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Regulatory Takings and Proposals for Change
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Summary

The Fifth Amendment to the U.S. Constitution prohibits the government from taking private property for public use without paying the owner just compensation. That requirement and its application are relatively straightforward when the government formally condemns privately owned land--for example, to build a road. But the issue becomes much more complex when owners allege that the government's regulations have effectively taken their property--by restricting the ways in which they can use it--and that they should be compensated. Only infrequently do courts identify the effect of a regulation on private property as a "taking"--specifically, a "regulatory taking"--that requires compensation under the Fifth Amendment.

At present, when a government's action limits the use of private property, owners find it quite difficult to claim that a regulatory taking has occurred and to sue successfully for compensation. The reasons are twofold. First, property owners may face many barriers to getting their claims heard and decided by a court. To ensure that they have sufficient information with which to decide cases, the courts require property owners to meet certain minimum requirements before they will consider the merits of the claims. Meeting those requirements can be costly and time-consuming.

Second, takings claims that do reach the courts are decided on the basis of constitutional takings jurisprudence that is generally tolerant of many actions by government that further legitimate public policy goals. (Constitutional takings jurisprudence is the legal reasoning on the topic that has been established over the years, predominantly through Supreme Court decisions.) Nevertheless, some property owners sue the government and win regulatory takings cases, and the courts have awarded them several hundred million dollars in compensation in recent years.

The debate over the appropriate role of the federal government has focused attention on the government's regulatory actions. Some people have voiced dissatisfaction with the current level of protection for private property rights, particularly rights associated with real property such as land. They argue that the process for getting takings claims heard in court is too arduous. They also maintain that even if a case is heard, the conclusion of no taking that is typically the outcome is unfair because property owners alone are bearing the burden of regulations that generate benefits for all of society. Property rights advocates contend that the government fails to adequately consider the magnitude and distribution of that burden during decisionmaking because it rarely bears the costs of regulation. In addition, it tends to overregulate--imposing restrictions beyond the point at which the additional benefits of more regulation are at least as great as the additional costs.

The concerns of property rights advocates have resulted in a number of proposals for changing the current approach to regulatory takings. Legislation considered by the Congress over the past several years has incorporated some of the proposed modifications, which can be grouped in four general categories:

- Relaxing procedural requirements that must be satisfied before a federal court will hear the merits of a taking claim;

- Creating a new statutory right (that is, one enacted into law) that would entitle property owners to compensation for reductions in the value of their property caused by federal regulatory actions--provided that the owners have satisfied legislatively defined criteria for eligibility;

- Increasing the requirements for analysis and reporting that federal agencies must meet before making decisions that could restrict the uses of privately owned property; and

- Specifying that the budget of the agency whose action triggers a regulatory compensation claim be the source of any compensation awarded under the statutory proposals.

Critics argue that such proposals would undermine federal regulatory programs, especially programs that protect the environment, because maintaining existing levels of regulatory protection would become too expensive if the Congress defined eligibility for regulatory compensation broadly. In addition, opponents disagree with claims by property rights advocates that federal regulations cause frequent and severe reductions in property values, in part because such critics maintain that property owners do not possess inherent rights to use their property in ways that might harm the environment. If problems do exist, the opponents of the proposals argue, it would be better to address them through targeted Congressional oversight and changes to specific underlying laws rather than through sweeping, "one-size-fits-all" legislative action.

This Congressional Budget Office (CBO) study describes the current system for handling claims of regulatory takings, focusing on real property, such as land and buildings, rather than other forms of property, such as contracts. It also analyzes the effects of the various proposals for changing that system and presents an illustrative exercise for estimating the costs of such changes. The study reached seven general conclusions:

1. The criteria to qualify for regulatory compensation under the various legislative proposals would be easier to satisfy than the implicit criteria of current law, and as a result, more property owners would qualify for compensation. However, some property owners might be overcompensated unless the proposed eligibility criteria took into account that the price at which a property was bought might reflect a discount stemming from the risk or the actual incidence of the regulation for which the owner was seeking compensation.

2. Precisely estimating the reductions in property values caused by federal regulation is often difficult. As a result, the eligibility criteria for compensation based on reductions in property values are vulnerable to uncertainty and possible manipulation. That vulnerability might lead to controversy and large expenditures on appraisals.

3. Changes in the procedures for handling regulatory compensation claims against the federal government are unlikely to have a significant effect on the frequency and outcome of takings litigation.

