

REGULATORY FREEZE FOR JOBS ACT OF 2012

JULY 20, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4078]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 4078) to provide that no agency may
take any significant regulatory action until the unemployment rate
is equal to or less than 6.0 percent, having considered the same,
report favorably thereon with amendments and recommend that
the bill as amended do pass.

CONTENTS

	Page
Committee Statement and Views	3
Section-by-Section	6
Explanation of Amendments	7
Committee Consideration	8
Rollcall Votes	8
Application of Law to the Legislative Branch	8
Statement of Oversight Findings and Recommendations of the Committee	8
Statement of General Performance Goals and Objectives	8
Federal Advisory Committee Act	9
Unfunded Mandate Statement	9
Earmark Identification	9
Committee Estimate	9
Budget Authority and Congressional Budget Office Cost Estimate	9
Minority Views	14

The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Regulatory Freeze for Jobs Act of 2012”.

SEC. 2. MORATORIUM ON FINAL SIGNIFICANT REGULATORY ACTIONS.

An agency may not take any final significant regulatory action during the period beginning on the date of the enactment of this Act and ending on the date that is the earlier of—

- (1) two years after such date of enactment; or
- (2) the date on which the national unemployment rate, as published by the Bureau of Labor Statistics, is first equal to or less than 6.0 percent.

SEC. 3. WAIVERS AND EXCEPTIONS.

(a) **IN GENERAL.**—Notwithstanding any other provision of this Act, an agency may take final significant regulatory action only in accordance with subsection (b), (c), (d), or (e) during the period described in section 2.

(b) **PRESIDENTIAL WAIVER.**—An agency may take final significant regulatory action if the President determines that the final significant regulatory action is—

- (1) necessary because of an imminent threat to health or safety or other emergency;
- (2) necessary for the enforcement of criminal laws;
- (3) necessary for the national security of the United States; or
- (4) issued pursuant to any statute implementing an international trade agreement.

(c) **DEREGULATORY EXCEPTION.**—An agency may take a final significant regulatory action if the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget certifies in writing that the final significant regulatory action is limited to repealing an existing rule.

(d) **EXCEPTION FOR THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF VETERANS AFFAIRS.**—The Department of Defense and the Department of Veterans Affairs may take a final significant regulatory action if such action affects the health or safety of members of the Armed Forces or veterans.

(e) **EXCEPTION FOR EQUAL PROTECTION AND CIVIL RIGHTS.**—An agency may take a final significant regulatory action if such action is to establish or enforce any statutory rights against discrimination on the basis of age, race, religion, gender, national origin, or handicapped or disability status except such final significant regulatory actions that establish, lead to, or otherwise rely on the use of a quota or preference based on age, race, religion, gender, national origin, or handicapped or disability status.

SEC. 4. DETERMINATION OF MAJOR GUIDANCE.

Before the issuance of any guidance, the head of an agency shall transmit any proposed guidance to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, who shall make a finding as to whether such proposed guidance is a major guidance.

SEC. 5. JUDICIAL REVIEW.

(a) **REVIEW.**—Any party adversely affected or aggrieved by any rule or guidance resulting from a final significant regulatory action taken in violation of this Act is entitled to judicial review in accordance with chapter 7 of title 5, United States Code. Any determination by either the President or the Secretary of Labor under this Act shall be subject to judicial review under such chapter.

(b) **JURISDICTION.**—Each court having jurisdiction to review any rule or guidance resulting from a final significant regulatory action for compliance with any other provision of law shall have jurisdiction to review all claims under this Act.

(c) **RELIEF.**—In granting any relief in any civil action under this section, the court shall order the agency to take corrective action consistent with this Act and chapter 7 of title 5, United States Code, including remanding the rule or guidance resulting from the final significant regulatory action to the agency and enjoining the application or enforcement of that rule or guidance, unless the court finds by a preponderance of the evidence that application or enforcement is required to protect against an imminent and serious threat to the national security of the United States.

(d) **REASONABLE ATTORNEY’S FEES FOR SMALL BUSINESSES.**—The court shall award reasonable attorney’s fees and costs to a substantially prevailing small business in any civil action arising under this Act. A small business may qualify as substantially prevailing even without obtaining a final judgment in its favor if the agency that took the final significant regulatory action changes its position after the civil action is filed.

(e) **LIMITATION ON COMMENCING CIVIL ACTION.**—A party may seek and obtain judicial review during the 1-year period beginning on the date of the challenged agency action or within 90 days after an enforcement action or notice thereof, except that where another provision of law requires that a civil action be commenced before the expiration of that 1-year period, such lesser period shall apply.

