Technical Reform of the Congressional Review Act

Committee on Rulemaking

Proposed Recommendation for Committee | October 21, 2021

1 [Preamble]

RECOMMENDATION

Requiring Electronic Submission of Reports Required by 5 U.S.C. § 801(a)(1)(A)

1. Congress should amend 5 U.S.C. § 801(a)(1)(A) to provide that the reports required by
that provision (“801(a) reports”) be submitted to Congress and the Government
Accountability Office (GAO) electronically rather than by hand delivery.

2. In the event Congress does not enact the amendment described in Paragraph 1, both
chambers of Congress still should modify their rules or policies to require electronic
submittal of 801(a) reports.

3. In the event that Congress, in some manner, mandates electronic submittal of 801(a)
reports, it should establish procedures governing how agencies may electronically submit
801(a) reports.

Simplifying and Clarifying the Procedures for Determining Relevant Dates Under 5

4. Congress should amend 5 U.S.C. § 801(d)(1) to establish a fixed date each year after
which rules submitted to Congress under the Congressional Review Act (“CRA”) will be
subject to the CRA’s review process during the following session of Congress. In fixing a
date to serve as the start of this “lookback period,” Congress should consider a date
between mid-July and early August, which is when, as a matter of recent history, the

Commented [MT1]: Note for Committee: The preamble will provide more information about the lookback period and how it functions in the context of the CRA as a whole.
lookback period under the current version of 5 U.S.C. § 801(d)(1) has typically commenced.

5. Congress should amend 5 U.S.C. § 802(a), which establishes the period during which joint resolutions of disapproval under the CRA may be introduced, to either:
   a. Eliminate the period; or
   b. Align the dates on which the period commences and ends with the period during which the Senate may act on a proposed joint resolution of disapproval submitted under the CRA.

6. Congress should review and, where appropriate, enact existing Parliamentarian interpretations that bear on calculating deadlines under the CRA. If Congress does not enact those interpretations, it should ensure that they are published in a manner that is accessible to the public.

**Initiating Review of Agency Actions for Which Agencies Do Not Submit 801(a) Reports**

7. Congress should amend Chapter 8 of Title 5 of the United States Code to provide a mechanism for initiating congressional review under the CRA of agency actions for which agencies do not submit 801(a) reports. In particular, Congress should enact the process it currently relies on to initiate CRA review of such agency actions, whereby:
   a. A Member or committee requests the opinion of the GAO on whether an agency action qualifies as a “rule” under the CRA;
   b. GAO issues an opinion as to whether the agency action in question qualifies as a “rule” under the CRA;
   c. If GAO concludes that the action amounts to a rule under the CRA, a Member of Congress or a committee provides for publication of the GAO opinion in the Congressional Record; and
   d. Publication of the GAO opinion in the Congressional Record is deemed to be the date that triggers the time periods for CRA review of the agency action.

Commented [MT2]: Note for Committee: The preamble will provide more information about this period and how it functions in the context of the CRA as a whole.

Commented [MT3]: Note for Committee: The preamble will provide more information about the role of Parliamentarian interpretations in administering the CRA.
8. If Congress amends the CRA to enact the procedure described in Paragraph 7, it should impose a time limit on its own use of that procedure.

9. If Congress amends the CRA to enact the procedure described in Paragraph 7, it should permit legislators in both chambers to solicit a GAO opinion on whether a particular agency action is a rule.

10. Congress should consider imposing a deadline on GAO for issuing requested opinions on whether a particular agency action is a rule for purposes of the CRA.