

MIDNIGHT RULE RELIEF ACT OF 2016

JUNE 10, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4612]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4612) to ensure economic stability, accountability, and efficiency of Federal Government operations by establishing a moratorium on midnight rules during a President's final days in office, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## COMMITTEE STATEMENT AND VIEWS

## PURPOSE AND SUMMARY

H.R. 4612, the Midnight Rule Relief Act of 2016, prohibits federal agencies from proposing or finalizing significant rules during a moratorium period that falls between the day after a presidential election and Inauguration Day in years when the serving president will leave office on Inauguration Day. The legislation is designed to ensure economic stability and the accountability and efficiency of federal government operations during an outgoing president's final days in office.

## BACKGROUND AND NEED FOR LEGISLATION

Outgoing presidents, whether they have termed out or lost reelection, have a clear incentive to work to shore up their "legacy" by implementing aspects of their agenda during their last few months in office. This incentive grows even stronger in the period between the election and inauguration of a new president. Outgoing presidents are free from the shackles of public opinion, making it tempting to issue rules that would have been too controversial to finalize before the election.

Research has shown that since 1948 when control of the White House switched to the opposite party, an average of 17 percent more rules were promulgated between Election Day and Inauguration Day compared to non-presidential election years.<sup>1</sup> This trend in "midnight rulemaking" has been more dramatic in more recent years, with the highest spikes occurring around the 1980, 1992, and 2000 elections.<sup>2</sup>

During the period between the election and inauguration of President George W. Bush, the outgoing Clinton Administration published 51 percent more pages of rules than it did during the average of the same period of the prior three years.<sup>3</sup> According to John Podesta, former chief of staff for President Bill Clinton, "starting in early 1999, [they] had people down in the White House basement with word processors and legal pads making lists of things [they] wanted to get done before [they] left."<sup>4</sup>

For example, on October 5, 2000, the Clinton Administration issued a proposed rule on residential clothes washers—mandating stores sell government-approved washing machines considered to be "more efficient."<sup>5</sup> Then, just three months later, and eight days before the end of his term, the final rule was published on January 12, 2001.<sup>6</sup> The entire rulemaking process for this major rule took less time than the *comment period* alone for the Clean Power Plan,

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<sup>1</sup>Jerry Brito and Veronique De Rugy, For Whom the Bell Tolls: The Midnight Regulations Phenomenon, Mercatus Center George Mason University (December 2008).

<sup>2</sup>*Id.*

<sup>3</sup>Susan Dudley, "Reversing Midnight Regulations," Regulation Magazine, Spring 2001.

<sup>4</sup>Jerry Brito and Veronique De Rugy, For Whom the Bell Tolls: The Midnight Regulations Phenomenon, Mercatus Center George Mason University (December 2008).

<sup>5</sup>Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards, 65 Fed. Reg. 194 (proposed October 5, 2000).

<sup>6</sup>Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards, 66 Fed. Reg. 3314 (proposed January 12, 2001).

which lasted five and a half months alone—from June 18, 2014 to December 1, 2014.<sup>7</sup>

The surge in midnight rules can overwhelm the Office of Information and Regulatory Affairs (OIRA), the entity charged with reviewing the quality of proposed agency rules. This can result in rushed and flawed oversight, further undermining the quality of review for proposed rules. In fact, as a result of midnight rule-making, the average review time for midnight rules issued between 1994 and 2009 was approximately 25 days shorter than the review time of other rules.<sup>8</sup> Economists have found that as the length of OIRA review time decreases, the quality of the economic analysis to which rules are subject also decreases.<sup>9</sup>

Midnight rules can also serve as a significant distraction for incoming presidents. Rather than being able to focus on a successful transition into office, midnight rules can force a newly-elected president to redirect energy to stopping ongoing rulemaking and repealing rules that were rushed through after his or her election. In fact, this has become such a problem that every president since President Ronald Reagan taking over from a president of the opposite party has ordered a regulatory moratorium.<sup>10</sup> Unfortunately, while the actions of incoming presidents can allow for delays in implementation of final rules or stop rules that have yet to be published, they can do little to stop midnight rules in a timely fashion.

This bill would make sure presidents are prohibited from proposing or finalizing rules that are being rushed through the rule-making process. Importantly, this bill does not create a moratorium that is excessive in length of time—it creates a moratorium just from the day after Election Day to Inauguration Day, about 11 weeks, and no more frequently than once every four years. If there are rules nearing proposal or final issuing, a new president will be able to take prompt action to ensure they move forward. The Midnight Rule Relief Act of 2016 will ensure that the current Administration and future Administrations—of either party—have a system of checks and balances on its regulatory powers.

