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The Congressional Review Act: Questions and Answers

What is the Congressional Review Act (CRA)?

The CRA is a law that enables Congress to block final regulations soon after they have been issued by Executive Branch and Independent Agencies by using what is known as a resolution of disapproval. The CRA's expedited process only applies for a short time after a final regulation has been completed. The CRA does not give Congress powers it does not already have – Congress always has the power to enact legislation blocking existing regulations. Instead, the purpose of the CRA is to make it easier for Congress to block final regulations by temporarily suspending some of Congress's self-imposed impediments on the legislative process.

How Does the CRA Work?

Soon after an agency, such as the U.S. Environmental Protection Agency or the U.S. Food and Drug Administration, completes a final major regulation, it must send a copy of that regulation along with certain supporting information to Congress. The receipt of this information triggers a short time period in which Congress is able to use expedited procedures to block the regulation through a resolution of disapproval. These expedited procedures, which primarily affect the Senate, expire after 60 "session days" (days the Senate is in session) unless the Senate has initiated a resolution of disapproval first.

Because a resolution of disapproval is a type of law, it must follow the constitutionally mandated legislative process. That means it must pass both the U.S. House of Representatives and the Senate and be signed by the president. If the president vetoes the resolution of disapproval, Congress still has the option of overriding the veto with the standard two-thirds supermajority vote.

What Effect Does the CRA Have on the Rulemaking Process?

The most immediate effect of the CRA is that it generally postpones the effective date of certain kinds of regulations known as "major rules" for 60 days while Congress carries out the CRA process. In general, major rules often include the bigger regulations that agencies might issue and typically have an annual economic effect of $100 million or more. This postponement contributes additional delay to an already slow rulemaking process.

If a resolution of disapproval successfully becomes law, two things happen. First, the targeted regulation is void and can have no effect. Second, the agency is prohibited from issuing another regulation that is "substantially the same" unless Congress specifically authorizes the agency to do so through subsequent legislation. Because courts have not yet determined how different a new regulation must be so that is not "substantially the same," the scope of this prohibition remains unclear, potentially discouraging an agency from issuing a new similar regulation once a rule has been blocked.

How do the CRA's "Carryover" Provisions Work?

For final regulations that are completed soon before Congress adjourns its annual session at the end of each calendar year, the CRA includes unique "carryover" procedures. The CRA creates a complicated process for counting the days when this carryover period begins, and as a result the starting date can differ greatly from year to year. Generally, in any given

year, the carryover period can start as early as the beginning of May or as late as the end of June. **For 2016 rules, the Congressional Research Service has recalculated the start of the carryover period as June 13 – as of their memo from Jan. 3, 2017.**

In general, the effect of the CRA's carryover provision is to treat final regulations that were completed during a previous year's carryover period as if they were completed at the start of the new calendar year instead. By automatically "resetting the clock" in this fashion, the carryover provisions aim to provide both chambers of Congress with a full, uninterrupted period of time to use the CRA's expedited procedures.

The carryover provisions take on additional significance when they apply to presidential election years, particularly those where presidential control switches from one political party to another. As noted above, under the CRA, the president is free to veto any resolutions of disapproval that reach his or her desk. Since the president is likely to veto any resolutions of disapproval that target a final regulation completed by his or her administration, the only realistic chance for a resolution of disapproval to succeed is if the CRA's carryover provisions enable a subsequent president to sign into law a resolution of disapproval that targets a final regulation completed by his or her predecessor during the preceding carryover period.

Has the CRA Ever Been Used Successfully to Block a Final Regulation?

Congress only used the CRA once successfully to block a final regulation issued by the Clinton Administration in November 2000 protecting workers from ergonomic injuries. In that case, all of the conditions for a successful resolution of disapproval were in place: the final regulation was completed during the carryover period of a presidential election year; a president from one political party (Republican George W. Bush) replaced a president from the other political party (Democrat Bill Clinton) in the ensuing election; and the same political party as the new president (Republican) also held majorities in both chambers of Congress.

Why is the Use of CRA to Block Final Regulations So Controversial?

Using the CRA to block final regulations is controversial for at least four reasons. First, the CRA empowers Congress to block regulations on the basis of little more than naked politics. Such politically-motivated resolutions of disapproval are particularly objectionable because they can be used to cancel final regulations that reflect good public policy and that would advance the public interest.

Second, CRA resolutions of disapproval are a blunt instrument for conducting congressional oversight. They block an entire regulation even if Congress's legitimate policy concerns relate to only a small subset of the rule's provisions.

Third, CRA resolutions of disapproval have powerful, far-reaching effects, because they also block agencies from issuing any final regulations in the future that are "substantially the same" as the one that was specifically targeted by the resolution of disapproval. There has only been one successful CRA resolution of disapproval which blocked a Clinton-era ergonomics regulation from the U.S. Occupational Safety and Health Administration (OSHA). Although the CRA does allow OSHA to once again craft a regulation, it must not be "substantially the same", to address ergonomics hazards for workers, OSHA has not attempted to do so.

Fourth, since the CRA process operates to block regulations only after it's gone through the resource-intensive rulemaking process, successful resolutions of disapproval result in a mammoth waste of scarce agency resources. This waste is particularly significant, because the CRA's prohibition on future regulations that are "substantially the same" would limit an agency's ability to repurpose the work it has already done to support a future regulation. In contrast, with an adverse judgment on judicial review, the agency at least has the option of mitigating its lost resources by undertaking a new rulemaking that cures any fatal defects in the earlier regulation that was struck down by the court.

For more information on the CRA process and specific rules under CRA threat, please visit RulesatRisk.org.