

## A Lookback at the Law: How Congress Uses the CRA

*How the Congressional Review Act works and how Congress uses it.*

Sarah Hay | February 13, 2024

The [Congressional Review Act \(CRA\)](#) was signed into law as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) on [March 29, 1996](#). The CRA most notably establishes procedures for overturning final rules issued by federal agencies. Prior to 2017, Congress had only used the CRA once to repeal a final rule. During the Trump administration, the 115<sup>th</sup> Congress used the CRA to overturn 16 rules issued towards the end of the Obama administration. In President Biden’s tenure, the 117<sup>th</sup> Congress overturned three rules from the end of the Trump administration, bringing the total number of rules overturned by the CRA to 20.

The CRA is an important regulatory oversight mechanism for Congress. If there is a presidential transition in 2025, the CRA could come into play in overturning Biden administration rules. This Insight first discusses how the CRA works and common misconceptions about the law. Expanding on Regulatory Studies Center research,<sup>1</sup> this piece offers visualizations showing how Congress has used the CRA since its passage in 1996 and how Congress is using the CRA today. This Insight aims to provide a foundation for understanding the mechanics of the CRA, its usage, and to communicate the past and present roles of the CRA as a means of congressional oversight.

### How Does the CRA work?

The CRA establishes a procedure by which Congress can overturn rules issued by federal agencies. The law applies to all final rules as defined by section 551 of the Administrative Procedure Act, with exceptions for rules of “particular applicability,” rules relating to agency management or

---

<sup>1</sup> My colleague Daniel Pérez initiated the Regulatory Studies Center’s CRA tracking work. I have expanded upon the dataset, and I continue our CRA data collection operations.

*This insight reflects the views of the author and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center’s policy on research integrity is available at <https://regulatorystudies.columbian.gwu.edu/about>.*

*Sarah Hay is a policy analyst at the GW Regulatory Studies Center. She can be reached at [haysarah@gwu.edu](mailto:haysarah@gwu.edu). She thanks Steven J. Balla, Susan Dudley, Mark Febrizio, Zhoudan Xie, and Roger Nober for their insightful comments.*

personnel, and agency organization rules.<sup>2</sup> The CRA can also be applied to [agency actions](#) such as guidance documents that the Government Accountability Office (GAO) has determined count as rules under the CRA.

After a federal agency issues a final rule, the agency must submit that rule to Congress. Once a rule is submitted, members of Congress have 60 days—excluding days in recess—to introduce a joint resolution disapproving the rule.<sup>3</sup> Each resolution of disapproval (RD) can only target one rule and must overturn that rule in its [entirety](#). The RD must then pass both the House and the Senate by simple majority vote. If signed into law by the president, the RD nullifies the rule. Rules overturned by the CRA “may not be reissued in substantially the same form,” barring agencies from simply issuing the rule again.<sup>4</sup>

Beyond the general process, the CRA has special “fast-track” procedures for RDs introduced in the Senate, and a “lookback” procedure for final rules issued in the latter days of a session of Congress through the beginning of the next session.

## Senate Fast-track Provisions

The CRA contains provisions that address two sticking points in typical Senate procedure: committee discharge and voting. Together, these two provisions make up the Senate fast-track provisions. If a Senate committee has not reported an RD after 20 calendar days, 30 Senators may sign a petition to discharge the RD from committee and place it on the Senate calendar.<sup>5</sup> Once an RD is placed upon the calendar, the CRA also ensures that the resolution will move forward unencumbered. To do so, the CRA stipulates:

- RDs are not subject to amendments, motions to postpone, or motions to proceed to other business.
- Debate on the RD is limited to a maximum of 10 hours and can be further limited to fewer hours.
- The Senate must vote on the resolution immediately following debate.<sup>6</sup>

The CRA limits the use of these fast-track provisions, however. To use these procedures, the Senate must vote on an RD within [60 session days](#) of its introduction. If the Senate does not take action within that window, the RD would have to follow typical Senate procedures.

---

<sup>2</sup> 5 U.S.C. § 804(3).

<sup>3</sup> 5 U.S.C. § 802(a).

<sup>4</sup> 5 U.S.C. § 801(b)(2).

<sup>5</sup> 5 U.S.C. § 802(c).

<sup>6</sup> 5 U.S.C. § 802(d).

## Lookback Period

The lookback period applies to rules issued and submitted to Congress in the [60 working days](#) before the end of a session of Congress through the beginning of the next session of Congress.<sup>7</sup> These rules are treated as though they were reported to Congress and published in the Federal Register on the 15<sup>th</sup> working day of the new session of Congress. Congress may then follow the procedures described above to overturn these rules.