#### LEGISLATIVE HISTORY

H.R. 4612, the Midnight Rule Relief Act of 2016, was introduced on February 25, 2016, by Congressman Tim Walberg (R–MI) and referred to the Committee on Oversight and Government Reform. The bill was also referred to the Committee on the Judiciary. Also on February 25, 2016, Senator Joni Ernst (R–IA) introduced a Senate companion, S. 2582, which was referred to the Senate Committee on Homeland Security and Governmental Affairs. On March 1, 2016, the Committee on Oversight and Government Reform considered H.R. 4612 and ordered it to be favorably reported by a vote of 20 to 17.

<sup>7</sup> Fact Sheet: Clean Power Plan & Carbon Pollution Standards Key Dates, U.S. Environmental Protection Agency, <https://www.epa.gov/cleanpowerplan/fact-sheet-clean-power-plan-carbon-pollution-standards-key-dates>.

<sup>8</sup> Patrick McLaughlin & Jerry Ellig, *Does OIRA Review Improve the Quality of Regulatory Impact Analysis? Evidence from the Final Year of the Bush II Administration*, 63 Admin L. Rev. (Special Edition) 179 (2011).

<sup>9</sup> *Id.*

<sup>10</sup> Jerry Brito and Veronique De Rugy, *A Solution to the Midnight Regulation Outburst*, Mercatus Center George Mason University (December 2008).

In the 112th Congress, H.R. 4607, the Midnight Rule Relief Act of 2012, was introduced on April 24, 2012, by Representative Reid Ribble (R–WI) and referred to the Committee on Oversight and Government Reform. The bill was also referred to the Committee on the Judiciary. On April 25, 2012, Senator Ron Johnson (R–WI) introduced a Senate companion bill, S. 2368. On April 26, 2012, the Committee on Oversight and Government Reform considered H.R. 4607 and ordered it to be favorably reported, by voice vote.

In the 110th Congress, Representative Jerrold Nadler (D–NY) introduced H.R. 7296, the Midnight Rule Act, to delay the implementation of agency rules adopted within the final 90 days of the final term a president serves.

#### SECTION-BY-SECTION

##### *Section 1. Short title*

Designates the short title of the bill as the “Midnight Rule Relief Act of 2016”.

##### *Section 2. Moratorium on midnight rules*

Prohibits an agency from proposing or finalizing any midnight rule during the moratorium period unless the Administrator of the Office of Information and Regulatory Affairs finds that the midnight rule will not result in any of the following:

- (1) An annual effect on the economy of \$100,000,000 or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- (3) 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; or
- (4) A significant economic impact on a substantial number of small entities.

##### *Section 3. Special rule on statutory, regulatory, and judicial deadlines*

Exempts major rules that are to be proposed or finalized during the moratorium period pursuant to a pre-existing statutory or judicial deadline.

Requires the Administrator to publish the deadline(s) in the Federal Register no later than 30 days.

##### *Section 4. Exceptions*

Provides that an agency may propose or finalize a midnight rule if the President determines that it is necessary for the health, safety, or national security, of the United States.

This section also provides that an agency may propose or finalize a midnight rule if the Administrator determines that the midnight rule is deregulatory in nature.“

##### *Section 5. Definitions*

Defines “Administrator” as the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

Defines “agency” to include executive branch and independent agencies; however, it exempts the Federal Election Commission, the Federal Reserve, the Federal Deposit Insurance Corporation, and the United States Postal Service.

Defines “deadline” as any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or rule.

Defines “midnight rule” as any agency statement of general applicability and future effect, issued during the moratorium period that is intended to have the force and effect of law and is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice of an agency.

Defines the “moratorium period” as the day after Election Day through January 20th of the following year, for years in which a president is not serving consecutive terms.

Defines “rule” as any agency statement of general applicability and future effect, issued during the moratorium period that is intended to have the force and effect of law and is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice of an agency.

Defines “small entity” as defined in section 601 of title 5, having the same meaning as “small business,” “small organization,” and “small governmental jurisdiction.”

#### EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Delegate Eleanor Holmes Norton (D–DC) offered an amendment to strike the word “imminent” from Sec. 4(a)(1) of the bill. The amendment was withdrawn.

