H. R. 4078

[Report No. 112–461, Parts I and II]

To provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 6.0 percent.

IN THE HOUSE OF REPRESENTATIVES

February 17, 2012

Mr. Griffin of Arkansas (for himself, Mr. Smith of Texas, Mr. Coble, Mr. Gallegly, Mr. Chabot, Mr. Franks of Arizona, Mr. Poe of Texas, Mr. Chaffetz, Mr. Marino, Mr. Gowdy, Mr. Ross of Florida, Mrs. Adams, Mr. Quayle, Mr. Amodei, and Mr. Carter) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

April 27, 2012

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

July 20, 2012

Additional sponsors: Mr. Goodlatte, Mr. Forbes, Mr. Schweikert, Mr. Duncan of South Carolina, Mr. Miller of Florida, and Mrs. Black
A BILL

To provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 6.0 percent.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

In this Act—

(1) the terms “agency” and “rule” have the
meanings given such terms under section 551 of title
5, United States Code;

(2) the term “regulatory action” means any sub-
stantive action by an agency that promulgates or is
expected to lead to the promulgation of a final rule
or regulation, including notices of inquiry, advance
notices of proposed rulemaking, and notices of pro-
posed rulemaking, but not including any substantive
action by an agency for repealing a rule;

(3) the term “significant regulatory action”
means any regulatory action that is likely to result
in a rule or guidance that may—

(A) have an annual cost to the economy of
$100,000,000 or more or adversely affect in a
material way the economy, a sector of the econ-
omy, productivity, competition, jobs, the environ-
ment, public health or safety, small entities, or
State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raise novel legal or policy issues; and

(4) the term “small entities” has the meaning given such term under section 601(6) of title 5, United States Code.

SEC. 3. SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—No agency may take any significant regulatory action during the period beginning on the date of enactment of this Act and ending on the date that the Secretary of Labor submits the report under subsection (b).

(b) DETERMINATION.—The Secretary of Labor shall submit a report to the Director of the Office of Management and Budget whenever the Secretary determines that the Bureau of Labor Statistics average of monthly unemployment rates for any quarter beginning after the date of enactment of this Act is equal to or less than 6.0 percent.
SEC. 4. WAIVERS.

(a) In General.—Notwithstanding any other provision of this Act, an agency may take a significant regulatory action only in accordance with either subsection (b) or subsection (c) during the period described in section 3(a).

(b) Presidential Waiver.—An agency may take a significant regulatory action if the President determines by Executive order that the 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) Congressional Waivers.—

(1) Submission.—For any significant regulatory action not eligible for a Presidential waiver pursuant to subsection (b), the President may submit a written request to Congress for a waiver of the application of section 3 to the significant regulatory action.

(2) Contents.—A submission by the President under this subsection shall—
(A) identify the significant regulatory action and the scope of the requested waiver;
(B) give all reasons why the significant regulatory action is necessary to protect the public health, safety, or welfare; and
(C) explain why the significant regulatory action is ineligible for a Presidential waiver pursuant to subsection (b).

(3) CONGRESSIONAL ACTION.—Congress shall give expeditious consideration and take appropriate legislative action with respect to any submission by the President under this subsection.

SEC. 5. JUDICIAL REVIEW.

(a) REVIEW.—Any party adversely affected or aggrieved by any 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 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 significant regulatory action to the agency and enjoining the application or enforcement of that significant regulatory action, 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 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) Definition.—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.

SECTION 1. SHORT TITLE.

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

SEC. 2. MORATORIUM ON FINAL SIGIFICANT 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 signifi-
cant regulatory action is—

(1) necessary because of an imminent
threat to health or safety or other emer-
gency;

(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 im-
plementing an international trade agree-
ment.

(c) DEREGULATORY EXCEPTION.—An agency
may take a final significant regulatory action
if the Administrator of the Office of Informa-
tion 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 DE-
FENSE AND THE DEPARTMENT OF VETERANS AF-
FAIRS.—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.
(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 pro-
tect 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 sub-
stantially prevailing small business in any civil action arising under this Act. A small business may qualify as substantially pre-
vailing even without obtaining a final judg-
ment 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 pro-
vision 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 sec-
tion, the term “small business” means any business, including an unincorporated busi-
ness 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.”.
A BILL

To provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 6.0 percent.

JULY 20, 2012

Reported from the Committee on Oversight and Government Reform with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.