The lookback period ensures that all rules get a full 60 working days of consideration, regardless of when they are issued. Without the lookback period, Congress's [60-day review](#) may be split across sessions of Congress or otherwise impeded.

The lookback period, particularly at the end of a presidential term, creates a unique political moment. If the sitting president is not reelected and is succeeded by a president and Congress of the opposing party, the succeeding president and Congress can use the lookback period to review and overturn rules issued during the previous administration. Notably, 19 of the 20 successful CRA overturns occurred during this lookback period.

## Common Myths About the CRA

There are two pervasive myths about the CRA: that it is an inherently deregulatory tool, and it is only used during presidential transitions.

### Inherently Deregulatory: False!

Because the CRA is designed to overturn regulations, it is often considered a deregulatory tool. However, Congress can use the CRA to achieve regulatory goals. [For example](#), the 117<sup>th</sup> Congress and the Biden administration used the CRA to [disapprove](#) a [Trump-era EPA regulation](#) that loosened oil and natural gas emissions standards. By overturning a deregulatory action, the 117<sup>th</sup> Congress's use of the CRA achieved a pro-regulatory end.

### Only Used During Presidential Transitions: False!

There is a common misconception that the CRA is only used during presidential transitions; of the 20 successful RDs, 19 of them were signed during the lookback period following a presidential transition. However, legislators continue to introduce RDs outside of the lookback period. According to a [2023 study](#) by Balla, Dooling, and Perez, 71 percent of RDs were introduced outside of the lookback period, when they had little chance of becoming law. The authors attribute these introductions to the use of the CRA as “an instrument of position taking.” Beyond using the CRA as a tool to achieve policy changes, using the CRA as a position-taking tool allows legislators

---

<sup>7</sup> “60 working days” refers to either 60 session days in the Senate, or 60 legislative days in the House.

to generate conversation around a topic or influence agency rulemaking. One of the most high-profile instances of leveraging the CRA to [influence agency action](#) occurred in 1998, when the House and the Senate introduced an RD targeting a home health care agency rule. Lawmakers used the threat of CRA action to force the Health Care Financing Administration to suspend its rule.

Figure 1 shows the number of RDs introduced by year. Although the number of RDs introduced fluctuates, at least one RD has been introduced each year, including outside of the lookback period in presidential transition years.

