

Introduction

The Congressional Review Act (CRA), enacted as part of the Contract with America Advancement Act of 1996 (Pub. L. 104–121) and codified at 5 U.S.C. § 801 et seq., requires agencies to submit a report of a “rule” to each chamber of Congress and the Comptroller General before an agency action can take effect.¹ Under the CRA, Congress can follow an expedited process to overturn an agency action by issuing a joint resolution of disapproval within the CRA-defined timeframe.² Once Congress passes the joint resolution, the President must sign it or Congress must override the President’s veto for the joint resolution to become law.³ Once a joint resolution passes these processes, the rule does not take effect or ceases having effect.⁴ Congress has overturned 20 rules using the CRA—19 rules subject to informal rulemaking requirements of the Administrative Procedure Act and 1 guidance document.⁵

The CRA supersedes other laws,⁶ bars judicial review,⁷ and provides that if a joint resolution of disapproval becomes law, the agency action “may not be reissued in substantially the same form” unless Congress passes a law specifically authorizing the rule.⁸

Given the breadth of the CRA, as well as Congress’s increasing reliance on it, understanding the scope of a “rule” under the CRA matters. The CRA adopts the broad definition of the term “rule” provided in the Administrative Procedure Act (APA), codified at 5 U.S.C. § 551(4).⁹ However, the CRA provides three notable exceptions to that broad definition. Government Accountability Office (GAO) decisions, case law, and legal scholarship are instructive in defining the scope of a “rule” under the CRA, elucidating when agencies must submit a report and when an agency action is subject to congressional disapproval.

Congressional Review Process Under the CRA

Before addressing how a “rule” is defined under the CRA, this memorandum addresses other parts of the CRA text, such as an agency’s reporting requirements, Congressional

¹ 5 U.S.C. § 801(a)(1)(A).

² 5 U.S.C. §§ 801(d), 802.

³ Maeve P. Carey & Christopher Davis, *The Congressional Review Act (CRA): Frequently Asked Questions*, CONG. RSCH. SERV., 1 (Nov. 12, 2021).

⁴ 5 U.S.C. § 801(b)(2).

⁵ MAEVE P. CAREY & CHRISTOPHER M. DAVIS, *THE CONGRESSIONAL REVIEW ACT (CRA): A BRIEF OVERVIEW* (Feb. 27, 2023); *Resolutions of Disapproval Under the Congressional Review Act*, FED. REG., <https://www.federalregister.gov/readers-aids/congressional-review/resolutions-of-disapproval-under-the-congressional-review-act>.

⁶ 5 U.S.C. § 806(a) (“This chapter shall apply notwithstanding any other provision of law.”). The U.S. Supreme Court has held that “notwithstanding” language indicates congressional intent to “override conflicting provisions” of other laws. *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993).

⁷ 5 U.S.C. § 805 (“No determination, finding, action, or omission under this chapter shall be subject to judicial review.”); *see, e.g., Foster v. U.S. Dep’t of Agric.*, 68 F.4th 372, 378–79 (8th Cir. 2023) (extending the bar on judicial review to omissions by the agency) (“Here, the CRA’s judicial review provision precludes review of Foster’s CRA claim. . . . based on the USDA’s alleged omission in failing to submit the Review Regulation to Congress and the Comptroller General.”).

⁸ 5 U.S.C. § 801(b)(2). The CRA does not define “substantially the same form.” *See* 5 U.S.C. chapter 8.

⁹ 5 U.S.C. § 804(3).

procedures to pass a joint resolution of disapproval, and the practical consequences of the procedures of a joint resolution of disapproval on an agency action.

Agency Requirements: Submitting the Report and Triggering the CRA Clock

When an agency promulgates a “rule,” the agency must submit a report to Congress and the Comptroller General.¹⁰ Once the agency submits its statutorily required report, the CRA clock begins ticking.¹¹ Typically, the agency action is also published in the *Federal Register*, although this is not always feasible or otherwise required.¹² Notably, GAO precedent suggests that incorrectly submitting a report triggers CRA review even if it would not otherwise apply.¹³

In those instances when an agency does not submit its statutorily required report, the CRA’s procedures for Congressional consideration may still be triggered. That can occur when a member of Congress requests GAO to review an agency action to determine whether it meets the definition of a “rule” and is not otherwise subject to an exception. When GAO issues a decision classifying an agency action as a “rule,” a Member of Congress may introduce that decision into the *Congressional Record*.¹⁴ It is the Congressional Parliamentarians’ view that *Congressional Record* publication of a GAO opinion that determines that an unsubmitted agency action is a rule serves as the legal equivalent of the agency submitting its report, thereby starting the time for Congressional action under the CRA.

The agency’s statutorily required report must provide the text of the rule; a general statement of the rule; whether it is a major rule;¹⁵ its proposed effective date; and analyses or information required by other governing statutes and Executive Orders, such as the cost-benefit analysis and regulatory flexibility analysis.¹⁶ GAO provides on its website the report paperwork¹⁷ and receipt of an agency’s report.¹⁸

Congressional Review: Procedures to Pass a Joint Resolution of Disapproval

¹⁰ 5 U.S.C. § 801(a)(1)(A). The CRA is not required to submit a report in two instances. First, when an agency finds and publishes in its rulemaking action “good cause” that notice and comment are “impracticable, unnecessary, or contrary to the public interest”; and second, when an agency issues a rule concerning a “commercial, recreational, or subsistence activity related to hunting or fishing.” 5 U.S.C. § 808.

¹¹ 5 U.S.C. § 801(a)(1)(A); Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must be Submitted to Congress*, CONG. RSCH. SERV., Summary (March 6, 2019); JEFFREY S. LUBBERS, A GUIDE TO FEDERAL AGENCY RULEMAKING 186–87 (4th ed., 2006).

¹² The CRA applies to agency actions not subject to notice-and-comment rulemaking procedures. Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must be Submitted to Congress*, CONG. RSCH. SERV., 19–20 (March 6, 2019).

¹³ See GAO, B–330376, *Internal Revenue Service: Applicability of the Congressional Review Act to Revenue procedure 2018–38*, 1, 3, (Nov. 30, 2018) (“IRS here cannot claim both the benefit of protection from the consequences of failure to submit a rule while also shielding the rule from congressional review.”); see also GAO, B–332517, *Request for a Congressional Review Act Opinion on IRS Notice 2020–65*, 1 (Sept. 15, 2020).

¹⁴ Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must be Submitted to Congress*, CONG. RSCH. SERV., 21–22 (March 6, 2019).

¹⁵ 5 U.S.C. § 804(2).

¹⁶ 5 U.S.C. § 801(a)(1)(A)–(B).

¹⁷ GAO, *Submission of Federal Rules Under the Congressional Review Act*, <https://www.gao.gov/assets/2023-11/Blank%20CRA%20Form-Updated.pdf>.

¹⁸ GAO, *Congressional Review Act*, <https://www.gao.gov/legal/other-legal-work/congressional-review-act#database>.

Once Congress has received a rule, Congress has 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress) to pass a joint resolution of disapproval and send it to the President for signature.¹⁹ Congress can pass a joint resolution of disapproval by a simple majority vote.²⁰ Congress is not required to explain its joint resolution of disapproval.²¹ Once this occurs, the federal agency typically publishes a notice in the *Federal Register* to institute the removal of the overturned rule.²² If Congress fails to take any action on a joint resolution within the 60 day period after receipt, a joint resolution can no longer be considered under the CRA.²³

Once an agency submits its statutorily required report, each chamber provides the report for review to the committee with jurisdiction.²⁴ If it is a major rule, the Comptroller General has 15 calendar days from the later date on which the agency submitted its report or published the action in the *Federal Register* to provide a report to the congressional committees with jurisdiction assessing the agency's compliance with the CRA and other governing law.²⁵

The CRA describes procedures for the Senate, waiving requirements that would allow delay of consideration of a joint resolution.²⁶ If no action has occurred on joint resolution within 20 days after referral to the Senate committee with jurisdiction, a petition of 30 Senators can discharge the resolution from committee, putting the joint resolution on the Senate calendar and subjecting it to a motion to proceed.²⁷ Alternatively, the Senate can consider the joint resolution by unanimous consent obtained by the Majority Leader.²⁸ Once the Senate agrees to the motion to proceed, the Senate cannot consider other business or postpone consideration without unanimous consent.²⁹ Once on the calendar, the Senate cannot amend or make a motion to recommit the joint resolution.³⁰ In addition, the CRA provides that the Senate may not debate appeals of procedural rulings.³¹ Where debate is permitted, the Senate cannot debate more than 10 hours, which precludes use of the filibuster on the joint resolution or its motion to proceed.³² The Senate can pass a joint resolution with a simple majority.³³

¹⁹ 5 U.S.C. § 802(a).

²⁰ 5 U.S.C. §§ 802(c), (d)(1)–(2); MAEVE P. CAREY & CHRISTOPHER M. DAVIS, *THE CONGRESSIONAL REVIEW ACT (CRA): A BRIEF OVERVIEW* (Feb. 27, 2023).

²¹ JEFFREY S. LUBBERS, *A GUIDE TO FEDERAL AGENCY RULEMAKING* 190 (4th ed., 2006).

²² *See e.g.*, 86 Fed. Reg. 42686 (Aug. 5, 2021).

²³ After expiration of the CRA process, Congress could consider legislation to disapprove an agency rule, but it would have to do so using the normal legislative process.

²⁴ 5 U.S.C. § 801(a)(1)(C).

²⁵ 5 U.S.C. §§ 801(a)(2)(A), 802(b)(2).

²⁶ JESSE M. CROSS, *TECHNICAL REFORM OF THE CONGRESSIONAL REVIEW ACT* 13 (Admin. Conf. of the U.S., Nov. 30, 2021).

²⁷ 5 U.S.C. §§ 802(c), (d)(1).

²⁸ JESSE M. CROSS, *TECHNICAL REFORM OF THE CONGRESSIONAL REVIEW ACT* 13 (Admin. Conf. of the U.S., Nov. 30, 2021).

²⁹ 5 U.S.C. §§ 802(d)(1)–(2); *see also id.* at 13–14.

³⁰ 5 U.S.C. § 802(d)(2).

³¹ 5 U.S.C. § 802(d)(4).

³² 5 U.S.C. § 802(d)(2); JESSE M. CROSS, *TECHNICAL REFORM OF THE CONGRESSIONAL REVIEW ACT* 14 fn.90 (Admin. Conf. of the U.S., Nov. 30, 2021).

³³ JESSE M. CROSS, *TECHNICAL REFORM OF THE CONGRESSIONAL REVIEW ACT* 14 (Admin. Conf. of the U.S., Nov. 30, 2021).

If a joint resolution of disapproval passes one chamber, that chamber holds the joint resolution at the desk, making it available for floor consideration.³⁴ The vote of the other chamber is then dispositive.³⁵ If Congress passes a joint resolution of disapproval, the CRA extends any agency action deadline established by another statute or regulation one year after the date on which Congress passes the joint resolution.³⁶

To retain its congressional review authority, Congress must timely introduce a joint resolution of disapproval.³⁷ Once introduced, the same Congress has no formal time limit to act on the resolution.³⁸ However, the CRA provides that the Senate loses access to its expedited resolution procedures—chiefly, no filibuster—if 60 session days have passed since the later date on which the agency submitted its report to Congress or published its action in the *Federal Register*.

The CRA includes one notable provision affecting this timeframe, colloquially known as the “lookback provision.”³⁹ When a rule is submitted less than 60 session days in the Senate or 60 legislative days in the House of Representatives before the end of an annual congressional session, the CRA clock begins anew during Congress’s next annual session, regardless of whether it is a new U.S. Congress.⁴⁰ The restarted clock begins on the 15th session day in the Senate and 15th legislative day in the House of Representatives of the following session.⁴¹ Whether an agency action was submitted or published during the lookback provision remains unclear until each chamber concludes its annual session at the end of the year.⁴² Notably, Congress retains the option to pass a joint resolution before the session during which the rule issued ends, giving Congress a second bite at the CRA apple.

Practical Outcomes: Determining the Date of Effectiveness of the Agency Action

The CRA does not delay the effective date of nonmajor rules, but does delay the effective date of major rules.⁴³ The CRA defines “major rule” as one the Administrator of the Office of Information and Regulatory Affairs (OIRA) determines is likely to (1) have an annual economic effect of at least \$100,000,000; (2) cause a major increase in consumer, industry, or government costs; or (3) lead to significant adverse effects on competition, employment, investment, and innovation.⁴⁴

³⁴ 5 U.S.C. § 802(f)(1).

