



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

February 8, 2018

S. 951 **Regulatory Accountability Act of 2017**

*As ordered reported by the Senate Committee on Homeland Security
and Governmental Affairs on May 17, 2017*

SUMMARY

S. 951 would amend the Administrative Procedures Act (APA), which governs the way that government agencies propose and establish federal regulations. Enacting the bill would codify some current practices under executive orders that aim at increasing transparency. However, S. 951 also would impose new requirements concerning agencies' issuance of rules that have an estimated economic effect of \$100 million or more annually. S. 951 also would make some existing requirements under executive orders apply to independent regulatory agencies that currently are exempt from those orders.

CBO estimates that implementing S. 951 would have a net cost of about \$55 million over the 2018-2022 period, assuming appropriation of the necessary funds. That amount would pay for the work of additional agency personnel and contractors and would cover other administrative expenses.

CBO expects that enacting S. 951 could delay the issuance and change the content of some final rules each year. As a result, CBO and the staff of the Joint Committee on Taxation (JCT) expect that enacting S. 951 could affect both direct spending and revenues. In addition, enacting the bill would affect direct spending of agencies that are not funded by annual appropriations (such as the Consumer Financial Protection Bureau, or CFPB). Therefore, pay-as-you-go procedures apply. However, given the large number of rules issued each year and the variations in their nature and scope, CBO cannot estimate whether delaying some rules or changing their content would result in costs or savings.

CBO cannot determine whether enacting S. 951 would increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

S. 951 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of S. 951 is shown in the following table. The costs of this legislation fall within all budget functions that include agencies that issue regulations.

	By Fiscal Year, in Millions of Dollars ^a					2018- 2022
	2018	2019	2020	2021	2022	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	0	15	15	15	15	60
Estimated Outlays	0	10	15	15	15	55

a. Enacting S. 951 also would affect direct spending and revenues, but CBO and staff of the Joint Committee on Taxation cannot determine the magnitude of those costs or savings.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the legislation will be enacted before the end of 2018 and that the necessary amounts will be appropriated near the start of each fiscal year. Estimated spending is based on historical patterns for similar activities.

Background

CBO is unaware of any comprehensive information on the current governmentwide cost of rulemaking. However, according to the Congressional Research Service, federal agencies issue between 2,500 and 4,500 final rules each year. Over the past five years, the Department of Health and Human Services, the Department of the Interior, and the Securities and Exchange Commission have issued the largest numbers of major rules (those with an estimated economic impact of \$100 million or more per year).

S. 951 would amend the APA to codify certain practices currently required under Executive Orders 12866 and 13563, among others. Those instructions require executive branch agencies to analyze the economic effects of proposed rules (including costs and

benefits), to coordinate with the Office of Information and Regulatory Affairs (OIRA) during the rulemaking process, and to perform other activities and analyses related to the process. The legislation would define several terms, including *major rule*, *major guidance*, and *high-impact rule*.

The bill defines major rule as any rule that OIRA determines is likely to impose:

- An annual effect on the economy of \$100 million or more, adjusted for inflation;
- A major increase in costs or prices for consumers, individual industries, federal, state, local, or tribal government agencies or geographic regions; or
- Significant adverse effects on competition, employment, investment, or productivity innovation or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic and export markets.

The bill defines major guidance to incorporate the same criteria used for a major rule, but as applied to agency guidance documents. A high-impact rule would be any rule that OIRA determines is likely to impose an annual effect on the economy of \$1 billion or more. That threshold would be adjusted every five years for inflation.

Enacting S. 951 also would add several new requirements that would broadly change the rulemaking process under the APA. For all major and high-impact rules, agencies would be required to:

- Publish a notice of the initiation of a rulemaking;
- Establish and continuously update a timetable for the rulemaking;
- Evaluate the costs and benefits of three alternatives;
- Conduct risk assessments;
- Accept public comments on the proposed rule for 90 days (rather than 60 days, as typically is the case under executive orders and current law);
- Permit members of the public to petition the rulemaking agency for a hearing on certain major and high-impact rules;

- Place all information used in the adoption of a final rule in a docket that is accessible to the public; and
- In the notice of final rulemaking, respond to significant issues raised during the public comment period.

After adoption of a final rule, agencies would be required to conduct ongoing assessments to determine whether a rule accomplishes its regulatory objectives.