## CRA Use Trending Upwards, Including Outside of Lookback Period, for both Major and Non-major Rules

*Resolutions of Disapproval (RDs) Introduced by Year, 1996-2022*

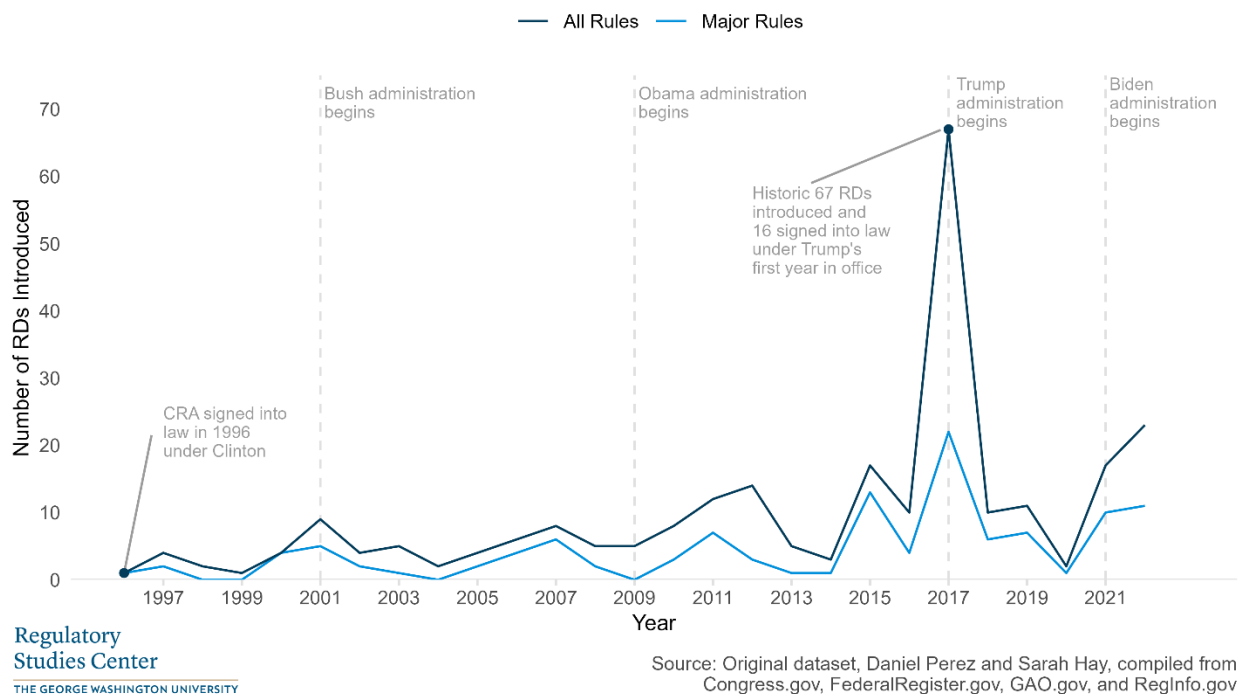


Figure 1

Generally, the number of RDs introduced per year is trending upwards. Following presidential transitions in 2001, 2017, and 2021, the number of RDs introduced increases from the prior year. These spikes could be attributed to members of Congress taking advantage of the lookback period at the beginning of the Bush, Trump, and Biden administrations, respectively. There is a notable spike in RDs introduced in 2017, which coincides with the successful overturning of an historic 15 rules right at the start of the Trump administration. (The 115<sup>th</sup> Congress overturned its 16<sup>th</sup> rule during the Trump administration in 2018.)

## What the Data Tell Us About the CRA

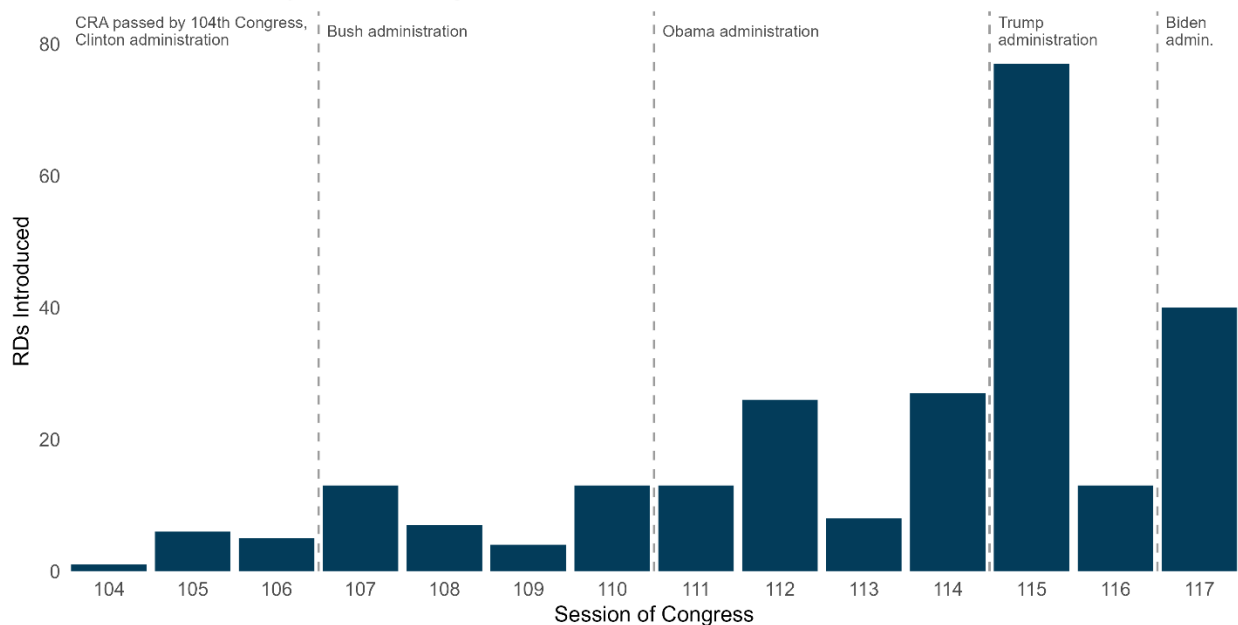
Expanding upon the Regulatory Studies Center's 2023 dataset, I have created the following visualizations to show characteristics about Congress's usage of the CRA. The visualizations show data from the 104<sup>th</sup> Congress—the Congress in session when SBREFA and the CRA were signed into law—through the 117<sup>th</sup> Congress, which ended in 2022. Because the 118<sup>th</sup> Congress is ongoing, I have excluded those observations from these visualizations. I describe trends from the 118<sup>th</sup> Congress in the following section. Data tracking RDs from the 118<sup>th</sup> Congress will be available at [go.gwu.edu/RegStudies](https://go.gwu.edu/RegStudies).

### Legislative Process Trends

Figure 2 shows the number of RDs introduced in each session of Congress. Each Congress since the CRA was signed into law has introduced RDs, although it has become more common in recent congresses. The four congresses with the highest RD totals—the 115<sup>th</sup>, 117<sup>th</sup>, 114<sup>th</sup>, and 112<sup>th</sup>—occurred in the six most recent congresses.

