Monograph Series

Project 2025: Implications for Climate and the Environment

The Congressional Review Act:
Regulations Can Be Eliminated by Act of Congress

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ABOUT THE MONOGRAPH SERIES

The Heritage Foundation launched Project 2025 in 2023. Titled "Mandate for Leadership: The Conservative Promise," it presents a comprehensive collection of proposals on critical topics, many with implications for U.S. energy and environmental policy. Despite receiving significant media attention, few have read the entire 900+ page document or mapped its potential implications for climate change and environmental impacts.

Over 100 conservative organizations contributed to Project 2025, but it is not explicitly linked to the new Administration. The document calls for a significant and often radical overhaul of the federal government, with a particular focus on agencies and actions connected to climate change and environmental and energy law and policy. Many of these proposals have already been put forward and it is fair to anticipate that the underlying legal theories will be pursued.

This Monograph Series presents analyses to examine the potential implications that could result from the implementation of proposals set forth in Project 2025 and how they may affect action on climate change and the environment.

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ABOUT THE CENTER FOR LAW, ENERGY & THE ENVIRONMENT

CLEE channels the expertise and creativity of the Berkeley Law community into pragmatic policy solutions to environmental and energy challenges. CLEE works with government, business, and the nonprofit sector to help solve urgent problems requiring innovative, often interdisciplinary approaches. Drawing on the combined expertise of faculty, staff, and students across the University of California, Berkeley, CLEE strives to translate empirical findings into smart public policy solutions to better environmental and energy governance systems.

In 2023, the Heritage Foundation released Project 2025, which aimed to guide the Presidential transition process if a Republican candidate won the 2024 Presidential Election. Donald Trump was elected President on November 5, 2024. Although he attempted to distance himself from Project 2025 while on the campaign trail, it is expected that the Trump Administration will rely heavily on Project 2025 to enact its agenda.

Project 2025 outlines sweeping changes to the federal government that would have widespread effects. This memorandum explores how the Congressional Review Act (CRA) can be used by the Trump Administration and the legislative branch, in line with Project 2025, to undo certain administrative rules issued by the Biden Administration.

BACKGROUND ON CONGRESSIONAL REVIEW ACT

The CRA creates a pathway for Congress to overturn final rules issued by federal administrative agencies (agencies).[1] The CRA was enacted in 1996 as a small part of the Small Business Regulatory Enforcement Fairness Act.[2] The CRA adopts the broadest definition of rule contained in the Administrative Procedure Act (APA). It applies to all final rules as defined by §551 of the APA, and only has exceptions for rules of "particular applicability," rules relating to agency management or personnel and agency organizational rules.[3] This means that the CRA applies to major rules, nonmajor rules, and interim final rules in addition to agency actions that are not subject to traditional notice-and comment rulemaking, such as guidance documents and policy memoranda, that the Government Accountability Office (GAO) has determined count as rules under the CRA.[4]

After an agency issues a final rule, it must submit that rule to Congress, which then has 60 days, excluding recesses, to introduce a joint resolution of disapproval (RD).[5] If the RD passes both the House and the Senate and is signed by the President (or vetoed then overridden), the final rule cannot go into effect or continue in effect. Additionally, the CRA bars the agency from reissuing a disapproved rule in

[1] 5 U.S.C. §§801-808
[2] Title II, Subtitle E, P.L. 104-121, 5 U.S.C. §§601 et seq.
[3] 5 U.S.C. § 804(3);5 U.S.C. §551.
[4] 5 U.S.C. § 804(3); 5 U.S.C. §801(a)(1)(A).
[5] 5 U.S.C. § 802(a).

"substantially the same form."[6] Each RD must target a single final rule; a single RD cannot be used to invalidate part of a rule or more than one rule.[7] Finally, the CRA states that "no determination, finding, action, or omission under this chapter shall be subject to judicial review."[8] However, a Congressional RD issued under the CRA is subject to judicial review on grounds that the RD raises a constitutional claim.[9]

A RD can be introduced in the House using the same procedure as any other House bill. In the Senate, a RD can be introduced through a "fast-track" procedure, using a petition signed by at least 30 senators. Once a RD has been presented in the Senate, any one senator can make a non-debatable motion to proceed to consideration of the RD.[10] If a majority of the Senate votes to consider the RD, debate is limited to a maximum of 10 hours on the floor, preventing any filibuster.[11] Though as indicated above, multiple RDs cannot be grouped together, each must be considered individually.[12] So despite the parliamentary prohibition on filibustering, the combination of the 10 hour limit on debate with the requirement to consider each RD individually limits the CRA efficacy and efficiency as a vehicle for mass rapid deregulation.

