

Wave of Final Rules Reflects Race Against CRA Deadline, *Law360*

Publications

April 26, 2024

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In an article for *Law360*, Partner Katie Johnson and Associates Michael Brady and Rachael Hanna discuss the flurry of rules the Biden Administration is currently finalizing ahead of the statutory “lookback period” deadlines under the Congressional Review Act.

Cherry blossom petals aren't the only things dropping all over Washington, D.C., this April. A flurry of final rules is leaping off the Federal Register press — with more to come.

President Joe Biden and his team are working overtime to ensure that his regulatory legacy is protected from congressional reversal. With April coming to a close, the administration likely only has a couple more weeks to shield regulations from the statutory look-back period under the Congressional Review Act.

If rules are finalized after the look-back period, a new Republican-controlled Congress could quickly strike down key regulations next year. The Biden administration is moving well ahead of the looming deadline, being very cognizant of how the GOP Congress elected in 2016 used the CRA to strike down 15 Obama-era rules.

With this flurry of regulatory activity, the Biden administration is working to deliver on previous promises — finalizing regulations that show its commitments to the environment, civil rights, gender equality, public health and fair housing.

Utilizing the administrative state for major policy advancements has been a centerpiece of the administration since day one, and it is anticipated that officials will remain laser-focused on their high-priority regulations over the coming weeks.

Below we highlight some of the most significant rules — the ones that will catch headlines and affect entire industries and millions of Americans — that the Biden administration has either finalized or will try to finalize before the looming CRA deadline. But there are hundreds more being completed in the coming weeks, so this is merely a selection.

How the CRA Works

The CRA allows a newly elected Congress to roll back regulations issued during the look-back period. Calculating the length of the look-back period necessitates some mathematical gymnastics and political guesswork.

The CRA requires agencies to submit all final rules to Congress and the U.S. Government Accountability Office. Once Congress receives notice of a rule, members of Congress have 60 days of continuous session to introduce a special joint resolution of disapproval of the rule.

If Congress adjourns sine die — the last day of a session of Congress — before the end of this 60-day period, the time to file and act on a disapproval resolution restarts with the next session of Congress. This look-back period depends on the sine die adjournment in either chamber, and is ultimately determined by the House and Senate parliamentarians.

Although the final date has not been announced, the deadline could be as early as March or as late as August. But historically, July is the most common month. Given the flurry of activity in recent weeks, the White House appears to be aiming to get its top priorities out well ahead of July.

The Rules

The priority rules coming down the pike run the subject-matter gamut. But below is a sampling of the key recently completed and anticipated rules.

Education

Title IX regulations implement the law guaranteeing sex equality in education. On the fiftieth anniversary of Title IX, the Biden administration announced changes to the regulations, which had been most recently updated during the Trump administration.

The U.S. Department of Education issued a final rule on April 19 that amends Title IX regulations to clarify the scope of sex discrimination, including funding recipients' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity.

Although the Biden administration has previously supported an interpretation of Title IX that prohibits gender identify and sexual orientation discrimination, this is the first time the position is codified in regulation. The rule also governs schools' obligations to investigate allegations of sexual harassment and assault.

Earlier this year, the Biden administration planned to issue a second Title IX regulation on the rights of transgender athletes and sex-related criteria for male and female athletic teams. But now, apparently fearing political backlash, the administration is back-benching this rule.

The rule would have stuck to a middle road on the highly contested issue, outlawing blanket state bans against transgender athletes, but creating more specific avenues and criteria for barring transgender women from competitive sports. The Department of Education has stated that the Title IX rule that is being finalized will not apply to school athletics because the rule specific to sports remains under consideration.

However, the administration has not clarified how or why the changes prohibiting gender identity discrimination would not apply to athletics, which has triggered criticism from Republicans and conservative activists.

Guns

Gun control is another regulatory priority for the Biden administration. Following through on Biden's promise to fast-track implementation of the Bipartisan Safer Communities Act, the U.S. Department of Justice finalized a rule on April 9 to tighten the so-called gun show loophole — which allows unregistered sellers at gun shows to avoid running background checks on their customers.