(f) **SMALL BUSINESS DEFINED.**—In this section, the term “small business” means any business, including an unincorporated business or a sole proprietorship, that employs not more than 500 employees or that has a net worth of less than \$7,000,000 on the date a civil action arising under this Act is filed.

SEC. 6. DEFINITIONS.

In this Act:

(1) **AGENCY.**—The term “agency” has the meaning given that term under section 551 of title 5, United States Code, except that such term does not include—

- (A) the Federal Election Commission;
- (B) the Board of Governors of the Federal Reserve System;
- (C) the Federal Deposit Insurance Corporation; or
- (D) the United States Postal Service.

(2) **FINAL SIGNIFICANT REGULATORY ACTION.**—The term “final significant regulatory action” means the promulgation of any major rule or the issuance of any major guidance.

(3) **MAJOR GUIDANCE.**—The term “major guidance” means any guidance that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds is likely to result in—

- (A) an annual effect on the economy of \$100,000,000 or more;
- (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- or
- (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(4) **MAJOR RULE.**—The term “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds is likely to result in—

- (A) an annual effect on the economy of \$100,000,000 or more;
- (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- or
- (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(5) **RULE.**—The term “rule” has the meaning given that term under section 551 of title 5, United States Code.

Amend the title so as to read:

A bill to provide that no agency may take any final significant regulatory action for two years or until the unemployment rate is equal to or less than 6.0 percent, whichever occurs earlier, and for other purposes.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 4078, the Regulatory Freeze for Jobs Act, aims to stabilize the economy by establishing a moratorium on the finalizing of significant regulatory actions (i.e., regulations and guidance) for a period of two years. The moratorium would terminate sooner, however, if the unemployment rate were to fall to 6.0 percent or less before the two years have passed. The President may waive the moratorium for purposes of an imminent threat to health or safety, the enforcement of criminal laws, national security, or pursuant to an international trade agreement. A significant regulatory action finalized during the moratorium period is subject to judicial review, and a small business may recover attorney’s fees if successful.

BACKGROUND AND NEED FOR LEGISLATION

Since the beginning of the 112th Congress, the Oversight and Government Reform Committee has shone a spotlight on the manner in which regulations impact the economy and job creation. On this topic, the Committee has held seven full committee hearings and nearly 20 subcommittee hearings, issued two staff reports,¹ and sent numerous letters to agencies. The Administrator of the Office of Management and Budget Office of Information and Regulatory Affairs (OIRA), Cass Sunstein, has called the Committee's work on this subject "constructive" and "important."²

Several regulations that regulated entities brought to the Committee's attention were subsequently struck down by the courts or significantly scaled back by federal agencies. For example, federal courts vacated a Securities and Exchange Commission (SEC) "proxy access rule" because the court found the SEC acted "arbitrarily" in its analysis of costs and benefits,³ overturned the Environmental Protection Agency's (EPA) decision to revoke a mining permit in West Virginia because the court found the EPA's action was "contrary to the language, structure, and legislative history of section 404 [of the Clean Water Act],"⁴ and delayed implementation of a notice posting rule because it was found the National Labor Relations Board (NLRB) "lack[ed] authority . . . to promulgate the rule."⁵ Moreover, the Department of Transportation altered its hours of service rule to cut the costs nearly in half,⁶ the Department of Agriculture scrapped the most controversial parts of its "GIPSA rule,"⁷ and the Department of Interior reduced the number of species proposed to be covered by the Lacey Act, which will help limit the impact on small businesses specializing in the reptile industry.⁸ It is unfortunate that litigation and congressional oversight were needed to put a halt to these excessive regulations.

Disturbingly, burdensome regulations continue to plague the economy. A recent Gallup poll found that nearly half of small businesses are not hiring because they are "worried about new government regulations,"⁹ and 44 percent of likely voters believe EPA

¹H. Comm. on Oversight & Gov't Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation*, 112th Cong. (2011) available at http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report_Regulatory_Impediments_to_Job_Creation.pdf; H. Comm. on Oversight & Gov't Reform Staff Report, *Broken Government: How the Administrative State has Broken President Obama's Promise of Regulatory Reform*, 112th Cong. (2011) available at http://oversight.house.gov/wp-content/uploads/2012/01/9.13.11_Broken_Government_Report1.pdf.

²"How a Broken Process Leads to Flawed Regulations": Hearing Before the H. Comm. on Oversight & Gov't Reform, 112th Cong. (2011) (testimony of Cass Sunstein, Administrator, Office of Information and Regulatory Affairs).

