



H.R. 5982 – Midnight Rules Relief Act of 2016 (Rep. Issa, R-CA)

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FLOOR SCHEDULE:

Expected to be considered on November 16, 2016 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 5982](#) would amend the [Congressional Review Act](#) to permit joint resolutions of disapproval of midnight regulations *en bloc*. The joint resolutions could include regulations that were submitted to Congress for review within 60 legislative days prior to the departure of an outgoing administration.

COST:

The Congressional Budget Office (CBO) is unable to [estimate](#) whether this legislation would increase net direct spending.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

As President Obama's tenure draws to a close, many are concerned the administration may issue midnight rules in order to push through final priorities. Midnight rules can serve to effectively extend an outgoing president's policy goals into a new administration. Though a succeeding Congress, through the Congressional Review Act, can presently disapprove of major midnight rules occurring at the close of an outgoing administration, they must do so on a rule-by-rule basis, which can take a great deal of time when a new Congress is seeking to undertake new legislative priorities. A large number of midnight rules issued within a short period can also serve as an attempt to overwhelm Congress, placing limitations on their ability to exercise their oversight over such regulations. Moreover, according to the [committee report](#), midnight rules, due to the restricted time period during which they are issued, are often rushed, lacking research into the policy objectives and practical effects of their issuance.

The Obama administration has aggressively issued new regulations throughout the past eight years, many of which have constituted major regulations, costing over \$100 million per year. This administration has [approved](#) "38 percent more [economically significant](#) regulation than at any time since 1996." Further,

according to the committee report, the Obama administration as of June 1, 2016 had at minimum \$5.3 billion in planned costs for the months of November and December.

This legislation would authorize a Congress that follows the close of a president's term to disapprove *en bloc*, any regulations submitted to it under the CRA that occurred during the final 60 legislative days of the prior Congress. Congress, through the CRA, has had the ability to disapprove of regulations occurring within 60 legislative days before the close of a proceeding term on a one-by-one basis since 1996, when the Congressional Review Act was enacted. Under H.R. 5982, regulations to which Congress does not disapprove, need not be included in the *en bloc* consideration. Both the existing and the succeeding Congress would therefore retain their ability to disapprove of an outgoing president's final regulations, though would be able to do so with an increased ability to disapprove of unwanted midnight rules in a timelier manner.

In this term, rules that would be eligible for disapproval could include those dating back to May 16, 2016. Major rules that could be subject to joint resolutions of disapproval under the proposed change include a Department of Labor [rule](#) that requires federal contractors to disclose labor law violations and an annual disclosure [rule](#) by the Securities and Exchange Commission. A list of significant rules enacted since May 2016 can be found [here](#), and a discussion on rules that could be overturned, [here](#).

Past legislation to address the problem of midnight rules include the [Midnight Rule Act](#) during both the 110th and 111th Congresses, the [Midnight Rule Relief Act of 2012](#), and the [Midnight Rule Relief Act of 2016](#).

This proposal is included in the [Better Way](#) initiative.

AMENDMENTS:

1. [Conyers \(D-MI\)](#) – This amendment would exempt rules necessary to prevent an imminent threat to health, safety, or to prevent an emergency.
2. [Johnson \(D-GA\)](#) – This amendment would exempt rules that are proposed more than three years prior to their submission to Congress.
3. [Jackson Lee \(D-TX\)](#) – This amendment would exempt rules pertaining to the prevention, response, or mitigation of matters related to national security.
4. [Connolly \(D-VA\)](#) – This amendment would exempt rules that pertain to addressing the effects of climate change.
5. [Connolly \(D-VA\)](#) – This amendment would exempt rules that the Director of the Office of Management and Budget determines would have benefits that outweigh their costs.

COMMITTEE ACTION:

H.R. 5982 was introduced on September 9, 2016 and was referred to the House Committee on the Judiciary, where it was ordered reported by the yeas and nays, 15-5, on September 14, 2016.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found [here](#).

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article I, Section 1, Clause 1 of the United States Constitution, in that the legislation concerns the exercise of legislative powers generally granted to Congress by that section, including the exercise of those powers when delegated by Congress to the Executive; Article I, Section 8, Clauses 1 to 17, of the United States Constitution, in that the legislation concerns the exercise of specific legislative powers granted to Congress by those sections, including the exercise of those powers when delegated by Congress to the Executive; Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing

Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;" and, Article I, Section 5, Clause 2, of the United States Constitution, in that the legislation concerns the powers of each House of Congress to determine the rules of its proceedings.

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