From its introduction in 1996 through the end of the most recently-concluded legislative session, which ended in 2021, Congress has introduced a total of 253 RDs. Of these, only 26 passed both chambers, and only 20 were signed into law by the President. A list of the 20 rules disapproved through the CRA process is provided as Attachment 1 to this memorandum.

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[6] 5 U.S.C. § 801(b)(2).
[7] See 5 U.S.C. §802(a) (requiring the text of a CRA resolution of disapproval to cite a rule in its entirety).
[8] See 5 U.S.C. §805.
[9] *Center for Biological Diversity v. Bernhardt*, 946 F.3d 553, 560-61 (9th Cir. 2019) (concluding that because the CRA's jurisdiction-stripping provision does not include explicit language barring judicial review of constitutional claims, Congress did not intend the statute to bar such claims).
[10] 5 U.S.C. §802(c).
[11] 5 U.S.C. §802(d).
[12] *Supra*, 7.

Given the stated "deregulatory agenda" of the incoming Trump Administration, it is reasonable to expect that the new Republican-led Congress will look to use the CRA aggressively to undo the extensive regulatory policy making of the Biden Administration.[13]

THE LOOKBACK PERIOD

When a final rule is issued and submitted to Congress during the last 60 working days of a legislative session, the CRA provides a lookback period that allows Congress in its next session to consider whether to disapprove the rule.[14] Final rules that fall into this category are treated as if they were reported to Congress on the 15th day of the new session.

The lookback period is of particular importance at the end of a presidential term. If a President is succeeded by a President and Congress of the opposing party, the new President and Congress can use the lookback period to overturn rules issued during the end of the previous administration. Of the 20 RDs passed into law through 2022, 19 occurred during this lookback period.[15]

ESTABLISHING THE LOOKBACK PERIOD AND IDENTIFYING VULNERABLE REGULATIONS

Establishing the lookback period determines which regulatory actions taken by the Biden Administration will be at risk of being overturned in the next legislative session using the CRA. The lookback period is established at the end of a legislative session. Prior to that, the lookback period can be estimated based on how many days Congress has met during the current session, how many days it still has scheduled to be in session, and when it is scheduled to adjourn. If the House and Senate have different lookback periods, the lookback period is officially established as the earlier of the two.[16]

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[13] Zoey Xie, *A Regulatory Surge in April 2024,* George Washington University, https://regulatorystudies.columbian.gwu.edu/regulatory-surge-april-2024; *see also* Stef W. Kight, Hans Nichols, *Senate GOP plots to erase Biden's final moves*, AXIOS.com, Jan. 15, 2025, available at: https://www.axios.com/2025/01/16/senate-congressional-review-act-biden-thune (last visited Jan. 16, 2025).

[14] 5 U.S.C. § 801.

[15] For a list of rules overturned under the CRA to date, see Appendix A of CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis.

[16] Congressional Research Service. *CRA Lookback Period Currently Estimated to Begin in August 1 Time Frame* , Prepared by Christopher M. Davis and Maeve P. Carey. Washington: Library of Congress, Aug. 21, 2024.

There were 176 total days in session in the recently-concluded second session of the 118th Congress.[17] The 60th legislative day prior to end of the session, and start of the lookback period, has been determined to be August 16, 2024.[18]

The most active regulatory month during the Biden Administration was April 2024, when federal agencies published a record 66 significant final rules.[19] Indeed, the Biden Administration published approximately five times the average number of significant final rules in April 2024 than it had in the previous 38 months.[20] Additionally, of these 66 significant rules, 34 are considered economically significant, meaning they have an estimated annual impact of $200 million or more on the economy.[21] This is the highest number of economically significant regulations in a month since the last month of the Carter Administration in 1980.[22] The Biden Administration may have had the CRA lookback period in mind when it set its regulatory schedule for 2024, attempting to shield as many rules as possible from future disapproval through the CRA process.

