

## New Implications of the Congressional Review Act

By: Susan E. Dudley | November 18, 2017

The [Congressional Review Act](#) (CRA) has been getting quite a bit of attention recently. Not only did President Trump sign his fifteenth resolution disapproving a federal regulation last week, but this action marked the first time a president had disapproved a regulation issued during his own tenure. Congress is also taking steps to apply the CRA to guidance documents and other non-APA (Administrative Procedure Act) agency regulatory actions.

### CRA procedures for disapproving rules

Under the CRA, majorities in both houses of Congress can use [expedited procedures](#) to disapprove recent regulations. Congress has [60 legislative days](#) after a final rule is issued to review it and send a “joint resolution of disapproval” to the president. Once the president signs the resolution, the rule cannot take effect; and perhaps more importantly, the agency needs express authority from congress to issue another regulation that is “[substantially the same.](#)”

Between January and May of this year, Congress and the president used the CRA to overturn 14 regulations issued at the end of President Obama’s term. (See our CRA tracker [here.](#)) The window for disapproving Obama administration rules has closed, however, and many expected the CRA to be set aside until the next presidential [transition.](#)

### Independent agencies’ rules are vulnerable

The president’s signature on the resolution disapproving a Consumer Financial Protection Bureau (CFPB) rule last week shows that rules issued by independent regulatory agencies may be viable CRA targets. Like his predecessors, President Trump is unlikely to sign a resolution disapproving a rule one of his cabinet agencies issues, but he may welcome a chance to reverse an [independent agency](#), like the CFPB. Presidents have less control over the heads of those

### In brief...

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agencies, and the regulations they produce may not reflect congressional or presidential priorities.

### **Three new developments**

Further adding to the CRA buzz are three recent congressional actions that I discuss in more detail in [Forbes](#) and the Yale Journal on Regulation's [Notice & Comment](#) blog.

1. The Government Accountability Office (GAO) recently [confirmed](#) that the CRA's definition of "rule" is broad enough to include guidance documents that did not go through notice-and-comment rulemaking. As amended by the CRA, the APA prevents rules and guidelines from going into effect before they are submitted to Congress. The GAO letter focused on an interagency [guidance on leveraged lending](#) issued more than four years ago, but it puts hundreds or even [thousands of sub-regulatory statements](#) never submitted to congress within the scope of the CRA's disapproval mechanism.
2. According to the [Wall Street Journal](#), "the Senate parliamentarian has found that the GAO ruling counts as the official report," triggering the review clock for the interagency leveraged lending guidance. If this ruling holds, it means that congress now has 60 legislative days to review the guidance and send a resolution to the president.
3. Another implication of the GAO letter is that guidance documents that were not sent to congress as required by the CRA were technically [never in effect](#). The chairman of the House Financial Services Subcommittee asked financial regulators to "conduct a zero-based review" of any guidance documents and supervisory letters not submitted to congress, and to determine whether they should be submitted or be withdrawn.

These recent actions suggest the CRA is likely to continue to influence the development, implementation, and enforcement of regulation. Given the large number of rules and guidance documents affected, both congress and the administration will need to take steps to review the enforceability of past actions and manage the regulatory agenda going forward.