#### 115th Congress Introduces Most Resolutions of Disapproval (RDs)

Number of RDs Introduced by Session of Congress, 1996-2022



Regulatory  
Studies Center  
THE GEORGE WASHINGTON UNIVERSITY

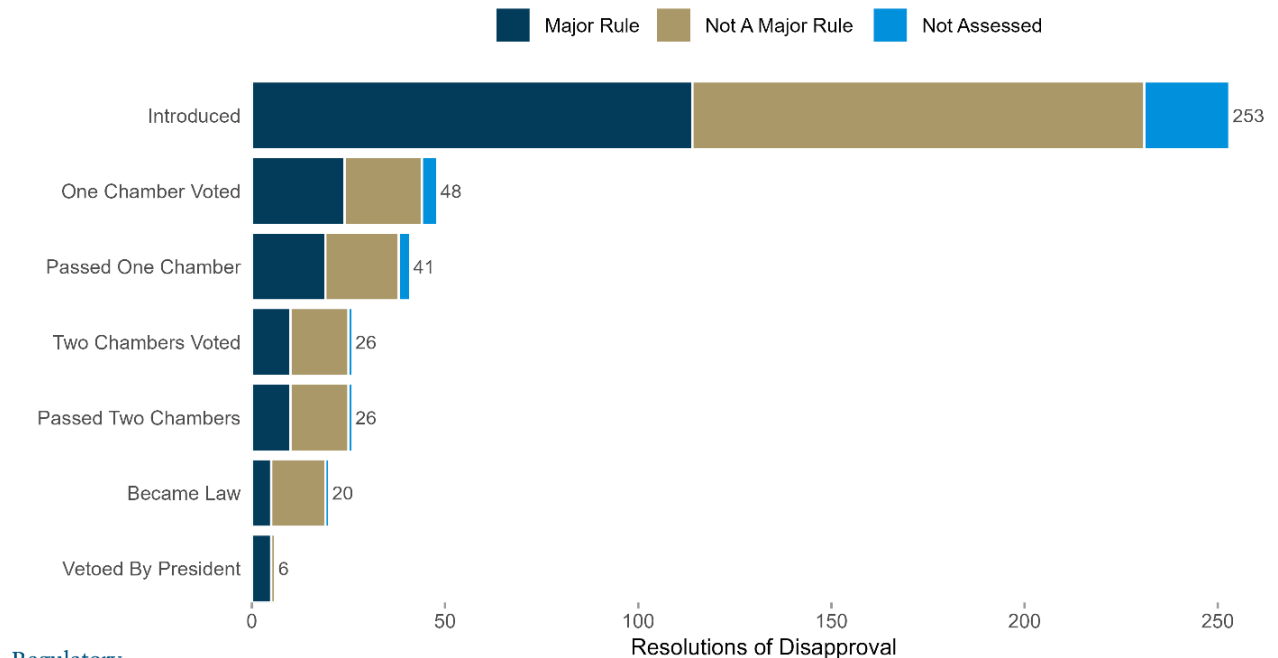
Source: Original dataset, Daniel Perez and Sarah Hay,  
compiled from Congress.gov, FederalRegister.gov,  
GAO.gov, and RegInfo.gov

Figure 2

Despite members of Congress introducing RDs in each session of Congress since the CRA's inception, not all of those bills make it to the president's desk. Figure 3 shows how many of those bills made it through the legislative process.

## Only 10.3 percent of CRA bills introduced have ever reached the president

Number of CRA bills by stage in the legislative process, 1996-2022



Regulatory  
Studies Center  
THE GEORGE WASHINGTON UNIVERSITY

Source: Original dataset, Daniel Perez and Sarah Hay, compiled from Congress.gov, FederalRegister.gov, GAO.gov, and RegInfo.gov

