

# Appendix A. Rules Overturned Using the Congressional Review Act

Through January 9, 2020

<b>Department and/or Agency Issuing Rule</b>	<b>Cong.</b>	<b>Title of Rule</b>	<b>Date Rule Was Published Federal Register Citation</b>	<b>Public Law Number Date Enacted</b>
Department of Labor, Occupational Safety and Health Administration	107 <sup>th</sup> (2001-2002)	Ergonomics Program	November 14, 2000 65 F.R. 68261	P.L. 107-5 March 20, 2001
Securities and Exchange Commission	115 <sup>th</sup> (2017-2018)	Disclosure of Payments by Resource Extraction Issuers	July 27, 2016 81 F.R. 49359	P.L. 115-4 February 14, 2017
Department of the Interior, Office of Surface Mining Reclamation and Enforcement	115 <sup>th</sup> (2017-2018)	Stream Protection Rule	December 20, 2016 81 F.R. 93066	P.L. 115-5 February 16, 2017
Social Security Administration	115 <sup>th</sup> (2017-2018)	Implementation of the NICS Improvement Amendments Act of 2007	December 19, 2016 81 F.R. 91702	P.L. 115-8 February 28, 2017
Department of Defense; General Services Administration; and National Aeronautics and Space Administration	115 <sup>th</sup> (2017-2018)	Federal Acquisition Regulation; Fair Pay and Safe Workplaces	August 25, 2016 81 F.R. 58562	P.L. 115-11 March 27, 2017
Department of the Interior, Bureau of Land Management	115 <sup>th</sup> (2017-2018)	Resource Management Planning	December 12, 2016 81 F.R. 89580	P.L. 115-12 March 27, 2017
Department of Education, Office of Elementary and Secondary Education	115 <sup>th</sup> (2017-2018)	Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act-Accountability and State Plans	November 29, 2016 81 F.R. 86076	P.L. 115-13 March 27, 2017
Department of Education, Office of Postsecondary Education	115 <sup>th</sup> (2017-2018)	Teacher Preparation Issues	October 31, 2016 81 F.R. 75494	P.L. 115-14 March 27, 2017
Department of Labor, Employment and Training Administration	115 <sup>th</sup> (2017-2018)	Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants	August 1, 2016 81 F.R. 50298	P.L. 115-17 March 31, 2017

Department and/or Agency Issuing Rule	Cong.	Title of Rule	Date Rule Was Published Federal Register Citation	Public Law Number Date Enacted
Department of the Interior, Fish and Wildlife Service	115 <sup>th</sup> (2017-2018)	Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska	August 5, 2016 81 F.R. 52247	P.L. 115-20 April 3, 2017
Department of Labor, Occupational Safety and Health Administration	115 <sup>th</sup> (2017-2018)	Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness	December 19, 2016 81 F.R. 91792	P.L. 115-21 April 3, 2017
Federal Communications Commission	115 <sup>th</sup> (2017-2018)	Protecting the Privacy of Customers of Broadband and Other Telecommunications Services	December 2, 2016 81 F.R. 87274	P.L. 115-22 April 3, 2017
Department of Health and Human Services, Office of Population Affairs, Office of the Secretary	115 <sup>th</sup> (2017-2018)	Compliance with Title X Requirements by Project Recipients in Selecting Subrecipients	December 19, 2016 81 F.R. 91852	P.L. 115-23 April 13, 2017
Department of Labor, Employee Benefits Security Administration	115 <sup>th</sup> (2017-2018)	Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees	December 20, 2016 81 F.R. 92639	P.L. 115-24 April 13, 2017
Department of Labor, Employee Benefits Security Administration	115 <sup>th</sup> (2017-2018)	Savings Arrangements Established by States for Non-Governmental Employees	August 30, 2016 81 F.R. 59464	P.L. 115-35 May 17, 2017
Bureau of Consumer Financial Protection	115 <sup>th</sup> (2017-2018)	Arbitration Agreements	July 19, 2017 82 F.R. 33210	P.L. 115-74 November 1, 2017
Bureau of Consumer Financial Protection	115 <sup>th</sup> (2017-2018)	Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act (CFPB Bulletin 2013-02)	March 21, 2013 N/A	P.L. 115-172 May 21, 2018

**Source:** Congressional Research Service, using information from the *Federal Register* and <http://www.congress.gov>.

## Appendix B. Government Accountability Office (GAO) Opinions on Whether Certain Agency Actions Are “Rules” Under the CRA

Table Lists GAO Opinions on Actions not Submitted to Congress, 1996—January 9, 2020

Agency Action	GAO Citation	Date	Requested By	GAO Determination
Department of Agriculture memorandum concerning the Emergency Salvage Timber Sale Program	B-274505	September 16, 1996	Senator Larry Craig	Agency action is a rule under the CRA.
U.S. Forest Service Tongass National Forest Land and Resource Management Plan	B-275178	July 3, 1997	Senator Ted Stevens Senator Frank Murkowski Representative Don Young	Agency action is a rule under the CRA.
American Heritage River Initiative, created by Executive Order 13061	B-278224	November 10, 1997	Senator Conrad Burns	Action is not a rule under the CRA because the President is not an agency under the CRA.
Environmental Protection Agency “Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits”	B-281575	January 20, 1999	Representative David McIntosh	Agency action is a rule under the CRA.
Farm Credit Administration national charter initiative	B-286338	October 17, 2000	Representative James Leach	Agency action is a rule under the CRA.
Department of the Interior Record of Decision “Trinity River Mainstem Fishery Restoration”	B-287557	May 14, 2001	Representative Doug Ose	Agency action is a rule under the CRA.
Department of Veterans Affairs (VA) memorandum regarding the VA’s marketing activities to enroll new veterans in the VA health care system	B-291906	February 28, 2003	Representative Ted Strickland	Agency action is not a rule under the CRA because it falls under the exception in 5 U.S.C. §804(3)(C).
Department of Veterans Affairs memorandum terminating Vendee Loan Program	B-292045	May 19, 2003	Representative Lane Evans	Agency action is not a rule under the CRA because it falls under the exception in 5 U.S.C. §804(3)(B) or (C).
Centers for Medicare and Medicaid Services Letter on the State Children’s Health Insurance Program	B-316048	April 17, 2008	Senator John D. Rockefeller, IV Senator Olympia Snowe	Agency action is a rule under the CRA.