4. Takings claims against state or local governments are sometimes decided in federal courts, but procedural barriers can limit the number of such suits. Reducing those barriers could divert many state- and local-level claims from state courts to federal ones.

5. Federal agencies currently evaluate whether their proposed regulatory actions would cause takings, but the level of resources needed to meet their obligations is minimal. Additional efforts and resources would improve the quality of those analyses, but in most cases the results would remain qualitative. Making the analyses available to the public would increase awareness of regulatory burdens but could create an incentive for agencies to bias their findings. Judicial review of the analyses might encourage agencies to improve their work, but it could also create new opportunities for litigation and delay.

6. Paying regulatory compensation from agencies' budgets would discourage activities that were likely to cause compensation awards, but limits on agency discretion in the form of authorizing legislation and other restrictions could make some awards unavoidable. If those awards were sizable, the Congress would need to decide how and when they would be paid. It would also have to decide whether to cut back the activities that gave rise to the awards.

7. Estimating the long-run cost of regulatory compensation that would result from statutory eligibility criteria is extremely difficult. As a result, such estimates vary dramatically. Credible projections of costs require detailed information about the effects of federal regulatory programs on property values and reliable predictions of the responses of property owners and federal agencies. Neither is readily available.

Relaxing Procedural Requirements and Increasing Access to Federal Courts

At present, courts are usually unwilling to decide a taking claim unless the claim is "ripe" for judgment. In other words, the case must involve a final action by a regulatory agency in which the agency applies the regulation in question to a specific property--and with

clear consequences. Reaching that point of final action may require several preceding steps. For example, a property owner may have to apply several times for a permit for a project before learning what land uses the agency will allow. In addition, the owner may have to pursue all available opportunities for an administrative appeal of an adverse decision by the agency or possible waivers of the regulation (in the case of the particular piece of property) before the courts will agree to hear the claim. Those activities can be both costly and time-consuming. The burden of expense and delay is especially weighty for challenges of state and local land-use regulations that property owners bring to the federal courts. It is relatively less severe for challenges of federal actions in federal courts.

Some of the legislative proposals for changing the current approach to regulatory takings would ease the difficulty of getting a claim heard in federal court. Under certain provisions, a claim would be ready to be decided after a property owner had submitted one "meaningful" application and pursued one appeal of an agency's unfavorable decision. Some proposals would also lift the requirement for an appeal if the appeal was unlikely to succeed. Relaxing the requirements associated with judicial ripeness might cut down some of the delay in getting a decision on the merits of a claim for regulatory compensation, but it might also put federal courts in the position of deciding cases on the basis of incomplete information. In such an instance, the property owner might lose the lawsuit because the court might conclude that the burden of proof that the property owner was required to demonstrate had not been met.

Some provisions in the property rights bills deal with which court or courts have jurisdiction over claims. At present, for all but the smallest cases involving the federal government, a property owner must file a claim for compensation in the U.S. Court of Federal Claims. However, to obtain "injunctive relief"--that is, to overturn the regulatory action that prompted the claim--the owner must file a separate suit in a federal district court. A decision on the owner's compensation claim may have to wait until the other case is decided. Some of the property rights proposals would modify the jurisdiction of the federal courts so that the property owner could pursue both suits in a single court. They would also remove any limitation that might prevent the U.S. Court of Federal Claims from deciding a compensation claim while a related suit was pending in another federal court. The effect of such changes is uncertain because the extent of the procedural hurdle is unclear.

Many regulatory takings cases involve property owners who are suing a state or local government over land-use restrictions (for example, zoning ordinances). Ordinarily, those cases are litigated in state courts under the takings clauses contained in state constitutions and do not involve the federal government at all. Sometimes, however, property owners choose to sue a state or local government in a federal district court rather than in a state court. In such cases, the property owner alleges that a state or local authority is violating the owner's federal constitutional rights--that is, the Fifth Amendment. The courts often dismiss those cases without deciding the merits of the claim, for one of two reasons. First, federal courts might abstain from deciding such claims if the decision required them to make determinations concerning state property law. Second, federal courts might dismiss

the cases on ripeness grounds--for example, if the property owner had not first sought and been denied compensation from the state.

Some proposals would relax the requirements that property owners must satisfy to establish the ripeness of claims against state or local governments that are filed in federal courts. In addition to the limitations on applications and appeals described earlier, those proposals would ensure that property owners were not required to seek compensation from a state before having a claim decided in a federal court. Moreover, some proposals would limit the discretion of federal courts to abstain from deciding those cases.

