EXECUTIVE SUMMARY

- The Congressional Review Act (CRA) allows Congress to effectively void rules promulgated by federal agencies.
- Due to the CRA’s structure, however, it has been seldom used as to be successful, and it typically must be used when a new president from a different party than the predecessor enters the White House and the new president’s party fully controls Congress.
- This tracker follows the status of CRA resolutions: So far in the 117th Congress, 22 resolutions of disapproval have been introduced. Three have been passed through both houses of Congress and signed by the president.

INTRODUCTION

The Congressional Review Act (CRA) allows Congress to strike down regulations issued by federal agencies. If a resolution of disapproval pertaining to a rule is passed by both chambers of Congress and signed by the president, the rule becomes void and the agency that issued the rule cannot issue a rule in “substantially the same form” in the future.

Due to the CRA’s structure, it is seldom successful. Two significant hurdles limit its use. First, presidents are highly unlikely to sign a disapproval resolution of a rule their administration issued. Second, Congress must typically be under the full control of the party opposite the administration that issued the rule. Successful resolutions, as a result of these two hurdles, typically only occur when the White House changes hands to a different party and the incoming president’s party controls Congress.

Republicans used the CRA in 2017 to repeal many Obama Administration rules by taking advantage of the CRA’s lookback provision, which allows a new Congress to consider CRA resolutions on rules issued in the last 60 session days of the previous Congress. Resolutions introduced on these rules also fall under the category of rules subject to the CRA’s expediting procedures, which allow resolutions to pass on a simple majority rather than the supermajority required to overcome a Senate filibuster. The period for using these expedited procedures on rules subject to the lookback period, however, expired on May 27, 2021.

With Democrats now in full control of Congress and the White House, 22 resolutions of disapproval have been introduced. Five of these were introduced under the lookback provision, the window for the use of which closed in early April 2021 such that no new resolutions can be introduced under that provision. The section below explains the rules for which resolutions have been introduced and will be updated as resolutions move through Congress or as more resolutions are introduced.
RULES SUBJECT TO THE LOOKBACK PROVISION

Environmental Protection Agency (EPA)

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review

Rule published: September 14, 2020

Resolution of Disapproval introduced: March 25, 2021 (Senate) and March 26, 2021 (House)

Status: Passed Senate (April 28, 2021); Passed House (June 25, 2021); Signed (June 30, 2021)

What the rule does: The rule scaled back and eliminated some of the requirements of an Obama Administration rule on methane emissions stemming from oil and natural gas production. The Trump Administration EPA believed the Obama-era regulations were redundant and that the Clean Air Act requires the agency to find that methane emissions from certain sources are harmful to public health. Opponents of the rule believe the Trump-era changes will result in detrimental increases in methane emissions.

Estimated economic impact: The rule saved an estimated $31 million, according to EPA.

Office of the Comptroller of the Currency (OCC)

National Banks and Federal Savings Associations as Lenders

Rule published: October 30, 2020

Resolution of Disapproval introduced: March 25, 2021 (Senate) and March 26, 2021 (House)

Status: Passed Senate (May 11, 2021); Passed House (June 24, 2021); Signed (June 30, 2021)

What the rule does: The rule defines when banks and savings associations are considered “true lenders” when they work with third parties to facilitate lending. The OCC rule clarifies that true lenders are those named as the lender as of the origination date of the loan. Opponents of the rule argue that it does little to stop third parties from “renting” a bank’s charter to allow the third party to take advantage of certain rights granted to lenders. The OCC says it addressed this criticism in the preamble to the final rule.

Securities and Exchange Commission (SEC)

Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8

Rule published: November 4, 2020

Resolution of Disapproval introduced: March 25, 2021 (Senate) and March 26, 2021 (House)
Status: Introduced

What the rule does: The rule made changes to SEC regulations governing what shareholder proposals must be published in a company’s shareholder proxy statements. Since the costs to publish the proxy statements are borne entirely by the company, the SEC has traditionally set out guidelines by which a company may deny publishing shareholder proposals. The SEC updated these guidelines in 2020 making them more restrictive to shareholders, in part because technology has improved shareholders’ ability to make and disseminate proposals. Opponents of the rule argue the new restrictions are too one-sided.

Estimated economic impact: The rule saved an estimated $10.5 million, according to the SEC.

The Enhancement and Standardization of Climate-Related Disclosures for Investors

Proposed rule published: April 11, 2022

Resolution of Disapproval introduced: June 15, 2022 (House)

Status: Introduced

What the rule does: The proposed rule would require publicly traded companies to provide certain climate-related information in their registration statements and annual reports. The proposed rule would require information about a registrant’s climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition. on

Estimated economic impact: The proposed rule would cost an estimated $19.1 billion, according to the SEC.

