CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 20, 2012

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

As ordered reported by the House Committee on the Judiciary on March 20, 2012

SUMMARY

H.R. 4078 would prohibit federal agencies from taking most significant regulatory actions until the unemployment rate falls to 6 percent or less. 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 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 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 significant regulatory actions until the average of monthly unemployment rates for any calendar quarter is 6 percent or less. H.R. 4078 would allow exemptions for certain significant regulatory actions if the President determines via an executive order that the action is 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.

Further, under the bill, the Congress would have to expeditiously consider and act on any additional waivers the President requests for significant regulatory actions that do not meet one of the four criteria listed above. If an agency were to pursue a 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 defines a *significant regulatory action* as any federal regulatory action that is likely to result in a rule or guidance that may:

- Have an annual cost to the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, small entities, or state, local, or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- Raise novel legal or policy issues.

The term significant regulatory action was originally defined in 1993 by Executive Order 12866, and is used to determine whether a regulatory action is subject to regulatory review by the Office of Information and Regulatory Affairs (OIRA).[1] H.R. 4078 largely uses the same definition established by that executive order, but expands the scope to include guidance as well as rulemaking, and also to include independent regulatory agencies.[2]

Looking to recent regulatory actions as a way to estimate the number of future regulatory actions that would be affected by H.R. 4078 is uncertain because agencies can change course following the enactment of the bill. However, historical data shows that OIRA reviewed 740 significant regulatory actions in 2011 and 657, on average, over the past five calendar years.[3] Examples of those regulatory actions in 2011 include: required warnings for cigarette packages and advertisements, Medicare payment rates for inpatient

1. See http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf, pg. 4.

2. In addition, the definition of significant regulatory action in Executive Order 12866 applies to regulatory actions that have an annual *effect* on the economy of $100 million or more, whereas H.R. 4078 applies to regulatory actions that have an annual *cost* to the economy of $100 million or more. However, a regulatory action that saves $100 million or more would likely still be classified as a significant regulatory action under H.R. 4078 because such actions are likely to fall under the other clauses of the bill's definition as described above.

3. See http://www.reginfo.gov/public/do/eoCountsSearchInit?action=init. The number of significant regulatory actions under H.R. 4078 in a given year may exceed the number reviewed by OIRA because, unlike Executive Order 12866, H.R. 4078 applies to guidance and independent regulatory agencies.

psychiatric facilities, and national emission standards for hazardous air pollutants from industrial, commercial and institutional boilers.

H.R. 4078 would delay significant regulatory actions until the average of monthly unemployment rates for any quarter is 6.0 percent or lower. Under CBO's most recent economic forecast, the unemployment rate is expected to remain elevated for at least the next few years; in those projections the unemployment rate would remain above 6.0 percent until late 2016.[4] However, many developments could cause economic outcomes to differ substantially, in one direction or the other. For example, the economy could grow more rapidly—or more slowly—with a consequent acceleration (or reduction) in the pace of employment. Furthermore, changes in fiscal policy that diverge from the path assumed in CBO's baseline could have a significant impact on economic growth and, by extension, the unemployment rate.

Impact on Direct Spending

The budgetary consequences of preventing significant regulatory action also 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 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, (2) preventing payment rate reductions scheduled to take place under the Medicare physician fee schedule, and (3) altering the implementation of new federal programs with substantial budget effects.

Routine Updates to Government Programs. Many routine significant regulatory actions 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 may also be temporarily frozen under the bill. CBO cannot estimate the net impact of all such changes.

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

Many programs, like 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 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 program while the moratorium was in effect.

Delay Implementation of Legislation. Enacting H.R. 4078 may also affect the implementation of new laws. 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.

This bill also could delay the implementation of new initiatives aimed at making more electromagnetic spectrum available for wireless services. As required by title VI of the Middle Class Tax Relief and Job Creation Act of 2012, the Federal Communications Commission (FCC) is developing proposed rules for what are known as "incentive auctions," for private firms to voluntarily relinquish some or all of their existing spectrum rights in exchange for a payment from the FCC. That spectrum would then be available for new licensed uses. Provisions in that act regarding the use of spectrum by federal agencies and the development of a wireless network for public safety users are being implemented by the Department of Commerce. A delay in the implementation of those programs would increase net direct spending (by reducing expected auction receipts) by several billion dollars over the 2013-2022 period, relative to current law.

Impact on Revenues

Enacting H.R. 4078 also would affect revenues, and JCT expects that delaying 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.

Enacting H.R. 4078 would also directly affect revenues through the operations of the Federal Reserve, which remits its net earnings to the Treasury; those remittances are classified as revenues in the federal budget. H.R. 4078 would prevent the Federal Reserve from writing rules and regulations to implement enacted legislation or to change any such rules and regulations currently in place if the rules or regulations would be considered significant regulatory action. The bill also would limit the ability of the Federal Reserve to conduct monetary policy because some parameters, such as the discount rate and the interest rate paid on reserves, are specified in regulations. However, H.R. 4078 probably would have no effect on the Federal Reserve's purchases and sales of securities. Preventing some rules and regulations from going into effect could reduce Federal Reserve remittances in some cases and increase remittances in other cases. CBO 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 while the unemployment rate exceeds 6 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 H.R. 4078 would impose no intergovernmental or private-sector mandates as defined in UMRA. By delaying significant regulatory actions, 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.

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