



## H.J. Res. 40 - Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Social Security Administration relating to Implementation of the NICS Improvement Amendments Act of 2007 (Rep. Johnson, R-TX)

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### FLOOR SCHEDULE:

Expected to be considered on February 2, 2017, under a closed [rule](#).

### TOPLINE SUMMARY:

[H.J. Res. 40](#) would use the [Congressional Review Act](#) to provide for the disapproval of the Social Security Administration [rule](#) that allows the SSA to share information with the National Instant Criminal Background Check System (NICS) for certain persons who receive Supplemental Security Income payments or Disability Insurance benefits.

### COST:

A Congressional Budget Office (CBO) estimate is not yet available.

### 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:

This joint resolution would disapprove, and provide for the nullification of the SSA rule that allows sharing of information with NICS in certain instances. This rule was [effectively](#) created in order to add an increased number of individuals to “no buy” lists for purchasing firearms. While it is appropriate for the SSA to determine who must obtain a representative payee, [many](#) feel it is not qualified to determine who is capable of responsibly owning a firearm.

Under the current rule, the SSA would share information with the NICS for individuals who receive Supplemental Security Income payments or Disability Insurance benefits. In order to do so, the individual must have: (1) filed a disability claim; (2) have disability based on a listed mental impairment following an SSA determination process; (3) received a primary diagnosis code that is based on the mental impairment; (4) reached at least 18 years of age, but not yet full retirement age; and, (4) benefit payments made to a representative payee because of a determination that the recipient cannot manage benefits payments.

The [Congressional Review Act](#) provides an expedited legislative process for Congress to disapprove of administrative rules through joint disapproval resolutions. Regulations issued by executive branch departments and agencies, as well as issued by independent agencies and commissions, are all subject to CRA disapproval resolutions. In [order](#) for a regulation to take effect, the issuing agency must produce a report to Congress. Generally, Congress then has 60 days to pass a resolution of disapproval under the CRA. However, this timeline is shifted in circumstances when rules are submitted to Congress within 60 legislative days of adjournment. In this case, the clock for the 60-day consideration timeline will restart 15 days into the 115<sup>th</sup> Congress, giving Congress the full window for consideration. While the parliamentarian will determine the exact cut off day after which rules may be subject to the CRA, Congress will be able to consider rules going back to roughly mid-May. Regulations that are successfully disapproved of will then either not go into effect or will be looked at as if they have not gone into effect. The CRA also prevents any new regulation that is substantially similar to a disapproved regulation from being promulgated in the future, absent action from Congress. Rules must be disapproved of on a rule-by-rule basis, and must be disapproved of in their entirety.

Under the CRA process, if a joint resolution is introduced in the Senate within the permitted time period and the resolution is not reported from committee on a timely basis, 30 Senators may petition to bring the resolution to the floor. This resolution would not be subject to the filibuster. When debate commences, the Senate must fully consider the resolution before moving on to any other business, with only 10 hours of debate. Finally, enactment of a joint resolution under the CRA would require a majority vote in each chamber and a presidential signature. Though the CRA has only been used once, in 2000 against Clinton-era ergonomic regulations, conditions today are largely the same as they were that year – with Republicans securing control of the House, Senate, and presidency.

#### **COMMITTEE ACTION:**

H.J. Res. 40 was introduced on January 30, 2017, and was referred to the House Committee on the Judiciary.

#### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not yet available.

#### **CONSTITUTIONAL AUTHORITY:**

Congress has the authority to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 of the U.S. Constitution.

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