³⁵ See JESSE M. CROSS, TECHNICAL REFORM OF THE CONGRESSIONAL REVIEW ACT 14–15 (Admin. Conf. of the U.S., Nov. 30, 2021).

³⁶ 5 U.S.C. § 803.

³⁷ JEFFREY S. LUBBERS, A GUIDE TO FEDERAL AGENCY RULEMAKING 189 (4th ed., 2006).

³⁸ *Id.*

³⁹ 5 U.S.C. § 802(e).

⁴⁰ 5 U.S.C. § 801(d)(1).

⁴¹ 5 U.S.C. § 801(d)(2).

⁴² See JESSE M. CROSS, TECHNICAL REFORM OF THE CONGRESSIONAL REVIEW ACT 32 (Admin. Conf. of the U.S., Nov. 30, 2021); Daniel Cohen & Peter L. Strauss, *Congressional Review of Agency Regulations*, 49 ADMIN. L.R. 95, 107–109.

⁴³ 5 U.S.C. § 801(a)(5).

⁴⁴ 5 U.S.C. § 804(2).

When an agency promulgates a major rule, the CRA automatically delays its effective date by at least 60 days.⁴⁵ The rationale is to permit time for Congress and the Comptroller General to review a rule of potential congressional interest.⁴⁶ The CRA provides that a major rule takes effect on the latest date among: (1) 60 calendar days after each chamber of Congress receives the agency’s statutorily required report or the agency publishes the rule in the Federal Register,⁴⁷ (2) 30 session days after Congress receives the President’s veto to a joint resolution of disapproval or the date on which Congress votes and fails to override the President’s veto if earlier, or (3) the date on which the rule would otherwise go into effect.⁴⁸ However, the CRA provides that if either chamber votes to reject a joint resolution of disapproval, the major rule goes into effect at that time “notwithstanding” the otherwise delayed effect.⁴⁹ The Second Circuit provides that this provision “does not *alter* major rules’ effective dates, but simply suspends their operation pending the outcome of Congressional review.”⁵⁰ The Federal Circuit provides the same.⁵¹

When Congress passes a joint resolution of disapproval, that rule does “not take effect,” or, in the case of a rule already in effect, ceases effectiveness.⁵² When Congress passes a joint resolution of disapproval of a rule already in effect, Congress rescinds the effectiveness of the agency action and the reliance on or need to comply with it by regulated parties.⁵³

There is an exception to the 60-day effectiveness delay for major rules. If the rule is necessary to protect against “an imminent threat to health or safety or other emergency,” enforce criminal laws, carry out matters of national security, or comply with statutes “implementing an international trade agreement,” the President may issue an Executive Order to move up the date of effectiveness.⁵⁴ The President must submit written notice to Congress.⁵⁵ However, GAO provides that agencies must still submit their statutorily-required report to Congress.⁵⁶

⁴⁵ 5 U.S.C. § 801(a)(3); JEFFREY S. LUBBERS, A GUIDE TO FEDERAL AGENCY RULEMAKING 188 fn.189 (4th ed., 2006).

⁴⁶ See, e.g., GAO, B-289880, 1 (Apr. 5, 2002).

⁴⁷ *Id.* at 1–2 (“Section 801(a)(1)(A) makes clear that compliance with the requirements of the CRA necessitates submission of a [major] rule to *both* Houses of Congress . . . [to constitute] the start of the 60-day delay period.”) (emphasis in original).

⁴⁸ 5 U.S.C. § 801(a)(3).

⁴⁹ JEFFREY S. LUBBERS, A GUIDE TO FEDERAL AGENCY RULEMAKING 369 (4th ed., 2006).

⁵⁰ *Nat’l Res. Def. Council v. Abraham*, 355 F.3d 179, 202 (2d Cir. 2004) (citing *Liesegang v. Sec’y of Veterans Affairs*, 312 F.3d 1368, 1375 (Fed. Cir. 2002)).

⁵¹ *Liesegang v. Sec’y of Veterans Affairs*, 312 F.3d 1368, 1375 (Fed. Cir. 2002) (“[T]he CRA does not change the date on which the regulation becomes effective. It only affects the dates when the rule becomes operative. In other words, the CRA merely provides for a 60-day waiting period before the agency may enforce the major rule so that Congress has the opportunity to review the regulation.”).

⁵² 5 U.S.C. § 801(b)(1).

⁵³ JEFFREY S. LUBBERS, A GUIDE TO FEDERAL AGENCY RULEMAKING 189 (4th ed., 2006); Daniel Cohen & Peter L. Strauss, *Congressional Review of Agency Regulations*, 49 ADMIN. L.R. 95, 107–109.

⁵⁴ 5 U.S.C. § 801(c)(2).

⁵⁵ 5 U.S.C. § 801(c)(1); JACOB L. LEW, M-99-13: GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 6-7 (OMB, Mar. 30, 1999).

⁵⁶ GAO, B-333501, *Centers for Disease Control and Prevention—Applicability of Congressional Review Act to Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*, 5 (Dec. 14, 2021) (“[A]n agency can provide for a rule to take effect immediately while still complying with the agency’s statutory obligation to submit the rule to Congress for review.”).

Defining Terminology: Session Days, Legislative Days, and Session

As it determines the start date of the congressional review period and may determine the date that a major rule takes effect, the CRA’s use of “session day” versus “legislative day” is important. The terms have practical and legal differences.

A “session day,” as relevant to the Senate’s 60-day CRA clock, is any calendar day of session.⁵⁷ A calendar day is any day when both chambers are in session for more than three days before adjournment, which can include weekends and holidays.⁵⁸ A “legislative day,” as relevant to the House of Representatives’ 60-day CRA clock, is the period between the start of a calendar day and an adjournment from day to day.⁵⁹ Either chamber can institute an adjournment from day to day to terminate a legislative day by motioning to adjourn, or in the Senate, by agreeing to a unanimous consent request.⁶⁰

On the other hand, a recess, which has no effect on calculating a session day or legislative day, is a “temporary suspension of a session,” and formally occurs during a daily session.⁶¹ The Senate can recess through a motion to recess or by unanimous consent.⁶² The House of Representatives authorizes the Speaker of the House to declare a recess by recognizing a Representative for the motion.⁶³

To define the relevant terminology differently, session days are any days that Congress convenes to work, while legislative days are determined by House of Representative procedures and require a formal termination of work. Thus, if a session “continues into a second calendar day without adjourning,” that constitutes two session days, but one legislative day.⁶⁴ Alternatively, if a chamber adjourns and reconvenes on the same day, that constitutes one session day, but two legislative days.⁶⁵

As another point of clarification, the term “session” on its own, refers to the “period when a chamber is formally assembled.”⁶⁶ An “adjournment sine die” terminates a chamber’s annual session.⁶⁷ Since Members of the House of Representatives are elected for two-year terms, each Congress lasts two years, meaning each Congress comprises two regular, annual

⁵⁷ Valerie Heitshusen, *Sessions, Adjournments, and Recesses of Congress*, CONG. RSCH. SERV., Summary (July 19, 2016).

⁵⁸ MAEVE P. CAREY & CHRISTOPHER M. DAVIS, *THE CONGRESSIONAL REVIEW ACT (CRA): A BRIEF OVERVIEW* (Feb. 27, 2023); *Resolutions of Disapproval Under the Congressional Review Act*, FED. REG., <https://www.federalregister.gov/reader-aids/congressional-review/resolutions-of-disapproval-under-the-congressional-review-act>.

⁵⁹ Valerie Heitshusen, *Sessions, Adjournments, and Recesses of Congress*, CONG. RSCH. SERV., Summary (July 19, 2016).

⁶⁰ *Id.* at 3.

⁶¹ *Id.* at 1.

⁶² *Id.* at 5.

⁶³ *Id.*

⁶⁴ *Id.* at Summary.

⁶⁵ *Id.*

⁶⁶ *Id.* at 1, 3.

⁶⁷ *Id.* at 8.

sessions.⁶⁸ The Adjournments Clause of the Constitution requires each chamber to obtain consent from the other to adjourn for more than three days.⁶⁹ When one chamber seeks to adjourn sine die, both chambers must adopt a concurrent resolution, known as an adjournment resolution, authorizing the other to adjourn sine die on a certain date.⁷⁰

The Text of the CRA

The CRA applies to any “rule” issued by a “federal agency.”⁷¹ Thus, the first inquiry to determine whether an action triggers CRA review is whether the entity issuing the action is a federal agency. The CRA does not define “federal agency,” but incorporates by reference the definition in the APA.⁷² The APA defines “agency” as “each authority of the Government of the United States,” but specifically exempts Congress, U.S. courts, U.S. territories, the government of the District of Columbia, and courts martial and military commissions.⁷³ (However, GAO recognized an action by District of Columbia Court Services and Offender Supervision Agency, Pretrial Services Agency as an agency action.⁷⁴) In addition, under the CRA and APA, courts and GAO exempt actions that are taken by the President.⁷⁵ Overall, actions by most executive branch agencies qualify.⁷⁶ Statements by a “subset” of an agency qualify.⁷⁷

Once a federal agency is involved, the next, and more complicated, inquiry is whether the action constitutes a “rule” under the CRA. The CRA incorporates by reference the definition of the term “rule” provided in the APA.⁷⁸ The APA defines “rule” as:

the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes in the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.⁷⁹

⁶⁸ *Id.* at 8.

⁶⁹ *Id.* at 10.

⁷⁰ *Id.*

⁷¹ 5 U.S.C. § 801(a)(1)(A).

⁷² 5 U.S.C. § 804(1).

⁷³ 5 U.S.C. § 551(1).

⁷⁴ GAO, B-334005, *Court Services and Offender Supervision Agency, Pretrial Services Agency—Privacy Act of 1974; Systems of Records Notice*, 4 (Jan. 18, 2023).

⁷⁵ *See, e.g.*, GAO, B-278224, 3 (Nov. 10, 1997) (“[T]he President is not an ‘agency’ under the Congressional Review Act.”); *see also* *Franklin v. Massachusetts*, 505 U.S. 788, 796 (“We hold that the final action complained of is that of the President, and the President is not an agency within the meaning of the [APA].”).

⁷⁶ Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must be Submitted to Congress*, CONG. RSCH. SERV., 3 (March 6, 2019).

⁷⁷ *E.g.*, GAO, B-334540, *Securities and Exchange Commission—Applicability of the Congressional Review Act to Staff Accounting Bulletin No. 121*, 5 (Oct. 31, 2023) (determining that a SEC Bulletin was still an agency statement although it did not represent the position of the full Commission).

⁷⁸ 5 U.S.C. § 804(3).

⁷⁹ 5 U.S.C. § 551(4).

Although adopting the APA definition, the CRA offers its own three exceptions: (1) a rule of “particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing,” (2) a rule “relating to agency management or personnel,” and (3) a rule “relating to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.”⁸⁰

Courts and GAO have recognized that the CRA’s modified APA definition retains three of the APA’s requirements: (1) “general . . . applicability,” (2) “future effect,” and (3) “designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.”⁸¹

Since the CRA incorporates by reference parts of the APA, GAO utilizes the judicial interpretation and application of the APA to define the scope of a “rule” under the CRA. Both the CRA and APA cover final rules, including interim final rules and direct final rules.⁸² In addition, both the CRA and APA exempt from its processes actions “relating to agency management or personnel.”⁸³ In addition, both the CRA and APA exempt agency actions related to agency organization, procedure, or practice.⁸⁴ However, under the CRA, agency rules of organization, procedure, or practice are subject to submission and disapproval procedures if the rule “substantially affect[s]” non-agency parties.⁸⁵

The CRA and APA definitions of “rule” differ in a few notable ways. The APA exempts “interpretative rules” and “general statements of policy” from notice-and-comment rulemaking procedures;⁸⁶ however, the CRA does not exclude interpretative rules or policy statements not subject to the APA’s notice-and-comment rulemaking procedures from submission and consideration of disapproval.⁸⁷ In fact, GAO has determined that general statements of policy can trigger CRA review,⁸⁸ as can “non-binding” agency actions that establish or provide

⁸⁰ 5 U.S.C. § 804(3).

⁸¹ 5 U.S.C. §§ 551(4), 804(3); Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must be Submitted to Congress*, CONG. RSCH. SERV., 5 (March 6, 2019); e.g., GAO, B-335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 4–5 (Oct. 18, 2023).

⁸² MAEVE P. CAREY & CHRISTOPHER M. DAVIS, *THE CONGRESSIONAL REVIEW ACT (CRA): A BRIEF OVERVIEW* (Feb. 27, 2023); JACOB L. LEW, M-99-13: *GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 3* (OMB, Mar. 30, 1999).

