

How Trump's Favorite Law Could Roll Back Recent Financial Regulations

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The Congressional Review Act (“CRA”) is an interesting law that we really only think about when there is a change of party affiliation of an incoming President. Effectively, the CRA allows Congress to overturn rules that have been put into place during the 60 legislative days prior to the change of administration. Passed in 1996 to allow Congress to better police federal agencies, the CRA applies to final rules, but also could apply to “agency actions that are not subject to traditional notice-and-comment rulemaking, such as guidance documents and policy memoranda.” (See [The Congressional Review Act \(“CRA”\): A Brief Overview by the Congressional Research Service, last updated August 29, 2024](#)).

Prior to the first Trump administration, Congress had only agreed to a “joint resolution of disapproval” and overturned a final rule once. But, Trump’s administration used it sixteen times during the 115th Congress (i.e., when both houses were Republican), which makes the CRA seem like one of Trump’s favorite laws. [Based upon letters sent out by the current Chairman and the incoming Chairman of the House Committee on Financial Services to financial regulators on December 17th](#), it seems as though we can expect the new Trump administration to encourage the Republican majority Congress to use the CRA to pursue overturning even more final rules. When Congress issues a joint resolution of disapproval, then the rule is immediately ineffective, if already in effect, and it is as though the rule never went into effect. If the rule was not yet in effect, then the rule never goes into effect. Further, such a rule “may not be reissued in substantially the same form, and a new rule that is substantially the same . . . may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution.” (See [CRS report](#))

The letters were sent to all of the following: the Department of the Treasury (“Treasury”), the Department of Housing and Urban Development (“HUD”), the Securities and Exchange Commission (“SEC”), the Federal Reserve Board (“Fed”), the Federal Deposit Insurance Corporation (“FDIC”), the Consumer Financial Protection Bureau (“CFPB”), the Office of the Comptroller of the Currency (“OCC”), and the Federal Housing Finance Agency (“FHFA”). Similar in form, each letter cautions the agencies “against finalizing partisan rulemaking over the next several weeks,” references the CRA and then states, “the financial system, its institutions, consumers, and the [agency] itself do not benefit from last-minute partisan rulemaking attempts.”

Counting back 60 legislative days puts rules and guidance issued as far back as mid-August into potential peril. Of course, the prescribed method for obtaining a joint resolution of disapproval under the CRA is not easy and requires careful coordination among the House and the Senate, so even an eager Trump administration, aided by a Republican Congress, will not be able to push through a complete rollback of all rules and guidance issued by federal agencies (i.e., not just financial federal agencies) since August. But, there are some laws issued by financial federal agencies that may be more likely to be rolled back than others. In particular, the CFPB rules addressing [Personal Financial Data Rights](#) and [Big Tech Supervision](#) could be candidates for roll back.

Nota bene: The letters to the [Fed](#), [FDIC](#), [OCC](#) and the [SEC](#) all mentioned that the Committee was interested in revisiting investigations into inter-agency coordination on “digital asset custody” issues. Specifically, they want to further address the SEC’s publication of [Staff Accounting Bulletin 121](#) that deals with “obligations to safeguard crypto-assets an entity holds for platform users” and which was published by the SEC in April 2022, despite the fact that the other agencies had been working on an inter-agency statement addressing similar issues. Stating “it is imperative to ensure that no agency undermines another through rushed actions, which risks introducing uncertainty and instability into our financial system,” all of this suggests that Congress may be ready to hit the ground running on cryptocurrency issues come January.