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Will History Repeat Itself? Forecasting CRA Use in a Second Trump Administration

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In brief…

The 115th Congress used the Congressional Review Act (CRA) an historic 16 times at the beginning of the Trump administration in 2017. We take a look at the regulations targeted by that Congress to get a sense of the policy areas most likely to be challenged if former President Trump wins reelection this fall.

Although there is much uncertainty surrounding the 2024 presidential election, two fundamental elements are already well established. First, former President Donald Trump is the [presumptive nominee](#) of the Republican Party. Second, public opinion polls demonstrate the [expected closeness](#) of the contest between Trump and President Joe Biden. Given the real possibility of a second Trump presidency, how does his 2017-2021 term inform predictions about which policy areas could be the focus of regulatory actions at the beginning of a second term?[1]

One of the primary initiatives of the Trump administration was the ["deconstruction"](#) of the administrative state, through measures such as the elimination of regulations issued during the preceding Obama presidency. A prominent means through which regulations were nullified was the [Congressional Review Act](#) (CRA), which provides expedited procedures for Congress to disapprove regulations issued in the waning months of outgoing presidential administrations. Through the CRA, Congress passed and President Trump signed resolutions disapproving of 16 regulations promulgated toward the end of the Obama administration. This number of CRA disapprovals was historically unprecedented and dwarfs the three resolutions that President Biden signed at the beginning of his presidency.

There is no immediate reason to think that a second Trump term would be less ambitious in terms of the volume of CRA disapprovals. Surrounded by advisors and allies favoring a ["pro-growth, deregulatory agenda,"](#) Trump will have the motivation to make aggressive use of the CRA. And he will certainly have

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[1] There are a number of factors that could influence which regulations Congress chooses to target with the CRA, such as the rule's significance or the quality of the regulatory process, to name a few. While these other factors are certainly relevant, this piece focuses on the broader policy areas that Congress chose to target previously.

the opportunity, given that President Biden—facing a deadlocked Congress—has relied extensively on regulatory policymaking as an instrument of advancing his administration's priorities.

What specific types of regulations are especially likely to be eliminated using the CRA if Republicans regain control of both houses of Congress and the White House in 2025? Figure 1 shows the number of successful resolutions of disapproval by policy area, per the policy area assigned to the resolution by the Congressional Research Service at Congress.gov.[2] Four policy areas were targeted by more than one successful resolution of disapproval.

Resolutions of Disapproval (RDs) signed into law by policy area, 115th Congress
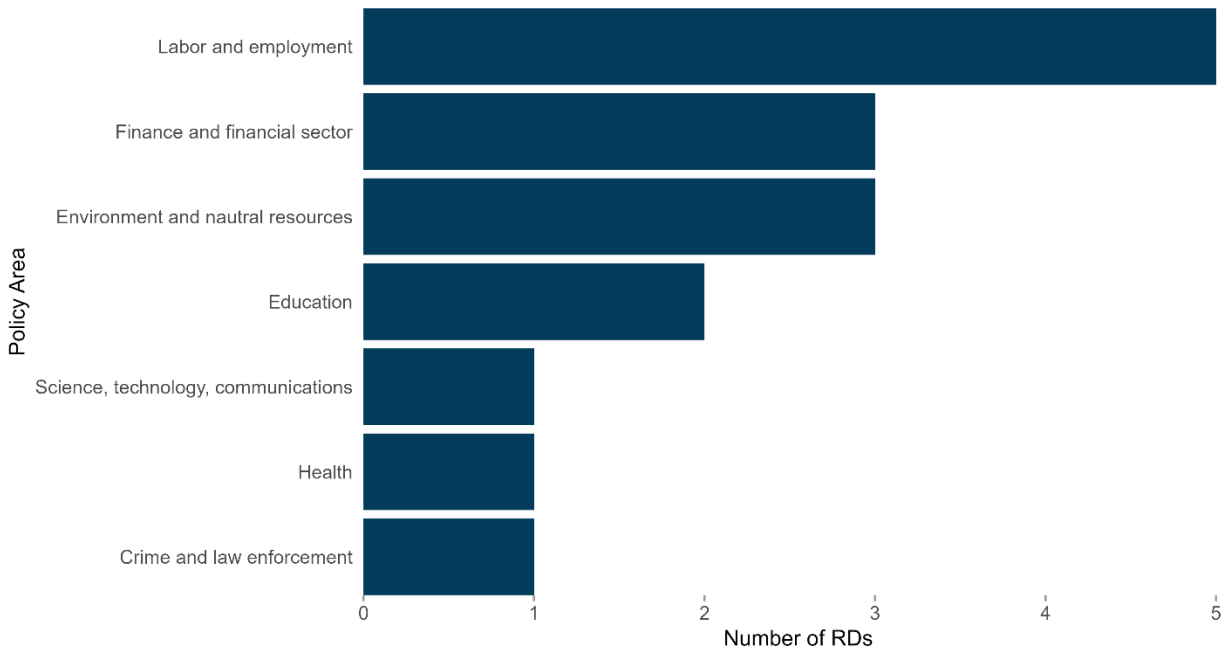
Source: Original dataset, Daniel Perez and Sarah Hay, compiled from Congress.gov, FederalRegister.gov, GAO.gov, and RegInfo.gov. Policy areas from Congress.gov.

