

Client Alert: A New Day for the CRA

Publications

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Only 19 days in, the 117th Congress has already taken its place in history. On January 3, 2021, the 117th Congress was sworn in, expecting to begin its work with a divided government: a Democrat-controlled House of Representatives and Republican-controlled Senate. Just two days later, however, runoff elections in Georgia completely upended that calculus after Reverend Raphael Warnock and Jon Ossoff pulled off improbable victories in their respective elections, giving Democrats (who count two Independents among their caucus) 50 Senate seats and, with Vice President Kamala Harris as the tie-breaking vote, the Senate majority. With Joe Biden as President, Nancy Pelosi as Speaker of the House, and Chuck Schumer as the Democratic Leader of a tied Senate, the Democrats have unified control of the executive and legislative branches for the first time since 2011. This gives Democrats a unique tool to quickly unwind regulatory actions undertaken by the outgoing administration that could otherwise take years through the regular rulemaking process—the Congressional Review Act (CRA), 5 U.S.C. § 801. This article walks through how the CRA works in practice and what Trump-era midnight regulations are most likely to find their way to the chopping block.

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