⁸³ 5 U.S.C. §§ 553(a)(2), 804(3)(B).

⁸⁴ 5 U.S.C. §§ 553(b)(A), 804(3)(C).

⁸⁵ *See, e.g.*, GAO, B-281575, 5 (Jan. 20, 1999) (citing *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)) (viewing the APA exception as whether the rule alters the rights and interests of affected parties under a procedural-substantive dichotomy).

⁸⁶ 5 U.S.C. § 553(b).

⁸⁷ Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must be Submitted to Congress*, CONG. RSCH. SERV., 9, 12 (March 6, 2019).

⁸⁸ GAO, B-329272, *Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation—Applicability of the Congressional Review Act to Interagency Guidance on Leveraged Lending*, 4–7 (Oct. 19, 2017).

information different from existing rules.⁸⁹ Also unlike the APA, GAO and OMB have determined that notices of proposed rules categorically do not trigger CRA review.⁹⁰

Assuming an agency is involved, GAO has utilized a three-step inquiry to determine whether an agency action constitutes a “rule” under the CRA.⁹¹ First, does the agency action constitute a rule under the APA—separate from whether it is subject to notice-and-comment rulemaking procedures?⁹² If not, the agency action is not a rule under the CRA. Second, does the agency action fall under an exception in the CRA? If so, the action is not a rule under the CRA. Third, is there another law that exempts the agency action from CRA review? This memorandum considers each step of this inquiry.

Step 1: Determining What is a “Rule” Under the CRA

GAO has argued that the CRA “should be broadly interpreted both as to the type and scope of rules covered.”⁹³ OMB has provided that this determination is fact-specific.⁹⁴ Courts and GAO consider how an agency describes an action, but focus on the action’s “substantive effect.”⁹⁵ GAO has also considered the length of time an agency takes to prepare and issue an action.⁹⁶

“Rule” Under the CRA’s Modified APA Definition

The first step in GAO’s inquiry is determining whether an agency action falls under the CRA’s modified APA definition.

⁸⁹ GAO, B–331171, *Department of Housing and Urban Development—Applicability of the Congressional Review Act to Fair Housing Guidance on Assistance Animals*, 6 (Dec. 17, 2020) (citing GAO, B–330843, *Board of Governors of the Federal Reserve System—Applicability of the Congressional Review Act to Supervision and Regulation Letters*, 6, 8 (Oct. 22, 2019)); GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 8 (Oct. 18, 2023) (classifying DOT’s Multimodal NOFO as a “rule”).

⁹⁰ GAO, B–325553, *GAO’s Role and Responsibilities Under the Congressional Review Act*, 1 (May 29, 2014); JACOB L. LEW, M–99–13: GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 3 (OMB, Mar. 30, 1999).

⁹¹ See, e.g., GAO, B–274505, *Whether Secretary of Agriculture Memorandum Concerning Emergency Salvage Timber Sale Program is a “Rule” under 5 U.S.C. § 801(a)(1)(A)*, 6 (Sept. 16, 1996); see also, e.g., GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 7 (May 14, 2001).

⁹² The APA exempts some rules from notice-and-comment rulemaking procedures. For example, interpretive rules and general statements of policy fall under the APA’s definition of rule, although they are exempt from notice-and-comment rulemaking procedures. 5 U.S.C. §§ 551(4), 553.

⁹³ GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 7 (May 14, 2001).

⁹⁴ JACOB L. LEW, M–99–13: GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 4 (OMB, Mar. 30, 1999).

⁹⁵ GAO, B–274505, *Whether Secretary of Agriculture Memorandum Concerning Emergency Salvage Timber Sale Program is a “Rule” Under 5 U.S.C. § 801(a)(1)(A)*, 6 (Sept. 16, 1996); see *Mt. Diablo Hospital District v. Bowen*, 860 F.2d 951, 956 (9th Cir. 1998); see also *Anderson v. Butz*, 550 F.2d 459, 463 (9th Cir. 1977); see also *Lewis-Mota v. Sec’y of Labor*, 469 F.2d 478, 481–82 (2d Cir. 1972).

⁹⁶ See, e.g., GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 1, 3 (May 14, 2001) (determining that 20 years of “detailed, scientific efforts” to produce the Record of Decision suggest the agency action was the product of a rulemaking).

General Applicability

To be generally applicable, GAO has explained that an agency action need not “generally apply to the population as a whole,” but rather have “general applicability within its intended range.”⁹⁷ The literal recipient of an agency action is not dispositive.⁹⁸ According to GAO, actions of general applicability under the CRA include broadly issued letters,⁹⁹ bulletins,¹⁰⁰ or other general policy statements,¹⁰¹ such as resource management plans.¹⁰² Under the APA, the Supreme Court has recognized that Department of the Interior (DOI), Bureau of Land Management land withdrawal review programs are generally applicable.¹⁰³

In GAO Decision B–287557, GAO concluded that a DOI, Fish and Wildlife Service Record of Decision affecting the water flow, economy, and anadromous fish population in “several major watersheds,” although in a certain geographic area, was generally applicable.¹⁰⁴ In its analysis, GAO cited to the legislative history of the CRA, noting Congress’s intent “to have a broad sweep and specifically rejected attempts to narrow the scope.”¹⁰⁵ GAO then provided a hypothetical, explaining that even a safety standard concerning a specific chemical compound would be generally applicable since it would aim to “protect all workers in the covered range.”¹⁰⁶

Whether an agency action is generally applicable is often a simple analysis. In fact, GAO often does not analyze the general applicability element,¹⁰⁷ focusing instead on whether the action was issued by an “agency” and, thus, constituting an agency statement.¹⁰⁸ In addition, GAO often implicitly answers the general applicability question by analyzing the particular applicability exception,¹⁰⁹ which this memorandum further addresses in a later part.

⁹⁷ GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 9 (May 14, 2001).

⁹⁸ See, e.g., GAO, B–334032, *Federal Highway Administration—Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America*, 5 (Dec. 15, 2022) (“While the [FHWA] Memo is addressed to agency officials and provides instructions to agency personnel, its main focus is the potential projects of potential grantees and other funding recipients.”).

⁹⁹ E.g., GAO, B–316048, *Applicability of the Congressional Review Act to Letter on State Children’s Health Insurance Program*, 6 (Apr. 17, 2008).

¹⁰⁰ E.g., GAO, B–329129, *Bureau of Consumer Financial Protection: Applicability of the Congressional Review Act to Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, 4–7 (Dec. 5, 2017).

¹⁰¹ E.g., GAO, B–329272, *Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation—Applicability of the Congressional Review Act to Interagency Guidance on Leveraged Lending*, 1, 12 (Oct. 19, 2017).

¹⁰² GAO, B–329272, *Eastern Interior Resource Management Plan*, 6 (Nov. 15, 2017).

¹⁰³ *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 892 (1990).

¹⁰⁴ See, e.g., GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 9–10 (May 14, 2001).

¹⁰⁵ *Id.* at 9.

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g., GAO, B–333501, *Centers for Disease Control and Prevention—Applicability of Congressional Review Act to Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*, 4 (Dec. 14, 2021).

¹⁰⁸ See, e.g., GAO, B–329272, *Eastern Interior Resource Management Plan*, 5 (Nov. 15, 2017); see also GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 4 (Oct. 18, 2023).

¹⁰⁹ See, e.g., *id.*

Future Effect

To determine if an action has future effect, GAO asks whether the action “is concerned with policy considerations for the future.”¹¹⁰ GAO focuses on whether the agency action is “prospective in nature.”¹¹¹ If the action evaluates “past or present conduct,” it is not of future effect.¹¹² In GAO Decision B–335488, GAO determined that a Department of Transportation (DOT) Multimodal Notice of Funding Opportunity (NOFO) had future effect when it established criteria for grant-program applications submitted after it issued the NOFO.¹¹³

Similarly, in GAO Decision B–334032, GAO determined that a DOT, Federal Highway Administration (FHWA) information memorandum setting out “preferred projects for funding under the Infrastructure Investment and Jobs Act” had future effect since it provided project guidance.¹¹⁴ The memorandum encouraged state officials and stakeholders to select projects based on FHWA priorities, such as modernizing streets and bridges.¹¹⁵ The memorandum acknowledged that states had final determination, but aimed “to influence state decisions.”¹¹⁶

Addressing past conduct will not necessarily contradict the future effect of an agency action. In GAO Decision B–287557, GAO concluded that a DOI, Fish and Wildlife Service Record of Decision was of future effect since its “essential purpose” was “to set policy for the future.”¹¹⁷ GAO specifically noted that even though the Record of Decision included background on prior government action leading to the statutory authority, the Record of Decision did not address past conduct.¹¹⁸ GAO also pointed to an analogous Record of Decision where the presiding federal judge issued a preliminary injunction to support its conclusion.¹¹⁹

Relevant to this analysis is the process an agency takes to issue its action. Courts and GAO have followed the APA’s distinction between adjudicatory and rulemaking processes to determine the type of action an agency issued.¹²⁰ The APA defines adjudication as the “agency processes for the formulation of an order.”¹²¹ The APA defines “order” as “the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter *other than rule making* but including licensing.”¹²² GAO explains that an

¹¹⁰ GAO, B–316048, *Applicability of the Congressional Review Act to Letter on State Children’s Health Insurance Program*, 3 (Apr. 17, 2008).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 4 (Oct. 18, 2023).

¹¹⁴ GAO, B–334032, *Federal Highway Administration—Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America*, 1 (Dec. 15, 2022).

¹¹⁵ *Id.* at 3.

¹¹⁶ *Id.*

¹¹⁷ GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 1–3, 7 (May 14, 2001).

¹¹⁸ *Id.* at 7–8.

¹¹⁹ *Id.* at 7 fn. 29.

¹²⁰ Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must be Submitted to Congress*, CONG. RSCH. SERV., 6, 11 (March 6, 2019).

¹²¹ 5 U.S.C. § 551(7).

¹²² 5 U.S.C. § 551(6) (emphasis added). The APA defines “license” as “the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission” and

order “results from an adjudicatory process.”¹²³ GAO and courts have given significant deference when an agency characterizes an action as an order.¹²⁴ In GAO Decision B–286338, GAO concluded that a Farm Credit Administration Booklet regarding application and conditions of a national charter was “not an adjudication” since the Booklet communicated a policy change “unrelated to any *particular* institution’s application.”¹²⁵

Designed to Implement, Interpret, or Prescribe Law or Policy

Finally, an agency action must be designed to implement, interpret, or prescribe law or policy. An agency action is designed to implement, interpret, or prescribe law or policy “when the action issues new regulations, changes regulatory requirements or official policy, or when it alters how the agency will exercise discretion.”¹²⁶ Analysis under this element always applies to final rules issued pursuant to required notice-and-comment rulemaking procedures, as well as interim final rules or direct final rules.¹²⁷ GAO has stated that the CRA does not apply to proposed rules.¹²⁸

Less clear is when an agency action is a rule that implements, interprets, or prescribes law or policy issued through procedures other than notice and comment rulemaking. To support its analysis, GAO considers whether the agency action “describes actions the regulated community could take” or if the agency action “provides extra information to aid with statutory compliance.”¹²⁹ An agency action is designed to implement, interpret, or prescribe law or policy if it “goes beyond simply restating the requirements in the law,” even if the affected parties can “ignore the [agency’s] preferences.”¹³⁰ Examples include agency actions that carry out forward-

“licensing” as “the agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.” 5 U.S.C. § 551(8)–(9).

¹²³ GAO, B–333501, *Centers for Disease Control and Prevention—Applicability of Congressional Review Act to Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*, 5 (Dec. 14, 2021).

¹²⁴ See GAO, B–334400, *Environmental Protection Agency—Applicability of the Congressional Review Act to June 2022 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program*, 5 (Feb. 9, 2023) (determining that an EPA action characterized as a denial was an order and not a rule under the CRA).

¹²⁵ GAO, B–286338, *Opinion on Whether the Farm Credit Administration’s National Charter Initiative is a Rule Under the Congressional Review Act*, 4–6 (Oct. 17, 2000) (emphasis in original).

¹²⁶ GAO, B–334005, *Court Services and Offender Supervision Agency, Pretrial Services Agency—Privacy Act of 1974; Systems of Records Notice*, 4 (Jan. 18, 2023) (citing *Industr. Safety Equip. Ass’n, Inc. v. EPA*, 837 F.2d 1115, 1120 (D.C. Cir. 1988)).