After the rush of regulatory activity in April, the Biden Administration's rule-making slowed down. Since the start of the lookback period on August 16, 2024, the Biden Administration passed 68 significant rules, 32 of which are considered economically significant. This limited subset constitutes the only rules at risk of RDs. The list of rules passed by the Biden Administration that would potentially be subject to the CRA is available to view using the "Congressional Review Act Window Exploratory Dashboard," published by the Regulatory Studies Center in Columbian College of Arts & Sciences at The George Washington University, accessible at: https://regulatorystudies.columbian.gwu.edu/congressional-review-act-window-exploratory-dashboard.

POTENTIAL EXPANDED USES OF THE CRA

While the Trump Administration's potential use of the CRA and its lookback period to promote deregulation should be limited by the Biden Administration's aggressive early rule-making, in reviewing

[17] https://www.govinfo.gov/content/pkg/CCAL-119scal-2025-01-09/pdf/CCAL-119scal-2025-01-09.pdf
[18] *Id.*
[19] As defined in Executive Orders 12866 and 14094.
[20] *Supra,* 14.
[21] *Id*.
[22] *Id*.

the use of the CRA during the first Trump administration there is a potential roadmap for attempting to expand its use. During the first Trump Administration, the President signed 16 CRA resolutions.[23] The majority of these resolutions were to repeal agency rules, but in 2018, President Trump signed a resolution invalidating a guidance document issued by the Consumer Financial Protection Bureau. This was the first time that the CRA was used to overturn a guidance document as opposed to a rule issued through the APA rulemaking process. The resolution was introduced by the Senate after the GAO issued a determination that the guidance document was a "rule" for the purposes of the CRA.[24]

Although this GAO ruling did not establish that all guidance documents are "rules" under the CRA, it shows a willingness by the Trump Administration and a GOP Congress to attempt to expand the definition of rules. This is potentially significant because there are a number of guidance documents that have never been formally submitted to Congress as required by the CRA. The GAO estimates that between 1998 and 2009 there were more than 1,000 guidance documents that agencies did not submit to Congress.[25] In 2018, the House Oversight Committee identified over 13,000 outstanding guidance documents that agencies have not submitted to Congress.[26] Of these outstanding guidance documents that have not been submitted to Congress, there is a subset that could have a significant effect if overturned. For example, notices of funding opportunities, which advertise funding for grant programs and set the requirements for the grant applications, are not typically submitted to Congress as rules.

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[23] Regulatory Studies Center, "Congressional Review Act," accessed November 22, 2024.
[24] Government Accountability Office, "Applicability of the Congressional Review Act to Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act," December 5, 2017.
[25] *See, e.g.*, Michael C. Bender & Rebecca Ballhaus, Trump Strategist Steve Bannon: 'Every Day Is Going to Be a Fight,' Wall Street J. (Feb. 23, 2017), (stating that Steve Bannon, who was at that time the chief strategist to President Trump, said that the President will "push for deregulation, which Mr. Bannon referred to as 'deconstruction of the administrative state'"); see also Paul J. Larkin, Jr., Reawakening the Congressional Review Act, 41 Harv. J. L. & Pub. Pol'y 187, 189–90 & n.4 (2018).
[26] Majority Staff Report, House Comm. On Oversight and Govt' Reform, Shining Light On Regulatory Dark Matter 10 (Mar. 2018) ("The information obtained by the Committee shows, of the more than 13,000 guidance documents identified, agencies sent only 189 to Congress and GAO in accordance with the CRA. To be sure, not all of the more than 13,000 guidance documents disclosed to the Committee necessarily qualify as a rule under the CRA. However, many of these guidance documents would likely qualify as rules under the CRA's capacious definition.")