The procedural changes that some proposals call for would increase the attractiveness of the federal courts as a venue for pursuing takings claims against state and local governments. Yet there is no reason to believe that federal courts would alter the way they applied the constitutional takings jurisprudence in those cases. Consequently, many of those claims would probably fail.

Establishing a Statutory Right to Compensation

Some of the legislative proposals would establish a new right for property owners: the right to compensation from the federal government when its actions reduced the value of their property (subject to certain exceptions). That kind of statutory regime would augment, not replace, takings claims based on the courts' interpretation of the Fifth Amendment. Thus, property owners could still pursue compensation under the Fifth Amendment's takings clause; however, they would probably opt to pursue a claim under the proposed statutory regime because the eligibility criteria for compensation would be easier to satisfy.

A distinct difference between the compensation regime found in many legislative proposals and the constitutional takings jurisprudence that the courts apply involves the use of an explicit "reduction-in-value" test to determine eligibility for compensation. Under the statutory regime, the government, in certain circumstances, would owe compensation to a property owner if the government's regulatory action reduced a property's value by more than a threshold percentage. Depending on the proposal, the reduction-in-value threshold ranges from 10 percent to 50 percent.

In contrast to the constitutional takings jurisprudence, the proposals would calculate percentage reductions in value not on the whole property but only on the portion that was affected by a restriction. (That approach tends to increase the percentage reduction in value that the calculation produces.) Although the courts' jurisprudence considers reductions in a property's value, it identifies no explicit threshold at which compensation is required. Indeed, regulations that appear to result in significant reductions in the value of a property are often not takings because courts give more consideration to other factors (such as the harm that the regulation prevents or the fact that at the time of purchase, the buyer was aware of the potential for regulation).

Another distinguishing feature of many of the property rights proposals is the narrower range of regulatory actions that they exempt from eligibility for compensation. Under some proposals, property owners who saw the value of their property diminished by a regulatory action below a certain compensation eligibility threshold would nevertheless be ineligible for compensation if the regulatory action abated a "nuisance," as defined by state law. That exemption from compensation eligibility is narrower than the one that the courts now apply. At present, a court may deny a claim for compensation if it concludes that there is no taking (on the basis of an ad hoc analysis that balances several factors) or if a regulatory action abates a nuisance. Under constitutional takings jurisprudence, the courts have denied compensation for severe regulatory actions that further legitimate public purposes but do not necessarily abate a nuisance.

Fairness and the Proposed Eligibility Criteria for Regulatory Compensation

As noted earlier, some people believe that government regulations impose unfair burdens on the owners of private property. Proponents of new standards are thus motivated in part by a desire to spread the cost of regulatory burdens more evenly among the citizenry. To people who believe that regulations wrongly force certain property owners to bear the cost of providing benefits that are enjoyed by society as a whole, such a change makes things fairer. But other people argue that government restrictions prevent certain property owners from imposing harm or costs (such as pollution) on others and that property rights proposals would result in paying polluters not to pollute. The distinction between regulatory actions that prevent harm (and should arguably not trigger compensation of property owners for their losses) and those that confer benefits (and should arguably trigger compensation) in many instances is highly subjective. Not surprisingly, substantial disagreement frequently arises over what rights a property owner enjoys and whether property owners should receive compensation when the government infringes on those rights.

In addition to the often divisive issue of who deserves compensation is the matter of whether property rights proposals would result in the appropriate amount of compensation for property owners who were found to be eligible for it. The relaxed eligibility criteria for compensation that some proposals contain would result in more payments to property owners than occur today. But the proposed new system also carries the risk that some property owners would be overcompensated--at least during the transition from the old to the new system.

That problem arises because the prices at which properties were bought and sold in recent decades may reflect information about the restrictions that were imposed on the uses of the property as well as the risk of future restrictions. If a property was sold after a regulatory program had been imposed, its sale price might include a discount that reflected the risk or perhaps the certainty of restrictions on the way it might be used. That discount would cause the seller of the property to be worse off. In contrast, the new property owner--provided that he or she paid an adequately discounted price--would not be harmed by the regulation because he or she was implicitly compensated for the

regulation's effect through a lower purchase price. Unless compensation proposals explicitly considered that phenomenon, they might overcompensate some property owners.