³*Business Roundtable and Chamber of Commerce of the United States v. SEC*, No. 10-1305 (D.C. Cir. July 22, 2011).

⁴Alan Kovski, *Federal Court Strikes Down EPA Decision To Retroactively Veto Dredge-and-Fill Permit*, BNA (Mar. 26, 2012) available at <http://www.bna.com/federal-court-strikes-n12884908597/>.

⁵*Chamber of Commerce of the United States and South Carolina Chamber of Commerce v. National Labor Relations Board*, Order, No. 2: 11-cv-02516-DCN (SC Dist. Ct. Apr. 13, 2012).

⁶News Release, U.S. Department of Transportation Takes Action to Ensure Truck Driver Rest Time and Improve Safety Behind the Wheel, Dec. 22, 2011.

⁷Capital Update, *New GIPSA Rule Issued*, National Pork Producers Council, Dec. 9, 2011.

⁸News Release, Salazar Announces Ban on Importation and Interstate Transportation of Four Giant Snakes that Threaten Everglades, Jan. 17, 2012.

⁹Dennis Jacobs, *Health Costs, Gov't Regulations Curb Small Business Hiring*, Gallup, Feb. 15, 2012 available at <http://www.gallup.com/poll/152654/health-costs-gov-regulations-curb-small-business-hiring.aspx>.

regulations and actions hurt the economy.¹⁰ According to the National Federation of Independent Business, “regulations and red tape” is the “single most important problem” for small business.¹¹ Meanwhile, the federal regulatory state under the Obama Administration continues to grow. From 2010 to 2011, the number of final rules issued by federal agencies rose from 3,807 to 3,573—a 6.5 percent increase. During the same time frame, the number of proposed rules increased 18.8 percent.¹² Moreover, according to the Heritage Foundation, the Obama Administration issued 106 new major rules in its first three years that collectively cost taxpayers more than \$46 billion annually.¹³ To compare, this is nearly four times the number and higher than five times the cost of major rules issued by the George W. Bush Administration during its first three years.¹⁴ Further, in the past decade, the number of economically significant rules—those that could cost \$100 million or more annually—published in the Unified Agenda of Regulatory and Deregulatory Activity has increased by more than 137 percent, rising from 56 in the spring of 2001 to 133 in the fall of 2011.¹⁵ These numbers make claims by the Obama Administration that it is issuing fewer regulations than did the George W. Bush Administration misleading.¹⁶

OIRA Administrator Sunstein has said that expensive regulations can “increase prices, reduce wages, and increase unemployment (and hence poverty).”¹⁷ Indeed, OIRA’s 2012 Draft Report to Congress on Federal Regulations reports that “regulations . . . can place undue burdens on companies, consumers, and workers, and may cause growth and overall productivity to slow.”¹⁸ In the draft report, OIRA admits that “evidence suggests that domestic environmental regulation has led some U.S. based multinationals to invest in other nations, and in that sense such regulation may have an adverse effect on domestic growth.”¹⁹ OIRA also admits that “regulations can also impose significant costs on businesses, potentially damaging economic competition and capital investment,” if not carefully designed.²⁰

Placing a temporary moratorium on finalizing the most expensive rules injects “predictability” and “certainty” into the regulatory system—features that even the Obama Administration admits are “highly desirable.”²¹ The moratorium in this legislation achieves predictability and certainty by ensuring regulated entities get a re-

¹⁰ 44% Think EPA Actions Hurt The Economy, Rasmussen Reports, Apr. 10, 2012 available at http://www.rasmussenreports.com/public_content/politics/current_events/environment_energy/44_think_epa_actions_hurt_the_economy.

¹¹ William C. Dunkelberg and Holly Wade, NFIB Small Business Economic Trends, NFIB Research Foundation (May 2012).

¹² Wayne Crews, Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, Competitive Enterprise Institute (2012).

¹³ James Gattuso and Diane Katz, Red Tap Rising: Obama-Era Regulation at the Three-Year Mark, The Heritage Foundation (Mar. 13, 2012).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Josh Hicks, *Who has the better regulatory record—Obama or Bush?*, The Washington Post, Mar. 27, 2012.

¹⁷ Robert W. Hahn & Cass R. Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis*, 150 U. Pa. L. Rev. 1489 (2002).

¹⁸ U.S. Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, *Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (March 2012).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

prieve from the most costly rules until the economy improves. According to economists, a healthy U.S. economy would feature a 5.0 percent to 6.0 percent unemployment rate.²² The unemployment rate today stands at 8.1 percent.²³ In March 2012, analysts expected that employers would add over 200,000 jobs; yet, only 120,000 were added.²⁴ This particular moratorium on rules is a balanced approach because it will allow federal agencies to proceed with the rulemaking process. Agencies will be permitted to engage in a meaningful and thorough dialogue with regulated industries and impacted parties—they will simply be unable to finalize any significant regulatory action until the end of the moratorium period.

