security, make annual adjustments in the benefits that are paid, often referred to as a cost-of-living adjustment. The new amounts are published in the *Federal Register*, but do not rise to the level of final significant regulatory action. Thus, under the bill, CBO expects that these types of programs would continue to operate as they normally do, though agencies would not be able to make significant changes to the programs while the moratorium was in effect.

---

3. See Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022* (January 2012), Appendix E.

Implementation of New Federal Programs. Enacting H.R. 4078 might also affect the implementation of new programs. For example, additional rules and guidance related to the implementation of the Affordable Care Act are expected in coming months. Many of these anticipated regulatory actions are consequential for health insurance exchanges, which are to become operational in 2014 under current law. Delaying those regulatory actions could delay implementation of health insurance exchanges, which would in turn result in significant savings to the federal budget, relative to spending expected under current law.

H.R. 4078 might also delay the issuance of non-major guidance because the legislation would require applicable agencies to submit all guidance to OMB prior to issuance so that OMB may determine whether the guidance is major or not. This additional step of review, which does not exist under current law, might slow the implementation of new laws or updates to existing programs.

Impact on Revenues

Enacting H.R. 4078 also would affect revenues, and JCT expects that delaying final significant regulatory actions of the Internal Revenue Service could reduce collections of revenues in some cases and increase collections in other cases. JCT cannot determine the sign or magnitude of the possible effects on revenues.

Impact on Spending Subject to Appropriation

H.R. 4078 also would affect programs for which spending is subject to the annual appropriations process. However, CBO cannot determine the magnitude of that effect. For example, if the Environmental Protection Agency were prohibited from issuing final rules for the lesser of two years or while the unemployment rate exceeds 6.0 percent, there could be reductions in spending for the agency, subject to appropriation action. A second example involves annual calculations made by the Department of Housing and Urban Development (HUD) of the fair-market rents that it uses to determine rental subsidies for low-income individuals. We expect that the bill would prohibit those calculations from being made and implemented, which would prevent the rental subsidy from adjusting for changes in market conditions. Any increase in rents would be paid for by the tenant and not by HUD and if tenants were unable to pay the increased rent, some landlords would likely leave the program.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Pay-as-you-go procedures apply to H.R. 4078 because enacting the legislation would affect direct spending and revenues. CBO and JCT cannot determine the sign or magnitude of those effects.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

CBO expects that the provisions of H.R. 4078 would impose no intergovernmental or private-sector mandates as defined in UMRA. By delaying final significant regulatory actions, the bill could affect public or private entities in a number of other ways, including slowing reimbursements and eliminating regulatory requirements. Such effects would not be mandates as defined in UMRA because they would not impose enforceable duties on public or private entities. Depending on the types and number of regulations affected, the costs and savings of those effects could be significant. However, CBO has no basis for estimating either the overall direction or magnitude of those effects on public or private entities because of uncertainty about the nature and number of regulations that would be affected.

PREVIOUS CBO ESTIMATE

On April 20, 2012, CBO transmitted a cost estimate for H.R. 4078, as ordered reported by the House Committee on the Judiciary on March 20, 2012. There are several notable differences between the version ordered reported by the House Committee on Oversight and Government Reform and the Judiciary Committee's version:

- First, the Oversight Committee's version uses a definition of significant regulatory action that is narrower in scope than the definition of significant regulatory action adopted by the Judiciary Committee's version.

- Second, the two bills differ in the types of exemptions allowed. For example, the Oversight Committee's version includes exemptions for regulations affecting certain populations or specific agencies, such as the Board of Governors of the Federal Reserve System, that are not included in the Judiciary Committee's version. However, unlike the Judiciary Committee's version, the Oversight Committee's version does not include an avenue through which Congress could expeditiously consider exemptions requested by the President for significant regulatory actions that do not fall into one of the four exemption categories discussed above.

- Finally, the Oversight Committee's version delays final significant regulatory actions for a maximum of two years after enactment, whereas the Judiciary Committee's version delays significant regulatory actions until the unemployment rate is 6.0 percent or less. Under CBO's latest economic forecast, the Judiciary

Committee's version of H.R. 4078 would delay significant regulatory actions for a longer period than the version ordered reported by the Oversight Committee.

As a result of these differences, while both versions of H.R. 4078 would affect direct spending and revenues, the budgetary effects could be very different.

ESTIMATE PREPARED BY:

Federal Costs: Sarah Anders
Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Holly Harvey
Deputy Assistant Director for Budget Analysis