As discussed above, the CRA can be used when a rule is submitted to Congress. So this trough of unsubmitted guidance documents offers a potential avenue to deregulation by the Trump Administration. First, Republicans in the House or Senate can request guidance from the GAO on whether administrative guidance documents should be considered rules under the APA. The Trump Administration could then submit any guidance document determined to be a "rule" to Congress for review. After those "rules" (i.e., guidance documents) are submitted for review, Republican members of the House and Senate could submit RDs. If those RDs pass and are signed by Trump, agencies would be forbidden from reissuing them in "substantially the same form." Critically, a GAO determination that an old government action amounts to a "rule" restarts the clock for purposes of the CRA, and current Republican Senators have expressed interest in pursuing this approach to reach back and undo a wide variety of government actions taken under Democratic administrations.[27] Some guidance documents current Republican Senators have attempted to have reclassified as rules include: $5.5 billion transportation funding notice because of provisions related to climate change and historically disadvantaged communities; funding requirements for the CHIPS and Science Act not specified in the law; the cancelling of oil lease sales in the Arctic National Wildlife Refuge; and an internal document on sex discrimination policy from the Department of Agriculture.[28]

To understand the potential efficiency of this strategy, the first angle to understand is the process of requesting GAO opinions. GAO cannot issue any CRA decisions on its own initiative but accepts all requests received with very limited exceptions as set out in GAO's Protocols for Legal Decisions and Opinions.[29] First, a member of Congress must submit a written signed request to the GAO identifying the issues, relevant law and facts, and the requestor's views on the issues. Next, the GAO will either accept or deny the request within 10 business days, explaining in writing why it accepted or declined, and if applicable, the next steps and schedule for the review. In developing its opinion, the GAO solicits views of fact and laws from agencies that would be impacted by the decision. Throughout the entire process, the requestor or other interested persons or entities may request informal *ex parte*

[27] Jeremy Dillion, Republicans Work to Expand Congressional Review Act, E&E News, (Jun 12, 2024) https://www.eenews.net/articles/republicans-work-to-expand-congressional-review-acts-scope/.
[28] *Id.*
[29] GAO, *Procedures and Practice for Legal Decisions and Opinions*, GAO-06-1064SP (Sept. 2006).

conferences with the GAO, which are typically not transcribed or recorded. A GAO opinion deciding whether an agency action is a "rule" under the CRA is advisory and has no legal effect.[30] Accordingly, such opinions are not likely subject to judicial review.[31]

While GAO opinions are not legally binding, the GAO gives precedential weight to its prior decisions and opinions.[32] Additionally, if the requestor or any entity with a stake in the recent decision believes the GAO made a mistake of law or fact, it can request reconsideration. This request must be made within one year of the GAO's decision, unless there is new information that was not previously available that would materially affect the decision.[33]

So far, this has been a fairly limited process, as the GAO has only issued 58 of these decisions over the past three decades. However, there has been a recent uptick, as 34 of these decisions have come in the last five years.[34] Additionally, the GAO is set up as a non-partisan organization, focused on providing fact-based information, rather than supporting one party's agenda.[35]

Given that the GAO is an independent agency that issues rule determinations on a fairly limited basis, the strongest reason for the Trump Administration pursuing this approach would be to take advantage of the CRA's prohibition on an agency promulgating the same or substantially the same rule absent intervening legislation by Congress authorizing the agency to reissue the rule.[36] According to the CRA:

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[30] Congressional Research Service. *The Congressional Review Act: Determining Which "Rules" Must Be Submitted to Congress*, Prepared by Valerie C. Brannon and Maeve P. Carey. Washington: Library of Congress, Mar. 6, 2019.

[31] *Supra*, 30. (We are not aware of any judicial opinions considering the reviewability of GAO opinions regarding "rule" determinations."

[32] Bridget C.E. Dooling, Into the Void: The GAO's Role in the Regulatory State, 70 AM. U. L. Rev. 387, 403 (2020)

[33] *Supra*, 30.

[34] *Supra*, 29.

[35] GAO, *What GAO Does*, https://www.gao.gov/about/what-gao-does.; *See Supra,* 28 (referring to these requests as "fishing expeditions.")

[36] Paul J. Larkin, Jr., Reawakening the Congressional Review Act, 41 Harv. J. L. & Pub. Pol'y 187, 204 & n.43. (2018).

"A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule."[37]

This means that if the Trump Administration overturns a rule through the CRA, administrative agencies are not allowed to reissue a rule on the same or substantially same topic unless Congress passes a law that specifically allows them to.