The problem of overcompensation is not insurmountable; indeed, the courts' takings jurisprudence has addressed that issue. Courts are unlikely to decide a Fifth Amendment taking claim in favor of the property owner if he or she should have reasonably anticipated a restriction and that risk was reflected in the purchase price. If that type of eligibility criterion was retained under the proposals, the chance of inappropriate compensation would be reduced. But that refinement has its costs. Assessing such a criterion would add considerably to the complexity of identifying property owners who were eligible for compensation.

Explicitly incorporating a consideration of property owners' expectations into statutory eligibility criteria for compensation would significantly reduce the number of property owners who qualified for compensation, relative to a set of criteria without that factor. The federal regulatory programs that are often alleged to infringe on property rights, such as those related to clean water and endangered species, were initiated over 25 years ago. Arguably, anyone who bought property since then (potentially a large number of current property owners) should have known, to varying extents, that the property was or might be subject to regulation. Many of those owners may have bought their property at a discount that reflected the incidence or risk of federal regulation. Under a set of statutory eligibility criteria that considered expectations, a number of those property owners would be ineligible for compensation.

Feasibility of the Proposed Eligibility Criteria for Regulatory Compensation

Critics of the status quo in the area of property rights argue that using an explicit reduction-in-value test to identify property owners who are eligible for compensation would be an improvement over the ambiguity of the constitutional takings jurisprudence. That argument is plausible in cases in which the drop in the value of the property that a government's restriction causes can be quantified relatively precisely and with minimal cost and controversy. Yet such estimates in many instances may meet none of those standards.

In the present regime, changes in a property's value are only one of many factors that a court considers in a taking case. Unless the reduction in the value of the property is clearly dramatic in percentage terms, the court does not usually estimate the amount, and the loss is not the deciding factor in the court's decision. But under the criteria proposed in the various property rights bills, relatively small reductions in value could decide eligibility for compensation. The increased importance of estimated reductions in value under the proposals, combined with potentially large areas of uncertainty in those estimates, may encourage property owners and the government to spend considerably more on appraisals than they do now.

The reliability of property valuations and the potential for disputes will vary depending on property type. If the type of property involved in a compensation claim is relatively homogeneous and changes hands frequently--such as residential property--disputes about its value between litigants and their appraisers could be minor. However, if the type of property is heterogeneous and changes hands infrequently--such as undeveloped property--then disputes between the various parties could be considerable. Because disagreements about property rights in many instances concern undeveloped property, the potential for controversy regarding property valuation under statutory eligibility criteria is significant.

Encouraging the Settlement of Compensation Claims

Litigating a regulatory taking claim is generally expensive and time-consuming, factors that affect both the claimant and the government. The potential expense may discourage some property owners from filing legitimate claims, and the lengthy process is a drain on the government's and property owners' resources. One way to reduce those costs and delays is to resolve allegations of undue infringement on property rights without going to court. To that end, some proposals include provisions to encourage out-of-court settlements and other forms of dispute resolution, such as establishing appeals processes for certain regulatory programs, promoting the use of alternative dispute resolution techniques, and giving property owners the option of forcing the government into binding arbitration.

Under the present system, property owners' takings claims against the government usually fail. But if relaxed eligibility criteria for compensation and other, procedural changes were adopted, the chances that property owners would prevail might increase. That prospect might strengthen the government's incentive to resolve claims outside the courts and could boost the generosity of its settlement offers. Yet the very improvement in the likelihood of property owners' winning their lawsuits in a trial might encourage some of them to reject such offers. In the end, the proportion of cases that were successfully resolved before trial would depend in part on the predictability of trial outcomes. At least during the initial years of a new compensation system, uncertainty over trial outcomes might increase, which could contribute to additional trials in the short run if not over the long term.

Increasing Agencies' Analysis and Reporting Requirements

Federal agencies are in many cases aware of the implications of regulatory behavior for owners of property, but those considerations are usually not central in their decisionmaking. That lack of focus on the potential for a taking is not surprising. Because very few regulatory actions qualify as takings, agencies have had little need to direct resources or attention toward the issue. People who advocate changing the current approach to takings want to require regulatory agencies to consider more fully how their

proposed actions could affect property rights and values. Toward that goal, some legislative proposals would build on an existing requirement that agencies analyze the potential effect of regulation on the use of private property.

For over a decade, an executive order has been in place that requires executive branch agencies to prepare "taking implications assessments" of any of their proposed regulatory actions that are likely to affect property rights. The analyses must include an assessment of whether a proposed action might be a taking of private property, a rough estimate of the compensation a court might award, and a discussion of alternative actions that would minimize the government's infringement on property rights. Agencies do not publish those reports. In addition, the requirement that agencies prepare such analyses is not enforceable in the courts.