The rule expands the definition of what it means to engage in the business of firearms dealing, and clarify what conduct requires sellers to obtain a license. This is an effort to target online sellers and gun show sellers, who are often unlicensed and not required to conduct background checks.

Under the new rule, any person who "sell[s] guns predominately to earn a profit" would be required to have a license and to conduct background checks, according to a statement by Attorney General Merrick Garland.

The White House anticipates that the new rule could require more than 20,000 people engaged in unlicensed firearms sales to become licensed and conduct background checks. However, the new rule would not affect individuals who sell guns from private collections or as a hobby.

Republicans have indicated that they intend to oppose the new rule, including Sens. John Cornyn, R-Texas, and Thom Tillis, R-N.C., who both helped to pass the Bipartisan Safer Communities Act in 2022.

Housing

The administration is also looking to revive an Obama-era fair housing rule to deliver on an early

promise Biden made to address racial segregation. The rule being finalized by the U.S. Department of Housing and Urban Development would provide a framework governing how Fair Housing Act program participants may use HUD funds to affirmatively further fair housing, with a focus on underserved and minority communities.

It retains the core of the Obama administration's Affirmatively Furthering Fair Housing rule, issued in 2015, and includes a more robust community engagement requirement and an increased emphasis on goal setting, progress measurement and accountability mechanisms for program recipients.

One of Biden's first actions as president was to call to reinstate the Obama-era rule — which the Trump administration had replaced — in an effort to address decades of federal housing policies that contributed to racial segregation. The rule is still under review at the U.S. Office of Management and Budget.

Environment

The administration made climate an immediate focus when taking office, and given the number of climate rules that have already been finalized ahead of the CRA deadline, climate action continues to be a top priority. Below is a quick look at what's recently been finalized.

Multipollutant Vehicle Emissions Standards

Finalized in late March, this rule sets new, more stringent standards to reduce harmful air pollutant emissions from passenger cars and light trucks starting with model year 2027.

The rule will require automakers to increase sales of electric vehicles while cutting carbon emissions from gasoline-powered models, which account for about one-fifth of America's contribution to global warming. Twenty-five Republican-led states have already sued to block the rule.

National Drinking Water Standard

The drinking water standard was finalized on April 10, and it requires public water systems to complete initial monitoring for certain per- and polyfluoroalkyl substances by 2027, followed by ongoing compliance monitoring.

Water systems must also provide the public with information on PFAS levels in their drinking water beginning in 2027. If drinking water exceeds maximum containment levels, public water systems have until 2029 to implement solutions that reduce PFAS.

Appliance Energy Efficiency Rules

The administration announced a final rule on April 16 that imposes new energy and water efficiency requirements for residential dishwashers. The rule will be enforced beginning in 2027, with the goal of reducing emissions by 9.5 million metric tons of carbon dioxide over 30 years.

The administration also finalized energy efficiency rules on refrigerators, circulator pumps, lightbulbs, air conditioners and heat pumps. A rule on gas stoves was finalized in January.

The new dishwasher rule replaces a Trump administration rule, and the repeal could be complicated by *State of Louisiana v. U.S. Department of Energy*, a U.S. Court of Appeals for the Fifth Circuit case decided in January, that found the DOE did not properly weigh alternatives from supporters of the Trump administration rules when it proposed its own updates.

Republicans have expressed frustration over appliance energy efficiency rules, leading House Republicans to propose a number of bills that focus on rules around household appliances.

Conclusion

Biden has already finalized — or is close to issuing — rules on a range of significant policies, from Title IX, gun control and fair housing, to the environment and energy efficiency. But important regulations remain on the table, and the clock is ticking.

With the look-back period growing closer each day, the White House will continue its activities to push more rules over the finish line. Before the final pen comes down, the Biden administration will likely focus its efforts on regulatory priorities they would prefer to shield from reversal in anticipation of the possibility of a newly elected, Republican-controlled Congress in 2025.

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