The CRA does not specifically define "substantially same" any further.[38] Guidance is limited to a single statement from one of the Act's sponsors in the post-enactment legislative history.[39] Notably, if a rule is repealed under the CRA, it is as if "such a rule had never taken effect," which would allow previously-issued regulatory guidance that was negated by the rule to come back into effect.[40]

Finally, it is unclear who has final say over whether a rule is "substantially the same."[41] As noted above, the CRA has a general prohibition on judicial review.[42] In general, courts interpret the ban on judicial review to mean that they cannot consider claims alleging that an agency has failed to comply with the CRA. However, some legal experts argue the ban on judicial review may not apply to the substantial

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[37] 5 U.S.C. § 802(b)(2)

[38] Nor is there a particular definition of "substantially the same" in the U.S. Code that would apply to this section. The Code contains over 270 provisions that include the terms substantially similar or substantially the same. See, for example, 15 U.S.C. §57a; 26 U.S.C. §§83, 168, 246; 49 U.S.C. §§30141, 30166. At least one other law has prohibited an agency from issuing "substantially similar" regulations, which is also undefined in the text (Federal Trade Commission Improvements Act of 1980, P.L. 96-252, 94 Stat. 391-92).

[39] 142 Cong. Rec. E571-E579 (daily ed. Apr.19, 1996) (statement of Rep. Henry Hyde) (stating that the sponsors believed that the debate around the disapproval of a rule would provide guidance to an agency on whether or not to reissue a rule.)

[40] Bethany A. Davis Knoll & Richard L. Revesz, Regulation in Transition, 104 Minn. L. Rev. 1, 22-23 (2019).

[41] Congressional Research Service. *The Congressional Review Act (CRA): Frequently Asked Questions*. Washington: Library of Congress, Nov. 12, 2021, at 21-22.

[42] *See* 5 U.S.C. §805.

review aspect of the CRA, reframing it as more consistent with judicial review of an agency action, which does fall within the purview of the courts.[43]

Outside of scholarly opinion, however, there is little judicial interpretation regarding the applicability of the CRA's judicial review bar on whether a rule is "substantially the same."[44] Most cases that address the subject have been dismissed for a lack of standing.[45] In one case where a court conducted a substantive review, the District of Idaho relied on the CRA's post-enactment legislative history to hold that the similarity of two rules would be judicially reviewable.[46] However, this line of analysis has not been adopted by other courts that disfavor reliance on post-enactment legislative history, because it could not have had an "effect on the congressional vote."[47]

According to the CRS, "the most likely enforcement mechanism for the 'substantially the same' question is Congress's ability to use the CRA again on the reissued rule."[48] There are no additional procedural requirements under the CRA for reissuing a rule that was previously subject to a successful RD. Rather the agency promulgating the rule must convince Congress that it is not "substantially the same" and therefore should not be subject to another RD. An example of this comes from the Securities and Exchange Commission (SEC) reissuing a rule in January of 2021 that had previously been struck down by an RD. The SEC was under a statutory mandate to regulate on the topic of the

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[43] *See, e.g.*, Michael J. Cole, Interpreting the Congressional Review Act: Why the Courts Should Assert Judicial Review, Narrowly Construe 'Substantially the Same,' and Decline to Defer to Agencies Under Chevron, 70 ADMIN L. REV. 53 (2018); Adam M. Finkel & Jason W. Sullivan, A Cost-Benefit Interpretation of the 'Substantially Similar' Hurdle in the Congressional Review Act: Can OSHA Ever Utter the E-Word (Ergonomics) Again? 63 Admin. L. Rev. 707, 732 fn. 122 (2011).

[44] *Supra,* 41, at 21-22.

[45] *Center for Biological Diversity v. Bernhardt* (9th Cir. 2019) 946 F.3d 553, 560; *Kansas Natural Resource Coalition v. U.S. Department of the Interior* (D. Kan. 2019) 382 F.Supp.3d 1179, 1182, aff'd sub nom. *Kansas Natural Resource Coalition v. United States Department of Interior* (10th Cir. 2020) 971 F.3d 1222

[46] See *Tugaw Ranches, LLC v. U.S. Dep't of Interior*, 362 F. Supp. 3d 879, 883 (D. Idaho 2019)

[47] *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008); see also *Kansas Natural Resource Coalition v. U.S. Department of the Interior* (D. Kan. 2019) 382 F.Supp.3d 1179, 1182, aff'd sub nom. *Kansas Natural Resource Coalition v. United States Department of Interior* (10th Cir. 2020) 971 F.3d 1222 (holding that the *Tugaw Ranch* holding is not persuasive and that consideration of post-enactment legislative history is unnecessary).