¹²⁷ MAEVE P. CAREY & CHRISTOPHER M. DAVIS, *THE CONGRESSIONAL REVIEW ACT (CRA): A BRIEF OVERVIEW* (Feb. 27, 2023); JACOB L. LEW, M–99–13: *GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 3* (OMB, Mar. 30, 1999).

¹²⁸ GAO, B–325553, *GAO’s Role and Responsibilities Under the Congressional Review Act*, 1 (May 29, 2014) (rejecting CRA review for an EPA proposed rule published in the *Federal Register*); JACOB L. LEW, M–99–13: *GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 3* (OMB, Mar. 30, 1999).

¹²⁹ GAO, B–334032, *Federal Highway Administration—Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America*, 4 (Dec. 15, 2022).

¹³⁰ *Id.* at 6.

looking criteria;¹³¹ announce grant programs preferences;¹³² establish application procedures, payment limits, or sanctions for noncompliance;¹³³ or create waiver requirements.¹³⁴

In GAO Decision B–335488, GAO concluded that a DOT Multimodal NOFO providing procedures for entities to apply to grant programs, describing DOT’s evaluation process, and explaining the amount of funding for eligible applicants was a final agency action designed to implement, interpret, or prescribe law or policy.¹³⁵ In GAO Decision B–334032, GAO concluded that a DOT, FHWA information memorandum was designed to implement, interpret, or prescribe law or policy when “it expressed a policy preference . . . and took steps to implement that preference” in selecting projects to fund.¹³⁶ Each of these decisions involved grant program processes and preferences.

Merely restating an agency’s policy action does not satisfy this element.¹³⁷ For example, an agency may issue an action and later put forth an explanation or summary. In those situations, GAO has not considered the later document describing a prior policy statement as implementing, interpreting, or prescribing law or policy.¹³⁸ In GAO Decision B–814723, GAO concluded that a D.C. Court Services and Offender Supervision Agency (CSOSA), Pretrial Services Agency (PSA) System of Records Notice (SORN) did not implement, interpret, or prescribe law or policy.¹³⁹ The President first issued an Executive Order requiring federal employees to get

¹³¹ See, e.g., GAO, B–329272, *Eastern Interior Resource Management Plan*, 6 (Nov. 15, 2017) (“Each of the four RMPs prescribes policies for future use of the areas they cover, such as where mining or off-highway vehicles are permitted; and two of the RMPs identify Areas of Critical Environmental Concern.”).

¹³² GAO, B–334032, *Federal Highway Administration—Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America*, 4 (Dec. 15, 2022) (“[A Federal Highway Administration memorandum] proscribes policy, as it announces a preference for certain types of projects and instructs agency employees to encourage funding recipients to select these types of projects.”).

¹³³ GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 5 (Oct. 18, 2023) (citing GAO B–333732, *United States Department of Agriculture—Applicability of the Congressional Review Act to the 2021 Updates to the Thrifty Food Plan* (July 28, 2022)).

¹³⁴ GAO, B–323772, 1, 4 (Sept. 4, 2012) (concluding that an HHS information memorandum was designed to implement, interpret, or prescribe law or policy since it established requirements to qualify for a waiver).

¹³⁵ GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 4–5 (Oct. 18, 2023)

¹³⁶ GAO, B–334032, *Federal Highway Administration—Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America*, 2, 4 (Dec. 15, 2022).

¹³⁷ See GAO, B–331171, *Department of Housing and Urban Development—Applicability of the Congressional Review Act to Fair Housing Guidance on Assistance Animals*, 5 (Dec. 17, 2020) (“[T]he Reasonable Accommodation Guidance does not simply restate the law as HUD asserts; rather, . . . it describes how HUD has interpreted the law through administrative decisions dating back to the 1990s.”).

¹³⁸ GAO, B–330288, *Department of Commerce—Memorandum Regarding a Citizenship Question on the 2020 Decennial Census Questionnaire* (Feb. 7, 2019) (concluding that a Commerce memorandum explaining whether to include a citizenship question on the census did not prescribe law since it only explained the agency’s rationale); GAO, B–334005, *Court Services and Offender Supervision Agency, Pretrial Services Agency—Privacy Act of 1974; Systems of Records Notice*, 4–5 (Jan. 18, 2023) (citing *Indust. Safety Equip. Ass’n, Inc. v. EPA*, 837 F.2d 1115, 1120 (D.C. Cir. 1988)) (concluding that the EPA report in federal court that “summarized the safety features of several respirators” was not designed to prescribe law since it was a technical report and gave employers discretion to choose among recommended respirators).

¹³⁹ *Id.* at 1.

vaccinated against COVID-19.¹⁴⁰ A Task Force then issued implementing guidance.¹⁴¹ Complying with the Executive Order and guidance, CSOSA PSA issued the SORN to collect information.¹⁴² GAO determined that the SORN did not change previously issued policy, “only addressed a necessary statutory step implicated by the prior policy decision,” and “left the world just as it found it.”¹⁴³

In GAO Decision B-330288, GAO similarly concluded that a memorandum from the Secretary of Commerce that explained “the Secretary’s rationale” for the agency’s decision to include a citizenship question on the census, and thus “did nothing more than explain the prior policy decision,” was not designed to implement, interpret, or prescribe law or policy.¹⁴⁴

GAO previously provided that the CRA applies to rules that are “certain and final”¹⁴⁵ or “binding.”¹⁴⁶ In 2008 GAO Decision B-316048, GAO concluded that a Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services letter to state health officials explaining the State Children’s Health Insurance Program was “binding” and, thus, implemented, interpreted, and prescribed law or policy, since the letter sought “to clarify and explain” “statutory and regulatory requirements” and indicated “specific strategies” for eligible states to adopt.¹⁴⁷ GAO highlighted that the agency used the letter to disapprove a state request to amend its plan.¹⁴⁸

However, other GAO decisions challenge any binding requirement. In 1999 GAO Decision B-281575, GAO reviewed Environmental Protection Agency (EPA) Interim Guidance that established an eight-stage framework to process complaints and a five-step process to analyze disparate impacts.¹⁴⁹ Although GAO recognized the Interim Guidance was non-binding, GAO concluded that the action implemented, interpreted, or prescribed law, since the Interim Guidance differed from existing rules and mandated notice and response from recipients.¹⁵⁰ In 2017 GAO Decision B-329129, GAO similarly concluded that a Consumer Financial Protection Bureau (CFPB) Bulletin—the only agency action overturned by Congress not subject to notice-and-comment rulemaking procedures—prescribed CFPB policy to enforce fair lending laws.¹⁵¹ Although GAO agreed with the CFPB that the Bulletin was a “non-binding guidance document,” GAO recognized that it explained how CFPB would exercise enforcement and indicated what indirect auto lending activities triggered legal consequences.¹⁵²

¹⁴⁰ *Id.* at 5.

¹⁴¹ *Id.* at 5–6.

¹⁴² *Id.* at 6.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 5–6.

¹⁴⁵ GAO, B-325553, *GAO’s Role and Responsibilities Under the Congressional Review Act*, 8 (May 29, 2014).

¹⁴⁶ GAO, B-316048, *Applicability of the Congressional Review Act to Letter on State Children’s Health Insurance Program*, 4 (Apr. 17, 2008).

¹⁴⁷ *Id.* at 3, enclosure 12.

¹⁴⁸ *Id.* at 4.

¹⁴⁹ GAO, B-281575, 3–4 (Jan. 20, 1999).

¹⁵⁰ *Id.* at 4–6.

¹⁵¹ GAO, B-329129, *Bureau of Consumer Financial Protection: Applicability of the Congressional Review Act to Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, 6 (Dec. 5, 2017).

¹⁵² *Id.* at 4–6.

Does Not Constitute a “Rule” Under the CRA

Certain agency actions do not fall under the CRA’s definition of a “rule,” avoiding CRA review under the first step of GAO’s framework. Under the CRA, monetary policies issued by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee¹⁵³ and agency actions promulgated under the Telecommunications Act of 1996¹⁵⁴ are exempt from CRA review.

GAO and case law also inform what falls outside of the CRA’s definition of a “rule.” Like the APA, the CRA excludes orders,¹⁵⁵ investigative actions,¹⁵⁶ and presidential actions.¹⁵⁷ Unlike the APA, GAO and OMB have interpreted that the CRA excludes proposed rules.¹⁵⁸ This memorandum discusses presidential actions and proposed rules in the following sections.

Presidential Actions

The Supreme Court and GAO provide that the President is not an agency, and thus, actions taken by the President do not fall under the CRA’s definition of a “rule.”¹⁵⁹ Congress must provide an express statement providing otherwise.¹⁶⁰ Less clear is when this exclusion extends to entities acting on the President’s behalf.

GAO adopts the Supreme Court holding in *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980) addressing FOIA and determining that an entity “whose sole function is to advise and assist the President” is not an agency.¹⁶¹ Courts and GAO ask whether the entity “wielded substantial authority independently of the President,”¹⁶² considering three factors: “(1) ‘how close operationally the group is to the President,’ (2) ‘whether it has a self-contained structure,’ and (3) ‘the nature of its delegated’ authority.”¹⁶³

¹⁵³ 5 U.S.C. § 807.

¹⁵⁴ 5 U.S.C. § 804(2).

¹⁵⁵ MAEVE P. CAREY & CHRISTOPHER M. DAVIS, *THE CONGRESSIONAL REVIEW ACT (CRA): A BRIEF OVERVIEW* (Feb. 27, 2023); JACOB L. LEW, *M-99-13: GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 5* (OMB, Mar. 30, 1999).

¹⁵⁶ 5 U.S.C. §§ 551, 555; see *United States v. W. H. Hodges & Co.*, 533 F.2d 276, 278 (5th Cir. 1976) (“The order at issue here was clearly investigatory in nature . . . and hence not subject to the procedures governing rule-making outlined in the APA.”)

¹⁵⁷ GAO, B-278224, 3 (Nov. 10, 1997).

¹⁵⁸ GAO, B-325553, *GAO’s Role and Responsibilities Under the Congressional Review Act*, 1 (May 29, 2014); JACOB L. LEW, *M-99-13: GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 3* (OMB, Mar. 30, 1999).

¹⁵⁹ GAO, B-333725, *Safer Federal Workforce Task Force—Applicability of the Congressional Review Act to COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, 5 (Mar. 17, 2022) (citing *Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992)).

¹⁶⁰ GAO, B-278224, 2 (Nov. 10, 1997) (citing *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992)).

¹⁶¹ GAO, B-333725, *Safer Federal Workforce Task Force—Applicability of the Congressional Review Act to COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, 5 (Mar. 17, 2022) (quoting *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 156 (1980)).

¹⁶² *Id.* (quoting *Citizens for Resp. and Ethics in Wash. v. Off. of Admin.*, 566 F.3d 219, 222-23 (D.C. Cir. 2009)).

¹⁶³ *Id.* (quoting *Armstrong v. Exec. Off. of the President*, 90 F.3d 553, 558 (D.C. Cir. 1996)).

In GAO Decision B–333725, GAO concluded that a guidance document put out by a presidentially-coordinated task force addressing governing operations during the COVID–19 pandemic was not an agency action.¹⁶⁴ The Task Force was not an agency because it worked with the President closely, comprised of “high-ranking government officials or their designees” (including heads from the General Services Administration and Federal Emergency Management Agency), had no independent staff, held no delegated authority, and advised the President only.¹⁶⁵ A D.C. Circuit Court came to the same conclusion on an analogous set of facts.¹⁶⁶

Similarly, in GAO Decision B–278224, GAO concluded that the American Heritage River Initiative, announced during the President’s State of the Union address, established by Executive Order, developed by interagency task force, and published as a notice in the *Federal Register* by the Council on Environmental Quality, was not a presidential action.¹⁶⁷ The Initiative did not create “new regulatory authority or requirements” and the Council on Environmental Quality had no regulatory function, and, thus, was not an agency.¹⁶⁸ In both instances, the President created and directed the non-agency group issuing the non-agency action.

Entities also act on the President’s behalf when they exercise “the President’s inherent discretionary power.”¹⁶⁹ Adopting D.C. Circuit Court rationale in *Natural Res. Def. Coun. v. Dep’t of State*, 658 F. Supp. 2d 105 (D.D.C. 2009), which addressed whether an agency acting on the President’s behalf was subject to the requirements of the APA, GAO concluded in GAO Decision B–333725 that OMB acted “explicitly under a presidential delegation of the President’s discretionary authority” and “stepped into the shoes of the President” when OMB approved a guidance document under the President’s authority under the Federal Property and Administrative Services Act.¹⁷⁰

GAO adopted a similar analysis in GAO Decision B–329206, concluding that a Fact Sheet and Standard Provisions document issued by the Department of State and Agency for International Development pursuant to a Presidential Memorandum were the “implementation of presidential policy-making.”¹⁷¹ The Fact Sheet defined “global health assistance” and the Standard Provisions formalized requirements laid out in the Presidential Memorandum.¹⁷² GAO concluded that the agencies were “carrying out the directives” of the President’s “broad statutory

¹⁶⁴ *Id.* at 2.

