

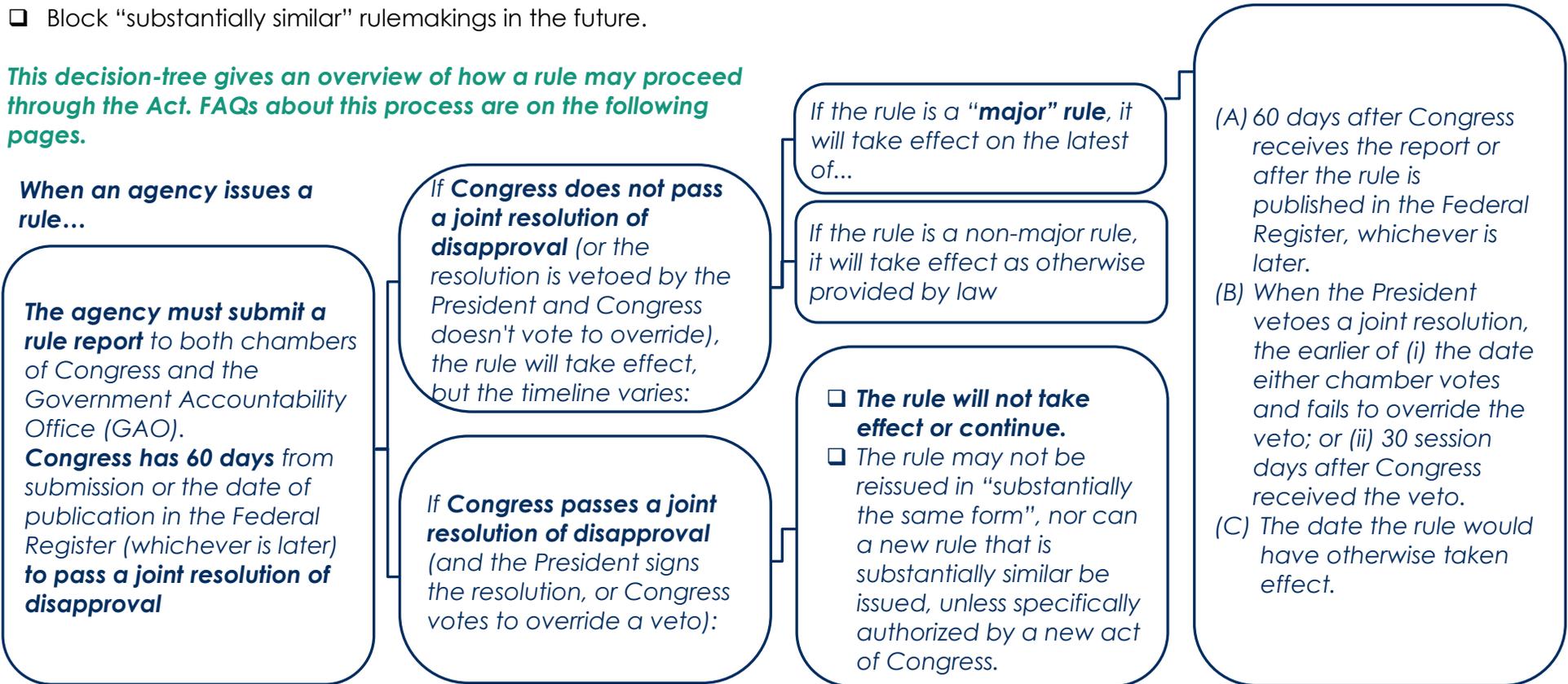


The Congressional Review Act: The Basics¹

The Congressional Review Act (CRA) [5 U.S.C. §§ 801-808] allows Congress, subject to Presidential veto, to overturn, on a fast track, final agency rules if Congress acts within 60 days of the rule's submission to Congress for review. Once a rule (including many guidance documents) has been blocked, agencies can never reissue that rule or any substantially similar rule without an act of Congress. Congress can only overturn an entire rule; it can't pick and choose which parts it likes. With the CRA, it's all or nothing. In summary, the CRA can be used to:

- Overturn a whole rule;
- Block "substantially similar" rulemakings in the future.

This decision-tree gives an overview of how a rule may proceed through the Act. FAQs about this process are on the following pages.



¹ Produced by Nikka Pascador and Diane Thompson.



Frequently Asked Questions

What does the CRA cover?

The CRA covers **rules** created by federal agencies. Generally, the CRA adopts the Administrative Procedure Act (APA)'s broad definition of a rule:

- "A whole or a part of an agency statement";
- "Of general applicability" * (but not particular applicability; see "What doesn't the CRA cover?" below);
- "With a future effect";
- "Designed to implement, interpret, or prescribe law or policy."



Rules can include interpretive rules and guidance documents, not just rules that go through notice-and-comment. For more information, see the GAO's "[Guidance Documents from Federal Agencies.](#)"

Congress has relied on GAO opinions as to whether an agency action is a CRA-covered rule.

Example: In response to a request by Senator Pat Toomey (R-Pa), the GAO issued a report in 2017 finding the CFPB's [2013 Auto-Lending Bulletin](#) to be a rule for the purposes of the CRA, even though the Bulletin was framed as "guidance about compliance."