A number of the property rights proposals would modify the existing analysis requirement in different ways. Rather than applying the existing takings jurisprudence, some versions would require agencies to evaluate their proposed regulatory actions on the basis of broader eligibility criteria for compensation. Some of the bills would also make the agencies' written analyses available to the public and include them in records of rulemaking. A further change would be to make the agencies' compliance with the analysis requirement enforceable by the courts.

If those proposals were enacted, regulatory agencies would probably conduct more analyses, more thoroughly, than they do now. But unless the agencies could devote a much higher level of resources to the work, the conclusions of most analyses would probably remain qualitative. Except for the application of the most obvious restrictions to a particular property, it would be infeasible to prepare reliable, quantitative estimates because of the many uncertainties and lack of information.

Requiring agencies to publish their takings analyses might have countervailing effects. On the one hand, it would increase public awareness of the burdens that agencies impose on property owners. On the other, it might create an incentive for agencies to avoid reporting "bad news"--a finding that a proposed action would have a significant effect on property values. If agencies devoted considerable effort to avoiding possible criticism, the informational value of the analysis and reporting process could be compromised.

Using the courts to enforce a takings analysis requirement could have different effects depending on the scope of the courts' review. If the courts applied a low standard of review or did not assess the reasonableness of the analyses, the outcome might be one of little or no effect. But if the courts evaluated the quality of the analyses according to a more stringent standard, regulatory agencies would have an increased incentive to prepare more thorough reports. A stringent standard of review might have an effect on property owners as well: it might encourage them to dispute the adequacy of the reports more frequently than they otherwise would in the hope of overturning or at least delaying an agency's decision. The source of that concern is the government's experience with a similar analysis requirement--the preparation of environmental impact statements as

mandated by the National Environmental Policy Act of 1969.

Paying Compensation from Agency Budgets

In the present system for handling claims of regulatory takings, most compensation awards are typically paid from a special account called the Claims and Judgments Fund. No Congressional action is required to authorize payments from that account, nor do the payments affect the part of the budget that funds regulatory agencies. Critics of that approach to paying compensation argue that federal agencies should face a stronger financial deterrent to making decisions that are likely to result in compensation awards. One way to establish that kind of disincentive, they say, is to pay compensation directly from the appropriations of the agency whose action triggers the award.

Whether agencies could limit those activities that were most likely to lead to compensation would depend on their ability to anticipate such awards (and thus avoid the actions that were likely to trigger them). But even if agencies could always anticipate which of their actions would lead to compensation awards, they would also require adequate discretion to choose a different action that still satisfied their regulatory obligations under the law. The extent of their discretion varies with the language of the laws that they are entrusted with enforcing. It is also affected by the willingness of different interest groups to use the courts to force agencies to regulate in ways consistent with those groups' goals. For those reasons, it would be imprudent to assume that federal agencies were always free to change their regulations and enforcement practices to avoid every action that might significantly reduce property values.

A requirement for paying regulatory compensation from an agency's budget could have several consequences. If an agency could not always predict the effects of the regulatory actions it proposed--or if it could not avoid certain actions--it might have to divert some portion of its appropriations to pay for the awards. Those payments in turn might reduce the resources available for meeting the agency's other statutory obligations. Unless the agency's appropriations were increased to offset the compensation payments it was expected to make, it might be forced to defer paying claims or to reduce its other activities.

Requiring agencies to pay compensation from their budgets would also affect the Congress. Under such an approach, the appropriations committees would ultimately be responsible for writing and approving the funding bills that allocated money to both ongoing activities and the payment of compensation. They would also have to respond to an agency's request for supplemental appropriations to pay unexpectedly large compensation awards. Those decisions would force the Congress to weigh the value of paying compensation awards against the value of spending for other programs.

In any year, the Congress could modify the proposed incentive system by changing the language of an agency's annual appropriations. For example, the Congress might choose to protect certain programs by earmarking their funds for specific uses that did not

include the payment of regulatory compensation. Such changes would affect the agency's ability to pay outstanding claims and could dilute the incentives that proponents of property rights proposals hope to create. If paying compensation became a problem for an agency, the appropriations committees might also instruct it--again, through language in the appropriation--to change certain practices or policies in the hope of reducing future awards. Using the appropriation process in that way might in some instances produce less-than-optimal policymaking. In addition, such action creates procedural problems for the appropriations committees.

