

CREATE CONGRESSIONAL ACCOUNTABILITY FOR MAJOR RULES

Congress must reclaim authority delegated to executive agencies and be accountable for major federal regulations that impose significant compliance costs on Americans.

BACKGROUND

The Constitution grants “all legislative powers” to a Congress of elected officials charged with representing the will of the people.¹ Over time, Congress has allocated “considerable power” to the executive branch by delegating rulemaking authority to implement statutes.² This shift of authority erodes the connection between federal lawmakers and the legal mandates imposed on Americans.

Today, federal regulations govern nearly every aspect of daily life.³ In 2016, federal agencies published almost 39,000 pages of rules in the Federal Register — the highest annual number in our nation’s history.⁴ According to the Competitive Enterprise Institute, regulatory agencies issued 11 rules for every law enacted by Congress in 2018, producing a total of 3,368 federal rules compared to 313 laws.⁵

Many of these rules carry significant economic implications. According to the Government Accountability Office (GAO), federal agencies crafted 72 major rules which took effect in 2019.⁶ Under federal law, a “major rule” is a regulation with: 1) an annual economic effect of \$100 million or more; 2) a major increase in costs for consumers; or 3) significant negative economic impacts.⁷ The George Washington University Regulatory Studies Center found that the Federal Government has published an average of 70 major rules per presidential year since 1996.^{8,9}

Currently, the Congressional Review Act (CRA) is the most significant tool Congress has to counter agency rules which run afoul of congressional intent.¹⁰ For a regulation to be invalidated by the CRA, the United States House of Representatives and Senate must pass a joint resolution of disapproval either signed by the president or override the president’s veto within 60 legislative working days.¹¹

Historically, the CRA has had little success. Prior to the 115th Congress, the CRA resulted in the repeal of only one rule.^{12,13} As such, the CRA is generally only effective to invalidate regulations when one political party takes control of both the White House and Congress and seeks to reverse rules promulgated towards the end of the prior administration.

CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution grants lawmaking powers to the legislative branch.¹⁴ Congress, not unelected bureaucrats, should be accountable for major rules imposed on the American people.

Quick Take

Over time, Congress has allocated considerable power to the executive branch by delegating rulemaking authority to federal agencies.

The Regulations from the Executive in Need of Scrutiny (REINS) Act, would restore congressional accountability for most major rules by requiring a joint resolution of approval before major rules could take effect.

POLICY SOLUTIONS

S.92, the Regulations from the Executive in Need of Scrutiny (REINS) Act,¹⁵ would remove the congressional delegation of authority for most major rules. The REINS Act requires Congress to enact a joint resolution of approval which must either be signed by the president or passed over through a presidential veto. By modifying the CRA disapproval procedure for a small class of major rules, the REINS Act ensures that elected members of Congress are accountable for the most important regulations imposed on Americans. Versions of the REINS Act have passed the House of Representatives four times since the 112th Congress.¹⁶

Please contact Cameron Smith or Kelsey Wall with the Republican Policy Committee at (202) 225-4921 with any questions.

¹ U.S. Const. art. I, § 1.

² Congressional Research Service, IF10003, *An Overview of Federal Regulations and the Rulemaking Process* (2019) <https://fas.org/sgp/crs/misc/IF10003.pdf>.

³ Calculating the comprehensive cost of federal regulations on the economy is difficult. Estimations provided by the Mercatus Center, the Competitive Enterprise Institute, and the American Action Forum range from hundreds of billions to trillions of dollars.

⁴ *Federal Register Pages Published 1936-2017*, Fed. Reg. <https://www.federalregister.gov/uploads/2018/03/stats2017Fedreg.pdf>.

⁵ Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, CEI.org (2019), <https://cei.org/sites/default/files/10KC2019.pdf>.

⁶ U.S. Gov't Accountability Office, *Database of Rules* (2020). <https://bit.ly/2L3D2Iu> (last accessed February 19, 2020).

⁷ 5 U.S.C. § 804 (2012).

⁸ George Washington University Regulatory Studies Center, *Reg Stats*, <https://regulatorystudies.columbian.gwu.edu/reg-stats> (last accessed June 20, 2019).

⁹ For the purpose of this guide, presidential year refers to the period between February 1 through January 31.

¹⁰ 5 U.S.C. § 801-808 (2012).

¹¹ Further, GAO reports that failure to submit a rule for congressional review as required by the CRA raises “legal uncertainty” over the enforceability of the regulation, as courts have differed in their interpretation of noncompliance with the CRA. Gov't Accountability Office, GAO-18-183, *Federal Rulemaking: OMB Should Work with Agencies to Improve Congressional Review Act Compliance During and at the End of Presidents' Terms* (2018), <https://www.gao.gov/assets/700/690624.pdf> [hereinafter GAO-18-183].

¹² GAO, *supra*, note 6. A total of 17 resolutions of disapproval have been enacted under the CRA. One was enacted in 2001, the only successful CRA enactment prior to the 115th Congress.

¹³ According to a 2018 GAO report, 25 percent of “economically significant” regulations did not comply with the CRA, due primarily to agencies' failure to observe the 60-day effective date delay for congressional review. GAO states that “economically significant” rules are generally considered to be “major rules” under the CRA, although agencies use varying terminology to indicate whether regulations are economically significant or significant. Additionally, the definition of a “major rule” is similar but “not identical” to the definition of an “economically significant” rule as defined under Executive Order 12866. GAO-18-183, 20, *supra* at 11.

¹⁴ U.S. Const. art. I, § 1.

¹⁵ H.R. 3972, 116th Cong. (2019).

¹⁶ The REINS Act passed the U.S. House of Representatives four times before. Those pieces of legislation were H.R. 26, 115 Cong. (2017), H.R. 427, 114 Cong. (2015), H.R. 367, 113 Cong. (2013), & H.R. 10, 112 Cong. (2011).