Figure 1

The first policy area is labor and employment, regulations primarily issued by the Department of Labor. Five such regulations were eliminated through the CRA, more than any other policy area. The disapproved regulations include an Occupational Safety and Health Administration rule clarifying that keeping and maintaining records of work-related injuries and illnesses is an ongoing obligation, as well as two rules regarding savings arrangements established by states and qualified state political subdivisions for non-governmental employees.

The second policy area concerns the financial sector. Two of the three such nullified regulations were issued by the Consumer Financial Protection Bureau (CFPB), while one was promulgated by the Securities and Exchange Commission (SEC). The disapproved SEC regulation implemented sections of the Dodd-

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[2] For a full list of the regulations disapproved by the 115th Congress, please see Table 1 in the appendix.

Frank Wall Street Reform and Consumer Protection Act regarding financial disclosures related to transparency in the [resource extraction](#) space.

The two CFPB disapprovals represent less typical uses of the CRA. One CFPB rule, regarding [arbitration agreements](#) for some consumer financial products and services, was actually issued towards the beginning of the Trump administration, rather than at the end of the Obama administration. However, the CFPB director at the time, Richard Cordray, had been appointed in 2012 by President Obama, so the rule reflected policy preferences consistent with the Obama administration. The other CFPB action was an agency bulletin regarding [indirect auto lending](#) and compliance with the Equal Credit Opportunity Act. The CFPB published this bulletin in 2013, well before the 115th Congress and the Trump administration. The agency never submitted the bulletin to Congress for review, as required by the CRA, likely because bulletins are not traditionally considered "rules." Members of Congress acquired an opinion from the Government Accountability Office (GAO) saying that this bulletin did meet the definition of "rule" as established by the CRA. Upon reading that GAO opinion into the Congressional Record, the clock for CRA action on the bulletin started well after its original publication.

The third policy area is environment and natural resources. Interestingly, the Department of the Interior—not the Environmental Protection Agency—issued the three such regulations nullified under the CRA. The disapproved regulations were the [Stream Protection Rule](#), which aimed to protect water quality and wildlife from the effects of surface coal mining, a rule that emphasized important stakeholders and considerations in [resource management planning](#), and a rule governing predator control and the non-subsistence take of wildlife on [national refuges in Alaska](#).

The fourth policy area consists of two regulations issued by the Department of Education. One regulation implemented changes to [education policy](#) introduced by the Every Student Succeeds Act of 2015. The other established regulations to collect data on [teacher preparation programs](#) across the country to better assess program performance.

To what extent is the Trump administration's past record in using the CRA in these policy areas likely to manifest in a second Trump presidency? The answer to this question in part depends upon which Biden regulations are finalized in the "lookback period." The lookback period is intended to prevent an outgoing administration from evading legislative review by waiting to issue regulations until the end of the congressional session. Instead, rules that are issued within 60 working days (legislative days in the House or session days in the Senate) of the end of a session of Congress are made available for congressional oversight again in the subsequent session of Congress.

Because the lookback period relies on counting back days from the end of a session of Congress, it is impossible to predict precisely when the period will open. Based on the [existing congressional calendar](#), estimates for the 2024 lookback period range from late May to early August. Historic data suggests that the lookback window will land later in the summer; a [2021 ACUS report](#) notes that the average lookback period date during presidential election years has been July 18.

Given these considerations and current unknowns, it is too soon to confidently offer a list of regulations that are likely to be targeted in 2025 should Republicans control both Congress and the White House. That said, labor, the environment, finance, and education stand out—if past is indeed prelude—as policy areas that are likely to attract the attention of President Trump and his congressional allies.

Table 1

Rule Disapproved	Issuing Agency	Policy Area
Federal Acquisition Regulation; Fair Pay and Safe Workplaces	Dept. of Defense, General Services Administration, NASA	Labor and employment
Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants	Dept. of Labor	Labor and employment
Savings Arrangements Established by States for Non-Governmental Employees	Dept. of Labor	Labor and employment
Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees	Dept. of Labor	Labor and employment
Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness	Dept. of Labor	Labor and employment
Disclosure of Payments by Resource Extraction Issuers	Securities & Exchange Commission	Financial Sector
Arbitration Agreements	Consumer Financial Protection Bureau	Financial Sector
Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act	Consumer Financial Protection Bureau	Financial Sector
Stream Protection Rule	Dept. of Interior	Environment & Natural Resources

Resource Management Planning	Dept. of Interior	Environment & Natural Resources
Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska	Dept. of Interior	Environment & Natural Resources
Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act-Accountability and State Plans	Dept. of Education	Education
Teacher Preparation Issues	Dept. of Education	Education
Implementation of the NICS Improvement Amendments Act of 2007	Social Security Administration	Crime and Law Enforcement
Compliance With Title X Requirements by Project Recipients in Selecting Subrecipients	Dept. of Health & Human Services	Health
Protecting the Privacy of Customers of Broadband and Other Telecommunications Services	Federal Communications Commission	Science, Tech, and Communications