

The Congressional Review Act and Why It Matters

BY ADAM CANCRYN AND TAYLOR MILLER THOMAS | 05/28/2024 05:00:00 AM EDT

PRO POINTS

- **Agencies across the Biden administration have pushed out dozens of final rules in recent weeks** in an effort to beat a deadline related to the Congressional Review Act, a law that allows Congress to more easily overturn [major regulations](#).
- **The law lets Congress roll back rules finalized within 60 legislative days with a simple majority** in both chambers. That window is a moving target estimated to be in late-May 2024.
- **Congressional resolutions used to undo rules can still be blocked by a presidential veto.** That makes Donald Trump's potential reelection particularly important for Republicans who want to roll back President Joe Biden's regulatory agenda if they win full control of Washington in November.
- **Biden's agencies have finalized new rules on everything from climate-related financial disclosures** to air travel refunds and sexual assault procedures in schools. But he has several major regulations, including those setting new environmental emission standards and prioritizing greater diversity in medical research, that could be undone if Republicans take power.
- **When a CRA is successfully used, the agency cannot issue any rule in the future that is** "substantially the same."

HOW WE GOT HERE

President Joe Biden has overseen a sweeping effort to transform the way the federal government approaches major issues like climate change, health care affordability and workers' rights.

But if Donald Trump returns to the White House, the extent of that legacy depends heavily on how quickly his administration can finalize a raft of federal regulations well ahead of November's election.

Biden has already finished rules bolstering abortion access through a health privacy law, issued fresh restrictions on credit card fees, established refunds for airline travelers, expanded overtime pay and restricted noncompete clauses.

Those regulations escaped a law called the Congressional Review Act, which allows Congress to overturn rules within 60 legislative days after

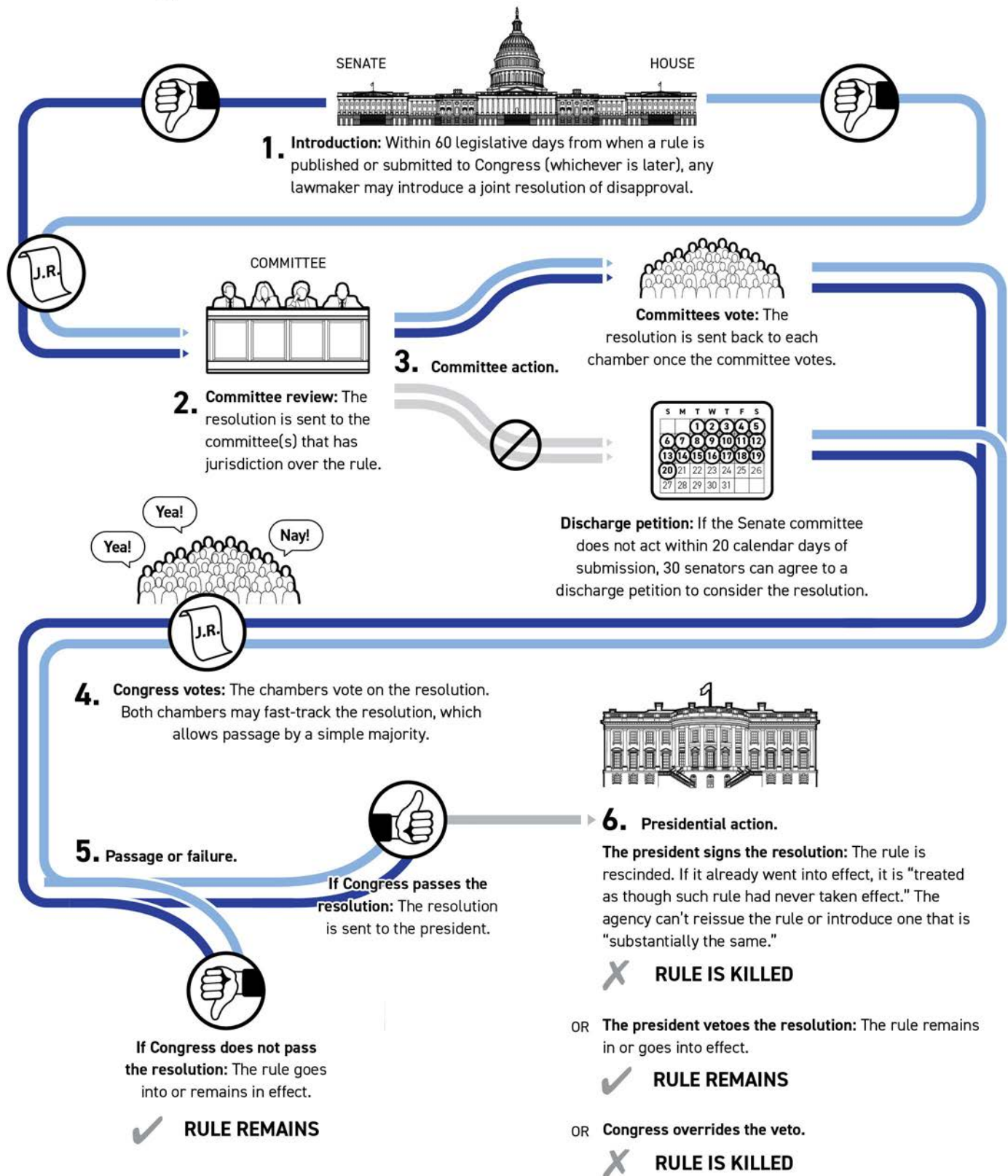
they're issued. That means Republicans — alongside moderate Democrats, in some cases — could potentially nullify any regulations finalized at the tail end of Biden's term if they win the presidency and control of Capitol Hill.

The law only requires a simple majority in both chambers to advance a rollback, and it prevents agencies from issuing similar rules in the future, allowing Congress to erect new regulatory barriers.

Just 20 federal rules have been overturned using the CRA's so-called lookback window since its passage in 1996. But 16 of those reversals occurred during Donald Trump's first term as president, after the Obama administration expected to hand the process off to Hillary Clinton. Trump has signaled plans to be similarly aggressive in blocking any Biden regulations that are eligible if he wins election again later this year.

Like previous presidents, Trump paused hundreds of draft or proposed regulations across the federal government when first came to office in 2017. But he made little effort to restart some rulemaking processes for months.

How the Congressional Review Act works



Sources: Congressional Research Service, OIRA, Senate

By: Pro Analysis staff, POLITICO

WHAT'S NEXT

The Biden administration spent much of the spring racing to finalize a flurry of regulations ahead of the deadline for the CRA's lookback window. But now his agencies have difficult choices to make before the election.

While proposed rules can be taken in an entirely different direction under a new White House before they're finished, using the CRA to roll back a completed one can lead to unintended consequences.

The Biden administration has focused on finalizing a range of environmental regulations spurred by the passage of the Inflation Reduction Act, a centerpiece of Biden's first-term agenda meant to speed the transition to clean energy and impose new limits on carbon emissions.

But a CRA resolution can only be used on a final rule in its entirety. Congress cannot peel back or modify one section of a regulation and leave another part intact. That, plus a provision barring an agency from ever producing a rule that's "substantially the same," means that finishing a rule this summer or fall could give Trump the opportunity to scrap it far beyond his administration.

In some cases, an agency may opt to leave the rule unfinished until after the election. And while some industries frequently complain about federal regulations, many are seeking favorable rules more than they're looking to toss them out altogether — forever.

Final rules that could be subject to the CRA next year are the ones issued after late May 2024. The exact timing is a little fuzzy because it'll ultimately be based on how many days Congress is in session through the rest of the year — something that could change as Congress hassles over fiscal 2025 spending.

Even if a rule gets finalized and can't be undone using the CRA, a new administration can choose to remake it. But doing so requires a lot more time — often years — and personnel to execute, compared to steering a proposed rule to a different destination.

Still, there are more than 100 regulations outstanding that are now unlikely to make it under the CRA wire, leaving them exposed if Republicans return to power. Those rules include a Food and Drug Administration proposal meant to encourage diversity in clinical health trials, changes at the Environmental Protection Agency to certain emission reporting requirements and new Energy Department conservation standards designed to encourage more efficient battery chargers.



POWER PLAYERS

- **Former President Donald Trump:** The GOP presidential nominee is already the most prolific signer of CRA resolutions and has signaled a desire to undo as much of Biden's legacy as possible if elected. While Trump's first year in the White House was marked by confusion, a significant government learning curve and frequent staff turnover, he and his congressional allies could move a lot more quickly to undo regulations in a second term.
- **Government Accountability Office:** The government watchdog is an integral part of the CRA process. In 2014, the agency decided that proposed rules were not susceptible to the rollback law. There are also occasions when an agency does not consider its action to qualify as a "rule" subject to the CRA – something lawmakers can challenge through a GAO review.
- **HHS Secretary Xavier Becerra:** Biden has made health care a central plank of his first-term agenda, raising the stakes for the department charged with implementing policies that improve access and affordability.
- **EPA Administrator Michael Regan:** The Inflation Reduction Act's passage in 2022 directed a range of regulatory changes meant to aid the fight against climate change, making the EPA's ability to churn out regulations pivotal to the long-term success of the law.
- **Independent agencies:** The suite of regulators, such as the Consumer Financial Protection Bureau and the Securities and Exchange Commission, are likely to face added scrutiny under a potential second Trump administration. While the White House traditionally has limited sway over their rulemaking processes, Trump has voiced a desire to influence their decisions.