



## **GAO on LLG: What Now?**

October 26, 2017 - Last week we reported that the Government Accountability Office (“GAO”) issued an opinion that the Leveraged Lending Guidance (“LLG”) was a “rule” subject to the Congressional Review Act (“CRA”) and explained how that ruling could have profound implications for the loan market. This week we ask “what happens next?” But first, a quick recap. The GAO, in response to a request from Senator Pat Toomey, ruled the LLG, issued jointly by the OCC, the Federal Reserve Board and the FDIC (the “Agencies”) in the form of “guidance”, is actually a “rule” for purposes of the Congressional Review Act (“CRA”) and must be submitted to Congress for review. The GAO’s decision is available [here](#).

The CRA permits Congress to disapprove rules finalized within the prior 60 legislative days (as was done with numerous regulations earlier this year and just this week with respect to an arbitration rule promulgated by the CFPB). If Congress disapproves a rule, it is effectively null and void and cannot be re-proposed in a similar form.

### **What Happens Now?**

Last Friday Senator Toomey submitted the GAO opinion for publication in the Congressional Record which started the 60-day CRA clock ticking even though the Agencies have not yet submitted the LLG to Congress. More importantly, until they submit the LLG to Congress, the LLG are of no force and effect.

The House and Senate can invalidate the LLG within the next 60 legislative days by passing a resolution disapproving the LLG and sending that resolution to the president for his signature. Is that likely to happen? No one knows for sure. While this Congress has already invoked the CRA fourteen times this session, the optics of revoking a rule designed to ensure the safety and soundness of bank loan underwriting may prove to be a bridge too far.

On the other hand, with the stakes so high, and in light of the Treasury Department’s June report recommending that the Agencies re-issue the LLG for public comment the Agencies may view this as an opportunity to work with Congress and the banks to refine the LLG and address some of their concerns. Of course, if the Agencies are feeling lucky, they could gamble that Congress will not act to invalidate the LLG and this entire episode will have passed leaving the status quo intact.

For a deep dive into the GAO process and how the CRA works and could impact the LLG, please [click here](#) to read our memo from May 23rd (prepared by Sidley Austin).