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Rob Portman: The Regulatory Cliff Is Nearly as Steep as the Fiscal One

The president has postponed damaging rules until after the November election.

By ROB PORTMAN

Americans are learning more about the "fiscal cliff" approaching at the beginning of next year, when tax rates for families and small businesses are set to spike and new taxes in President Obama's health-care spending law take effect. But unless there's real change in Washington, we're also headed for a steep "regulatory cliff" that could compound the damage.

After three years of bureaucratic excess, the Obama administration has been quietly postponing several multibillion-dollar regulations until after the November election. Those delayed rules, together with more than 130 unfinished mandates under the 2010 Dodd-Frank financial law, could significantly increase the regulatory drag on our economy in 2013.

The Labor Department, for example, is working on a regulation that would increase the cost of retirement planning for middle-class workers, to "protect" them from investment help. This regulation, known as the Fiduciary Rule, would tighten restrictions and increase litigation risks for businesses that offer investment guidance on a commission basis, rather than the more expensive fee-for-service model.

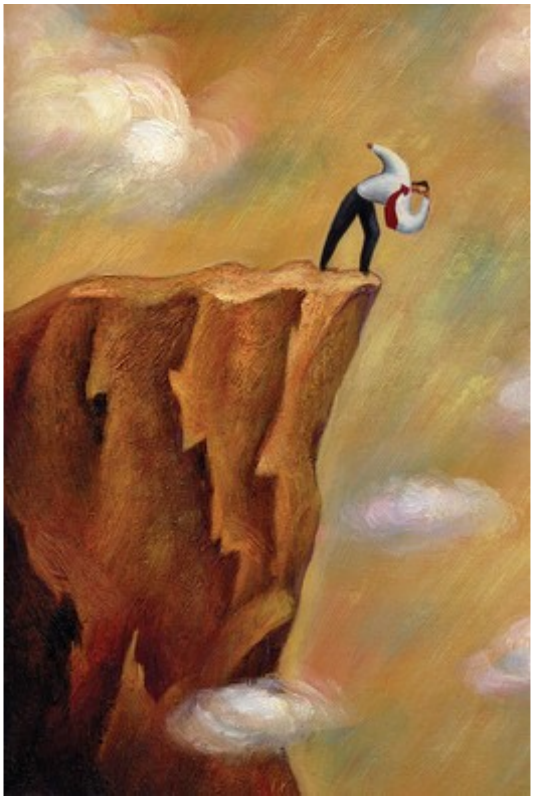
A study last year by the Oliver Wyman Group found that the Fiduciary Rule could result in higher retirement account minimums and cause 7.2 million individual retirement account (IRA) holders to lose access to investment advice. Even the Labor Department was unable to show that the rule's illusory benefits outweigh its substantial costs.

After other lawmakers and I urged the White House to step in, this rule-making was delayed temporarily. But the Labor Department has told interested parties to stay tuned for another iteration of this rule.

Then there is the mega-rule on the shelf at the Environment Protection Agency (EPA) that could block business expansion in many areas of the country. Proposed in 2010, the Ozone Rule would impose a limit on ozone (which creates haze from emissions from cars, power plants and factories) so strict that up to 85% of U.S. counties monitored by the EPA would be in violation.

Susan Dudley, a regulatory economist at George Washington University who served in the previous administration, notes that this rule would force many communities "to forego productive investment and hiring decisions in order to spend hundreds of billions of dollars per year in vain attempts to meet unachievable standards."

The EPA itself says the rule could impose up to $90 billion in yearly costs on manufacturers and other employers. Last September, after months of public outcry, the White House instructed the EPA to put the rule on ice until 2013, when it will be "revisited."



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Also on the Obama EPA's to-do list for 2013 is a new rule that its regulators admit could increase costs for energy consumers and others by as much as $4.5 billion per year, depending on how it's implemented. The rule targets equipment that power plants and manufacturing facilities use to draw in water to prevent overheating, even though those intake systems are not harmful to human health or water quality.

Last year the EPA estimated that this new rule would cost $1 for every three cents in benefits. More recently, the EPA has proposed the use of public-opinion surveys with hypothetical scenarios that boost the alleged benefits of its proposed regulation by nearly 14,000%. This is another example of a major regulation put off until next year, ensuring that Americans won't learn about its effect on their electricity bills until after the election.

Consumers can also look forward to a new Department of Transportation rule that will increase the costs of new cars and trucks by mandating expensive new technology. First proposed in 2010, the Rear-View Camera Rule would require that all cars and trucks be equipped with a rear-view camera and video display on the dashboard, at a cost of some $2.7 billion to auto makers and car buyers.

Americans who want this technology are free to buy it and more than 40% of new cars have it. We don't need a government mandate to drive up costs for families who need to economize. Not surprisingly, the administration delayed moving forward on this costly rule until after Dec. 31.

Next year will bring not only new rules but new regulators. The Independent Payment Advisory Board—a bureaucracy created by the president's health-care law—has vast authority over patient care and health markets, yet it is immune from the usual public input and review requirements that apply to other regulators.

As the American Medical Association and others have pointed out, the board is charged with the contradictory mandate of cutting Medicare reimbursement rates to health-care providers, without reducing benefits or finding new ways to increase value. The result will be a technocratic body with almost unchecked power to limit access to care for Medicare patients.

According to a 2011 Gallup survey, overregulation tops the list of "most important problems" facing America's small-business owners. With our economy stuck in the worst jobs slump since the Great Depression, the pressing need is to build a regulatory climate that encourages investment, growth and job creation. Avoiding the coming regulatory cliff, like the fiscal cliff, will require new leadership at the top.

Mr. Portman, a Republican, is a U.S. senator from Ohio.

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