Insight

The Fiscal Costs of Regulatory Overreach

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"I've got a pen and I've got a phone … I can use that pen to sign executive orders and take executive actions and administrative actions that move the ball." That was President Obama in 2014 pledging to use executive action to implement his policy priorities. The American people elected Republican majorities in both the House and the Senate and President Obama responded through regulation, rather than working with Congress on legislation. The regulatory costs of this approach are well-known, amounting to more than 600 major regulations , totaling $743 billion in costs. However, there are also fiscal costs, burdens borne by taxpayers and not just companies complying with federal rules. Conservatively, this "pen and phone" approach will cost taxpayers more than $31.3 billion in increased spending and debt.

This figure excludes $9.6 billion in Anti-Deficiency Act violations and a recent proposed rule implementing one of President Obama's executive orders on paid leave for contractors. The taxpayer costs of this executive order are unclear, but there is more than $500 million in deadweight loss annually, essentially removing half-a-billion in production from the economy. Article I section 9 of the U.S. Constitution explicitly states, "No money shall be drawn from the treasury, but in consequence of appropriation made by law." Yet, from creating new student loan repayment plans that will cost taxpayers more than $15 billion to unilateral changes to the Affordable Care Act that will cost $12 billion, the "pen and phone" approach involves more than just regulatory burdens.

The following chart displays a review of just nine measures that will impose additional burdens on taxpayers or contribute to the national debt.

Top Executive Action Imposing Fiscal Costs

Action	Taxpayer Cost
Amending Student Loan Payments	$15.4 billion
Delay of Employee Health Mandates	$12 billion
Changing Cost Sharing Provisions for ACA Insurers	$3 billion
Overtime for Contractors	$501 million
Executive Order on Risk Management	$295.7 million

Overtime Rule	$115 million in unfunded state costs
Nondisplacement of Contractors	$39.7 million
“Fair Pay” Executive Order	$25.8 million
Gun Checks	$5.5 million
Total	**$31.3 Billion**

Generally, supporters of increased regulatory action defend the practice by noting that Congress has previously authorized the regulation through statute. On some occasions, courts step in to mandate new regulatory action. However, the measures covered here are a result of executive orders or administrative action, as opposed to general regulatory authority delegated from Congress. Generally, there was no specific provision allowing the president to spend money or incur new debt. Now, these actions have resulted in more than $31 billion in taxpayer obligations.

The creation of an “income-contingent repayment plan” for student loans is likely the largest new obligation. Although Congress never authorized these outlays, taxpayers will be responsible for more than $15.4 billion in costs through 2025, $8.3 billion from previous loans and $7.1 billion from future borrowers. In addition to the fiscal outlays, the student loan revision will also add more than 1.1 million paperwork hours on institutions and individuals.

This action took a relatively short period of time, at least in the rulemaking world. The president issued a memo on June 9, 2014 to expand the “Pay as You Earn Repayment Plan,” but there was no notice in the Unified Agenda until November 21, 2014. On July 9, 2015, the administration proposed a rule and by October 30, 2015, the final rule was published. Congress authorized none of these actions and yet taxpayers will now be responsible for more than $15 billion in spending.

The second most expensive executive action is arguably the most infamous: the unilateral delay of the employer mandate. As the Congressional Budget Office (CBO) noted, delaying this aspect of the Affordable Care Act (ACA) did not arrive without expense. CBO found the one-year delay in penalties for employers and the delay in reporting requirements for insurers and employers will cost taxpayers $12 billion. Although this provided relief to some employers, CBO noted, “The largest change is a $10 billion reduction in penalty payments by employers that would have been collected in 2015.” In essence, this deregulatory measure nevertheless resulted in a $12 billion increase in federal debt.

The ACA has produced at least two budgeting gimmicks without congressional approval. Currently in the middle of litigation, the administration took unilateral action to change ACA cost-sharing for insurers. Recently, Judge Rosemary Collyer found the House of Representatives was justified in taking action against the administration for altering payments to these exchanges without authorization or appropriation. As she wrote, “Congress is the only source for such an appropriation, and no public money can be spent without one.” According to reports, the administration asked to fund the cost-sharing program with at least $1.4 billion in the FY 2014 budget, but Congress declined. The administration took action anyway and now it faces the prospect of federal courts striking down the move.

Finally, the administration’s attempt to reduce income inequality did not merit majority votes in Congress, so instead President Obama issued an executive order on overtime for contractors and expanded that action to the civilian workforce as well. Providing overtime for federal contractors will increase the burden on taxpayers by roughly $501 million, according to the administration's own math. The general overtime expansion, in addition to its $2.9 billion in regulatory costs, will have implications for state and local governments. Because their workers are covered by the executive action, states will have to spend $115 million to comply. Last year, the American Action Forum found President Obama has added at least $35 billion in unfunded mandates on states and local governments. These overtime provisions were often lauded as free money ("Good for Everyone") for certain employees, but far from free, taxpayers will need to fund an additional $616 million to cover the president's actions.

Conclusion

Regulatory action is often framed as a way to generate net benefits for the American people while carrying out the will of Congress. For as much as critics target some regulations for scrutiny, there is typically at least the appearance of congressional approval. For the actions discussed here, President Obama acted unilaterally without legislative approval to cement his policy vision. There are regulatory costs for these rules, but taxpayers will also have to find $31 billion to cover this expensive vision.