LEGISLATIVE HISTORY

H.R. 4078, the Regulatory Freeze for Jobs Act of 2012, was introduced on February 17, 2012, by Representative Tim Griffin (R-AR) and referred to the Committee on Oversight and Government Reform and the Committee on the Judiciary. On February 27, 2012, the Committee on the Judiciary's Subcommittee on Courts, Commercial and Administrative Law held a hearing on the bill. On March 30, 2012, the Committee on the Judiciary marked up H.R. 4078 and ordered it to be reported, as amended, by a vote of 15–13. On April 26, 2012, the Committee on Oversight and Government Reform marked up H.R. 4078 and ordered it to be reported favorably, as amended, by a vote of 21–16.

On July 28, 2011, Senator Ron Johnson (R-WI) introduced S. 1438, the Regulation Moratorium and Jobs Preservation Act of 2011, a companion bill to H.R. 4078.

SECTION-BY-SECTION

Section 1. Short title

This Act may be cited as the “Regulatory Freeze for Jobs Act of 2012.”

Section 2. Moratorium on final significant regulatory actions

This section provides that an agency may not finalize any significant regulatory action (i.e., rule or guidance) for 2 years or until the unemployment rate falls to 6.0 percent or less, whichever occurs first.

Section 3. Waivers and exceptions

This section provides that an agency may finalize a significant regulatory action during the time period described above if the President determines that it is necessary for purposes of an imminent threat to health or safety, the enforcement of criminal laws, national security, or pursuant to an international trade agreement. This section also provides that an agency may finalize a significant regulatory action if the Administrator of the Office of Information

²² Alisa Roth, *What's a realistic 'normal' unemployment rate?*, Marketplace, Nov. 24, 2010.

²³ Economic News Release, *The Employment Situation—April 2012*, Bureau of Labor Statistics, May 4, 2012.

²⁴ Mark Memmott, *Just 120,000 Jobs Added, But Jobless Rate Dips to 8.2 Percent*, NPR, Apr. 6, 2012.

and Regulatory Affairs (OIRA) determines that the significant regulatory action is deregulatory in nature.

Section 4. Determination of major guidance

This section provides that before an agency issues guidance it must first submit it to the OIRA Administrator, who shall determine whether the guidance is major guidance.

Section 5. Judicial review

This section provides that the bill shall be subject to judicial review.

Section 6. Definitions

This section provides that a significant regulatory action is a major rule or guidance that the OIRA Administrator finds is likely to result in the following:

- (A) an annual effect on the economy of \$100,000,000 or more;
- (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

This section defines agency to include executive branch and independent agencies. Exempted from the definition are the Federal Election Commission, the Federal Reserve, the Federal Deposit Insurance Corporation, and the United States Postal Service.

EXPLANATION OF AMENDMENTS

An amendment in the nature of a substitute (ANS) offered by Chairman Issa was adopted. The provisions of the ANS are described in the section-by-section.

Two additional amendments to the ANS were adopted. An amendment by Mr. Yarmuth was adopted by voice vote to exempt from the moratorium final significant regulatory actions by the Department of Defense and the Department of Veterans Affairs that affect the health or safety of members of the Armed Forces or veterans. Another amendment, by Ms. Maloney, was adopted by voice vote to exempt a final significant regulatory action if such action establishes or enforces any statutory rights against discrimination on the basis of age, race, religion, gender, national origin, or handicapped or disabled status, unless such action establishes, leads to, or otherwise relies on the use of a quota or preference based on age, race, religion, gender, national origin, or handicapped or disability status. The Committee intends this amendment to encompass regulatory actions that enforce existing statutory rights against discrimination concerning pay disparities, retaliatory discharge, hostile work environments, sexual harassment, voting rights, or access to education.

COMMITTEE CONSIDERATION

On April 26, 2012, the Committee met in open session and ordered reported favorably the bill, H.R. 4078, as amended, by a roll call vote of 21–16, a quorum being present.

ROLLCALL VOTES

1. Mr. Cummings offered an amendment to the Issa ANS regarding exception for the health or safety of children. The amendment was defeated by a recorded vote of 16 Yeas to 20 Nays.

Yeas: Cummings, Towns, Norton, Kucinich, Tierney, Clay, Lynch, Cooper, Connolly, Quigley, Davis, Braley, Welch, Yarmuth, Murphy and Speier.

