



Evaluating Regulatory Review Commissions to Analyze COVID-19 Regulation

DAN BOSCH | MAY 19, 2020

EXECUTIVE SUMMARY

- The COVID-19 pandemic caused many federal agencies to temporarily suspend or modify existing regulations, leading some observers to call for regulatory review commissions to evaluate whether those rules are truly necessary absent a national emergency.
- Most recommendations envision a model based on the Base Realignment and Closure commissions, with independent experts developing a list of regulations modified or suspended temporarily because of COVID-19 that then gets an up-or-down vote in Congress.
- An alternative and more aggressive approach, recently introduced in the House of Representatives, would instead form several commissions to develop lists of rules that must stay in place, with the rest ceasing to have effect, although this approach will likely struggle to gain bipartisan support.

INTRODUCTION

The COVID-19 pandemic caused many federal agencies to temporarily suspend or modify existing regulations in order to help facilitate the federal government's response. These actions have sought to expedite the provision of needed goods and services, including medical supplies; relieve requirements that cannot be met with reduced staffing at many businesses; and enhance the federal government's ability to stabilize capital markets.

The federal response has left many wondering whether the regulations that are not needed in an emergency are really necessary once the pandemic is declared over. Some have recommended that the federal government establish a commission – or several commissions – to review amended rules to see if they are necessary.

One bill, the [Coronavirus Regulatory Repeal Act \(CRRA\)](#), was recently introduced in the House of Representatives and is the first legislation proposed that would form commissions to review rules amended due to COVID-19. This analysis looks at the merits of the CRRA and another possible regulatory review commission structure.

REGULATORY REVIEW COMMISSIONS

The idea of forming a commission to review regulations is not new. In 2016 and 2017, the House of Representatives passed the [Searching for and Cutting Regulations that are Unnecessarily Burdensome \(SCRUB\) Act](#). The crux of the SCRUB Act was to establish a Retrospective Regulatory Review Commission, made up of outside experts, that would develop a list of regulations to repeal, and that list would then go to Congress for an up-or-down vote. The idea was based on the Base Realignment and Closure (BRAC) commissions used to determine what military bases to shutter following the Cold War. The BRAC model helped members of

Congress avoid political consequences for closing individual bases by cloaking those closures in a broad measure drafted by outside experts and seeking greater Department of Defense efficiency.

The same idea applied to the SCRUB Act: By having members of Congress vote for or against a package of repeals developed by regulatory experts, the bill sought to minimize the political ramifications of voting to repeal individual regulations.

THE COMMISSION MODEL AND COVID-19 REGULATORY ACTIONS

As federal agencies have temporarily repealed, modified, or waived certain regulations in response to the COVID-19 pandemic, some regulatory experts have suggested that Congress should review those regulations to see if they were needed in the first place.

Most suggestions center around a commission that would examine the universe of rules temporarily changed due to COVID-19 and develop a list of those that could be repealed or modified on a permanent basis. This list would then go to both houses of Congress for an up-or-down vote, similar to the BRAC model.

Notably, the only COVID-19 regulatory review commission proposal introduced as legislation so far – the CRRA – differs from the BRAC model. Rather than create one commission for the government, it would create several commissions, one for each committee of jurisdiction in the House and Senate. These commissions would consist of committee members and the head of each agency under its jurisdiction.

Instead of developing a list of rules to repeal or modify permanently, the commissions would develop a list of rules to keep. Those rules not on the list would be permanently repealed or modified (commensurate with the action taken during the COVID-19 emergency). Those rules on the list would have to be approved by the House and Senate and signed by the president to remain in place. If not, the rules go away.

The appeal of the CRRA for some is that it puts the onus on the commissions, Congress, and the president to keep rules in place, rather than reach consensus on rules to repeal. While this approach would likely be effective in removing regulations, it is also aggressive and is unlikely to gain much bipartisan support, particularly in the Democratic-controlled House. The use of elected politicians to form the bulk of the commissions, rather than independent experts, also reduces the benefits of political cover that come with an up-or-down vote.

A BRAC-style commission of independent experts would be more likely to gain bipartisan traction. Those averse to removing regulations are more apt to support a review commission whose recommendations come from independent experts rather than politicians. In addition, politicians of all stripes would benefit from the political cover a BRAC-style commission would offer.

CONCLUSION

Two types of approaches are emerging for how to review the regulations that have been temporarily repealed or modified during the COVID-19 crisis. One relies on commissions that are formed by politically engaged policymakers and would decide which rules get to stay, while the other, similar to BRAC commissions, uses a panel of independent experts to decide which rules should be eliminated. The one modeled on BRAC commissions stands a better chance of political viability than the alternative CRRA, which holds appeal for those aiming to reduce more regulatory burdens. Whether either can muster a bipartisan consensus remains to be seen. With the current national emergency likely in place for some time, Congress will have plenty of opportunity to debate how to address regulations that inhibited the response to and recovery from COVID-19.