



Insight

# CRA Tracker: Congressional Review Act in the 117th Congress

DAN BOSCH | MAY 11, 2021

## 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, 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 117<sup>th</sup> Congress, six resolutions of disapproval have been introduced but none has yet been advanced through either chamber of Congress.

## 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.

With Democrats now in full control of Congress and the White House, six resolutions of disapproval have been introduced. Four of these were introduced under the lookback provision, the window for the use of which closed in early April 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 ([Senate](#)) and March 26 ([House](#))

*Status:* Passed Senate ([April 28](#))

*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 ([Senate](#)) and March 26 ([House](#))

*Status:* Passed Senate ([May 11](#))

*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 ([Senate](#)) and March 26 ([House](#))

*Status:* In committee

*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.

## **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 ([House](#))

*Status:* In committee

*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 117<sup>TH</sup> CONGRESS**

### **Equal Employment Opportunity Commission (EEOC)**

#### [Update of Commission's Conciliation Procedures](#)

*Rule published:* January 14, 2021

*Resolution of Disapproval introduced:* March 23 ([House](#)) ([Senate](#))

*Status:* In committee

*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 ([House](#))

*Status:* In committee

*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 sunseting 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 sunseting 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.