Agency Action	GAO Citation	Date	Requested By	GAO Determination
Department of Health and Human Services Information Memorandum concerning the Temporary Assistance to Needy Families Program	B-323772	September 4, 2012	Senator Orrin Hatch Representative Dave Camp	Agency action is a rule under the CRA.
Environmental Protection Agency proposed rule on Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units	B-325553	May 29, 2014	Senator Mitch McConnell	Agency action is not a rule because “the precedent provided in our prior opinions underscores that proposed rules are not rules for CRA purposes, and GAO has no role with respect to them.”
Office of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation Interagency Guidance on Leveraged Lending	B-329272	October 19, 2017	Senator Pat Toomey	Agency action is a rule under the CRA.
U.S. Forest Service 2016 Amendment to the Tongass Land and Resource Management Plan	B-238859	October 23, 2017	Senator Lisa Murkowski	Agency action is a rule under the CRA.
Bureau of Land Management Eastern Interior Resource Management Plan	B-329065	November 15, 2017	Senator Lisa Murkowski	Agency action is a rule under the CRA.
Consumer Financial Protection Bureau bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act	B-329129	December 5, 2017	Senator Pat Toomey	Agency action is a rule under the CRA.
U.S. Agency for International Development fact sheet on global health assistance and revisions to standard provisions for U.S. nongovernmental organizations	B-329206	May 1, 2018	Senator Jeanne Shaheen Senator Benjamin Cardin Senator Richard Blumenthal Senator Patty Murray Representative Nita M. Lowey Representative Diana DeGette Representative Eliot L. Engel Representative Barbara Lee	Agency actions are not rules under the CRA because “federal courts have held that agencies’ implementation of presidential policy-making does not constitute a rule.”

Agency Action	GAO Citation	Date	Requested By	GAO Determination
Internal Revenue Service statement on health care reporting requirements	B-329916	May 17, 2018	Representative Mark Meadows	Agency action is not a rule under the CRA because it falls under the exception in Title 5, Section 804(3)(C), of the U.S. Code.
Social Security Administration Hearings, Appeals, and Litigation Law Manual (“HALLEX”)	B-329926	September 10, 2018	Representative Jason Smith	Agency action is not a rule under the CRA because it falls under the exception in Title 5, Section 804(3)(C), of the U.S. Code.
Internal Revenue Service Revenue Procedure 2018-38	B-330376	November 30, 2018	Senator Orrin Hatch	Agency action is eligible for review under the CRA “because IRS submitted the revenue procedure as a rule” and “IRS’s submission triggered Congress’s review and oversight powers under CRA.”
Department of Justice memorandum to federal prosecutors along the southwest border of the United States	B-330190	December 19, 2018	Senator Edward Markey	Agency action is not a rule under the CRA because it falls under the exception in Title 5, Section 804(3)(C), of the U.S. Code.
Department of Commerce memorandum regarding a citizenship question on the 2020 Census	B-330288	February 7, 2019	Senator Brian Schatz	Agency action is not a rule under the CRA because “it was not designed to implement, interpret, or prescribe law or policy.”
Departments of Health and Human Services and Treasury guidance entitled “State Relief and Empowerment Waivers”	B-330811	July 15, 2019	Senator Ron Wyden Representative Frank Pallone Jr.	Agency action is a rule under the CRA.
Board of Governors of the Federal Reserve System Supervision and Regulation Letters 12-17, 14-8, 15-7	B-330843	October 22, 2019	Senator Thom Tillis Senator Mike Crapo Senator David Perdue Senator Michael Rounds Senator Kevin Cramer	Two of the three agency actions (SR Letters 12-17 and 14-8) are rules under the CRA. The third agency action (SR Letter 15-7) is not a rule under the CRA because it falls under the exception in Title 5, Section 804(3)(C), of the U.S. Code.

Board of Governors of the Federal Reserve System Supervision and Regulation Letter 11-7	B-331324	October 22, 2019	Senator Thom Thillis	Agency action is a rule under the CRA.
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**Source:** Congressional Research Service. Opinions are available on the GAO website at [https://www.gao.gov/legal/other-legal-work/congressional-review-act#legal\\_opinions](https://www.gao.gov/legal/other-legal-work/congressional-review-act#legal_opinions).

**Notes:** This table lists agency actions for which Members of Congress asked GAO's opinion as to whether the action falls under the definition of *rule* under the CRA. For a more in-depth discussion of this issue and for summaries of each of the opinions listed in this table, see CRS Report R45248, *The Congressional Review Act: Determining Which "Rules" Must Be Submitted to Congress*, by Valerie C. Brannon and Maeve P. Carey.

## Author Information

Maeve P. Carey  
Specialist in Government Organization and  
Management

Christopher M. Davis  
Analyst on Congress and the Legislative Process

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