¹⁶⁵ *Id.* at 5.

¹⁶⁶ *Meyer v. Bush*, 981 F.2d 1288, 1297–98 (D.C. Cir. 1993).

¹⁶⁷ GAO, B–278224, 1 (Nov. 10, 1997).

¹⁶⁸ *Id.* at 1–2 (citing *Nat’l Helium Corp. v. Morton*, 455 F.2d 650, 656 (1971)).

¹⁶⁹ *Nat. Res. Def. Council, Inc. v. U.S. Dep’t of State*, 658 F. Supp. 2d 105, 111 (D.D.C. 2009); see GAO, B–333725, *Safer Federal Workforce Task Force—Applicability of the Congressional Review Act to COVID–19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, 6 (Mar. 17, 2022).

¹⁷⁰ GAO, B–333725, *Safer Federal Workforce Task Force—Applicability of the Congressional Review Act to COVID–19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, 1, 6 (Mar. 17, 2022).

¹⁷¹ GAO, B–329206, *Department of State, U.S. Agency for International Development: Applicability of the Congressional Review Act to the Protecting Life in Global Health Assistance Fact Sheet and Revised Standard Provisions for U.S. Nongovernmental Organizations*, 1 (May 1, 2018).

¹⁷² *Id.* at 2–3.

authority” under the Foreign Assistance Act.¹⁷³ In both instances, the agency acted under a clear and targeted directive from the President.

Proposed Rules

OMB and GAO have provided that the CRA does not impose requirements on proposed rules.¹⁷⁴ In a 1999 memorandum, OMB clarified that this includes notices of proposed rulemaking, such as “advance notices of proposed rulemaking, notices of inquiry, and other forms of rulemaking that are not final.”¹⁷⁵ In GAO Decision B–325553, GAO rejected an argument that the CRA extended to an EPA proposed rule addressing greenhouse gas emissions from electric utility generating units published in the *Federal Register*.¹⁷⁶ GAO emphasized that the action was “an interim step in the rulemaking process,” since EPA still had to “receive and analyze public comments” and publish a final rule.¹⁷⁷ GAO reasoned that the proposed rule did not have “a binding effect on the obligations of any party.”¹⁷⁸

Challenging this rationale, recent GAO decisions have found an agency action subject to the CRA despite being non-binding, such as EPA Interim Guidance mandating recipient notice and response,¹⁷⁹ a CFPB Bulletin explaining its enforcement actions,¹⁸⁰ and a DOT FHWA memorandum expressing “a preference for specific types of projects.”¹⁸¹ In each decision, GAO noted particular concern with the effect on regulated parties.¹⁸²

Although challenging the rationale, nothing suggests that GAO has rescinded the categorical exclusion of proposed rules from CRA review. This suggests that notices of proposed rulemaking published in the *Federal Register* remain outside of the scope of the CRA, while “non-binding” guidance documents that meet the CRA’s modified APA definition are within the scope. A potential distinction is that proposed rule are not binding given that they are an interim step, while non-binding guidance documents can take, and have, an immediate effect.

Step 2: Exceptions Under the CRA

¹⁷³ *Id.* at 4–5.

¹⁷⁴ GAO, B–325553, *GAO’s Role and Responsibilities Under the Congressional Review Act*, 1 (May 29, 2014); JACOB L. LEW, M–99–13: GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 3 (OMB, Mar. 30, 1999)

¹⁷⁵ JACOB L. LEW, M–99–13: GUIDANCE FOR IMPLEMENTING THE CONGRESSIONAL REVIEW ACT 3 (OMB, Mar. 30, 1999).

¹⁷⁶ GAO, B–325553, *GAO’s Role and Responsibilities Under the Congressional Review Act*, 1 (May 29, 2014).

¹⁷⁷ *Id.* at 6.

¹⁷⁸ *Id.* at 8.

¹⁷⁹ GAO, B–281575, 4–6 (Jan. 20, 1999).

¹⁸⁰ GAO, B–329129, *Bureau of Consumer Financial Protection: Applicability of the Congressional Review Act to Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, 4–6 (Dec. 5, 2017).

¹⁸¹ GAO, B–334032, *Federal Highway Administration—Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America*, 5 (Dec. 15, 2022).

¹⁸² *Id.* at 6; GAO, B–281575, 6 (Jan. 20, 1999); GAO, B–329129, *Bureau of Consumer Financial Protection: Applicability of the Congressional Review Act to Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, 5 (Dec. 5, 2017).

After determining that an agency action constitutes a rule under the CRA’s definition, GAO then considers whether the action falls under one of the CRA’s prescribed exceptions—particular applicability; related to agency management or personnel; or related to agency organization, practice, or procedure and does not substantially affect non-agency parties.

Exception 1: Rules of “Particular Applicability”

The particular applicability exception is the mutually exclusive opposite of the general applicability requirement, and thus, by addressing one, the analyzing body addresses the other.¹⁸³ Between the two, GAO tends to focus on the particular applicability exception.

For an agency action to be particularly applicable, GAO recognizes that the action must address specific entities based on individualized actions and circumstances.¹⁸⁴ The action should not bind outside cases or parties.¹⁸⁵ GAO has identified examples of rules of particular applicability: import and export licenses, individual rate and tariff approvals, wetland permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take limits, broadcast licenses, and product approvals,¹⁸⁶ Internal Revenue Service (IRS) private letter rulings,¹⁸⁷ and certain environmental site-specific designations.¹⁸⁸

GAO defines the particular applicability exception narrowly.¹⁸⁹ For example, in GAO Decision B–330843, GAO concluded that an IRS letter addressed to eight different banks was not particularly applicable when it addressed “recovery planning generally” and provided “a variety of actions the eight bank holding companies should consider.”¹⁹⁰

GAO analyzes the particular applicability exception separately from the rule analysis. In GAO Decision B–334400, despite concluding that the action was an order (and not a product of a rulemaking), GAO separately concluded that the action was not particularly applicable since it

¹⁸³ See, e.g., GAO, B–333501, *Centers for Disease Control and Prevention—Applicability of Congressional Review Act to Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*, 5 (Dec. 14, 2021) (determining that a CDC Notice was not of particular applicability when it applied to “all travelers using public conveyances”); see also, e.g., GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 5 (Oct. 18, 2023) (concluding that a DOT Multimodal NOFO was not of particular applicability when it applied “broadly” to regulated parties).

¹⁸⁴ GAO, B–330842, *Board of Governors of the Federal Reserve System—Applicability of the Congressional Review Act to Supervision and Regulation Letters*, 9 (Oct. 22, 2019).

¹⁸⁵ See, e.g., GAO, B–238859, *Tongass National Forest Land and Resource Management Plan Amendment*, 10–11 (Oct. 23, 2017).

¹⁸⁶ *Id.* at 10.

¹⁸⁷ *Id.* at 10–11.

¹⁸⁸ GAO, B–275178, *Status of the Tongass National Forest Land and Resource Management Plan Under the Small Business Regulatory Enforcement Fairness Act*, 9 (July 3, 1997).

¹⁸⁹ GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 9 (May 14, 2001).

¹⁹⁰ GAO, B–330843, *Board of Governors of the Federal Reserve System—Applicability of the Congressional Review Act to Supervision and Regulation Letters*, 9 (Oct. 22, 2019).

was directed towards particular petitions “based on the facts those petitions presented.”¹⁹¹ In GAO Decision B–334400, GAO determined that an action was an order, but even if it had been a rule, it would have fallen under the particular applicability exception when an EPA action characterized as a denial provided the “final disposition” of 69 petitions requesting a statutory exemption.¹⁹²

Exception 2: Rules “Relating to Agency Management or Personnel”

The CRA has an exception for agency actions “relating to agency management or personnel.”¹⁹³ Under the APA, agency actions that relate to agency management or personnel “appl[y] to agency employees and not to outside parties.”¹⁹⁴ GAO provides that there should be “no effect on non-agency parties.”¹⁹⁵ GAO has applied this exception where outside parties are impacted, but primarily in instances in which management or personnel matters were “clearly and directly implicated.”¹⁹⁶ Under the CRA, GAO applies this exception to internal vaccination requirements¹⁹⁷ and “leaves of absence, vacation, [or] travel.”¹⁹⁸ Under the APA, courts include internal hiring policies.¹⁹⁹ In GAO Decision B–335115, GAO determined that Department of Defense memoranda prescribing notification and leave procedures for pregnant service members and establishing criteria to hire outside personnel related to agency management or personnel.²⁰⁰

¹⁹¹ GAO, B–334400, *Environmental Protection Agency—Applicability of the Congressional Review Act to June 2022 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program*, 7 (Feb. 9, 2023)

¹⁹² *Id.* at 6.

¹⁹³ 5 U.S.C. §§ 553(a)(2), 804(3)(B).

¹⁹⁴ GAO, B–333732, *United States Department of Agriculture—Applicability of the Congressional Review Act to the 2021 Updates to the Thrifty Food Plan*, 5 (July 28, 2022).

¹⁹⁵ GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 5 (Oct. 18, 2023) (quoting GAO, B–334411, *U.S. Department of Agriculture, Food and Nutrition Service—Applicability of the Congressional Review Act to Food and Nutrition Service Policy Memorandum CRD 01–2022, Application of Bostock v. Clayton County to Program Discrimination Complaint Processing—Policy Update*, 5 (June 5, 2023) and GAO, B–334221, *Office of Personnel Management—Applicability of the Congressional Review Act to the Memorandum on Achieving a \$15 Per Hour Minimum Pay Rate for Federal Employees*, 5 (Feb. 9, 2023)).

¹⁹⁶ GAO, B–335115, *U.S. Department of Defense—Applicability of the Congressional Review Act to Certain Healthcare Memoranda*, 4 (Sept. 26, 2023) (citing *Stewart v. Smith*, 673 F.2d 485, 496–97 (D.C. Cir. 1982)) (recognizing the application of the agency management or personnel exception under the APA to a Bureau of Prisons rule setting a maximum hiring age of 34 for employees working in federal correctional facilities).

¹⁹⁷ GAO, B–334237, *Office of Personnel Management—Applicability of the Congressional Review Act to Guidance on Enforcing Coronavirus Disease 2019 Vaccination Requirement for Federal Employees—Executive Order 14043*, 1 (Apr. 6, 2023).

¹⁹⁸ GAO, B–335115, *U.S. Department of Defense—Applicability of the Congressional Review Act to Certain Healthcare Memoranda*, 4 (Sept. 26, 2023) (quoting THOMAS CAMPBELL CLARK, ATTORNEY GENERAL’S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT 18 (1947)).

¹⁹⁹ *Stewart v. Smith*, 673 F.2d 485, 496, 499 (D.C. Cir. 1982); see *Hamlet v. United States*, 63 F.3d 1097, 1103 (Fed. Cir. 1995) (providing that a personnel manual could relate to agency management or personnel under the APA).

²⁰⁰ *Id.* at 4–5.

This exception includes agency actions that cover all federal government workers. In GAO Decision B–334221, GAO concluded that an OPM Memorandum that proscribed special pay rates for federal government workers related to agency management or personnel.²⁰¹

A notable application of this exception exists in GAO Decision B–292045, where GAO determined that a Department of Veterans Affairs (VA) memorandum terminating a discretionary loan program for foreclosed properties related to agency management or personnel since it “merely announced the agency’s discretionary” method “to dispose of foreclosed properties” and discontinued direct loan financing.²⁰² Since the VA had received a “lump-sum appropriation” from Congress, GAO determined the decision was one of “management.”²⁰³

Conversely, in GAO Decision B–333732, GAO concluded that a Department of Agriculture (USDA) Plan determining the value of Supplemental Nutrition Assistance Program benefits did not relate to agency management or personnel because it determined the amount of benefits for qualifying families.²⁰⁴ In GAO Decision B–330811, GAO came to the same conclusion for a HHS and U.S. Department of the Treasury guidance that applied to states.²⁰⁵

Exception 3: Rules “Relating to Agency Organization, Procedure, or Practice” That Do Not “Substantially Affect the Rights or Obligations of Non-Agency Parties”

The CRA excludes from its definition of a “rule” agency actions that relate to organization, procedure, or practice, but only if the agency action has no substantial impact on non-agency parties.²⁰⁶ Although the APA does not qualify the exception from notice-and-comment for such rules,²⁰⁷ under the APA, courts have opined on whether an agency action is procedural—and thus has no substantial impact on non-agency parties—or is substantive and, therefore, is not procedural.²⁰⁸ Under the APA, the D.C. Circuit asks whether an agency action “trenches on substantial private rights and interests.”²⁰⁹ Under the CRA, GAO recognizes this

²⁰¹ GAO, B–334221, *Office of Personnel Management—Applicability of the Congressional Review Act to the Memorandum on Achieving a \$15 Per Hour Minimum Pay Rate for Federal Employees*, 3, 5 (Feb. 9, 2023).

