

# Biden is Using Multiple Mechanisms to Reverse Trump's Regulatory Agenda

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## In brief...

The Congressional Review Act is not the only mechanism that incoming presidential administrations have to reverse the regulatory agenda of the previous administration. In the case of regulatory rollbacks, the Biden administration has been actively using several options to reverse Trump-era rules.

On April 4, the [deadline](#) passed for Congress to submit new resolutions of disapproval on rules issued within the window for the [Congressional Review Act](#) of 1996 (CRA). The CRA is an [effective tool](#) for incoming presidential administrations and their allies in Congress to reverse policies issued [toward the end](#) of the previous administration. Congressional Democrats [introduced](#) resolutions of disapproval for six Trump administration regulations, which still need to pass each house of Congress and be signed by the president.

Some commentators have [criticized Democrats](#) for missing an opportunity to repeal objectionable Trump-era rules. Of [28 notable rules](#) assembled by the [Coalition for Sensible Safeguards](#) (CSS)—a group of advocacy organizations—as candidates for the CRA, Democrats introduced disapprovals for only five. Now that the CRA window has expired, has the Biden administration's opportunity to change Trump-era rules gone with it?

Incoming presidents have multiple options to reverse the policies of the prior administration, even beyond issuing revised rules through the notice-and-comment process (which often takes years). Some can be done entirely by officials in the executive branch; others require action from other branches of government. In his first few months, President Biden has already utilized several methods to undo Trump administration regulations, including withdrawals, regulatory suspensions, strategic responses to litigation in the courts, and other executive actions like departmental policy changes.

## Withdrawals

Presidents have the option to [withdraw a regulation](#) before a final rule is published in the Federal Register—in other words, before the agency has completed the notice-and-comment process. A new administration can simply withdraw an action in the proposed rule stage, as the Department of Homeland Security (DHS) did for its [Affidavit of Support on Behalf of Immigrants](#) proposal. Other regulatory actions might have been finalized by the agency but not yet published in the Federal Register; those can also be withdrawn before publication, as [incoming presidents](#) commonly do through a [regulatory freeze](#) memorandum.

In cases where one administration published a direct final rule—a process often reserved for noncontroversial rulemaking—that received a [significant adverse comment](#), the incoming president can also justify a withdrawal. For instance, the Biden administration withdrew a Trump administration rule in February, [Discretionary Review by the Secretary of Labor](#), that the department had published as a direct final rule.

Withdrawals are not just an option for rulemakings, but also other agency actions. The final environmental impact statement for the [Resolution Copper Project and Land Exchange](#), which appears on the [CSS list](#), was [officially withdrawn](#) by the Forest Service in early March.

## Regulatory Suspensions

The Trump administration [paved the way](#) for more aggressive use of various rollback strategies, including suspensions of final rules. Regulatory suspensions [refer](#) to actions that postpone a rule's compliance date or effective date. While regulatory suspensions can help advance a president's agenda, agencies must utilize the tool in adherence with administrative procedures. The Trump administration used effective date delays liberally, but also frequently [lost in court](#) for failing to comply with the Administrative Procedure Act.

Under Biden, agencies have suspended at least three rules on the CSS list. After a court [stayed](#) the [Health and Human Services Grants Regulation](#) from January, the department agreed to an [effective date delay](#). The Biden administration has also delayed the effective date of two immigration-related rules to the end of the year: 1) a [DHS rule](#) affecting the process for selecting H-1B petitioners; 2) an [interim final rule](#) barring individuals from asylum eligibility based on a public health emergency.

## Strategic Responses to Litigation

Presidents can also strategically respond to court proceedings in ways that undo the prior administration's efforts. The Trump administration strategically used [abeyances](#)—"court orders that put off briefing, argument, and decision in the pending case"—to accomplish the reversal of certain Obama-era regulatory policies. Specifically, by delaying court decisions, a new administration can ensure that a pending court case will not be decided before it has a chance to revise the rule. Under Biden, the Department of the Interior requested that a circuit court hold its decision on the appeal of a case involving the Migratory Bird

Treaty Act regulation in abeyance, giving the department time to [delay](#) the effective date of the rule and [permanently withdraw](#) the solicitor's opinion [undergirding](#) the change.

The Biden administration has also responded in a strategic manner to court decisions that are favorable to the president's new policy direction. The Environmental Protection Agency (EPA) [successfully sought](#) vacatur and remand of its "Strengthening Transparency" in science [rule](#), which the court granted in February 2021. Thus, Biden's EPA was able to roll back an unwanted regulation, without triggering issues the CRA can raise like limitations on issuing a [substantially similar rule](#) in the future.

Such calculated legal decisions can apply to rules outside the CRA window too. For instance, one of the most controversial Trump actions, DHS's "Public Charge" rule, was [finalized](#) in 2019 but its implementation was stayed in court. After [moving to dismiss](#) DHS's appeal in March 2021, the Biden administration implemented vacatur of the rule and officially [removed](#) its provisions from the Code of Federal Regulations.

Several rules on the CSS list have been enjoined in federal court, including [three regulations affecting](#) the asylum process and a [Department of Justice action](#) changing appellate procedures in immigration proceedings. These decisions could offer the Biden administration additional opportunities to use ongoing litigation to reconsider Trump-era policies.

## Other Executive Actions

Finally, outside of rulemaking, some executive actions can directly reverse important policy priorities, particularly when the president or executive officials have extensive discretionary authority on the implementation of programs. President Biden [issued](#) Executive Order 14010, which [directed](#) DHS to revise the Migrant Protection Protocols (MPP) and reverse the [Termination of the Central American Minors Parole Program](#). DHS officials under Biden already [announced](#) changes to [MPP](#) under Biden, departing starkly from [Trump-era implementation of the program](#). The executive order also revoked five Trump-era [presidential documents](#) on immigration policy, which had been specifically cited by agencies to justify the need to take certain [regulatory actions](#).

## Conclusion

The CRA is a critical method of reversing the regulatory agenda of a prior president, which Democrats have begun to use to repeal six Trump-era rules. But presidents and their allies may turn to several additional mechanisms for removing or stalling implementation of unwanted regulations. Although congressional Democrats may have missed some opportunities to facilitate the reversal of Trump administration rules, the overall picture shows that many of these regulations are already being undone once other tools at the president's disposal are also considered. Presidential transitions present many pressures and varied demands for a new administration. Rarely will one policy tool suffice as the sole way to accomplish a task. In the case of regulatory rollbacks, the Biden administration has been actively using several options to reverse Trump-era rulemakings.