CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 14, 2017

S. 21
Regulations from the Executive in Need of Scrutiny Act of 2017

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

SUMMARY

Under current law, a final federal rule can take effect unless the Congress enacts a joint resolution of *disapproval*. In contrast, S. 21 would require the Congress to enact a joint resolution of *approval* before any major rule could take effect. Thus under S. 21 new major regulations would depend on future legislation.

CBO and the staff of the Joint Committee on Taxation (JCT) cannot determine the budgetary effect of making all future major rules subject to Congressional approval, but we expect that, in the absence of subsequent legislative action affecting those rules, enacting S. 21 would have significant effects on both direct spending and revenues. Pay-as-you-go procedures apply because enacting S. 21 would affect direct spending and revenues.

CBO cannot determine whether enacting S. 21 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.

CBO expects that implementing S. 21 also could have a significant impact on spending subject to appropriation, although we cannot determine the magnitude of that effect.

CBO expects that S. 21 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 the Congress and the Comptroller General before they may take effect. Final rules may be annulled by the Congress if a joint resolution of disapproval is enacted into law. S. 21 would amend current law to require instead that the Congress enact a joint resolution of approval before any major rule may take effect, thereby making implementation of major rules contingent on future Congressional action.

The CRA defines a major rule as one that the Office of Management and Budget (OMB) finds has resulted in or 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 U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.[1]

S. 21 would establish special Congressional procedures and explicit timelines for enacting a joint resolution of approval for major rules. Under the bill, if a joint resolution of approval is not enacted within 70 legislative (or session) days of the Congress receiving the major rule and an accompanying report from a federal agency, the rule would not take effect. Further, the Congress could not reconsider a joint resolution of approval relating to that rule in the same Congress. However, a major rule could take effect for one 90-calendar-day period without Congressional approval if the President determines, via an executive order, that it was 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.

Historical data show that federal agencies published 117 major rules in 2016, and 84 major rules, on average, over the past five calendar years.[2] Major rules published in recent years include ones that established standards for the reliability of critical infrastructure, set Medicare payment rates for inpatient psychiatric facilities, and established national ambient air quality standards for ozone pollution. However, looking to recent major rules as a way to estimate the number or scope of future major rules that would be affected by S. 21 may not be a good guide to what would happen under the bill because agencies might change course if the bill was enacted.

Because major rules are issued to implement current law, the budgetary effects of anticipated rules are reflected in CBO's baseline projections. For example, annual rules establish new payment rates for a variety of Medicare services that reflect changes in the

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1. See 5 USC § 804(2).

2. GAO Federal Rules Database, www.gao.gov/legal/congressional-review-act.

price indices used for those services under current law. Those rules often result in an increase in payment rates and thus an increase in spending, which are incorporated in the baseline.

Under the Deficit Control Act, which governs the contents of the baseline, actions that are contingent on future Congressional action are generally not included in CBO's projections. S. 21 would amend that Act to require that CBO continue to assume that any planned major rule will go into effect, unless the rule has already been promulgated and the Congress has not enacted a resolution of approval within the specified 70-day period. (Without that provision amending the Deficit Control Act, S. 21 would result in baseline projections that did not reflect the budgetary impact of major rules.)

Under S. 21, CBO's baseline projections would continue to include the budgetary impact of major rules even though future Congressional action would be necessary to approve them. For example, if S. 21 is enacted, baseline projections would continue to reflect the assumption that payment rates and related federal spending for Medicare providers would rise over time, even though raising those rates would require future Congressional action. Accordingly, a Congressional resolution of approval for a major rule raising such rates would be estimated as having no cost relative to CBO's baseline projections. (CBO's subsequent baseline projections would be updated to exclude the budgetary impact of the proposed rule if it is not approved.)

Impact on Direct Spending

To assess the budgetary effects of S. 21, CBO considered the costs and savings that would be realized if anticipated major rules do not take effect. The consequences would vary tremendously because the budgetary impact of different rules varies considerably.

Preventing some major rules from taking effect would result in costs to the federal government, while preventing others would result in savings. On net, CBO estimates that enacting S. 21 would probably have a significant effect on direct spending (more than $500,000), but we cannot determine the magnitude or sign of those changes for any year or over time.

Many major rules that occur routinely under current law are related to the government's health care programs, in particular Medicare. For example, some rules establish annual updates to payment rates for services provided by hospitals, physicians, and other Medicare providers. Enacting S. 21 would freeze payment structures for those providers at current levels pending future Congressional actions. Similarly, payment rates (such as the annual benefit amount for each individual) under some other federal programs might also be frozen under the bill in the absence of future Congressional actions. CBO cannot estimate the net impact of all such changes.

Impact on Revenues

Enacting S. 21 would also affect tax 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 Spending Subject to Appropriation

S. 21 also would affect programs funded through the annual appropriation process. However, CBO cannot determine the magnitude of such effects. For example, if the major rules issued by the Environmental Protection Agency could not take effect, spending by the agency would decline, assuming future appropriations were reduced accordingly.

The legislation also would require the Government Accountability Office (GAO) to prepare a study on the rules and their economic cost. Based on information from agencies and on similar GAO reports, CBO estimates that completing the study would cost less than $500,000 over the next few years.

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. 21 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 S. 21 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. Although 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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