Ranking Member Elijah Cummings (D–MD) offered an amendment to create an exception to the moratorium for rules published in the regulatory flexibility agenda and the Unified Regulatory Agenda for at least a year. The amendment was not adopted by a roll call vote of 16 to 20.

#### COMMITTEE CONSIDERATION

On March 1, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 4261, by roll call vote of 20 to 17, a quorum being present.

#### ROLL CALL VOTES

## COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

## ROLL CALL

Vote #: 1

Vote on: H.R. 4612 – Cummings Amendment Date: 3-1-16

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>		X		MR. CUMMINGS (MD) <i>(Ranking)</i>	X		
MR. MICA (FL)		X		MRS. MALONEY (NY)	X		
MR. TURNER (OH)				MS. NORTON (DC)			
MR. DUNCAN (TN)				MR. CLAY (MO)	X		
MR. JORDAN (OH)		X		MR. LYNCH (MA)	X		
MR. WALBERG (MI)		X		MR. COOPER (TN)	X		
MR. AMASH (MI)		X		MR. CONNOLLY (VA)			
MR. GOSAR (AZ)		X		MR. CARTWRIGHT (PA)	X		
MR. DesJARLAIS (TN)		X		MS. DUCKWORTH (IL)	X		
MR. GOWDY (SC)				MS. KELLY (IL)	X		
MR. FARENTHOLD (TX)				MS. LAWRENCE (MI)	X		
MRS. LUMMIS (WY)		X		MR. LIEU (CA)	X		
MR. MASSIE (KY)		X		MRS. WATSON COLEMAN (NJ)	X		
MR. MEADOWS (NC)		X		MS. PLASKETT (VI)	X		
MR. DeSANTIS (FL)		X		MR. DeSAULNIER (CA)	X		
MR. MULVANEY (SC)				MR. BOYLE (PA)	X		
MR. BUCK (CO)		X		MR. WELCH (VT)	X		
MR. WALKER (NC)		X		MS. LUJAN GRISHAM (NM)	X		
MR. BLUM (IA)		X					
MR. HICE (GA)		X					
MR. RUSSELL (OK)		X					
MR. CARTER (GA)		X					
MR. GROTHMAN (WI)		X					
MR. HURD (TX)		X					
MR. PALMER (AL)		X					

Roll Call Totals: Ayes: 16 Nays: 20 Present:

Passed: \_\_\_\_\_ Failed:   X

## COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

114TH CONGRESS

## ROLL CALL

Vote #: 2

Vote on: H.R. 4612 – Report to House Favorably Date: 3-1-16

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CHAFFETZ (UT) <i>(Chairman)</i>	X			MR. CUMMINGS (MD) <i>(Ranking)</i>		X	
MR. MICA (FL)	X			MRS. MALONEY (NY)		X	
MR. TURNER (OH)				MS. NORTON (DC)		X	
MR. DUNCAN (TN)				MR. CLAY (MO)		X	
MR. JORDAN (OH)	X			MR. LYNCH (MA)		X	
MR. WALBERG (MI)	X			MR. COOPER (TN)		X	
MR. AMASH (MI)	X			MR. CONNOLLY (VA)			
MR. GOSAR (AZ)	X			MR. CARTWRIGHT (PA)		X	
MR. DesJARLAIS (TN)	x			MS. DUCKWORTH (IL)		X	
MR. GOWDY (SC)				MS. KELLY (IL)		X	
MR. FARENTHOLD (TX)				MS. LAWRENCE (MI)		X	
MRS. LUMMIS (WY)	X			MR. LIEU (CA)		X	
MR. MASSIE (KY)	X			MRS. WATSON COLEMAN (NJ)		X	
MR. MEADOWS (NC)	X			MS. PLASKETT (VI)		X	
MR. DeSANTIS (FL)	X			MR. DeSAULNIER (CA)		X	
MR. MULVANEY (SC)				MR. BOYLE (PA)		X	
MR. BUCK (CO)	X			MR. WELCH (VT)		X	
MR. WALKER (NC)	X			MS. LUJAN GRISHAM (NM)		X	
MR. BLUM (IA)	X						
MR. HICE (GA)	X						
MR. RUSSELL (OK)	X						
MR. CARTER (GA)	X						
MR. GROTHMAN (WI)	X						
MR. HURD (TX)	X						
MR. PALMER (AL)	X						

Roll Call Totals: Ayes: 20 Nays: 17 Present:

Passed: X Failed: \_\_\_\_\_

JASON CHAFFETZ, UTAH  
CHAIRMAN

CORRESPONDENCE  
ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-6051  
<http://oversight.house.gov>

June 8, 2016

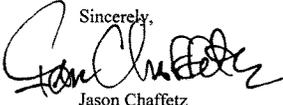
The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
Room 2138 Rayburn HOB  
Washington, D.C. 20515

Dear Mr. Chairman:

On March 1, 2016, the Committee on Oversight and Government Reform ordered reported H.R. 4612, the Midnight Rule Relief Act of 2016, by a vote of 20 to 17. The bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on the Judiciary.