What doesn't the CRA cover?

The CRA does not cover:**

- Rules concerning the "monetary policy" of the Board of Governors of the Federal Reserve or the Federal Open Market Committee.
- **"Rules of particular applicability," including rules approving or prescribing the following for them:
 - o "Future rates, wages, prices, services, or allowances";
 - o "Corporate or financial structures, reorganizations, mergers, or acquisitions";
 - o "Accounting practices or disclosures."
- Rules relating to "agency management or personnel."
- Rules of "agency organization, procedure, or practice" not substantially affecting non-agency parties.
- Executive Orders.



**This is not an exhaustive list.



What is a "major" rule?

A major rule is a rule that the Office of Information and Regulatory Affairs (OIRA) finds "is likely to result in":

- An annual economic effect of \$100 million or more; or
- "A major increase in costs or prices" for consumers, industries, governments, or regions; or
- "Significant adverse effects" on "competition, employment, investment, productivity, innovation" or the United States' ability to compete with foreign entities.



Exception: Under the CRA, no rule made under the Telecommunications Act of 1996 is a major rule.

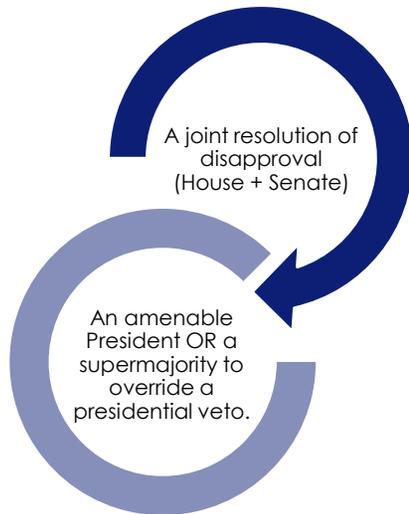
! **Pro Tip:** For more information on OIRA's role and opportunities for advocacy, see *Working with Cost-Benefit Analysis*.

What counts as substantially similar?

The CRA says that an agency cannot reissue a rule that is "substantially the same" but does not define this phrase. So, what is substantially similar is up for debate. While judicial review under CRA is limited, an agency re-issuing a rule could still face challenge in the courts as well as congressional action.



What political support is needed to overturn a rule using the CRA?



To overturn a rule using fast-track procedures of the CRA, both chambers of Congress must pass a joint resolution of disapproval within 60 days of receiving the rule report or the date the rule is published in the Federal Register (whichever is later).

Because the President can veto Congress's joint resolution of disapproval, overturning a rule requires either the support of the President or the political backing in both chambers for supermajority votes (2/3 of the House and Senate) overriding a presidential veto.

Example: In 2020, both chambers passed a joint resolution of disapproval of a student loan rule issued by the Department of Education. The President vetoed the resolution. Despite bipartisan support for overturning the rule, as shown by passage of the resolution in the Republican-controlled Senate, House support was insufficient to override the veto, and the resolution failed.



How long does Congress have to use the fast-track procedures in the CRA?

- ❑ **The “lookback” provision:** If Congress receives a rule but is adjourned before 60 session (Senate) or legislative (House) days elapse, the 60-day window to issue a joint resolution starts anew 15 days after the next session of Congress begins.



- ! **Pro Tip: Under the CRA, date calculations are made retrospectively by the House and Senate Parliamentarians, based on the actual number of session or legislative days.** Therefore, you can only estimate the lookback period until the Parliamentarians make their determination.

- ❑ **Unsubmitted rules:** The CRA clock doesn't start until the agency submits the rule to Congress, the GAO, and publishes the rule in the Federal Register. Very rarely, agencies miss a step for a rule issued after notice-and-comment, but agencies have historically not submitted guidance documents to GAO and Congress. If the GAO later determines that a guidance document not submitted to Congress is a rule under the CRA, that guidance document can be “CRA'ed,” even years after it was initially issued.

Example: In 2018, Congress overturned the Consumer Financial Protection Bureau's March 2013 Auto-Lending Bulletin. This action was possible because the CFPB neither submitted the Bulletin to Congress nor published it in the Federal Register in 2013.

Is there judicial review under the CRA?

No “determination, finding, action, or omission” made under the CRA is subject to judicial review. It is unsettled whether this extends to agency actions or just congressional actions and whether it applies to determinations of what is “substantially similar.” For more information, see Valerie C. Brannon, “Is There Judicial Review Under the CRA?” in *The Congressional Review Act (CRA): Frequently Asked Questions*, pg. 20.



Can one joint resolution of disapproval be used to overturn multiple rules?

The language of the CRA does not explicitly disallow this, but it has never been done. The House and Senate parliamentarians would decide whether to allow an omnibus use of the CRA. If allowed, the volume of rules combined with time restraints would heighten the risk of accidentally barring similar rulemakings.



How else can a rule be overturned?

In addition to using the CRA's fast-track procedures, there are three (more common) ways to overturn an agency rule:

- ❑ Challenging the rule in court;
- ❑ Lobbying the agency to revise the rule; and
- ❑ Lobbying Congress to overturn the rule through legislation.

1 x [Bush (43) administration]

16 x [Trump administration]

= 17 rules overturned using the CRA as of 01/09/2020.