Figure 3<sup>8</sup>

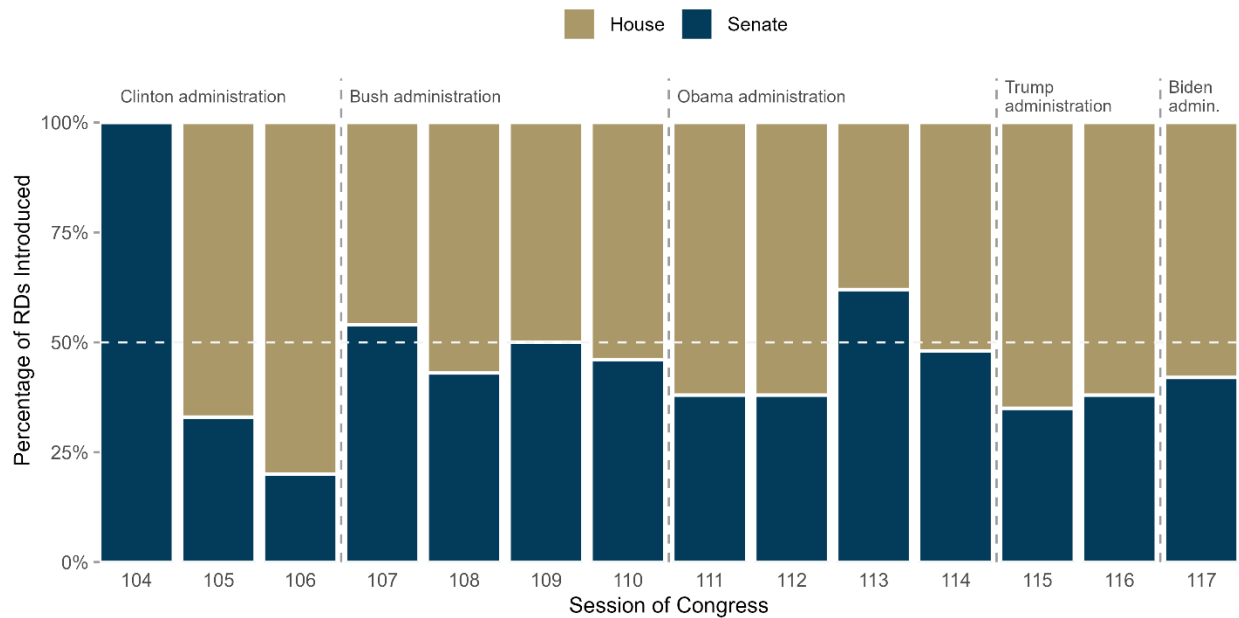
Of the 253 RDs introduced from 1996 to 2022, only 26 RDs successfully passed both houses of Congress to go before the president. Of the 20 RDs that became law, President George W. Bush signed one, President Donald Trump signed 16, and President Joe Biden signed 3. Five of these RDs targeted major rules, 14 targeted non-major rules, and one targeted a guidance document, which was not evaluated for major rule status.

Figure 4 shows the percentage of RDs introduced in the House versus the Senate. The data show that, in 10 of the 14 Congresses used in this analysis, more RDs originated in the House than the Senate. In three Congresses—the 108<sup>th</sup>, 110<sup>th</sup>, and 114<sup>th</sup>—the House introduced just one more RD than the Senate, and in the 107<sup>th</sup> Congress, the Senate introduced just one more RD than the House. In the 109<sup>th</sup> Congress, both the House and the Senate introduced two RDs each. Most other Congresses have wider margins in the number of RDs introduced.

<sup>8</sup> In this chart, the “Not Assessed” category refers to bills targeting items other than final rules, which include notices, guidance documents, and policy memoranda. These items are not evaluated for major rule status but are still eligible for congressional oversight.

## In 10 Congresses, More Resolutions of Disapproval Introduced in House than Senate

Percentage of Resolutions of Disapproval (RDs) Introduced by Chamber of Congress, 1996-2022



Regulatory  
Studies Center  
THE GEORGE WASHINGTON UNIVERSITY

Source: Original dataset, Daniel Perez and Sarah Hay,  
compiled from Congress.gov, FederalRegister.gov,  
GAO.gov, and RegInfo.gov

