



The Daily Dish

Tracking the Congressional Review Act in 2021

DOUGLAS HOLTZ-EAKIN | APRIL 20, 2021

Eakinomics: Tracking the Congressional Review Act in 2021

Recall that Congress has legislative tools to address concerns over administration regulations. Specifically, the [Congressional Review Act \(CRA\)](#), passed in 1996, allows legislators to introduce a resolution of disapproval, and receive expedited consideration of the resolution, to rescind a regulation. If successfully passed, the rule “may not be reissued in substantially the same form.” In practice, this would end the life of the regulation permanently. The CRA sat in relative obscurity until 2017, with the exception of overturning an [ergonomics rule](#) in 2001.

In 2017, however, the Trump Administration and Republican Congress put the CRA on (relative) steroids, rescinding [16 rules](#). With the precedent, AAF’s Daniel Bosch has undertaken to provide a [CRA Tracker](#) for this, the 117th, Congress. To cut to the bottom line: “So far in the 117th Congress, six resolutions of disapproval have been introduced but none has yet been advanced through either chamber of Congress.”

Those six rules fall into two categories. Four are rules published in the final 60 legislative days of the previous Congress; the CRA has a “look back” provision that makes these fair game. [Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review](#) would scale back and eliminate some of the requirements of an Obama Administration rule on methane emissions stemming from oil and natural gas production. [National Banks and Federal Savings Associations as Lenders](#) defines when banks and savings associations are considered “true lenders” when they work with third parties to facilitate lending. [Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8](#) made changes to Securities and Exchange Commission regulations governing what shareholder proposals must be published in a company’s shareholder proxy statements. [Hearings Held by Administrative Appeals Judges of the Appeals Council](#) clarifies when Social Security Administration administrative appeals judges may hold hearings on individual cases. (Bosch has more details.)

At least to my eye, none of these rules seems especially earthshaking, but importance is very much in the eye of the beholder. That probably applies as well to the next two rules currently under consideration, which the Trump Administration finalized at the beginning of this Congress. The first is the Equal Employment Opportunity Commission’s [Update of Commission’s Conciliation Procedures](#) that updated the procedures for 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.

The second is Health and Human Services’ (HHS) [Securing Updated and Necessary Statutory Evaluations Timely](#) (SUNSET) rule, and is likely to be a bigger deal. The rule garnered considerable [attention](#) because it required HHS and its agencies to review most of their regulations within 10 years to see if they should stay on the books. If the review did not occur over that time, the regulation would sunset.

Sunsetting federal rules appears to be unappealing to the Democrats controlling Congress. And the CRA is a powerful tool to keep HHS from doing so again.