



3 Things Employers Need to Know About the Congressional Review Act and the Upcoming Elections

Insights

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As the upcoming elections approach, employers should be aware of the Congressional Review Act, its potential impact on current rulemaking, and how your workplace might be affected. This brief Insight will outline how the CRA works, how it has been used in the past, and why new regulatory activity might be impacted due to upcoming deadlines.

1. What is the Congressional Review Act?

The Congressional Review Act, enacted in 1996, allows Congress to review and potentially overturn new federal regulations issued by government agencies. It gives a new Congress the power to overturn rules established by an outgoing Administration, making it a significant tool during periods of political transition.

When a rule is finalized, Congress has 60 legislative days to disapprove it through a Joint Resolution. If both the House and Senate pass the resolution and the President signs it, the rule is nullified, and the agency is prohibited from issuing a substantially similar rule in the future. This last feature, the “CRA death-penalty,” prevents an agency from ever issuing a similar regulation again unless Congress passes a new law authorizing it to do so.

2. The CRA Has Been Effectively Used in the Past

The CRA has been used to overturn a total of 20 rules:

- one in the 107th Congress (2001-2002)
- 16 in the 115th Congress (2017-2018)
- three in the 117th Congress (2021-2022)

This precedent underscores the importance of the CRA as a mechanism for newly elected officials to reshape regulatory policies quickly. Because of the CRA Death Penalty, regulators are paying close attention to the deadlines of the law: the 60-day deadline excludes days when either chamber has adjourned for more than three days.

Even more relevant for election years, if Congress adjourns to end its current session within 60 session days after a rule is submitted, the periods to introduce and act on a disapproval resolution are reset in the next session of Congress, beginning in each chamber on the 15th day of the new session. This “lookback” provision gives a new Congress the entire time provided for in the CRA to disapprove a rule regardless of when it was originally received.

3. Impact of CRA Deadlines on Current Regulatory Activity

Due to the CRA's legislative timelines, federal agencies seek to implement significant rulemaking efforts early in election years. This year is no exception.

The impending elections mean that any new rules issued now could be subject to CRA review by a new Congress and President with differing policy priorities. As a result, many agencies will be aware that new initiatives might be overturned if the political landscape shifts, which could impact new rules' content and timing.

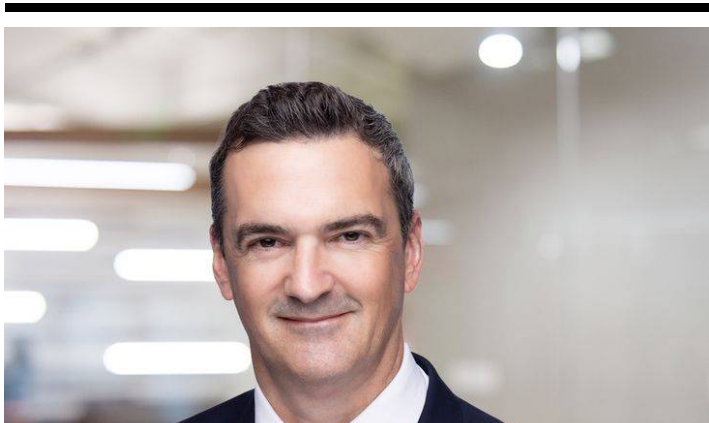
The dynamic nature of the law's timeframe means that Congress will also be paying close attention to when it adjourns in order to maximize (or minimize) the chances of a regulation being overturned depending on the outcome of the elections. The normal rush to publish regulations at the end of an outgoing Administration will no doubt be impacted by the potential for any new rules to be overturned and the imposition of the “death penalty” on a substantially similar rule in the future.

Conclusion

Understanding the Congressional Review Act is crucial for employers as the elections approach. It highlights how swiftly regulatory environments can change and underscores the importance of staying informed about potential shifts in federal policies that could impact business operations.

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Gregory Zerzan

Of Counsel

214.220.8317

Email

Service Focus

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