



H. J. Res. 57 - Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to accountability and State plans under the Elementary and Secondary Education Act of 1965

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FLOOR SCHEDULE:

Expected to be considered on February 7, 2017, subject to a [closed rule](#).

TOPLINE SUMMARY:

[H.J. Res. 57](#) would use the [Congressional Review Act](#) to provide for the disapproval under [chapter 8 of title 5, United States Code](#), of the rule submitted by the Department of Education relating to accountability and State plans under the Elementary and Secondary Education Act of 1965.

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:

H.J. Res. 57 would provide for the disapproval of the [rule](#) submitted by the Department of Education relating to accountability and State plans under the Elementary and Secondary Education Act of 1965 (published at 81 Fed. Reg. 86076 (November 29, 2016)). Many conservatives may believe that this rule would infringe upon state authority and flexibility intended to be allowed under the Every Student Succeeds Act. Under the rule, states would be required to follow rigid federal guidelines with regard to determining academic achievement, accountability, and improvement, instead of allowing state and local education agencies to make these determinations.

In regards to participation in academic testing, the rule established specific actions that states must take should a school not meet the participation requirement. The rule also establishes indicators that states must follow to provide differentiation among public schools and dictates which indicators should be more heavily weighed. In addition, the rule requires states to build accountability systems that measure school success in four indicators. While one of the indicators may be chosen by the states, the rule severely limits the options states have to choose from by requiring the indicator to be supported by research that includes highly quantifiable data.

After the rule was released, Education and the Workforce Committee chairman Rep. John Kline (R-MN) and Rep. Todd Rokita (R-IN), chairman of the Subcommittee on Early Childhood, Elementary and Secondary Education, released a [statement](#) regarding the rule, saying: "...we raised concerns with the department's original proposal and why we remain concerned with this final accountability rule. While the department has made some improvements, this expansive regulation is still flawed and still places too much authority in the hands of federal bureaucrats."

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 115th 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. 57 was introduced on January 30, and referred to the House Committee on Education and the Workforce.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not yet available.

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article I, Section I and Article I, Section 8, clause 18.

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