²⁰² GAO, B–292045, *Whether a Department of Veterans Affairs Memorandum is a Rule Under the Congressional Review Act* (May 19, 2003).

²⁰³ *Id.*

²⁰⁴ See, e.g., GAO, B–333732, *United States Department of Agriculture—Applicability of the Congressional Review Act to the 2021 Updates to the Thrifty Food Plan*, 4–5 (July 28, 2022) (rejecting USDA’s argument that “evaluating market baskets based on current food prices” related to agency management or personnel when the Plan determined the amount of SNAP benefits for qualifying families).

²⁰⁵ GAO, B–330811, *Department of Health and Human Services and Department of the Treasury—Applicability of the Congressional Review Act to State Relief and Empowerment Waivers*, 5 (July 15, 2019) (“[An HHS] Information Memorandum did not relate to agency management or personnel since it applied to states.”).

²⁰⁶ 5 U.S.C. § 553(b)(A).

²⁰⁷ 5 U.S.C. § 553(b)(A) (“Except when notice or hearing is required by statute, this subsection does not apply—(A) to . . . rules of agency organization, procedure, or practice.”).

²⁰⁸ GAO, B–275178, *Status of the Tongass National Forest Land and Resource Management Plan Under the Small Business Regulatory Enforcement Fairness Act*, 6 (July 3, 1997) (quoting *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994)); see GAO, B–238859, *Tongass National Forest Land and Resource Management Plan Amendment*, 12 (Oct. 23, 2017).

²⁰⁹ *Batterton v. Marshall*, 648 F.2d 694, 708 (D.C. Cir. 1980).

substantive and procedural distinction,²¹⁰ although GAO does not rely on the test since “procedure impacts on outcomes and thus can virtually always be described as affecting substance.”²¹¹ Regardless, given the analytical approaches, the CRA and APA exceptions function similarly.

Since “the entire focus of the [CRA] is to require congressional review of agency actions that substantially affect the rights or obligations of outside parties,”²¹² whether an agency action substantially affects non-agency parties is often dispositive to whether it is subject to the CRA. Under the APA, courts consider whether an agency action “alter[s] the rights or interests of parties” and “whether the substantive effects of the rule are ‘sufficiently grave so that notice and comment are needed to safeguard the policies underlying the APA.’”²¹³ According to the D.C. Circuit, actions eligible for this exception “do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.”²¹⁴

Under the CRA, agency actions that do not substantially impact the rights and obligations of outside parties should be “internal,” “mainly directed toward improving the efficient and effective operation of an agency,” and not “determin[e] the rights and interests of affected parties.”²¹⁵ GAO has cited to the purpose of the APA version of this exception, which is to allow agencies to “retain latitude in organizing their internal operations.”²¹⁶ GAO provides that the exception “should be read narrowly and resolved in favor of nonagency parties” and apply when the effect is “truly minor” and “incidental.”²¹⁷

In GAO Decision B–329926, GAO concluded that two sections of the Social Security Administration’s Hearings, Appeals, and Litigation Law Manual providing when an adjudicator could consider social media networks and other internet sites during adjudicative proceedings

²¹⁰ GAO, B–275178, *Status of the Tongass National Forest Land and Resource Management Plan Under the Small Business Regulatory Enforcement Fairness Act*, 6 (July 3, 1997); see GAO, B–238859, *Tongass National Forest Land and Resource Management Plan Amendment*, 12 (Oct. 23, 2017).

²¹¹ See, e.g., GAO, B–275178, *Status of the Tongass National Forest Land and Resource Management Plan Under the Small Business Regulatory Enforcement Fairness Act*, 6 (July 3, 1997) (quoting *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994)).

²¹² GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 7 (May 14, 2001); GAO, B–291906, *Whether Department of Veterans Affairs Memorandum is a Rule Under the Congressional Review Act*, 4 (Feb. 28, 2003).

²¹³ GAO, B–275178, *Status of the Tongass National Forest Land and Resource Management Plan Under the Small Business Regulatory Enforcement Fairness Act*, 7 (July 3, 1997) (quoting *Lamoille Valley R.R.C. v. ICC*, 711 F.2d 295, 328 (D.C. Cir. 1983)).

²¹⁴ *Batterton v. Marshall*, 648 F.2d 694, 707–08 (D.C. Cir. 1980) (noting application of this exception to a freeze on radio broadcast station application processing and a requirement for nonagency accountants to conduct audits).

²¹⁵ GAO, B–287557, *Opinion on Whether Trinity River Record of Decision is a Rule*, 8 (May 14, 2001).

²¹⁶ GAO, B–329926, *Social Security Administration: Applicability of the Congressional Review Act to Sections of the Hearings, Appeals, and Litigation Law Manual*, 5 (Sept. 10, 2018) (citing *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)).

²¹⁷ GAO, B–274505, *Whether Secretary of Agriculture Memorandum Concerning Emergency Salvage Timber Sale Program is a “Rule” under 5 U.S.C. § 801(a)(1)(A)*, 8 (Sept. 16, 1996) (quoting 142 Cong. Rec. H3005 (daily ed. Mar. 28, 1996)).

was an internal matter and bound agency officials only.²¹⁸ Thus, the sections did “not impose new burdens on claimants or alter claimants’ rights or obligations” during appeals and did not invoke this exception.²¹⁹

In GAO Decision B–330843, GAO determined that a Board of Governors of the Federal Reserve System letter setting forth how a new internal committee would conduct examinations of regulated institutions did not substantially affect the rights of the institutions.²²⁰ The letter explained the new committee structure, but did not change substantive guidelines or examination criteria.²²¹ The letter affected “the way institutions interact” with the agency only.²²² GAO cited *James V. Hurson Associates v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000), which held that the USDA changing the food label approval process from the option of mail-in applications or in-person meetings to mail-in applications only did not change substantive criteria and was procedural, and, thus, not subject to notice and comment under the APA.²²³

GAO suggests agency discretion may be one factor in whether an action substantially affects non-agency parties. In GAO Decision B–292045, GAO determined that a VA memorandum terminating a discretionary loan program for foreclosed properties was of agency procedure or practice not substantially affecting non-agency parties.²²⁴ The action was internal because it was “not an entitlement or right” for veterans or third parties, but rather a “tool . . . to help move acquired property from [the agency’s] inventory” and “purely discretionary.”²²⁵ Second, GAO provided that veterans were not affected because any loans would be made to third-party purchasers.²²⁶

Unlikely to fit under this exception are notices of funding opportunity for agency grant programs, even if applicants are not obligated to apply or receive funding.²²⁷ GAO determined there was a substantial impact on non-agency parties in several instances: a USDA NOFO that implemented a new grant program and established “whether and in what amount” non-agency entities could receive funding,²²⁸ a USDA NOFO that amended the requirements of existing

²¹⁸ GAO, B–329926, *Social Security Administration: Applicability of the Congressional Review Act to Sections of the Hearings, Appeals, and Litigation Law Manual*, 1–2, 7 (Sept. 10, 2018) (determining that adjudicating claims is an agency proceeding and defining permissible evidence falls within that responsibility).

²¹⁹ *Id.* at 7.

²²⁰ GAO, B–330843, *Board of Governors of the Federal Reserve System—Applicability of the Congressional Review Act to Supervision and Regulation Letters*, 4, 10 (Oct. 22, 2019).

²²¹ *Id.* at 11.

²²² *Id.* at 10.

²²³ *Id.* at 11.

²²⁴ GAO, B–292045, *Whether a Department of Veterans Affairs Memorandum is a Rule Under the Congressional Review Act* (May 19, 2003).

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ E.g., GAO, B–335488, *U.S. Department of Transportation—Applicability of the Congressional Review Act to Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity*, 5, 8 (Oct. 18, 2023).

²²⁸ *Id.* at 5–6.

financial assistance programs and determined the maximum benefit amount,²²⁹ and a DOT NOFO defining “eligibility requirements, selection criteria, and funding ranges.”²³⁰

Step 3: Exempted by Other Law

The Supreme Court held in *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10 (1993) that a provision with “notwithstanding” language indicates congressional intent to “override conflicting provisions” of other laws.²³¹ The CRA provides that 5 U.S.C. chapter 8 “shall apply notwithstanding any other provision of law.”²³² Although suggesting that the CRA supersedes other laws, GAO has addressed the possibility that other laws may override the CRA and exempt an otherwise qualifying agency action from CRA review.

In GAO Decision B–334644, GAO analyzed whether this applied to a Department of Education action.²³³ Congress passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which included a “notwithstanding” provision.²³⁴ GAO cited the holding in *Cisneros v. Alpine Ridge Grp.*²³⁵ Even though both the CRA and HEROES Act had a notwithstanding clause, GAO determined there was no conflict.²³⁶ First, GAO looked to the CRA, noting that the language of the CRA did not have a “specific reference” to the HEROES Act.²³⁷ Second, GAO evaluated “the design or policy of the HEROES Act,” determining that the HEROES Act authorized the Department of Education to address “emergency” student loan situations and “ease the burden” on loan recipients.²³⁸ Third, GAO identified that the language of the HEROES Act expressly exempted other conflicting laws, but not the CRA.²³⁹

If there had been an issue, GAO provided an analytical framework. Where the CRA and another statute conflict, the interpreting body should consider the overall language and “design of the statute” at issue.²⁴⁰ If the interpreting body cannot reconcile the conflicting statute and the CRA, the conflicting statute overrides the CRA.²⁴¹

²²⁹ *Id.* at 6.

²³⁰ *Id.*

²³¹ *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993).

²³² 5 U.S.C. § 806(a).

²³³ GAO, B–334644, *U.S. Department of Education—Applicability of the Congressional Review Act to the Department of Education’s Student Loan Debt Relief Website and Accompanying Federal Register Publication*, 8 (Mar. 17, 2023).

²³⁴ *Id.* at 9.

²³⁵ *Id.* at 8 (quoting *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993)).

²³⁶ *Id.* at 9.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *See id.* at 8 (quoting *K. Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)).

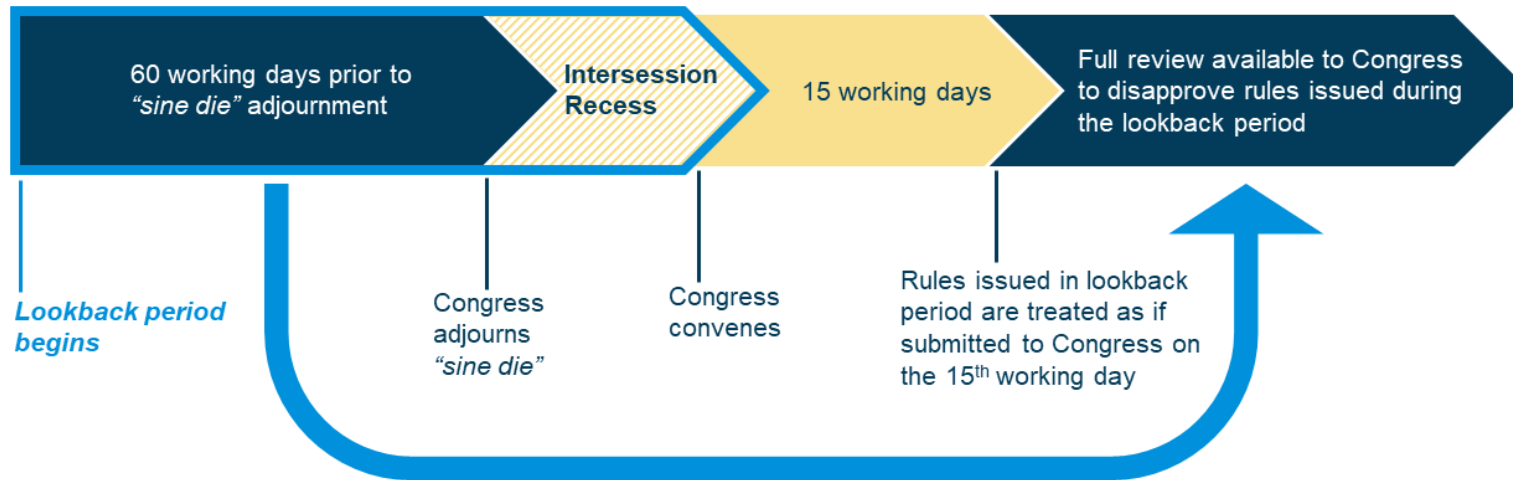
²⁴¹ *See id.*

Appendix A: Table Comparing a “Rule” Under the CRA and APA

“Rule” Under Both the CRA and the APA	Not a “Rule” Under Either the CRA or the APA	Could Trigger CRA Review, But Not Subject to APA N&C	Subject to APA Rulemaking Requirements, But Not Subject to CRA “Rule” Requirements
<ul style="list-style-type: none"> • Interim final rules • Direct final rules • Final rules 	<ul style="list-style-type: none"> • Orders • Investigative actions • Presidential actions 	<ul style="list-style-type: none"> • General policy statements • Interpretative rules • Guidance documents • Notices of funding opportunities 	<ul style="list-style-type: none"> • Notices of proposed rulemaking • Advance notices of proposed rulemaking

Appendix B: CRA Lookback Provision

Congressional Review Act Lookback Provision



Regulatory
Studies Center

THE GEORGE WASHINGTON UNIVERSITY

In this graphic, "working days" refers to legislative days in the House or session days in the Senate.