I ask that you allow the Committee on the Judiciary to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,  
  
Jason Chaffetz  
Chairman

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Elijah E. Cummings  
The Honorable John Conyers, Jr.  
The Honorable Thomas J. Wickham, Parliamentarian

BOB GOODLATTE, Virginia  
CHAIRMAN

\* JAMES SENSENBRENNER, JR., Wisconsin  
LAMAR S. SMITH, Texas  
STEVE CHABOT, Ohio  
DARRYL E. ISSA, California  
J. RANDY PERDES, Virginia  
STEVE KING, Iowa  
TRENT FRANKS, Arizona  
LEAH GORNBEIN, Texas  
JIM GORDAN, Ohio  
TED POE, Texas  
JASON CHAFFETZ, Utah  
TOM MARINO, Pennsylvania  
TREV GOWDY, South Carolina  
RAUL A. LABRADOR, Idaho  
BLAKE FARENTHOLD, Texas  
DOUG COLLINS, Georgia  
RON DEANES, Florida  
MIKE WALTERS, California  
KEN BUCK, Colorado  
JOHN RANKIN, Texas  
DAVE TROTT, Michigan  
MIKE BISHOP, Michigan

ONE HUNDRED FOURTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

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June 8, 2016

JOHN CONYERS, JR., Michigan  
RANKING MEMBER

JEFFREY BLUM, New York  
ZOE LOFGREEN, California  
DRELA JACKSON LEE, Texas  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
PEDRO R. PIÑERUSI, Puerto Rico  
JUDY OHLS, California  
TED DEUTCH, Florida  
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KAREN BASS, California  
CEDRIC L. RICHMOND, Louisiana  
SIOBANH H. DONNE, Washington  
HAKSYM G. JEFFRIES, New York  
DAVID CICILLINE, Rhode Island  
SCOTT PETERS, California

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Chaffetz,

I am writing with respect to H.R. 4612, the "Midnight Rule Relief Act of 2016," which was referred to the Committee on Oversight and Government Reform and in addition to the Committee on the Judiciary. As a result of your having consulted with us on provisions in H.R. 4612 that fall within the Rule X jurisdiction of the Committee on the Judiciary, I agree to discharge our committee from further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 4612 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation and that our committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation and asks that you support any such request.

I would appreciate a letter confirming this understanding with respect to H.R. 4612 and would ask that a copy of our exchange of letters on this matter be included in your committee report and in the *Congressional Record* during Floor consideration of H.R. 4612.

Sincerely,



Bob Goodlatte  
Chairman

cc: The Honorable John Conyers, Jr.  
The Honorable Elijah Cummings  
The Honorable Paul Ryan, Speaker  
Mr. Thomas J. Wickham, Jr., Parliamentarian

## APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill ensures economic stability, accountability, and efficiency of Federal Government operations by establishing a moratorium on midnight rules during a President’s final days in office. As such this bill does not relate to employment or access to public services and accommodations.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of Rule X of the rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goals and objectives of the bill are to ensure economic stability, accountability, and efficiency of Federal Government operations by establishing a moratorium on midnight rules during a President’s final days in office.

## DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

## FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

## EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

## COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

## BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 15, 2016.*

Hon. JASON CHAFFETZ,  
*Chairman, Committee on Oversight and Government Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4612, the Midnight Rule Relief Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

ROBERT A. SUNSHINE  
(For Keith Hall, *Director*).

Enclosure.

*H.R. 4612—Midnight Rule Relief Act of 2016*

H.R. 4612 would prohibit federal agencies from promulgating significant regulatory actions from Election Day through Inauguration Day unless an incumbent President is reelected. The bill defines significant regulatory actions as those having an annual impact of more than \$100 million on the economy, causing major increases in costs or prices, having adverse effects on U.S. companies competing in global markets, or having a significant economic impact on small entities. The legislation, however, would provide a number of exemptions to the prohibition.

