

## **Congressional Review Act: Implications for Regulations Leading Up to the 2020 Election**

With the federal elections looming later this year, now is a good time to review the power of the Congressional Review Act (CRA). Congress can use the CRA to invalidate regulations issued by a past administration. If a new Democratic majority captures the US Congress and a Democrat becomes President in 2021, the CRA could be used to undo certain regulations advanced by the Trump Administration, particularly if those regulations are promulgated in the second half of 2020.

Enacted in 1996, the CRA empowers the legislative branch to invalidate regulations and regulatory guidance issued by executive branch agencies. The CRA creates a mechanism, called a joint resolution of disapproval, by which Congress may nullify an agency finalized rule. Because of its design—elaborated upon in [this report](#)—the CRA plays an important role in setting the timeline for the executive branch to finalize regulations, especially in an election year. The Trump Administration may seek to finalize regulations by Memorial Day 2020 to protect them from congressional disapproval. Should Democrats capture both chambers of Congress and President Trump does not win re-election, the next Congress could use the CRA to nullify some of the Trump Administration’s regulations that fit within the CRA parameters.

### **Rules that Fall Under the CRA**

Under the CRA, agency action that is “designed to implement, interpret, or prescribe law or policy” is [deemed a rule](#) and therefore may be reviewed by Congress. This broad definition comes from the Administrative Procedure Act and encompasses the majority of substantive regulations. There are two significant classes of exemptions. The first is for rules that concern monetary policy proposed or implemented by the board of governors of the Federal Reserve System. Second, any rule relating to internal agency organization or personnel is also exempt, as long as that policy does not substantially affect the rights or obligations of non-agency parties. All rules that meet the aforementioned definition and are not exempt can be subject to the CRA.

The US Government Accountability Office (GAO) has developed a process in which members of Congress can request a formal legal opinion on whether a particular agency action qualifies as a rule under the CRA. If GAO affirms that an agency action constitutes a rule, Congress may “use the CRA procedures to consider legislation overturning an agency action despite the agency not submitting that action to Congress.”

### **Timeline for Congress to Use the CRA**

[Under the Administrative Procedure Act](#), a proposed rule may go into effect as early as 30 days after it is published in the *Federal Register*, except in special circumstances. For major rules, the effective date typically is 60 days after the rule is published. A rule is “major” if the Office of Management and Budget determines that it will have a certain level of economic impact.

The CRA authorizes Congress to issue a joint resolution of disapproval within 60 days of its receipt of a rule. This means that even if a non-major rule goes into effect 30 days following its publication in the *Federal Register*, Congress retains the ability to disapprove it under the 60-day timeline.

Another component of the CRA timeline that is especially significant in an election year is *sine die* adjournment. If Congress adjourns *sine die* (without establishing a day to appear again) within 60 days of a rule being submitted, the CRA clock starts over in the new session of Congress. A *sine die* adjournment typically happens at the end of every legislative session, meaning that the 116th Congress will conclude at the end of 2020 without a set date on which to reappear as the 117th Congress. This means that when the new Congress convenes, the CRA countdown will restart for any rule that did not expire in the previous Congress.

### **Political Context and Recent CRA Action**

After President Trump took over the White House in January 2017, Congress worked with the Administration to [use the CRA](#) to overturn 14 regulations that the Obama Administration had promulgated in its final weeks. The Republican-controlled Congress was able to suspend these regulations because the 60-day window had not closed. Congress and the Trump Administration also advanced an interpretation of the CRA that would allow them to repeal federal rules stretching back decades. The analysis relies on language in the CRA specifying that the 60-day clock starts when rules are *submitted to Congress*. If a rule is not officially submitted to Congress, then the clock has not started, even if the rule is being enforced by the executive branch.

For example, the GAO [agreed with Sen. Toomey's office](#) that the Consumer Financial Protection Bureau's guidance regulating third-party auto lenders had not been submitted properly to Congress in 2013, and therefore could be resubmitted and invalidated under the CRA. Congress did just that by passing [S.J.Res.57](#) through both the US House of Representatives and the US Senate and securing President Trump's signature on May 21, 2018.

While the Trump Administration has worked with Congress to use CRA, it is also aware that these mechanisms could be used against its own regulatory actions, should the administration change in 2021. The US presidential and congressional elections will be held on November 3, 2020, and the presidential inauguration will be January 20, 2021. Given the flexibility of the congressional calendar, the strong likelihood that Congress will adjourn *sine die* in December 2020, and the time it likely would take a new administration to file a resolution of disapproval, the Trump Administration likely is working to finalize regulations by Memorial Day 2020 to ensure that the 117th Congress does not subject those regulations to CRA review.

