

April 12, 2017

## Regulatory Update

### Update on Congressional Review Act Resolutions

#### Overview

Congress enacted the “Congressional Review Act” (CRA) as part of the “Contract with America Advancement Act” ([P.L. 104-121](#)) in 1996 and it is codified at [5 U.S.C. 801-808](#). The CRA established an expedited process for Congress to repeal recently promulgated regulations through passage of joint resolutions signed into law by the President.

As of April 7, the President has signed eleven CRA resolutions into law. The House and Senate have passed two more, which the President is expected to sign. CRA activity in Congress will begin to wind down as the statutory cut-off for action on resolutions to repeal final rules issued during the 114<sup>th</sup> Congress is expected to occur no later than early May. A Senate Republican Policy Committee [post](#) on the Congressional Review Act, published on March 7, projected the deadlines for introduction and final action on CRA resolutions:

Obama administration rules finalized between June 13, 2016, and January 3, 2017, require a CRA resolution to be introduced by March 30 and voted on by the 60<sup>th</sup> day the Senate is in session. Based on the current schedule, that deadline is expected to be May 9.

During a [press briefing](#) on the Congressional Review Act on April 5, White House Director of Legislative Affairs Marc Short indicated that the deadline for congressional action on CRA resolutions is April 28: “[I]t is a tool that we’re taking advantage of and that we’re actually passing this legislation, and that working with House and Senate leadership, there are several more that we hope to sign before this window closes on April 28<sup>th</sup>.”

#### Congressional Review Act Resolutions Signed by the President

- **SEC: Oil, Gas and Mineral Payments:** On February 14, 2017, the President signed into law the joint resolution “Providing for congressional disapproval...of a rule submitted by the Securities and Exchange Commission relating to ‘Disclosure of Payments by Resource Extraction Issuers’” ([H.J.Res. 41](#)). The Securities and Exchange Commission (SEC) published the [final rule](#) on July 27, 2016. The rule was intended to implement Section 1504 of the Dodd-Frank Act, which directed the SEC to promulgate “rules requiring resource extraction issuers to include in an annual report information relating to any payment made

by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.”

- ***Department of Interior: Stream Protection Rule:*** On February 16, 2017, the President signed into law the joint resolution “Disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule” ([H.J.Res. 38](#)). The Department of Interior’s Office of Surface Mining Reclamation and Enforcement (OSMRE) published the [final](#) “Stream Protection Rule” on December 20, 2016. As described by the Department of Interior, the final rule was intended to “better protect water supplies, surface water and groundwater quality, streams, fish, wildlife, and related environmental values from the adverse impacts of surface coal mining operations...”
- ***Social Security Administration: Gun Background Checks:*** On February 28, 2017, the President signed into law the joint resolution “Providing for congressional disapproval...of the rule submitted by the Social Security Administration relating to Implementation of the NICS Improvement Amendments Act of 2007” ([H.J.Res. 40](#)). The Social Security Administration (SSA) published the [final rule](#) on December 19, 2016. As described by the SSA, the final rule would have implemented “provisions...that require Federal agencies to provide relevant records to the Attorney General for inclusion in the National Instant Criminal Background Check System.” Under the rule, the SSA would have provided the Department of Justice with information on “individuals who receive Disability Insurance benefits under title II of the Social Security Act (Act) or Supplemental Security Income (SSI) payments...and who also meet certain other criteria, including an award of benefits based on a finding that the individual’s mental impairment meets or medically equals the requirements of section 12.00 of the Listing of Impairments...”
- ***DOD, GSA, NASA: Contractor Reporting of Labor Violations:*** On March 27, 2017, the President signed into law the joint resolution “Disapproving the rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation” ([H.J.Res. 37](#)). The Department of Defense (DoD), the General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) published the [final rule](#) titled “Federal Acquisition Regulation; Fair Pay and Safe Workplaces” on August 25, 2016. The rule was intended to implement President Obama’s Executive Order titled “Fair Pay and Safe Workplaces” ([E.O. 13673](#)).
- ***Resource Planning:*** On March 27, 2017, the President signed into law the joint resolution “Disapproving the rule submitted by the Department of the Interior relating to Bureau of Land Management regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act of 1976” ([H.J.Res. 44](#)). The Bureau of Land Management (BLM) published the [final rule](#) titled “Resource Management Planning” on December 12, 2016. The regulations would have made significant changes to the “procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA).”
- ***Elementary and Secondary Education Act:*** On March 27, 2017, the President signed in into law, “A joint resolution providing for congressional disapproval...of the rule submitted by the Department of Education relating to accountability and State plans under the Elementary and Secondary Education Act of 1965” ([H.J.Res. 57](#)). The Department of

Education published the [final rule](#) titled “Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans” on November 29, 2016.