Nays: Issa, Burton, Turner, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

2. Mr. Kucinich offered an amendment to the ANS regarding exception for limiting oil speculation. The amendment was defeated by a recorded vote of 16 Yeas to 20 Nays.

Yeas: Cummings, Towns, Norton, Kucinich, Tierney, Clay, Lynch, Cooper, Connolly, Quigley, Davis, Braley, Welch, Yarmuth, Murphy and Speier.

Nays: Issa, Burton, Turner, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

3. The bill, H.R. 4078, was ordered reported favorably to the House, as amended, by a recorded vote of 21 Yeas to 16 Nays.

Yeas: Issa, Burton, Mica, Turner, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

Nays: Cummings, Towns, Norton, Kucinich, Tierney, Clay, Lynch, Cooper, Connolly, Quigley, Davis, Braley, Welch, Yarmuth, Murphy and Speier.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill establishes a moratorium on the finalizing of significant regulatory actions for a period of two years. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 4078 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4078. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4078 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 2012.

Hon. DARRELL ISSA,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4078, the Regulatory Freeze for Jobs Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Anders.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 4078—Regulatory Freeze for Jobs Act of 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.²⁵

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 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 pro-

¹H.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.

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

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

vided 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.

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.

MINORITY VIEWS

H.R. 4078, the Regulatory Freeze for Jobs Act of 2012, is based on the false premise that business investment and hiring is being held back by uncertainty over future regulations. The bill disregards evidence from economists on both sides of the political spectrum that regulations do not negatively impact the economy or job growth.¹

Supporters of this bill argue that regulation is impeding job creation and injuring small businesses, but small businesses have directly disputed this premise. Recent surveys by the American Sustainable Business Council, the Main Street Alliance, and the Small Business Majority show that the vast majority of small business owners believe weak demand is the primary problem their businesses currently face.²

The regulatory moratorium included in this legislation is misguided and will produce terrible results for the American people. As Cass Sunstein stated at an Oversight Committee hearing last September:

A moratorium would not be a scalpel or a machete, it would be more like a nuclear bomb, in the sense that it would prevent regulations that . . . cost very little, and have very significant economic or public health benefits.³

The Congressional Budget Office (CBO) has found that the bill would freeze routine updates to government programs. For example, payment rates for services provided by hospitals, physicians, and Medicare providers would be frozen at current levels, interfering with access to quality healthcare for seniors.

Although the Committee has held more than 20 hearings on regulations so far this Congress, the majority has emphasized the costs of regulation while disregarding the much more significant

¹See, e.g., Economic Policy Institute, *Regulatory Uncertainty: A Phony Explanation for Our Jobs Problem* (Sept. 27, 2011) (online at www.epi.org/publication/regulatory-uncertainty-phony-explanation/); House Committee on Education and Workforce, Testimony of Jared Bernstein, *Hearing on Expanding Opportunities for Job Creation*, 112th Cong. (Feb. 1, 2012) (citing evidence that it is weak demand rather than regulation that is preventing faster job creation.); *Misrepresentations, Regulations and Jobs*, New York Times (Oct. 4, 2011) (“regulatory uncertainty is a canard invented by Republicans that allows them to use current economic problems to pursue an agenda supported by the business community year in and year out”) (online at www.economix.blogs.nytimes.com/2011/10/04/regulation-and-unemployment/?smid=tw-nytimes&seid=auto).

²House Committee on the Judiciary, Subcommittee on Courts, Commercial and Administrative Law Written Testimony of Robert Weissman, President, Public Citizen, *Hearing on H.R. 4078, the Regulatory Freeze for Jobs Act of 2012* (Feb. 27, 2012).

³Senate Committee on the Budget, Testimony of Douglas Elmendorf, Congressional Budget Office, *Hearing on Policies for Increasing Economic Growth and Employment in 2012 and 2013*, 112th Cong. (Nov. 15, 2011) (online at budget.senate.gov/democratic/index.cfm/files/serve?File_id=795c2267-9349-4c2c-a488-262dfd346a2c).

benefits that have resulted from all major rules issued over the past ten years.⁴

Freezing all significant regulatory activity would do great harm to our economy and the health and safety of millions of Americans. It is critical that agencies have the ability to issue protections that carry out the laws Congress passes. Regulations save lives, protect the health and safety of hundreds of millions of Americans, and provide protections that are critical to the functioning of a healthy economy.

ELIJAH E. CUMMINGS,
Ranking Member.



⁴Office of Management and Budget, *2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (June 24, 2011) (online at www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf).