

Chapter 5

The Congressional Review Act and Its Impact on the Regulated Community

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§ 5.01. Introduction.

During the 2016 presidential election, Republican Donald Trump made many campaign promises as to his intentions to roll back the administrative regulations advanced during the Obama Administration. He said things like, “I love the miners, and we’re going to put the miners back to work, OK.”¹ While President Trump’s campaign promises resonated with voters, including out-of-work coal miners, many wondered how he would fulfill those promises if elected. Fast-forward to June of 2017, and we are starting to see many of those campaign promises initiated as President Trump uses Executive Orders and a little-used statute known as the Congressional Review Act (CRA) to up-end a litany of Obama-era regulations that have hampered the regulated community for years.

¹ Jim Axelrod, “It’s time for him to support us:” *Coal miners look to Trump to fulfill promise*, <http://www.cbsnews.com/news/coal-miners-western-pennsylvania-trump-first-100-days/> (April 27, 2017).

While we are all familiar with how President Trump can use Executive Orders to overturn certain policies and place regulations under further review, the Congressional Review Act and its use is much more mysterious. Many citizens within the United States had never heard of the Congressional Review Act prior to President Trump's inauguration in January of 2017, as it had only been successfully used once in its 21-year history.

The basic premise of the Congressional Review Act is easy enough to understand: Congress can use the Act to issue a resolution of disapproval in order to overturn the entirety of an administrative agency's newly imposed regulation, acting as a super check on administrative agencies by Congress and ultimately, the president. But, if it is that easy, why has it not been used more frequently? This answer is partially found in the brute force of politics as the Act requires that Congress and the president agree to roll back an executive agency rule, subject to the confusing world of Congressional process. The Act itself is premised upon archaic parliamentary procedures that are difficult to understand and even more difficult to implement, and there are difficult consequences which can result from the use of the Act. Congress' ability to enact a resolution of disapproval requires strict adherence to various time periods, and a failure to adhere to such periods renders the Act inoperable. Further, because actions taken pursuant to the Act overturn the entirety of an administrative agency's rulemaking and further directly impacts the authority of that executive agency to re-visit the subject matter being addressed, questions arise as to how an action to remove a regulation will affect the regulated community. Also at issue is how and whether an administrative agency can proceed with similar regulations in the future.

As President Trump and the Republican-controlled Congress initiate unprecedented use of the Congressional Review Act, we will examine how this Act is used, what it means for future agency policy, and how current uses of the Act will impact potential future changes to the political landscape in Washington, DC.

§ 5.02. The Birth of the Congressional Review Act (CRA).

The Congressional Review Act was born from two distinct moments in time, one political and the other legal.