- ***Teacher Preparation:*** On March 27, 2017, the President signed into law, “A joint resolution providing for congressional disapproval...of the rule submitted by the Department of Education relating to teacher preparation issues” ([H.J.Res. 58](#)). The Department of Education published the [final rule](#) titled “Teacher Preparation Issues” on October 31, 2016. The regulations were intended to “implement requirements for the teacher preparation program accountability system under title II of the Higher Education Act of 1965...that will result in the collection and dissemination of more meaningful data on teacher preparation program quality...”
- ***Drug-Testing for Unemployment Applicants:*** On March 31, 2017, the President signed into law a joint resolution “Disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants” ([H.J.Res. 42](#)). The Department of Labor published the [final rule](#) titled “Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants” on August 1, 2016.
- ***Alaska Wildlife Takings:*** On April 3, the President signed into law “A joint resolution providing for congressional disapproval...of the final rule of the Department of the Interior relating to ‘Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska’” ([H.J.Res. 69](#)). The Department of Interior’s Fish and Wildlife Service (FWS) published the [final rule](#) on August 5, 2016. The rule was intended to “clarify how...existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on refuges in Alaska relate to predator control; prohibit several particularly effective methods and means for take of predators; and update...public participation and closure procedures.”
- ***Workplace Illnesses and Injuries Recordkeeping:*** On April 3, the President signed into law the joint resolution “Disapproving the rule submitted by the Department of Labor relating to ‘Clarification of Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness’” ([H.J.Res. 83](#)). The Occupational Safety and Health Administration (OSHA) published the [final rule](#) on December 19, 2016. The final rule was intended to “to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation...[and] does not expire just because the employer fails to create the necessary records when first required to do so.”
- ***Privacy Protections for Broadband Customers:*** On April 3, the President signed into law a joint resolution “Providing for congressional disapproval...of the rule submitted by the Federal Communications Commission relating to ‘Protecting the Privacy of Customers of Broadband and Other Telecommunications Services’” ([S.J.Res. 34](#)). The Federal Communications Commission (FCC) published the [final rule](#) on December 2, 2016. The final rule was intended to extend “the privacy requirements of the Communications Act of 1934, as amended, to broadband Internet access service (BIAS) and other telecommunications services.” The regulations would have imposed a series of mandates, including requiring that “carriers to provide privacy notices that clearly and accurately inform customers; obtain opt-in or opt-out customer approval to use and share sensitive or non-

sensitive customer proprietary information, respectively; take reasonable measures to secure customer proprietary information; provide notification to customers, the Commission, and law enforcement in the event of data breaches that could result in harm; not condition provision of service on the surrender of privacy rights; and provide heightened notice and obtain affirmative consent when offering financial incentives in exchange for the right to use a customer's confidential information.”

### **Congressional Review Act Resolutions Approved by the House and Senate**

- “Providing for congressional disapproval...of the final rule submitted by Secretary of Health and Human Services relating to compliance with title X requirements by project recipients in selecting subrecipients” ([H.J.Res. 43](#)); and
- “A joint resolution disapproving the rule submitted by the Department of Labor relating to savings arrangements established by qualified State political subdivisions for non-governmental employees” ([H.J.Res. 67](#)).

### **Congressional Review Act Resolutions Approved by the House**

- “Providing for congressional disapproval...of the final rule of the Bureau of Land Management relating to ‘Waste Prevention, Production Subject to Royalties, and Resource Conservation’” ([H.J.Res. 36](#)); and
- “A joint resolution disapproving the rule submitted by the Department of Labor relating to savings arrangements established by States for non-governmental employees” ([H.J.Res. 66](#)).

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