# CONGRESSIONAL BUDGET OFFICE
# COST ESTIMATE

November 17, 2011

## H.R. 10
## Regulations From the Executive in Need of Scrutiny Act of 2011

*As ordered reported by the House Committee on Rules on November 16, 2011*

### SUMMARY

Under current law, the Congress can prevent a rule from taking effect by enacting a *joint resolution of disapproval*. In contrast, H.R. 10 would require enactment of a *joint resolution of approval* prior to any major rule taking effect. Therefore, H.R. 10 would make major regulations dependent on future legislation.

About 80 major rules have been issued per year, on average, over the past five years. Major rules vary greatly in their nature and scope. CBO and the staff of the Joint Committee on Taxation (JCT) cannot determine the budgetary effects of preventing all future major rules from going into effect, but we expect that enacting H.R. 10 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. 10 would not have any significant impact on spending subject to appropriation.

CBO expects that H.R. 10 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

### ESTIMATED COST TO THE FEDERAL GOVERNMENT

#### Background

The Congressional Review Act (CRA) of 1996 requires federal agencies to submit final rules to Congress and the Comptroller General before they may take effect. Final rules may only be annulled by Congress if a joint resolution of disapproval is enacted into law. H.R. 10 would amend current law by requiring Congress to enact a joint resolution of approval before any major rule may take effect. The definition of a major rule, which was originally set by the CRA and is left unchanged by H.R. 10, is any rule that the Office of Management and Budget determines would have:

- 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]

H.R. 10 specifies special Congressional procedures and explicit timelines for enacting a joint resolution of approval for major rules. Under H.R. 10, if the Congress fails to enact a joint resolution of approval within 70 legislative (or session) days of receiving the major rule and accompanying report from a federal agency, the rule may not take effect. Further, the Congress may not reconsider a joint resolution of approval relating to that rule in the same Congress. However, a major rule may take effect for one 90-calendar-day period without Congressional approval if the President determines via an executive order that the major rule is necessary for one of four reasons. These reasons are: to respond to an imminent threat to health or safety, to enforce criminal laws, to protect national security, or to implement an international trade agreement.

Since 1997, which was the first full calendar year following the enactment of the CRA, federal agencies have published 50 or more major rules each year. One hundred major rules were issued in 2010, and 79 major rules have been issued, on average, over the past five full calendar years. Fifty major rules have been issued so far in 2011 (as of November 8, 2011). Major rules vary greatly in scope and in their effect on the federal budget. For example, major rules issued 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.[2]

In general, most major rules with budgetary effects are issued to implement current law; therefore, the budgetary effects of such anticipated rules are reflected in CBO's baseline projections. For example, routine annual rules establish new payment rates for a variety of Medicare services. Such updated payment rates reflect changes in the price indices specified to be used for those services by current law; the result is often an increase in payment rates and thus an increase in spending.

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1. See 5 USC § 804(2).

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

If H.R. 10 is enacted, baseline projections would no longer reflect the budgetary impact of major rules. Accordingly, if the Congress later considers a joint resolution of approval for a major rule, the estimated budgetary effect of that resolution would include the cost or savings of implementing that rule. For example, if H.R. 10 is enacted, baseline projections would no longer assume that payment rates for Medicare providers would rise over time without Congressional action. As a result, a Congressional resolution of approval for a major rule raising such rates would be estimated as having a cost to reflect those higher rates.

**Impact on Federal Spending and Revenues**

**Direct Spending.** H.R. 10 would prevent all major rules from taking effect unless subsequent legislation is enacted. Therefore, in assessing the budgetary effects of H.R. 10, CBO considered the costs and savings that would be realized if anticipated major rules do not take effect. Preventing some major rules from taking effect would result in costs, while preventing others would result in savings. CBO expects that the rules with the largest effects on federal spending will be those related to federal health programs, particularly Medicare, and that enacting H.R. 10 would significantly reduce Medicare spending relative to current law.

On net, CBO estimates that enacting H.R. 10 would result in savings for direct spending over the 2012-2021 period. Such budgetary effects would largely be driven by:
(1) preventing annual updates to payment schedules for provision of Medicare services and other routine revisions to aspects of selected government programs; and
(2) significantly altering the implementation of legislation with substantial budget effects.

Many routine major rules are health-related and in particular pertain to Medicare. Some examples include rules that establish annual increases in payment rates for services provided by hospitals, physicians, and other Medicare providers. Enacting H.R. 10 would freeze payment structures for those providers at current levels, which would, on net, result in hundreds of billions of dollars in savings over the 2012-2021 period. Preventing some major rules from taking effect would result in an increase in direct spending (from an increase in spending or from a reduction in offsetting receipts). For example, preventing annual increases in premiums paid by beneficiaries for Medicare Part B would reduce premium collections, and preventing scheduled reductions in payments for hospitals that serve a disproportionate share of low-income patients under the Medicaid program would increase costs relative to current law. However, CBO estimates that overall savings would likely offset those costs by a substantial amount.

Enacting H.R. 10 would also affect the implementation of significant legislation for which final rules have not been issued. For example, H.R. 10 would make some major rules related to implementing the Patient Protection and Affordable Care Act (PPACA, Public Law 111-148) subject to a joint resolution of approval because a number of rules have not yet taken effect. Many of these rules relate to health insurance exchanges, which will become operational in 2014 under current law. Preventing rules governing exchanges from taking effect would, at a minimum, delay implementation of health insurance exchanges, which would in turn result in significant savings.

**Revenues.** Enacting H.R. 10 would also affect revenues, and JCT expects that preventing regulations from going into effect 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 Future Legislation

If H.R. 10 is enacted, the budgetary effect of any joint resolution of approval for a major rule would include any direct spending and revenue effects of implementing that rule. Further, for future legislation whose implementation would be contingent upon the promulgation of major rules, CBO would estimate the budgetary effects assuming those major rules did not take effect. The costs or savings associated with those major rules would instead be estimated and counted for budget enforcement purposes at the time that joint resolutions to approve those major rules were being considered.

## 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. 10 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 H.R. 10 would impose no intergovernmental or private-sector mandates as defined in UMRA. By requiring major rules to be approved by a joint resolution of Congress and potentially delaying or halting the implementation of those rules, the bill could affect public or private entities in a number of ways, including slowing reimbursements and eliminating or changing regulatory requirements. While the costs and savings tied to those individual effects could be significant, 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 affected.

## PREVIOUS CBO ESTIMATE

On November 9, 2011, CBO transmitted a cost estimate for H.R. 10, as ordered reported by the House Committee on the Judiciary on October 25, 2011. The Rules Committee's version of H.R. 10 is similar to the Judiciary Committee's version and would have the same budgetary effects. The two versions of the bill are slightly different in that the Rules Committee version would establish somewhat different expedited procedures for Congressional approval of major rules. However, those changes in the bill do not affect CBO's and JCT's assessment of the budgetary effects.

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