### **Conclusion**

The CRA is one of the many complicated procedural laws that dictate the balance between the executive and legislative branches of the US government. This law will likely play a key role in driving regulatory policy in 2020. With an election looming, the CRA places pressure on the Trump Administration to finalize key regulations in the first half of the year, a lengthy process that typically involves first issuing a

Notice of Proposed Rulemaking and collecting public comments. With these factors in mind, [we will continue to keep you updated on the Administration’s regulatory actions in 2020.](#)

**Table 1. Congressional Process for Using the CRA**

Legislative Process	House of Representatives	Senate	Timeline
Initiation Period	<p>A joint resolution of disapproval must be submitted by a member of either house within 60 calendar days of when the rule is received by Congress.</p> <p>Recess periods of more than three days are excluded when calculating this period. In other words, weekend days will count toward the initiation period, but district work periods will not.</p>		60 calendar days (excluding district work periods)
Initial Consideration/ Action Period	<p>The CRA does not establish an expedited process for initial House consideration. The House would consider a disapproval resolution under its general procedures, likely as prescribed by a special rule reported from the Committee on Rules.</p>	<p>Initial consideration of an expedited resolution in the Senate is called the action period. Here, the Senate has 60 session days following publication of the rule in the <i>Federal Register</i> to complete initial consideration of a disapproval resolution.</p> <p><b>Note:</b> The action period runs concurrently to the initiation period.</p>	60 session days after the rule is published in <i>Federal Register</i>
Committee Consideration	<p>In each house, any disapproval resolution submitted is to be referred to the committee or committees with jurisdiction. This step is consistent with the regular procedure in each chamber.</p>		N/A
Committee Discharge	<p>Again, expedited procedures in the CRA apply only to the Senate. The CRA attempts to ensure that the Senate will be able to act on the disapproval resolution whether or not the committee of referral reports it. A procedure to discharge the committee from its consideration becomes available beginning 20 calendar days after the rule has been both submitted to Congress and published in the <i>Federal Register</i>. If 30 senators submit a petition, the measure is automatically discharged and placed on the calendar, from which it may be called up for floor consideration.</p>		Available 20 days after a rule is submitted and published in the <i>Federal Register</i>

Legislative Process	House of Representatives	Senate	Timeline
Taking Up a Disapproval Resolution	The motion to consider is normally reserved to the majority leader. However, the CRA emphasizes that the Senate, in principle, has means of calling up the disapproval resolution, no matter what position the committee or leadership take on it. Because of the time-sensitive nature of this process, the CRA also eliminates many of the tools used to delay legislation in the Senate. The CRA prohibits amendments, motions to postpone the resolution’s consideration, and motions to consider other business.		N/A
Floor Consideration	The CRA does not preclude amendment of a disapproval resolution in the House.	Floor debate on the resolution is limited to 10 hours, and no amendment is in order.  At the conclusion of debate, the Senate automatically proceeds to vote on the resolution. No intervening action is permitted, except that one quorum call may take place if any Senator so requests.	N/A
Reconciliation	Both houses must present the president with identical measures. To ensure continuity, the CRA designates that when either house adopts a disapproval resolution and sends it to the other, the receiving house must hold it at the desk rather than referring it to committee. This means that the resolution is available for floor action. When the receiving house later considers a disapproval resolution of its own, it votes on the resolution already received from the other house. In this way both houses take final action on the same measure; if both adopt it, the requirements for presentation to the president are satisfied.		N/A
Passage	If a disapproval resolution passes both houses and is signed by the president, the rule may not take effect and the agency cannot issue any substantially similar rule without subsequent statutory authorization. If a rule is disapproved after going into effect, it is “treated as though [it] had never taken effect.”		N/A

Legislative Process	House of Representatives	Senate	Timeline
<p><b>Presidential Veto</b></p>	<p>If the president vetoes the resolution, the rule may not take effect for 30 days of session thereafter, unless the House or Senate votes to sustain the veto. Congress may also override the president’s veto under the normal procedures, which require a two-thirds vote in each chamber.</p> <p>If the president vetoes a resolution to disapprove a major rule, Congress has an additional 30 days of session to override the veto.</p> <p>If the president vetoes the disapproval resolution of a rule that has already gone in effect, the rule remains in effect pending congressional action on the veto.</p>		<p>30 session days from veto</p>