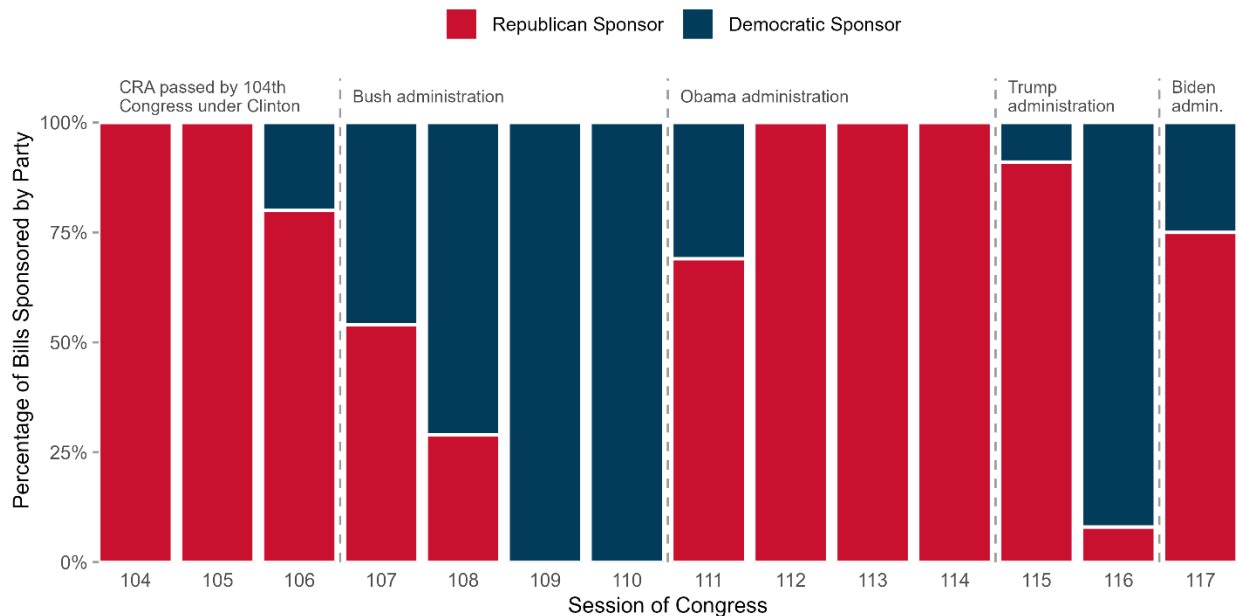
Figure 4

## Partisanship and Bipartisanship in the CRA

Figure 5 shows the proportion of RDs introduced by Republicans versus Democrats. The data show that in the Bush, Obama, and Trump administrations, the percentage of bills introduced by the opposing party increased over the course of the administration. In the first session of Congress for both the Bush and Trump administrations, a majority of RDs were introduced by the president's party (54 percent in the 107<sup>th</sup> Congress, and 90 percent in the 115<sup>th</sup> Congress). This is consistent with CRA expectations: a president can work with members of their party in Congress to leverage the CRA to overturn regulations issued by the previous president.

## In Later Years of Presidency, CRA Resolutions More Often Introduced by Opposing Party

Percentage of Resolutions of Disapproval Introduced by Party by Session of Congress, 1996-2022



Regulatory  
Studies Center  
THE GEORGE WASHINGTON UNIVERSITY

Source: Original dataset, Daniel Perez and Sarah Hay, compiled from Congress.gov, FederalRegister.gov, GAO.gov, and RegInfo.gov

Figure 5

The increase of RDs introduced by the opposing party in subsequent congresses is also consistent with the CRA’s use as a position-taking tool, particularly outside of the lookback period. Members of the opposing party can introduce RDs to show their active opposition to the administration’s policies, even if they know the president would almost certainly veto the RD.

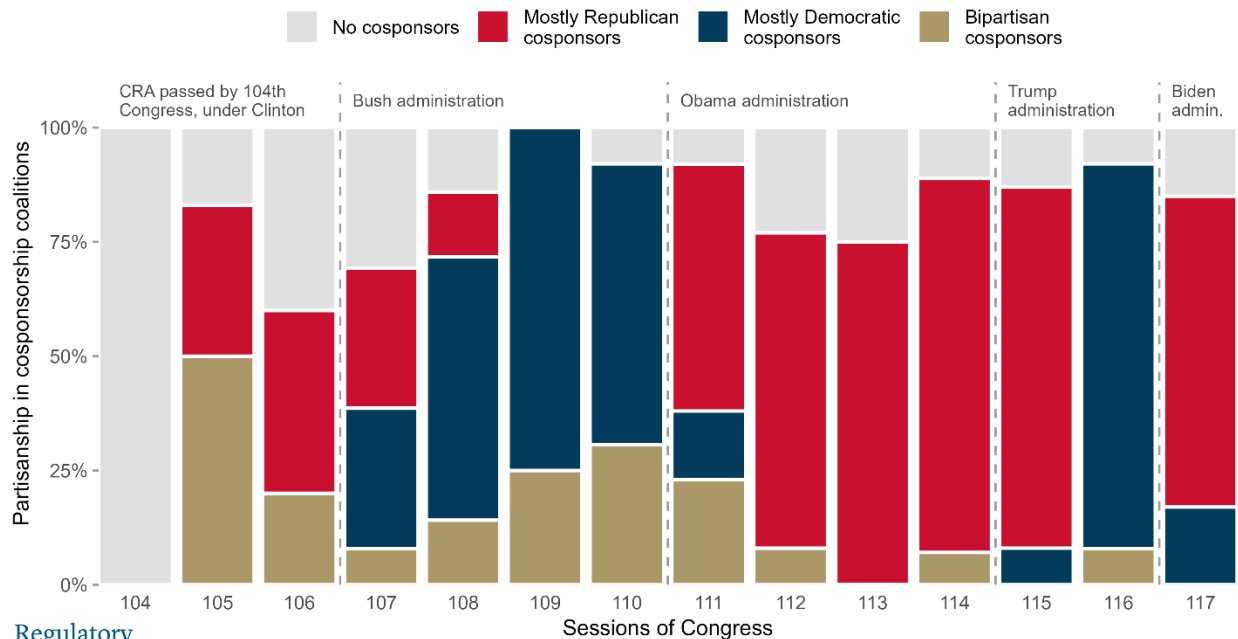
There is also evidence of partisanship in RD cosponsorship coalitions. Figure 6 shows the proportion of bills cosponsored by mostly Democrats, mostly Republicans, by a coalition of bipartisan cosponsors,<sup>9</sup> and without cosponsors.

