

Learning about Legislation #53: The Congressional Review Act

The Congressional Review Act (CRA) is a mechanism that can be used to overturn the rules of bureaucratic agencies. [Vox](#) explains that the CRA, which was introduced in the 1990s, “gives Congress extensive power to invalidate rules established by federal agencies and, in doing so, making it more difficult for any future administrations to resurrect the policies that lawmakers have struck down.”

The *Congressional Research Service*, MoCTrack’s favorite source of white papers on government rules, processes and procedures, produced a wonderfully informative *In Focus* single-page/double sided handout, clearly designed for new Members of Congress, that is particularly useful in understanding this process. [Check it out!](#)

From that handout:



The Congressional Review Act (CRA)

Overview

What is the CRA? The CRA (codified at 5 U.S.C. §§801-808) is a tool Congress can use to overturn certain federal agency actions. The CRA was enacted as part of the Small Business Regulatory Enforcement Fairness Act in 1996. The CRA requires agencies to report the issuance of “rules” to Congress and provides Congress with special procedures, in the form of a joint resolution of disapproval, under which to consider legislation to overturn rules. If a CRA joint resolution of disapproval is approved by both houses of Congress and signed by the President, or if Congress successfully overrides a presidential veto, the rule at issue cannot go into effect or continue in effect.

Until recently, the CRA was only used infrequently. Realistically, it can only be implemented when the presidency changes hands, if the new Congress is the opposite party of the departing president. Administrative rules are put into place under the direction of the presidential administration and would presumably reflect the values of that president’s party. But even in the situation when the Congress changes hands under a president (which often happens after midterm elections), it is unlikely that a new Congress would use the CRA, because the President would simply veto it. This explains why prior to 2017, the CRA had only been successfully invoked once (in 2001, after the presidency passed from Bill Clinton to George W. Bush).

With the 2016 election passing the presidency to Donald Trump and the election of the GOP majority in the 115th Congress, the CRA came into **frequent** use. The 115th Congress used the CRA to invalidate 16 Obama-era rules, like when the majority GOP Congress repealed a rule that made it harder for severely mentally ill people to get guns ([H.J. Res. 40](#) - 115th)... or when they repealed a rule that, according to [NBC News](#), “prohibited from shooting or trapping wolves while at their dens with cubs, using airplanes to scout for potential grizzly bear targets, trapping bears with wire snares and luring bears with food to get a point-blank kill” ([H.J. Res. 69](#) - 115th)... or when they repealed a rule that forbade internet service providers from selling your browser history to third parties ([S.J. Res. 34](#) - 115th). For us Pennsylvanians it is worth knowing that another instance of CRA usage was championed by our own [Senator Toomey](#), with the specific goal of neutering the Consumer Financial Protection Bureau.

This term, the Senate Democrats began to use the CRA in a brand new way. There are provisions in the CRA that allow the Senate to fast track votes on CRA issues under certain circumstances. That *Congressional Research Service* handout describes it further:

Are there expedited procedures for a CRA joint resolution of disapproval in the Senate? Yes. When a CRA joint disapproval resolution meets certain criteria, it cannot be filibustered in the Senate. To be eligible for these “fast track” procedures, the Senate must act on a disapproval resolution during a 60-days-of-Senate-session period, which begins on the date the rule has been submitted to Congress and published in the *Federal Register* (if applicable).

In three memorable circumstances, Senate Minority Leader Chuck Schumer forced CRA votes this past autumn. He did so not because he thought he could get the GOP-led Senate to overturn these Trump Administration rules, but instead to get the GOP senators on the record as supporting these deeply divisive and unpopular rules.

In mid-October 2019, Schumer used that expediting process to force a bill to the floor to object to President Trump’s efforts to weaken power plant emissions regulations. [E&E News](#), an excellent source for information related to energy and the environment, explains that the Trump Administration released the Affordable Clean Energy (ACE) Plan to replace the Obama-era Clean Power Plan. ACE “repealed the statewide emissions caps of the Clean Power Plan and replaced it with a less stringent regulation focused on upgrades at individual power plants.” *E&E News* also reports that “in some cases, the ACE rule’s focus on heat-rate efficiency improvements could lead coal-fired power plants to run more frequently, thus increasing pollution, according to EPA’s analysis.” Schumer’s use of the CRA put GOP senators on the record as affirmative approving of a plan that increases pollution.

Then, on October 23, 2019, the Senate Democrats went after an IRS rule aimed at predominantly Democrat-governed states that came out of the 2017 GOP Tax Bill. Clearly, they didn’t believe they had enough votes to overturn this rule, but their efforts to force votes on these awful policies highlight the damaging moves made by President Trump’s administration and the GOP-led Senate.

Then, on October 30, 2019, the Senate Democrats took on a rule designed to weaken Affordable Care Act protections for people with pre-existing conditions. [Vox](#) has the best explainer of the regulation in question:

Democrats sought to overturn one of the administration’s most recent attempts to undermine the health care legislation: a rule that would give states more flexibility in the types of plans they could use ACA subsidies to purchase.

Under the administration’s rule, states could request a 1332 waiver, which would enable them to buy and offer plans that Democrats see as low-quality options, including plans that could discriminate against patients with preexisting conditions — rolling back one of the key accomplishments of the ACA.

There is no doubt that Senate Minority leader Schumer’s usage of the CRA to highlight GOP positions on the environment, tax policy and healthcare WILL be used in 2020 campaign messaging against the most vulnerable GOP incumbent senators.

This week the Senate successfully deployed the CRA to get rid of a Betsy DeVos/Trump Administration rule that hurts people with student debt who were defrauded by their now defunct for profit schools. This usage is more in line with its original intent of allowing Congress to overturn a bureaucratic rule that does not conform with the manner in which they feel an agency should be run. But the past three years have shown how a previously ignored law can have massive, unforeseen effects... and be used in new and interesting ways.