

The 118th Congress and the Congressional Review Act “Lookback” Mechanism

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With a change in party majority taking place in the House of Representatives in the 118th Congress (2023-2024), there has been renewed interest by some lawmakers in a provision of the Congressional Review Act (CRA, [5 U.S.C. §§801-808](#)) commonly known as the CRA “lookback” mechanism. This provision of the act allows, for a limited time, a new Congress to access special “fast track” parliamentary procedures to consider a joint resolution disapproving an agency rule submitted late in the previous session of Congress. The CRA lookback mechanism potentially offers a brief period at the beginning of the 118th Congress where the House may be able to pass and send to the Senate for its consideration, under expedited parliamentary procedures, a joint resolution disapproving a rule issued by the Biden Administration late in 2022. A joint resolution would have to become law—that is, be signed by the President or enacted over his veto—to invalidate a rule.

The CRA, enacted as part of the 104th Congress’s (1995-1996) “Contract with America,” established a special parliamentary mechanism whereby Congress can, by enacting a joint resolution into law, disapprove a rule promulgated by a federal agency. Whenever a rule is finalized and submitted to Congress under the CRA, it is subject to an overall period of congressional review, lasting approximately 60 days of Senate session, where “fast track” parliamentary procedures are available, primarily in the Senate, to consider a joint resolution invalidating the rule.

If a rule is submitted to Congress so late in the year, however, that the final adjournment of the session prevents either chamber from enjoying this full 60-day review period, that CRA review period—and its associated “fast track” parliamentary procedures—occur again in their entirety in the next session of Congress. This mechanism is called the CRA “lookback” mechanism.

Specifically, Section 801(d) of the CRA provides that, if a rule is submitted to Congress with either fewer than 60 days of session in the Senate or fewer than 60 legislative days in the House of Representatives before Congress adjourns a session *sine die*, a new period for congressional review of that rule becomes available in the next session. For this purpose, a rule is treated as if it had been submitted to Congress and published in the *Federal Register* on the 15th legislative day (House) or 15th session day (Senate) of the new session for purposes of starting the renewed review periods. The lookback mechanism is intended to ensure that an Administration cannot deny Congress the full periods for review and action on rules

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contemplated by the CRA simply by waiting until shortly before Congress adjourns for the year to submit the rule.

Said another way, rules submitted to Congress prior to both the 60th day of Senate session and the 60th House legislative day before the day of the adjournment will not be subject to the additional periods for review in the following congressional session. Rules submitted on or after the 60th day before *sine die* adjournment in at least one chamber will be subject to the renewed periods for congressional review. These lookback provisions are applied in the same way regardless of whether the session in question is the first or second session of a Congress. They hold special import, however, in instances in which the first session of a Congress coincides with a new congressional majority in one or both chambers and/or a President of a different party than the prior President.

The projected second-session meeting schedules of the [House](#) and [Senate](#) issued by each chamber's majority leader may be used to estimate the date in 2022 after which rules submitted to Congress will be subject to the renewed CRA review periods in 2023. The estimated start of the lookback period for all rules is determined by counting back from the projected *sine die* adjournment in the respective chambers (assumed in this case to be January 3, with no adjournment resolutions adopted)—60 days of session in the Senate and 60 legislative days in the House—then taking the earlier of the two dates. Using this calculation, CRS currently estimates that agency rules submitted to one or both chambers after July 29, 2022, will be subject to renewed CRA review periods in 2023. Should the chambers deviate from the schedule projected by the party leaders, this estimate will necessarily change.

CRS day count estimates are unofficial and non-binding; the Senate and House Parliamentarians are the sole definitive arbiters of the operation of the CRA mechanism and should be consulted for guidance on specific procedural questions. CRS can assist congressional clients, however, by providing unofficial estimates of the periods to review rules under the CRA, as well as lists of late-submitted agency rules that could potentially be subject to renewed CRA review in the opening months of the 118th Congress.

For more information on the CRA and the CRA “lookback” mechanism, see:

- CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis
- CRS Report R46690, *Congressional Review Act Issues for the 117th Congress: The Lookback Mechanism and Effects of Disapproval*, by Maeve P. Carey and Christopher M. Davis

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