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Lauren Campisi Discusses Targeting by Congressional Democrats of Trump-Era Consumer Financial Regulations

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Hinshaw partner Lauren Campisi discusses in *Law360* efforts by Congressional Democrats to use the Congressional Review Act (CRA) to repeal the "true lender" rule issued by the Trump-era Office of the Comptroller of the Currency (OCC). The rule adopted a two-prong test for determining who is legally considered a loan's "true lender," a status that in turn controls what interest-rate limits and other laws apply. The OCC said the rule provides a simple, bright-line test, while detractors argue it encourages predatory lending.

One of the challenges of using the CRA to overturn agency rulemaking is that it requires the rule to be tossed in its entirety and prevents agencies from coming back with a new rule that is "substantially the same." Campisi noted there likely will be many provisions of the CFPB's debt collector rules that a new CFPB under President Biden and many Democrats would not object to, "even if they may call for stronger consumer protections in the regulation." However, she said there is little clarity as to how a CRA disapproval would bind the hands of an agency, as the law does not define when a replacement rule is considered "substantially the same," and case law on the issue is "thin on the ground."

Campisi also pointed to a possible reluctance by Democrats to a broad use of the CRA when more progressive Biden regulators are taking over at the agencies.

> "The question is are these particular regulations really the right opportunities to use that power?" Campisi said. "In the past, the reason this [CRA] authority was used was very much to prevent a subsequent similar rule … That was the biggest advantage of this process, but it could also work in the opposite direction as a detriment to prevent a more surgical approach."

Read the full article on the *Law360* website (*subscription may be required*)

"With 'True Lender' Repeal, Dems May Bag Their 1st CRA Win" was published by *Law360*, April 16, 2021.

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