[48] *Supra* 41 at 21.

previously disapproved rule. In reissuing the rule, the SEC cited statements of members of Congress calling on the agency "to shape new rules" and highlighting that the rule was not "substantially the same," aimed at convincing Congress not to use the CRA on the rule again.[49] At the time, all three branches of government where under Democratic Party control.

Another potential expansion of the CRA under the second Trump administration involves amending the CRA's parliamentary procedures to allow for faster consideration of RDs. While the CRA prevents filibustering RDs, it allows for up to ten hours of debate and requires each RD to be considered individually. This parliamentary procedure greatly reduces the efficiency of the CRA, as Senators who oppose RDs can use the ten hours of debate per RD to grind Senate proceedings to a halt. At the end of the 114th Congress and at the start of the 115th Congress, the House passed the "Midnight Rules Relief Act." This act would have allowed Congress to vote on multiple RDs at once. The companion bill did was not adopted in the Senate.[50]

The House passed the same legislation again in mid-December 2024,[51] but it gained no traction in the Democrat-controlled Senate. With the Republican Party taking control of the Senate in January 2025, the House can pass this legislation again in hopes that it will now be taken up by the Senate. However, given the timeline to pass a bill into law, it is unclear that even if this bill passed, it would be able to be used on any regulations in the lookback period for the current Biden Administration.

BIDEN ADMINISTRATION'S USE OF THE CRA

The CRA also has the potential to limit administrative rules that the second Trump administration can promulgate. President Biden signed three RDs into law during his administration. These RDs blocked the following three rules: "Update of Commission's Conciliation Procedures" issued by the Equal Employment Opportunity Commission (EEOC), "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review" issued by the Environmental Protection Agency

[49] SEC, "Disclosure of Payments by Resource Extraction Issuers," 86 Federal Register 4662, January 15, 2021
[50] *See* the Midnight Rules Relief Act, H.R. 21 (115th Congress), H.R. 5982 (114th Congress), S. 34 (115th Congress), and S. 3483 (114th Congress).
[51] Midnight Rules Relief Act, H.R. 115 (118th Congress).

(EPA), and "National Banks and Federal Savings Associations as Lenders" issued by the Office of the Comptroller of the Currency (OCC).

The EEOC rule amended the conciliation process to "bring greater transparency and consistency to the conciliation process and help ensure that the Commission meets its statutory obligations regarding conciliation."[52] Critics of the rule claimed it made the conciliation process more attractive to employers, making it harder for employees to bring complaints to the EEOC.[53]

The EPA rule would have removed sources in the transmission and storage segment from the source category; rescinded the requirements to reduce volatile organic compounds (VOC) and methane emissions from these sources; and separately rescinded the methane-specific requirements applicable to sources in the production and processing segments.[54]

Finally the OCC rule established that when a bank makes a loan, it is the "true lender" if, as of the date of origination, the bank (1) is named as the lender in the loan agreement, or (2) funds the loan. The rule provides certainty about key aspects of the legal framework that applies to loans made as part of banks' relationships with third parties.[55]

Under the CRA's prohibition of an agency promulgating the same or substantially the same rule, the second Trump Administration will be barred from attempting to repass these rules or pass rules on the same or substantially same subject.

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[52] *Federal Register*, "86 FR 2974, Update of Commission's Conciliation Procedures," January 14, 2021

[53] Nat'l Women's Law Ctr., Comment Letter on Proposed UPDATE of EEOC Conciliation Procedures (Nov. 9, 2020)m https://nwlc.org/resource/nwlc-comment-on-eeoc-proposed-rule-on-conciliation-procedures/

[54] *Federal Register*, "85 FR 57018, "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review," September 14, 2020.

[55] *Federal Register*, "85 FR 68742," October 30, 2020.

CONCLUSION

The CRA and its lookback period provide an avenue for a wave of deregulation when the White House and Congress switch parties. The Biden Administration's aggressive regulatory calendar should protect the majority of the regulatory actions against potential RDs under a Republican Congress and presidency in 2025. However, from examining the usage of the CRA under the first Trump Administration, it can be expected that the second Trump Administration will attempt to expand the use of the CRA by attempting to overturn regulatory guidance documents and prevent future administrations from issuing similar ones.

ATTACHMENT 1