<sup>9</sup> For this work, I define a “coalition of bipartisan cosponsors” as a group in which at least 20 percent of cosponsors are not from the same party as the bill’s sponsor. See Laurel Harbridge, *Is Bipartisanship Dead? Policy Agreement and Agenda-setting in the House of Representatives*, (2015).



## In recent Congresses, fewer bills receive bipartisan cosponsor support

Proportion of CRA bills by partisan affiliation of cosponsors, 1996-2022



Regulatory  
Studies Center  
THE GEORGE WASHINGTON UNIVERSITY

Source: Original dataset, Daniel Perez and Sarah Hay, compiled from Congress.gov, FederalRegister.gov, GAO.gov, and RegInfo.gov

Figure 6

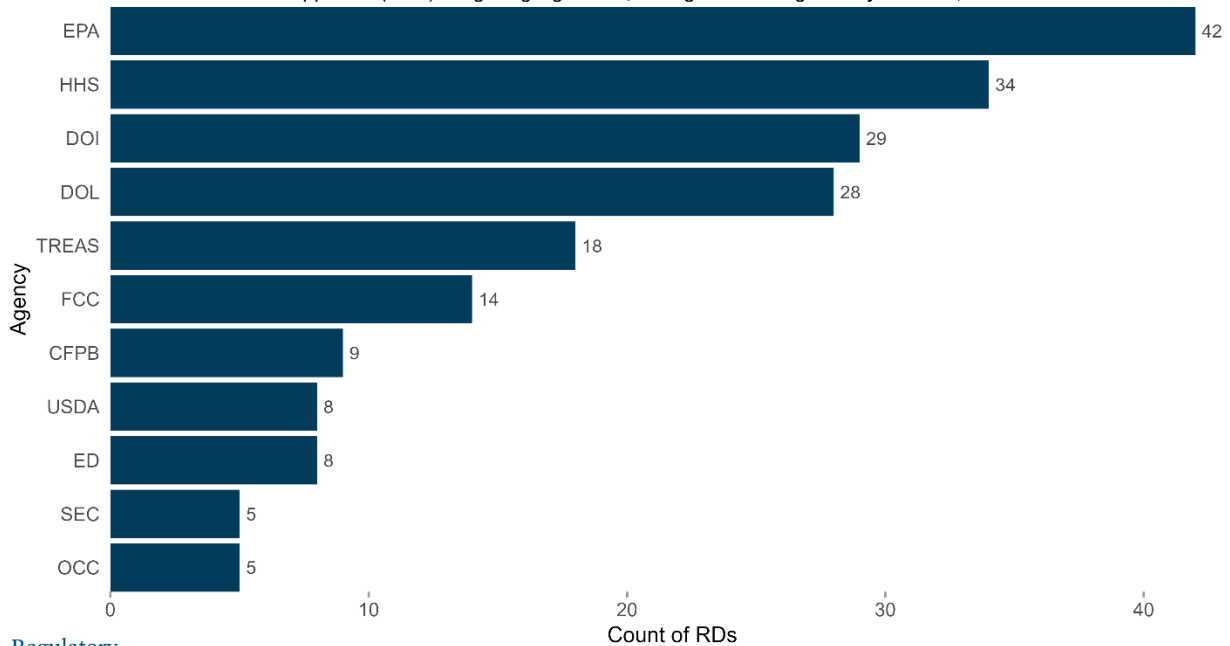
The clear trend is that a smaller proportion of bills is sponsored by bipartisan groups now compared to the earlier days of the CRA. Further research is needed to understand more about cosponsorship patterns in the CRA.

## Agencies Targeted by CRA Resolutions

Figure 7 shows the number of RDs targeting a given agency's regulations, for agencies with 5 or more rules targeted by an RD. The Environmental Protection Agency (EPA) has been the subject of the most RDs, with 42 bills targeting its rules. Congress also targeted many rules from the Departments of Health and Human Services (34 rules), Interior (29 rules), and Labor (28 rules).

