

Congressional Review Act and the Cardin-Lugar Anti-Corruption Provision

What is the Cardin-Lugar Anti-Corruption Provision?

The [Cardin-Lugar Provision](#) requires US-listed oil, gas and mining companies to publicly disclose the payments they make to the US and foreign governments for the extraction of oil, gas and minerals.

What is the Congressional Review Act?

The Congressional Review Act (CRA) (5 U.S.C. §§801-808) was enacted in 1996 and established a mechanism through which Congress can overturn a rule promulgated by a federal agency. Congress is given 60 'working days' once the regulation is submitted to Congress to consider the rule and vote on a 'resolution of disapproval'. To be successful, a majority vote is required in both houses, and the resolution must be signed by the President. The CRA does not permit components of rules to be repealed; a resolution of disapproval must apply to an entire rule. The CRA is not subject to filibuster rules.

This CRA is rarely used and often unsuccessful because of the likelihood of a President vetoing a resolution targeting regulations released under his administration. The CRA has only been used successfully in one instance.

Does the Cardin-Lugar provision fall into the time window for a CRA resolution?

Yes. The [Congressional Research Service](#) (CRS) estimates that final rules submitted to Congress after May 30, 2016 will be subject to renewed review periods in 2017 by the 115th Congress. The Cardin-Lugar rule was released on June 27, 2016 and was not officially submitted to Congress until July 2016. It will be subject to the full 60 day review period in 2017. CRS estimates that the CRA review period will begin on January 24, 2017 and end in mid-May.

Why is the Cardin-Lugar Provision being targeted?

In a recent WSJ op-ed, the House Majority Leader took aim at a number of regulations, including the Cardin-Lugar Provision. He painted these as 'midnight regulations', and claimed that Cardin-Lugar would put US companies at a competitive disadvantage to foreign counterparts. However, the Cardin-Lugar provision [enjoys broad support](#) amongst the majority of extractives companies. [All major competitors](#) to US companies are required to disclose either via the US regulations, or through [laws passed in 30 other countries](#), modeled on the US provision. This includes Russian, Brazilian, and Chinese state-owned oil companies.

The Cardin-Lugar provision cannot be considered a 'midnight regulation' nor agency overreach. The law has a [long legislative history](#), as bipartisan standalone bills in the House and Senate. Numerous Congressional [reports](#) and hearings analyzed the best way to combat corruption in the oil, gas, and mining sector and recognized the importance payment transparency would play. The final regulation was also subject to two rigorous rulemaking processes. The Cardin-Lugar rule was not an agency initiative, but a Congressional mandate with a specific statutory deadline for enacting a rule.

What happens to the Cardin-Lugar rule if a 'Resolution of Disapproval' is passed?

The rule would be voided and the Securities and Exchange Commission would have to issue a new rule at its discretion. However, that rule could not be 'substantially similar' to the previously issued rule unless a new law was passed by Congress directing the agency to do so. 'Substantially similar' is not defined in the CRA. The current regulation is aligned with the international transparency standard; a rule 'not substantially similar' would be out of alignment with the standard and would place a double reporting burden on cross-listed companies.

What is the recourse if a 'Resolution of Disapproval' is passed?

There is no judicial review of CRA resolutions or other forms of recourse