

# Another “First” for the CRA: Democrats Send Three Bills to President Biden

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## In brief...

In another historic first for the Congressional Review Act (CRA), three bills targeting Trump administration regulations for elimination are headed to President Biden’s desk. If signed into law, it will mark the first time that the fast-track oversight tool is successfully used by Democrats to eliminate regulatory agency actions. These actions include rules published by the Environmental Protection Agency, the Department of the Treasury, and the Equal Employment Opportunity Commission.

Congress recently passed three bills targeting Trump administration regulations for elimination. President Biden is expected to sign them, marking another historic “first” for use of the Congressional Review Act ([CRA](#)). To date, Democrats have yet to successfully use the oversight tool to strike regulations from the books.

The bills would eliminate a rule issued by the Environmental Protection Agency (EPA) modifying [emissions standards for methane](#), a rule published by the Department of the Treasury that determines when banks qualify as a “[true lender](#),” and a rule by the Equal Employment Opportunity Commission (EEOC) modifying the [conciliation procedures](#) related to complaints of discrimination in the workplace. The GW Regulatory Studies Center [tracked](#) a total of six resolutions of disapproval introduced in this session of Congress, but only these three passed the Senate before the deadline for using the CRA’s fast-track provisions. Those that missed the deadline would be subject to the Senate filibuster and are, therefore, unlikely to move forward.

## The Congressional Review Act

The CRA allows Congress to eliminate a regulation with only a simple majority vote in both chambers and also contains fast-track provisions that prevent resolutions from being filibustered in the Senate. Once a regulation is eliminated this way, the agency is also prevented from issuing another rule that is “substantially the same” unless Congress specifically authorizes it to do so. The CRA also contains a [lookback provision](#) that allows an incoming Congress (and President) to exercise expedited review over

regulations issued during the last 60 working days of the previous administration. The Act was passed in 1996, but resolutions of disapproval under the CRA have only been signed into law during this additional review period—although members of Congress have [routinely introduced](#) resolutions outside of this window. Historically, Democrats have introduced [far fewer](#) resolutions than Republicans—although they have often accounted for the majority of resolutions introduced under Republican presidents.

## Six Regulations Targeted but Only Three Likely to Be Eliminated

Three additional resolutions of disapproval were introduced under the CRA in this session of Congress, but they are unlikely to move forward because they did not receive a vote in the Senate before the May 27<sup>th</sup> deadline to exercise the CRA’s fast-track voting procedures. This means that any votes would be subject to dilatory tactics—like the filibuster—in the Senate.

The other regulations Members targeted for elimination include a Securities and Exchange Commission regulation modifying its [shareholder-proposal procedures](#), another Social Security Administration rule clarifying when and how administrative appeals judges on its Appeals Council may [hold hearings and issue decisions](#), and a Department of Health and Human Services rule to [evaluate its existing regulations](#) every 10 years.

## What Happens Now?

Once President Biden signs these bills into law the respective regulations are immediately nullified, and agencies may not reissue a rule “[in substantially the same form](#).” Since these regulations cease to exist, the regulatory status quo returns to whatever baseline was in place before these rules were published. For instance, in the case of the EPA methane rule, the status quo defaults to the regulations that were previously issued under the Obama administration.

Given that the window for review of Trump administration regulations has closed, we are unlikely to see any more resolutions introduced by Democrats—although [our data suggest](#) that Republicans are likely to introduce numerous resolutions of disapproval for rules issued by agencies under the Biden administration. However, these are likely to meet the same fate as the handful of rules targeted for disapproval and sent to the desks of Presidents Obama and Trump (vetoed without the necessary votes in Congress for an override).