Considering the short time frame proposed for prohibiting regulatory actions and the broad exemption authority that would be

provided, CBO estimates that implementing H.R. 4612 would not have a significant effect on the budget. Pay-as-you-go procedures do not apply because enacting the bill would not affect direct spending or revenues.

CBO estimates that enacting H.R. 4612 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4612 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by H. Sam Papenfuss, Deputy Assistant Director for Budget Analysis.

## MINORITY VIEWS

The Minority opposes H.R. 4612, the Midnight Rule Relief Act of 2016. This bill would significantly interfere with the ability of federal agencies to implement regulations that are critical to protecting the health and safety of the American people.

The value of a rulemaking should not be judged solely by when it becomes final. Agencies have a responsibility to continue to protect our health, safety, environment, and economy no matter how long a president has left in his or her term.

H.R. 4612 would bar virtually all regulations from being finalized during the end of a president's term, regardless of when the rule was proposed or how long the regulation has been in the regulatory process. This legislation would also block agencies from proposing rules during the moratorium period. Rules that would repeal existing rules, on the other hand, would be exempt from the moratorium.

This legislation is based on the false conclusion that regulations finalized near the end of a president's term are rushed through the regulatory process and do not comply with mandatory rulemaking procedures. According to a report issued by the Administrative Conference of the United States, most end-of-term regulations have been found to be routine matters or were issued in response to deadlines that are out of the agency's control.<sup>1</sup> This nonpartisan research is the most recent comprehensive review of late-term rulemakings.

There is no indication that this Administration will short-circuit the rulemaking process. The Administrator of the Office of Information and Regulatory Affairs (OIRA) issued a memo on December 17, 2015, that encouraged agencies to submit rules for OIRA review before the end of the year. The memo stated:

Agencies should strive to complete their highest priority rulemakings by the end of 2016 to avoid an end of the year scramble that has the potential to lower the quality of regulations that OIRA receives for review and to use the resources available for interagency review.<sup>2</sup>

The Coalition for Sensible Safeguards, which includes more than 150 consumer, public health, environmental, labor, and scientific organizations, sent a letter to the Committee opposing H.R. 4612. The letter stated:

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<sup>1</sup>Administrative Conference of the United States, Recommendation 2012-2, *Midnight Rules* (June 14, 2012) (online at [www.acus.gov/sites/default/files/Final-Recommendation-2012-2-Midnight-Rules.pdf](http://www.acus.gov/sites/default/files/Final-Recommendation-2012-2-Midnight-Rules.pdf)).

<sup>2</sup>Memo from Administrator Howard Shelanski, Office of Information and Regulatory Affairs, Office of Management and Budget, to Deputy Secretaries, Regulatory Review at the End of the Administration (Dec. 17, 2015) (online at [www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation\\_circulars\\_memoranda\\_2015\\_pdf/regulatory\\_review\\_at\\_the\\_end\\_of\\_the\\_administration.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation_circulars_memoranda_2015_pdf/regulatory_review_at_the_end_of_the_administration.pdf)).

This bill would jeopardize public protections affecting public health and safety and the environment that often are years, if not decades, in the making. Worse, it would exempt attempts in the final days of an administration, through rulemaking to “undo” or weaken existing regulations.<sup>3</sup>

The American Association for Justice also sent a letter to the Committee opposing H.R. 4612. That letter stated:

This misguided bill would jeopardize crucial public protections by blocking regulations based on timing alone. It presumes the regulations which are proposed or finalized during the so-called “midnight” rulemaking period are rushed and inadequately vetted.<sup>4</sup>

Yet many of the regulations which this moratorium would apply to have been in the regulatory process for years. These regulations were delegated by Congress to agencies in order to protect children from toxic toys, families from tainted food, and consumers from financial exploitation.<sup>4</sup>

I offered an amendment that would have exempted from the moratorium imposed by H.R. 4612 any rule that is published in the regulatory flexibility agenda of the agency and that has been included in the Unified Regulatory Agenda for at least one year. If the majority were really concerned about ensuring that regulations are not rushed through the process, they would have accepted this amendment, but they did not.

For all of these reasons, Committee Democrats oppose H.R. 4612.

ELIJAH E. CUMMINGS,  
*Ranking Member.*



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<sup>3</sup>Letter from Robert Weissman, President, Coalition for Sensible Safeguards, to Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Mar. 1, 2016).

<sup>4</sup>Letter from Linda Lipsen, Chief Executive Officer, American Association for Justice, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Feb. 29, 2016).