



September 12, 2023, Is Estimated to Be the Beginning of the Congressional Review Act “Lookback” Period

January 24, 2024

The Congressional Review Act (CRA, [5 U.S.C. §§801-808](#)) is an oversight tool that Congress may use to consider a joint resolution overturning a rule issued by a federal agency. Under the act, when a rule is finalized and submitted to Congress, a finite time window begins—lasting roughly 60 chamber work days—during which joint resolutions disapproving the rule can be introduced and considered under special “fast track” parliamentary procedures.

If a rule is submitted to Congress so late in the year that the adjournment of that session of Congress prevents the House or Senate from enjoying this full 60-day review period, the time periods for introduction and action on a disapproval resolution begin again the following year. This provision is commonly called the CRA “lookback” provision. The lookback mechanism is intended to ensure that an Administration cannot deny Congress the full periods for oversight contemplated by the CRA by simply waiting to submit rules to Congress until shortly before it adjourns for the year.

It appears that the current CRA lookback period began on September 12, 2023. That is, rules received in the House or Senate on or after that date during the first session of the 118th Congress may receive full, renewed periods of CRA review in 2024 during the second session.

Overview of the CRA Time Periods

Under the CRA, before a rule can take effect, an agency must submit that rule to both houses of Congress and publish the rule in the *Federal Register*. After a rule is received and published, the CRA establishes specific time periods during which Congress can introduce and act on a joint resolution that, if enacted, would disapprove the rule. Specifically:

- An “introduction” period, which lasts for 60 calendar days (excluding days on which either house has adjourned pursuant to a concurrent resolution), during which joint resolutions disapproving the rule can be introduced in either chamber.

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- A “discharge” period, which lasts for 20 calendar days. After the conclusion of this period, a petition signed by 30 Senators can be filed to discharge a Senate committee from the further consideration of a CRA joint resolution of disapproval.
- A “Senate action” period, which lasts for 60 days of Senate session, during which a disapproval resolution can be considered in the Senate under “fast track” parliamentary procedures that permit a simple majority to call up and reach a final vote on the joint resolution without a cloture process.

The Lookback Mechanism

Section 801(d) of the CRA provides that, if a rule is submitted to Congress either less than 60 days of session in the Senate or less than 60 legislative days in the House of Representatives before Congress adjourns a session of Congress *sine die*, a new period for congressional review of that rule becomes available in the next session of Congress. For this purpose, the “lookback” rule is treated as if it had been submitted to Congress and published in the *Federal Register* on the 15th legislative day (House) or session day (Senate) of the new session for purposes of calculating the time periods described above. This 15th day is sometimes referred to as the date of “constructive resubmission” of the rule. That is, the lookback period rule is treated as if the 15th day of the new session was the first time the rule had been received and published for purposes of CRA oversight.

Accordingly, 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 two-year Congress.

Calculating the Lookback Date

CRS unofficially estimates that Biden Administration rules submitted to the House or Senate on or after September 12, 2023, until the end of the first session of the 118th Congress on January 3, 2024, are subject to the CRA lookback provisions and will qualify for additional periods of CRA review in the first few months of the second session of the 118th Congress (2024). These renewed periods of review are likely to permit the introduction of disapproval resolutions aimed at such rules until late March 2024 and make the “fast track” procedures available to consider such joint resolutions in the Senate until late May or early June 2024.

The estimated start of the CRA lookback period for all rules was determined by counting back from the *sine die* adjournment of the first session in the respective chambers—60 days of session in the Senate and 60 legislative days in the House—then taking the earlier of the two dates.

CRS day count estimates are unofficial and nonbinding. The Senate and House Parliamentarians are the sole definitive arbiters of the operation of the CRA mechanism, including its associated time periods, and should be consulted if a formal opinion is desired. CRS can, however, provide congressional clients with unofficial day count estimates of the action windows for specific rules and provide spreadsheets listing rules that appear likely to be in the current CRA lookback period.

For more on the CRA, see CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis.

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