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Legislative update: House passes legislation on regulations issued late in president's term

The U.S. House of Representatives today approved, by a vote of 238 to 184, H.R. 21, the "Midnight Rules Relief Act of 2017."

H.R. 21 would amend the provisions in the U.S. Code popularly known as the Congressional Review Act to allow the Congress to pass a single resolution disapproving any number of regulations issued near the end of a president's term—rather than passing separate resolutions for each regulation of which it disapproves.

Background

The Congressional Review Act (CRA) provides an expedited process for Congress to pass a joint resolution disapproving of regulations that were issued near the end of a president's term. If the president signs the joint resolution (or his veto is overridden by a two-thirds supermajority of both the House and Senate), the regulation at issue "shall be treated as though such rule had never taken effect."

Further, under the CRA, the regulation "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."

The new Congress could use the CRA to attempt to nullify regulations issued on or after June 13, 2016. If Trump were to sign those joint resolutions once he becomes president on January 20, the underlying regulations would be nullified. Refer to a report from the Congressional Research Service, *Agency Final Rules Submitted on or After June 13, 2016, May Be Subject to Disapproval by the 115th Congress*, December 15, 2016 (IN10437).

Under current law, each joint resolution can be used to invalidate only one final rule in its entirety. In other words, a separate resolution would have to be passed for each regulation sought to be invalidated.

Implications of H.R. 21

H.R. 21 would allow a joint resolution of disapproval to address more than one regulation. Thus, if H.R. 21 passed the Senate (following today's vote in the House) and were signed into law by then-President Trump, it would be possible to bundle together a host of regulations issued near the end of the Obama Administration into one resolution of disapproval.

The CRA provides a limited time period for regulatory review. Under the provisions of the CRA, it appears that Congress will have until mid-May (and possibly longer, depending on the congressional calendar) to act upon a joint disapproval resolution to invalidate a regulation and to send the resolution to President Trump.

KPMG observation

H.R. 21 would need to pass the Senate next, if it were to become law. Given that Republicans have fewer than 60 seats in the Senate, some believe that H.R. 21 could be subject to filibuster and would likely require the support of a minimum of eight Democratic Senators. As a result, passage by the Senate is highly uncertain.

If H.R. 21 is not passed by Congress, the current rules of the CRA would remain in effect—meaning that each resolution of disapproval would have to address only one final rule, thereby requiring Congress to expend legislative floor time to each and giving opponents an opportunity to highlight the effects of repeal.

Keep in mind that the CRA can be used for regulations in general; it is not limited to tax regulations. Although a number of tax regulations have been finalized since June 13, 2016 (including the section 385 regulations), it is not clear whether Congress may attempt to nullify any tax regulations under the CRA.

Read more information on possible legislative action on regulatory matters in [**TaxNewsFlash-Legislative Update**](#)

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