If agencies paid compensation from their appropriations, the Congress could exercise direct control over those payments through the annual appropriation process. That mechanism would allow it to limit the payments' effects on federal spending. But the Congress would not directly control the number of compensation awards. Rather, controlling factors would include the statutory eligibility criteria for compensation, the regulatory activities of federal agencies, and the willingness of property owners to sue for compensation. The Congress's inability to affect those factors directly might force it to decide between diverting scarce resources to pay outstanding compensation or deferring such payments until additional resources were available. During such deferrals, however, the awards would earn compound interest, which could become a sizable expense.

Estimating the Cost of Property Rights Proposals

What might happen to the number and size of compensation awards if the Congress enacted a law that was less restrictive than the constitutional takings jurisprudence in determining which property owners qualified for compensation for infringement of their property rights? That question reflects what is perhaps the most contentious issue in the debate over the various proposals considered by the Congress. Supporters of the proposals maintain that the number of individual compensation payments as well as the amount of the payments would be small (because agencies would avoid actions that might result in awards). They also argue that the Congress would retain control over the level of payments through the annual appropriation process. Critics counter that agencies would be unable to adjust their behavior sufficiently to offset a large increase in the number and size of awards. Furthermore, such critics argue, the relaxed eligibility criteria would lead to a deluge of spurious claims. The Congress might then face the unenviable task of choosing between diverting scarce funds to pay compensation or cutting back regulatory programs, particularly those that protect the environment.

The debate over takings legislation in the 104th Congress included a number of different estimates of the potential cost of compensating property owners. The Office of Management and Budget, for example, estimated that one of the proposals being debated would increase compensation awards by $28 billion over seven years. However, it provided no supporting analysis for that conclusion, which makes the estimate difficult to evaluate. In its estimate of the budgetary effects of another proposal, CBO provided some indication of costs but was unable to produce any long-run figures for compensation payments because it could find no sound basis for making the calculation. The discussion

below explains why such calculations are so difficult and why they generate such uncertain results. It also illustrates that uncertainty with several examples.

Difficulties in Estimating Changes in Compensation Costs

There are many barriers to a reasonably precise estimate of the change in compensation costs that statutory eligibility criteria could produce. First, to determine how many property owners would qualify for compensation under any set of eligibility criteria, one must have information on the distribution of regulatory effects--data regarding the average effect are not sufficient. For most federal regulatory programs, that information is unavailable.

Second, in cases in which the information is available, one must distinguish between those property owners who could qualify for compensation under the constitutional takings jurisprudence and those who would qualify under the proposed statutory eligibility criteria. That distinction is difficult to draw because the courts' jurisprudence is somewhat unclear and cannot be easily reduced to criteria that are comparable with the statutory criteria in proposals. (The statutory eligibility criteria are not totally without ambiguity either, in part because the effect of certain exceptions that they contain would have to be defined by the courts during litigation.)

Third, and perhaps most important, the proposed statutory compensation regime would involve a great many actors who might respond in varying ways to the new incentives that the proposals are designed to create. Those actors include government regulators, property owners, the courts, and the Congress. Although reliably predicting the direction of certain responses is possible, predicting their magnitude is exceedingly difficult and may verge on the impossible. The potential increase in compensation awards is a function of all those actors' reactions, which makes it difficult to predict the size of any change.

The cost-estimating problems noted here are not unique to the issue of regulatory takings. Cost estimates are often made on the basis of less-than-ideal information, and simplifying assumptions are almost always required when predicting the effect of a new program before it is put into place. The difference is one of degree. Without knowing the distribution of regulatory effects, analysts find it exceedingly difficult to quantify the relationship between changes in eligibility criteria and the number of property owners who might qualify for compensation. That uncertainty dramatically increases the importance of the assumptions that the analysis uses. And in the context of property rights proposals, little agreement exists about what assumptions are reasonable.

Illustrative Estimates

CBO developed two illustrations of the estimating problem for the case of federal restrictions on the conversion of wetlands to other uses. Analysts made no attempt to capture all of the complexity described above. Instead, they attempted to use the available data on the rate of wetlands conversions and the economic activities that led to those conversions to impute plausible estimates of changes in property values that might be

attributable to federal restrictions. Using two sources of data and assumptions about the effects of wetlands restrictions, CBO constructed a number of estimates. The variation among them was extreme--the largest estimate was over 300 times that of the smallest. No single point estimate is particularly informative. What is important is the vast range of the estimates and the tremendous uncertainty surrounding possible changes in property values attributable to federal regulation.