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Republicans Poised to Attempt to Roll Back at Least 50 Major Obama Administration Regulations

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With the changeover in administration from President Obama to President-elect Trump, congressional Republicans hope to roll back at least 50 major regulations finalized in the waning days of the Obama Administration. Targeted regulations include the Overtime Rule, Affordable Care Act implementation rules, the Fiduciary Rule, the Deferred Action for Childhood Arrivals (DACA) rule and rules coming from independent agencies such as the Consumer Financial Protection Bureau. Republicans are expected to utilize an infrequently used law, the Congressional Review Act (CRA). Passed in 1996 as part of the so-called Contract with America, the CRA provides Congress with an expedited legislative process to overrule "major" regulations (those with an annual effect on the economy of more than \$100 million) that have been finalized by the Administration.

Under the CRA, Congress can adopt a joint resolution of disapproval overturning the resolution if this is accomplished within 60 days of "continuous session" from the date of the regulation's finalization. If this is passed, the President can either sign the joint resolution, canceling the implementation of the resolution, or issue a veto, giving Congress 30 session days to attempt to override it. Resolutions under consideration via the CRA procedures are not subject to a filibuster in the Senate. Additionally, if the 60-day cut-off is not reached before Congress adjourns for the end of the legislative session (known as sine die), the 60-day clock is reset for the fifteenth day of the ensuing legislative session (which in the past has been as early as May 12 and as late as September 9), giving Congress additional time to weigh in. The vast majority of actions under the CRA are unsuccessful, as sitting presidents have always vetoed attempts to overturn their Administration's proposed regulations. The one and only time in which the Act was successfully used to block a finalized regulation was in early 2001, when the Republican-controlled Congress and recently elected President George W. Bush overturned a Clinton Administration rule related to ergonomics in the workplace.

This year's November election results mean that throughout much of 2017 the Republican-controlled Congress (with the cooperation of President Trump) will be able to seek to retroactively void Obama Administration regulations finalized after early May 2016 without the threat of a Democratic filibuster in the Senate. Congressional Republicans have already indicated that they anticipate using the CRA and other mechanisms to overturn a number of significant regulations. Congressional leadership has also embraced a proposal by Rep. Darrell Issa (R-CA) that would allow Congress to repeal a number of regulations at once, rather than one at a time, as allowed under the CRA. The bill, known as the Midnight Rules Relief Act of 2016, faces significant headwinds as Senate Democrats are unlikely to support the bill – and would likely filibuster – if it is expected to be used to gut Obama Administration regulations.

We will be sure to keep you abreast of the potentially significant changes that are expected to take place after the inauguration of President Trump on January 20, 2017. Please feel free to reach out for additional information on these topics or other issues of importance.

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