Spending Subject to Appropriation

CBO contacted several agencies to determine whether or how the legislation would affect rulemaking procedures and costs. The extent to which S. 951 would impose new requirements on individual agencies depends in part on whether an agency's rulemaking process is governed by laws beyond the APA. (For example, the Toxic Substances Control Act requires the Environmental Protection Agency to consider the costs and benefits of each proposed rule and to present at least one alternative.) Although some agencies may already be conducting the activities that would be required by the bill, others would face a larger increase in workload and higher administrative costs. Those costs also would depend on the number of major and high-impact rules an agency issues each year. CBO estimates that the administrative costs to comply with S. 951 would vary by agency. In total, CBO estimates that implementing S. 951 would cost \$15 million annually, assuming appropriation of the necessary funds. CBO estimates that level of effort would be reached in about two years.

CBO anticipates that additional federal employees and contractors would be needed to undertake cost-benefit analyses, complete risk assessments, respond to public comments, conduct post-rulemaking assessments, and perform other administrative tasks required by the bill. Using information from several agencies, CBO estimates that the government would spend about \$13 million annually to meet the bill's requirements. Of the 22 agencies that have issued major rules over the last 5 years, CBO expects that half of them would need an average of 5 to 10 additional people at an average annual cost of \$150,000—or about \$1 million annually to implement the bill. CBO estimates that the remaining agencies would spend less than \$500,000 a year to implement the bill.

By subjecting independent regulatory agencies to the requirements followed by executive branch agencies, the bill also would expand OIRA's consultation and oversight duties, thus requiring additional staff. Using information from OIRA, CBO estimates that the resulting cost to the agency would be \$2 million per year for 10 to 15 new staff.

Direct Spending

CBO expects independent regulatory agencies would face an increased workload associated with rulemaking. Enacting S. 951 would affect the direct spending of several agencies not funded through annual appropriations; including the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, and the Office of Financial Research. Those agencies collect premiums and fees to support administrative expenses; therefore, CBO estimates that the net effect on spending for those agencies would be negligible. However, CBO estimates that implementing S. 951 could increase direct spending by the CFPB; that spending would not be offset by any premiums or fees.

CBO expects that enacting S. 951 could delay some major and high-impact rules from taking effect each year. Therefore, in assessing the budgetary effects of S. 951, CBO considered the costs or savings that might be realized if anticipated rules were delayed or modified. Delaying issuance of some major or high-impact rules, which would delay when they take effect, could result in costs; delaying others could result in savings.

CBO expects that the rules with the largest effects on federal spending would be related to federal health programs, particularly Medicare. Such budgetary effects would largely be driven by delaying annual updates to payment schedules for providing Medicare services and other routine revisions to other government programs. Thus, enacting S. 951 could significantly affect Medicare spending relative to current law. However, CBO cannot estimate the magnitude of any costs or savings in direct spending over the 2018-2027 period from enacting S. 951. If delaying a Medicare rule increased or decreased costs by 1 percent a year, the total budgetary effects could be tens of billions of dollars over the 2018-2027 period.

Revenues

CBO expects that under S. 951, the Federal Reserve could incur additional administrative costs to conduct some types of rulemaking, although any rulemaking by the Federal Reserve concerning monetary policy would be exempt. Such costs are treated as reductions in remittances to the Treasury, which are recorded in the budget as reductions in revenues.

CBO expects that enacting the bill also would affect revenues by changing the way that the Internal Revenue Service issues guidance and by slowing rulemaking generally. JCT expects that those delays would reduce revenue collections in some cases and increase them in others. However, JCT cannot estimate the magnitude of any costs or savings from those possible effects.

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 S. 951 because enacting the legislation would affect direct spending and revenues. However, CBO and JCT cannot determine the size of the costs or savings associated with those effects.

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO cannot determine whether enacting S. 951 would increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

MANDATES

CBO expects that S. 951 would impose no intergovernmental or private-sector mandates as defined in UMRA. By potentially delaying federal rules, the bill could affect public or private entities in other ways, for example, by slowing reimbursements or delaying the implementation of regulatory requirements. The costs and savings associated with such effects could be significant, but CBO has no basis for estimating them because CBO cannot predict the number or nature of regulations that could be delayed.

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