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Appendix C: Table of GAO Decisions Determining Whether an Agency Action is Subject to the Requirements of the CRA²⁴²

Agency	Title of Agency Action	Description of Agency Action	Link to GAO Decision	Focus of Rationale
Agency Action Determined to be a Rule Subject to CRA Requirements				
Department of Agriculture	Revised Direction for Emergency Timber Salvage Sales Conducted Under Section 2001(b) of P.L. 104-19	July 2, 1996 Memorandum from the Secretary to the Chief of the Forest Service.	https://www.gao.gov/products/b-274505-1	<ul style="list-style-type: none"> • Affected all eligible trees (general applicability) • Effective until Department changed (future effect) • Established criteria to select emergency salvage timber (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of Agriculture, Forest Service	Tongass National Forest Land and Resource Management Plan	May 23, 1997 Plan.	https://www.gao.gov/products/b-275178-1	<ul style="list-style-type: none"> • Designated land uses throughout Tongass National Forest (general applicability) • Effective for 10–15 years (future effect) <p><i>Identified that no exception applied.</i></p> <p><i>Distinguished site-specific decisions as typically being of particular applicability.</i></p>
Environmental Protection Agency	Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits	February 5, 1998 Guidance.	https://www.gao.gov/products/b-281575-0	<ul style="list-style-type: none"> • Established mandatory procedures to process complaints different from existing regulations (law-prescribing) <p><i>Distinguished the “Impacts and Disparate Impact Analysis” section as potentially</i></p>

²⁴² GAO compiles its decisions addressing agency actions under the CRA. GAO, *Congressional Review Act*, <https://www.gao.gov/legal/other-legal-work/congressional-review-act#database>.

				<i>relating to agency practice not substantially affecting non-agency parties.</i>
Farm Credit Administration	National Charters	May 3, 2000 Booklet. 65 Fed. Reg. 45066 (July 20, 2000)	https://www.gao.gov/products/b-286338	<ul style="list-style-type: none"> • Applied to all eligible institutions (general applicability) • Effective one year later (future effect) • Issued steps that institutions should “rely on” to obtain a charter (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of the Interior, Fish and Wildlife Service	Trinity River Mainstem Fishery Restoration	December 2000 Record of Decision. (General policy statement)	https://www.gao.gov/products/b-287557	<ul style="list-style-type: none"> • Addressed water flow and ecosystem issues in relevant rivers (general policy statement) • Affected ecosystems and economies around the Trinity and Sacramento River mainstems (general applicability) • Intended to restore and maintain anadromous fish (future effect)
Department of Health and Human Services, Centers for Medicare and Medicaid Services	SHO #07–001	August 17, 2007 Letter to State Health Officials.	https://www.gao.gov/products/b-316048	<ul style="list-style-type: none"> • Extended to all interested states (general applicability) • Addressed prospective policy considerations (future effect) • Explained CMS’s statutory and regulatory requirements (law-prescribing)
Department of Health and Human Services	Guidance Concerning Waiver and Expenditure Authority Under Section 1115 (TANF–ACF–IM–2012–03)	July 12, 2012 Letter to States Administering TANF Program.	https://www.gao.gov/products/b-323772	<ul style="list-style-type: none"> • Extended to all eligible states (general applicability) • Issued requirements to qualify for a waiver (law-prescribing) <p><i>Identified that no exception applied.</i></p>

Consumer Financial Protection Bureau	Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act	March 21, 2013 Bulletin. (General policy statement)	https://www.gao.gov/products/b-329129	<ul style="list-style-type: none"> • Advised the public how CFPB would apply its discretionary enforcement power (general policy statement) • Applied to all indirect auto lenders (general applicability) • Prescribed enforcement policy (law-prescribing)
Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation	Interagency Guidance on Leveraged Lending	March 22, 2013 Guidance. (General policy statement)	https://www.gao.gov/products/b-329272	<ul style="list-style-type: none"> • Described agency expectations to properly manage risks of certain activities (general policy statement) • Assisted eligible financial institutions (general applicability)
Department of the Interior, Bureau of Land Management	Eastern Interior Resource Management Plan	December 30, 2016 Plan.	https://www.gao.gov/products/b-329065	<ul style="list-style-type: none"> • Governed all activities in the regulated area (general applicability) • Recommended and designated future uses of the land (future effect) • Implemented applicable statutory and regulatory provisions (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of the Interior, Forest Service	Tongass Land and Resource Management Plan Amendment	December 2016 Record of Decision.	https://www.gao.gov/products/b-238859	<ul style="list-style-type: none"> • Effected “all natural resource management activities” (general applicability) • Established a “guide for future forest management activities” and “prospective management direction” (future effect) <p><i>Identified that no exception applied.</i></p>

Department of Health and Human Services and Department of the Treasury	State Relief and Empowerment Waivers	October 22, 2018 Guidance.	https://www.gao.gov/products/b-330811	<ul style="list-style-type: none"> Announced requirements to receive State Innovation Waiver (agency statement) Effective on publication (future effect) Interpreted Patient Protection and Affordable Care Act section 1332 (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Board of Governors of the Federal Reserve System	Consolidated Supervision Framework for Large Financial Institutions: SR 12-17/CA 12-14	December 17, 2012 Letter.	https://www.gao.gov/assets/b-330843.pdf	<ul style="list-style-type: none"> Issued by FRB (agency statement) Provided guidance to banks to prepare for financial distress (future effect) Established supervisory expectations under its authority (law-prescribing) <p><i>Identified that no exception applied.</i></p> <p><i>Noted the Letter was non-binding.</i></p>
Board of Governors of the Federal Reserve System	Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies: SR 14-8	September 25, 2014 Letter.	https://www.gao.gov/assets/b-330843.pdf	<ul style="list-style-type: none"> Issued by FRB (agency statement) Established supervisory expectations (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Board of Governors of the Federal Reserve System	Supervisory Guidance on Model Risk Management: SR 11-7	April 4, 2011 Letter.	https://www.gao.gov/products/b-331324	<ul style="list-style-type: none"> Issued by FRB (agency statement) Provided guidance on modeling risks impacting future financial decisions and internal bank policies (future effect) <p><i>Identified that no exception applied.</i></p>
Board of Governors of the Federal Reserve System	Federal Reserve Supervisory Assessment of Capital Planning and Positions for	December 18, 2015 Letter.	https://www.gao.gov/	<ul style="list-style-type: none"> Issued by FRB (agency statement) Outlined prospective supervisory expectations (future effect)

	LISCC Firms and Large and Complex Firms: SR 15–18		products/b-331560	<ul style="list-style-type: none"> • Outlined supervisory expectations for capital planning (law-prescribing) <p><i>Identified that no exception applied.</i></p> <p><i>Noted the Letter was non-binding.</i></p>
Department of Housing and Urban Development	Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act	January 28, 2020 Guidance.	https://www.gao.gov/products/b-331171	<ul style="list-style-type: none"> • Issued by agency (agency statement) • Provided step-by-step guide to housing providers (future effect) • Interpreted statutory language (law-prescribing) <p><i>Indicated that no exception applied.</i></p>
Department of Health and Human Services, Centers for Disease Control and Prevention	Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs	February 3, 2021 Notice of Agency Order.	https://www.gao.gov/products/b-333501	<ul style="list-style-type: none"> • Issued by CDC (agency statement) • Effective until terminated (future effect) • Established requirements (law-prescribing) <p><i>Indicated that no exception applied.</i></p>
Department of Agriculture	Thrifty Food Plan, 2021	August 16, 2021 Plan.	https://www.gao.gov/products/b-333732	<ul style="list-style-type: none"> • Issued by USDA (agency statement) • Provided guidance for new market basket prices (future effect) • Implemented new market baskets under Food and Nutrition Act of 2008 and 2018 Farm Bill (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of Transportation, Federal Highway Administration	Information: Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America	December 16, 2021, Memorandum to Agency Officials.	https://www.gao.gov/products/b-334032	<ul style="list-style-type: none"> • Issued by senior leadership (agency statement) • Provided guidance for projects funded by the Infrastructure Investment and Jobs Act (future effect)

				<ul style="list-style-type: none"> Announced project preferences (law-prescribing) <p><i>Identified that no exception applied.</i></p> <p><i>Noted the Memorandum as non-binding.</i></p>
Department of Education	One-Time Federal Student Loan Debt Relief; Federal Student Aid Programs (Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program)	March 2023 and October 12, 2022 Waivers and Modifications.	https://www.gao.gov/products/b-334644	<ul style="list-style-type: none"> Issued by Department of Education (agency statement) Extended temporarily suspension of payment and interest (future effect) Waived and modified provisions of the Higher Education Act of 1965 (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of Agriculture	Partnerships for Climate-Smart Commodities Notice of Funding Opportunity; Commodity Container Assistance Program Notice of Funds Availability; Local Food for Schools Cooperative Agreement Program Request for Applications	February 7, 2022 NOFO; May 23, 2022 NOFA; March 17, 2022 Request.	https://www.gao.gov/products/b-334146	<ul style="list-style-type: none"> Issued by USDA (agency statement) Effective after issuance and before specified deadlines (future effect) Established new grant program, including eligibility requirements, proposal criteria, and funding levels (NOFO), and new financial assistance program (NOFA), under the Commodity Credit Corporation Charter Act (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of Agriculture	Supply Chain Assistance Funds	December 17, 2021 Policy Memorandum.	https://www.gao.gov/products/b-334146	<ul style="list-style-type: none"> Issued by senior leadership (agency statement) Applied after issuance (future effect)

				<ul style="list-style-type: none"> Described agency procedures for new state financial assistance (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of Agriculture, Food and Nutrition Service	Application of <i>Bostock v. Clayton County</i> to Program Discrimination Complaint Processing—Policy Update	May 5, 2022 Memorandum to Regional and State Directors of Food and Nutrition Service Programs.	https://www.gao.gov/products/b-334411	<ul style="list-style-type: none"> Issued by USDA (agency statement) Directed state agencies to change their complaint processes (future effect) Explained that sex discrimination includes gender identity and sexual orientation under Title IX and the Food and Nutrition Act (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Department of Transportation	Notice of Funding Opportunity for the Department of Transportation’s FY 2023–2024 Multimodal Project Discretionary Grant Opportunity	June 23, 2023 NOFO.	https://www.gao.gov/products/b-335488	<ul style="list-style-type: none"> Issued by DOT (agency statement) Announced grant application criteria submitted after issuance (future effect) Defined application and evaluation procedures (law-prescribing) <p><i>Identified that no exception applied.</i></p>
Securities and Exchange Commission	Staff Accounting Bulletin No. 121	March 31, 2022 Bulletin.	https://www.gao.gov/products/b-334540	<ul style="list-style-type: none"> Published by SEC (agency statement) Provided guidance on safeguarding crypto-assets (future effect) Announced preference for disclosing crypto-asset-related custody (law-prescribing) <p><i>Identified that no exception applied.</i></p> <p><i>Noted the Bulletin as non-binding.</i></p>

Agency Action Determined Not to Be Subject to CRA Requirements				
Environmental Protection Agency	Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility General Units	Proposed rule. 79 Fed. Reg. 1430 (Jan. 8, 2014)	https://www.gao.gov/products/b-325553	Proposed rule.
Council on Environmental Quality	American Heritage River Initiative	Request for Comments. 62 Fed. Reg. 27253 (May 19, 1997)	https://www.gao.gov/products/b-278224	Presidential action.
Department of Veterans Affairs	Status of VHA Enrollment and Associated Issues	July 18, 2002 Memorandum to VA Network Directors.	https://www.gao.gov/products/b-291906-0	Relating to agency procedure or practice not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(C).
Department of Veterans Affairs	Memorandum.	January 23, 2003 Memorandum from the Secretary to Directors and Loan Guarantee Officers.	https://www.gao.gov/products/b-292045	Relating to agency management or personnel, or to agency organization, procedure, or practice and not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(B)–(C).
Department of State	Protecting Life in Global Health Assistance	May 15, 2017 Fact Sheet.	https://www.gao.gov/products/b-329206	Implementation of presidential action.