## EPA, HHS Rules Targeted Most by CRA

Number of Resolutions of Disapproval (RDs) Targeting Agencies, for Agencies Targeted by 5+ RDs, 1996-2022



Regulatory  
Studies Center  
THE GEORGE WASHINGTON UNIVERSITY

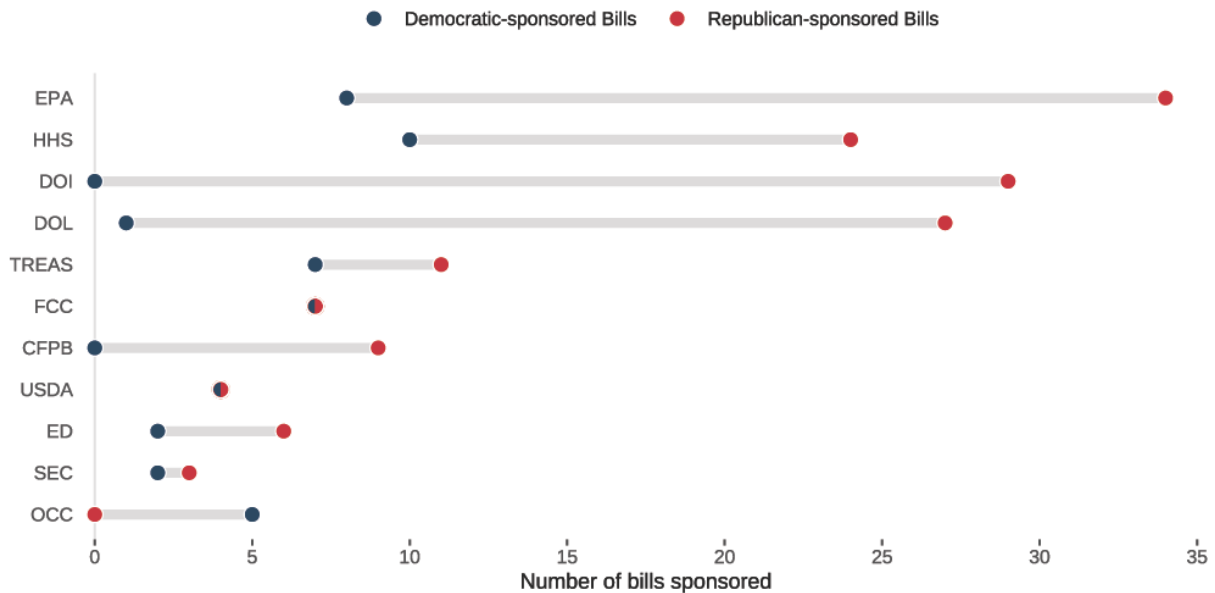
Source: Original dataset, Daniel Perez and Sarah Hay, compiled from Congress.gov, FederalRegister.gov, GAO.gov, and RegInfo.gov

Figure 7

While rules by these agencies have been targeted many times, Figure 8 shows that political parties do not target agencies equally. Each point in the figure shows the number of RDs introduced by one political party targeting a given agency's rules. The bar provides a visual representation of the difference between the number of bills introduced by the parties. While EPA rules have been targeted many times, more Republican-sponsored RDs are aimed at EPA rules than Democratic-sponsored bills. Interior rules have only been targeted by Republican-sponsored bills, whereas rules from the Office of the Comptroller of the Currency (OCC) have only been targeted by Democratic-sponsored bills. Republican and Democratic RDs have targeted Federal Communications Commission (FCC) and Department of Agriculture (USDA) rules equally.

## Republicans Target EPA, HHS Rules More Frequently; Democrats Target Comptroller More Frequently

*Difference in Number of Resolutions of Disapproval Introduced by Party*



Regulatory  
Studies Center

THE GEORGE WASHINGTON UNIVERSITY

Source: Original dataset, Daniel Perez and Sarah Hay, compiled from Congress.gov, FederalRegister.gov, GAO.gov, and RegInfo.gov

Parties introduced equal number of bills targeting FCC, USDA

Figure 8

## Trends from the 118<sup>th</sup> Congress

The charts presented show past trends in CRA usage. As of February 12, 2024, the 118th Congress has introduced 59 RDs. Of these, 31 have been introduced in the House, and 28 have been introduced in the Senate. All of the RDs have been introduced by Republican members of Congress. [Despite Democratic control of the Senate](#), the 118th Congress has passed nine RDs. President Biden has vetoed all of the resolutions.

Data tracking actions from the 118th Congress is forthcoming on the Regulatory Studies Center website.