Social Security Administration (SSA)

Hearings Held by Administrative Appeals Judges of the Appeals Council

Rule published: November 16, 2020

Resolution of Disapproval introduced: April 1, 2021 (House)

Status: Introduced

What the rule does: The SSA issued the rule to clarify when its administrative appeals judges (AAJs) may hold hearings on individual cases. The SSA argues while it has always had the authority to let AAJs hold hearings, it just has not used it often (instead it typically has administration law judges [ALJs] hold hearings). SSA argues that using AAJs can help it handle situations when caseloads are abnormally high. Opponents contend that the Administrative Procedure Act and recent court precedent only allow for ALJs.

RULES ISSUED DURING THE 117TH CONGRESS
Equal Employment Opportunity Commission (EEOC)

Update of Commission’s Conciliation Procedures

*Rule published:* January 14, 2021

*Resolution of Disapproval introduced:* March 23, 2021 (House) (Senate)

*Status:* Passed Senate (May 19, 2021); Passed House (June 24, 2021); Signed (June 30, 2021)

*What the rule does:* The rule updated the procedures for “conciliation,” or the pre-litigation settlement of discrimination charges filed under the Civil Rights Act, the Americans with Disabilities Act, the Genetic Identification Nondiscrimination Act, and the Age Discrimination in Employment Act. While the Trump Administration’s EEOC said the rule was necessary to improve transparency and make the conciliation process more consistent, those supporting the resolutions of disapproval argue it unfairly tilts the process in the favor of employers.

Department of Health and Human Services (HHS)

Securing Updated and Necessary Statutory Evaluations Timely

*Rule published:* January 19, 2021

*Resolution of Disapproval introduced:* March 29, 2021 (House)

*Status:* Introduced

*What the rule does:* The rule required HHS and its agencies to review most of their regulations within 10 years. If such a review on a regulation does not occur over that time, the regulation would sunset, or expire. The goal of sunsetting is to force agencies to review their rules to make sure they are working as intended, that their expected benefits and costs were accurate, and that they are updated as appropriate. Opponents claim the sunsetting provision could force the expiration of needed regulations and unduly burden agency time and resources.

*Estimated economic impact:* The rule saved an estimated $104.5 million, according to HHS.

Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination

*Rule published:* November 5, 2021

*Resolution of Disapproval introduced:* December 9, 2021 (House)(Senate)

*Status:* Passed Senate (March 2, 2022)

*What the rule does:* The rule requires all staff working at facilities that participate in Medicare and Medicaid to...
be vaccinated by January 4, 2022.

*Estimated economic impact:* The rule cost an estimated $1.4 billion, according to HHS.

Temporary Halt in Residential Evictions in Communities With Substantial or High Transmission of COVID-19 To Prevent the Further Spread of COVID-19

*Rule published:* August 6, 2021

*Resolution of Disapproval introduced:* August 10, 2021 (Senate)

*Status:* Introduced

*What the rule does:* The order was an attempt to re-issue a moratorium on evictions that had expired in July 2021 following the Supreme Court's determination that Congressional action would be necessary. Unsurprisingly, the Supreme Court struck down this order in August 2021 rendering the CRA resolution moot.

Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs

*Rule Published:* February 3, 2021

*Resolution of Disapproval introduced:* February 10, 2022 (Senate); February 18, 2022 (House)

*Status:* Introduced

*What the rule does:* The rule requires persons traveling to wear masks over the mouth and nose when traveling on any conveyance (*e.g.*, airplanes, trains, subways, buses, taxis, ride-shares, ferries, ships, trolleys, and cable cars) into or within the United States. A person must also wear a mask on any conveyance departing from the United States until the conveyance reaches its foreign destination. Additionally, a person must wear a mask while at any transportation hub within the United States (*e.g.*, airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation within the United States).

Vaccine and Mask Requirements to Mitigate the Spread of COVID-19 in Head Start Programs

*Rule Published:* November 30, 2021

*Resolution of Disapproval introduced:* February 14, 2022 (Senate); April 21, 2022 (House)

*Status:* Introduced

*What the rule does:* The rule requires universal masking for all individuals two years of age and older, with some noted exceptions, and all Head Start staff, contractors whose activities involve contact with or providing direct services to children and families, and volunteers working in classrooms or directly with children to be vaccinated for COVID-19 by January 31, 2022.
Estimated economic impact: The rule cost an estimated $49.5 million, according to HHS.

Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services

Rule Published: October 7, 2021

Resolution of Disapproval introduced: March 16, 2022 (House)(Senate)

Status: Introduced

What the rule does: The rule removes restrictions on nondirective options counseling and referrals for abortion services and eliminates requirements for strict physical and financial separation between abortion-related activities and project activities under Title X of the Public Health Service Act.

Estimated Economic Impact: The rule cost an estimated $1.6 million, according to HHS.

Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond

Rule Published: September 27, 2021

Resolution of Disapproval introduced: March 23, 2022 (House)(Senate)

Status: Introduced

What the rule does: The rule makes several revisions to Affordable Care Act exchanges for 2022.

Estimated Economic Impact: The rule saved an estimated $1.3 billion, according to HHS.

Occupational Safety and Health Administration (OSHA)

COVID-19 Vaccination and Testing; Emergency Temporary Standard

Rule published: November 5, 2021

Resolution of Disapproval introduced: November 17, 2021 (House) (Senate)

Status: Passed Senate (December 8, 2021)

What the rule does: The rule requires employers with 100 or more employees to establish and enforce a policy requiring employees to be vaccinated for COVID-19 or submit to mask-wearing and weekly testing by January 4, 2022.

Estimated economic impact: The rule cost an estimated $3 billion, according to OSHA.
Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

Definition of “Frame or Receiver” and Identification of Firearms

Rule published: April 26, 2022

Resolution of Disapproval introduced: April 27, 2022 (Senate); May 6, 2022 (House)

Status: Introduced

What the rule does: The rule expands the definition of firearms to include privately made firearms and gun kits. It also requires kits sold commercially that can be readily assembled by a purchaser to have serial numbers. In addition, if a gun retailer buys a firearm without a serial number from a gun owner, the retailer must serialize the gun before reselling it. In addition to the serial number requirements, the rule requires gun kit retailers to conduct background checks. The rule also amends recordkeeping requirements to obligate retailers of all firearms to keep records for as long as they are licensed to sell, up from the previous minimum of 20 years.

Estimated economic impact: The rule cost an estimated $100.4 million, according to ATF.

Department of Homeland Security (DHS)

Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers

Rule published: March 29, 2022

Resolution of Disapproval introduced: April 28, 2022 (House) (Senate)

Status: Introduced

What the rule does: The rule amends regulations governing the procedures for determining certain protection claims and available parole procedures for individuals subject to expedited removal and found to have a credible fear of persecution or torture.

Public Charge Ground of Inadmissibility

Rule published: September 9, 2022

Resolution of Disapproval introduced: September 21, 2022 (House); November 14, 2022 (Senate)

Status: Introduced
What the rule does: The rule sets out the conditions under which a noncitizen can be denied certain government benefits if found to be “likely to become primarily dependent on the government for assistance.” The rule makes changes to the program from a controversial Trump Administration rule.

Estimated economic impact: The rule cost an estimated $45.1 million, according to DHS.

National Highway Traffic Safety Administration (NHTSA)

Civil Penalties

Rule published: April 1, 2022

Resolution of Disapproval introduced: April 28, 2022 (House)

Status: Introduced

What the rule does: The rule repeals a 2021 interim final rule that reduced civil penalties for violating the corporate average fuel economy standards starting in model year 2022.

Council on Environmental Quality (CEQ)

National Environmental Policy Act Implementing Regulations Revisions

Rule published: April 20, 2022

Resolution of Disapproval introduced: July 13, 2022 (Senate); July 19, 2022 (House)

Status: Passed Senate (August 4, 2022)

What the rule does: The rule repeals parts of a 2020 final rule that aimed to streamline NEPA requirements for federally funded projects.

Department of Education


Rule published: July 6, 2022

Resolution of Disapproval introduced: September 8, 2022 (Senate); September 9, 2022 (House)
Status: Introduced

What the rule does: The rule places additional requirements on charter schools seeking federal funding, including proving a need and community support for the charter school, analyzing the school’s enrollment, and disclosing contracts with for-profit entities.

Employee Benefits Security Administration (EBSA)

Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Rule published: December 1, 2022

Resolution of Disapproval introduced: December 1, 2022 (Senate)

Status: Introduced

What the rule does: The rule allows plan fiduciaries to consider climate change and other environmental, social and governance factors when they select retirement investments and exercise shareholder rights, repealing changes made during the Trump Administration.

Estimated economic impact: The rule cost an estimated $117.2 million, according to EBSA.

Department of Veterans Affairs

Reproductive Health Services

Rule Published: September 9, 2022

Resolution of Disapproval introduced: December 13, 2022 (Senate)(House)

Status: Introduced

What the rule does: The rule removed exclusions to abortion counseling and services for service members and civilians covered under a Department of Veterans Affairs health plan.