Agency for International Development	Standard Provisions for U.S. Nongovernmental Organizations	March 2, 2017 Standard Provisions.	https://www.gao.gov/products/b-329206	Implementation of presidential action.
Internal Revenue Service	IRS Statement on Health Care Reporting Requirements	2018 Statement.	https://www.gao.gov/products/b-329916	Relating to agency procedure or practice not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(C).
Social Security Administration	Hearings, Appeals, and Litigation Law Manual	2018 Manual.	https://www.gao.gov/products/b-329926	Relating to agency procedure or practice not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(C).
Department of Justice	Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)	April 6, 2018 Memorandum from the Attorney General to Southwest-Based Federal Prosecutors.	https://www.gao.gov/products/b-330190	Relating to agency procedure or practice not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(C).
Department of Commerce	Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire	March 26, 2018 Memorandum.	https://www.gao.gov/products/b-330288	Did not implement, interpret, or prescribe law or policy under 5 U.S.C. § 551(4).
Board of Governors of the Federal Reserve System	Governance Structure of the Large Institution Supervision Coordinating Committee (LISCC) Supervision Program: SR 15-7	April 17, 2015 Letter.	https://www.gao.gov/assets/b-330843.pdf	Relating to agency procedure or practice not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(C).

Federal Communications Commission	LightSquared Technical Working Group Report	April 22, 2020 Order.	https://www.gao.gov/products/b-332233	Licensing action.
Safer Federal Workforce Task Force and Office of Management and Budget	COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors	September 24, 2021 Guidance.	https://www.gao.gov/products/b-333725	No agency action.
District of Columbia Court Services and Offender Supervision Agency, Pretrial Services Agency	Privacy Act of 1974; System of Records	January 11, 2022 Notice.	https://www.gao.gov/products/b-334005	Did not implement, interpret, or prescribe law or policy under 5 U.S.C. § 551(4).
Environmental Protection Agency	June 2022 Denial of Petitions for RFS Small Refinery Exemptions	June 3, 2022 Denial.	https://www.gao.gov/products/b-334400	Licensing action.
Office of Personnel Management	Achieving a \$15 Per Hour Minimum Pay Rate for Federal Employees	January 21, 2022 Memorandum.	https://www.gao.gov/products/b-334221	Relating to agency management or personnel under 5 U.S.C. § 804(3)(B).
Office of Personnel Management	Guidance on Enforcing Coronavirus Disease 2019 Vaccination Requirement for Federal Employees- Executive Order 14043	October 1, 2021 Guidance.	https://www.gao.gov/products/b-334237	Relating to agency management or personnel under 5 U.S.C. § 804(3)(B).
Department of Homeland Security	Termination of the Migrant Protection Protocols; Explanation of the Decision	October 29, 2021 Memoranda.	https://www.gao.gov/products/b-334045	Relating to agency procedure or practice not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(C).

	to Terminate the Migrant Protection Protocols			
Department of Health and Human Services, Food and Drug Administration	Risk Evaluation and Mitigation Strategy (REMS) Single Shared System for Mifepristone 200 mg	January 3, 2023 Revised Strategy.	https://www.gao.gov/products/b-334995	Licensing action.
Department of Defense	Changes to Command Notification of Pregnancy Policy; Administrative Absence for Non-Covered Reproductive Health Care; Military Advisory Panel Item 86–22(R), Paragraph 033013 “Travel for Non-Covered Reproductive Health Care Services”	February 16, 2023 Memoranda.	https://www.gao.gov/products/b-335115	Relating to agency management or personnel under 5 U.S.C. § 804(3)(B).
Department of Health and Human Services, Centers for Disease Control and Prevention	Advisory Committee on Immunization Practices Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States, 2023	February 10, 2023 Schedule.	https://www.gao.gov/products/b-335316	Did not implement, interpret, or prescribe law or policy under 5 U.S.C. § 551(4).
Environmental Protection Agency	California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a	March 14, 2022 Notice.	https://www.gao.gov/products/b-334309	Order.

	Waiver of Preemption; Notice of Decision			
Department of Education	Fact Sheet: President Biden Announces New Actions to Provide Debt Relief and Support for Student Loan Borrowers	June 30, 2023 Fact Sheet.	https://www.gao.gov/products/b-335516	Relating to agency procedure or practice not substantially affecting non-agency parties under 5 U.S.C. § 804(3)(C).
Department of the Interior	Decision Memorandum	September 6, 2023 Memorandum from the Deputy Secretary to the Alaska Industrial Development and Export Authority.	https://www.gao.gov/products/b-335781	Licensing action.
Federal Housing Finance Agency	FHFA Announces Updates to the Enterprises' Single-Family Pricing Framework	January 19, 2023 Updates.	https://www.gao.gov/products/b-335424	No agency action.
Federal Housing Finance Agency	FHFA Announces Targeted Increases to Enterprise Pricing Framework	January 5, 2022 Announcement.	https://www.gao.gov/products/b-335424	No agency action.
Federal Housing Finance Agency	FHFA Announces Targeted Pricing Changes to Enterprise Pricing Framework	October 24, 2022 Announcement.	https://www.gao.gov/products/b-335424	No agency action.

Appendix D: Table of Agency Actions Overturned Using the CRA²⁴³

Agency	Title of Agency Action	Federal Register Citation of Initial Agency Action	CRA Revocation Public Law Number, Date	Federal Register Citation of Revocation of Agency Action
107th Congress (2001–2002)				
Department of Labor, Occupational Safety and Health Administration	Ergonomics Program	65 Fed. Reg. 68261 (Nov. 14, 2000)	Pub. L. 107–5 (Mar. 20, 2001)	66 Fed. Reg. 20403 (Apr. 23, 2001)
115th Congress (2017–2018)				
Securities and Exchange Commission	Disclosure of Payments by Resource Extraction Issuers	81 Fed. Reg. 49359 (July 27, 2016)	Pub. L. 115–4 (Feb. 14, 2017)	86 Fed. Reg. 4662 (Jan. 15, 2021)
Department of the Interior, Office of Surface Mining Reclamation and Enforcement	Stream Protection Rule	81 Fed. Reg. 93066 (Dec. 20, 2016)	Pub. L. 115–5 (Feb. 16, 2017)	82 Fed. Reg. 54924 (Nov. 17, 2017)
Social Security Administration	Implementation of the NICS Improvement Amendments Act of 2007	81 Fed. Reg. 91702 (Dec. 19, 2016)	Pub. L. 115–8 (Feb. 28, 2017)	82 Fed. Reg. 22741 (May 18, 2017)
Department of Defense; General Services Administration; and National Aeronautics and Space Administration	Federal Acquisition Regulation; Fair Pay and Safe Workplaces	81 Fed. Reg. 58562 (Aug. 25, 2016)	Pub. L. 115–11 (Mar. 27, 2017)	82 Fed. Reg. 51773 (Nov. 8, 2017)
Department of the Interior, Bureau of Land Management	Resource Management Planning	81 Fed. Reg. 89580 (Dec. 12, 2016)	Pub. L. 115–12 (Mar. 27, 2017)	82 Fed. Reg. 60554 (Dec. 21, 2017)

²⁴³ Two existing tables greatly influenced this table. First, *Resolutions of Disapproval Under the Congressional Review Act*, FED. REG., <https://www.federalregister.gov/reader-aids/congressional-review/resolutions-of-disapproval-under-the-congressional-review-act>. Second, Maeve P. Carey & Christopher Davis, *The Congressional Review Act (CRA): Frequently Asked Questions*, CONG. RSCH. SERV., Appendix A (Nov. 12, 2021).

Department of Education, Office of Elementary and Secondary Education	Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act-Accountability and State Plans	81 Fed. Reg. 86076 (Nov. 29, 2016)	Pub. L. 115-13 (Mar. 27, 2017)	82 Fed. Reg. 31690 (July 7, 2017)
Department of Education, Office of Postsecondary Education	Teacher Preparation Issues	81 Fed. Reg. 75494 (Oct. 31, 2016)	Pub. L. 115-14 (Mar. 27, 2017)	82 Fed. Reg. 21475 (May 9, 2017)
Department of Labor, Employment and Training Administration	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	81 Fed. Reg. 50298 (Aug. 1, 2016)	Pub. L. 115-17 (Mar. 31, 2017)	82 Fed. Reg. 21916 (May 11, 2017)
Department of the Interior, Fish and Wildlife Service	Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska	81 Fed. Reg. 52247 (Aug. 5, 2016)	Pub. L. 115-20 (Apr. 3, 2017)	82 Fed. Reg. 52009 (Nov. 9, 2017)
Department of Labor, Occupational Safety and Health Administration	Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness	81 Fed. Reg. 91792 (Dec. 19, 2016)	Pub. L. 115-21 (Apr. 3, 2017)	82 Fed. Reg. 20548 (May 3, 2017)
Federal Communications Commission	Protecting the Privacy of Customers of Broadband and Other Telecommunications Services	81 Fed. Reg. 87274 (Dec. 2, 2016)	Pub. L. 115-22 (Apr. 3, 2017)	82 Fed. Reg. 44118 (Sept. 21, 2017)
Department of Health and Human Services, Office of the Secretary	Compliance with Title X Requirements by Project Recipients in Selecting Subrecipients	81 Fed. Reg. 91852 (Dec. 19, 2016)	Pub. L. 115-23 (Apr. 13, 2017)	84 Fed. Reg. 7714 (Mar. 4, 2019)

Department of Labor, Employee Benefits Security Administration	Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees	81 Fed. Reg. 92639 (Dec. 20, 2016)	Pub. L. 115–23 (Apr. 13, 2017)	82 Fed. Reg. 29236 (June 28, 2017)
Department of Labor, Employee Benefits Security Administration	Savings Arrangements Established by States for Non-Governmental Employees	81 Fed. Reg. 59464 (Aug 30, 2016)	Pub. L. 115–35 (May 17, 2017)	82 Fed. Reg. 29236 (June 28, 2017)
Consumer Financial Protection Bureau	Arbitration Agreements	82 Fed. Reg. 33210 (July 19, 2017)	Pub. L. 115–74 (Nov. 1, 2017)	82 Fed. Reg. 55500 (Nov. 22, 2017)
Consumer Financial Protection Bureau	Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act ²⁴⁴	N/A (Mar. 21, 2013)	Pub. L. 115–172 (May 21, 2018)	N/A
117th Congress (2021–2022)				
Equal Employment Opportunity Commission	Update of Commission’s Conciliation Procedures	86 Fed. Reg. 2974 (Jan. 14, 2021)	Pub. L. 117–22 (June 30, 2021)	89 Fed. Reg. 12232 (Feb. 16, 2024)
Environmental Protection Agency	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review	85 Fed. Reg. 57018 (Sept. 14, 2020)	Pub. L. 117–23 (June 30, 2021)	<i>See</i> 89 Fed. Reg. 16820 (Mar. 8, 2024) <i>See also</i> EPA’s Congressional Review Act Resolution to Disapprove EPA’s 2020 Oil and Gas Policy Rule
Department of the Treasury, Office of the Comptroller of the Currency	National Banks and Federal Savings Associations as Lenders	85 Fed. Reg. 68742 (Oct. 30, 2020)	Pub. L. 117–24 (June 30, 2021)	86 Fed. Reg. 42686 (Aug. 5, 2021)

²⁴⁴ CFPB Bulletin 2013–02 is a guidance document and the only agency action Congress has overturned that was not subject to notice-and-comment rulemaking.