

Congress of the United States
Washington, DC 20515

December 10, 2020

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We are writing to request that the Government Accountability Office (GAO) prepare materials to assist Congress in its oversight of “midnight rules” promulgated by the outgoing Trump administration. Midnight rules are new rules promulgated at the end of presidential terms, especially during transitions to an administration of the opposite party.

Midnight rules are inherently problematic for several reasons. First, outgoing administrations cannot be held accountable for the effects of their midnight rules.¹ A high volume of midnight rules can overwhelm the institutional review process, which potentially allows midnight rules to evade thorough review, analysis and stakeholder input.² Finally, a new administration seeking to change or repeal a midnight rule must engage in a time-consuming process defined by the Administrative Procedure Act, during which time the midnight rule has taken effect.³

Congress has tools to address midnight rulemaking, one of which is an expedited disapproval process afforded by the Congressional Review Act (CRA).⁴ Specifically, the CRA allows Congress to submit a joint resolution of disapproval and contains a lookback provision that allows Congress and an incoming presidential administration to overturn midnight rules that were issued in the final months of the previous administration.⁵

To assist our oversight of midnight rules issued by the outgoing administration, we request that the GAO identify major rules published in the Federal Register during the 116th and

¹ Congressional Research Service, *Midnight Rulemaking: Background and Options for Congress* (Oct. 4, 2016) (online at <https://crsreports.congress.gov/product/pdf/R/R42612>).

² *Id.*; Anne Joseph O’Connell, *Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State*, Virginia Law Review, Vol. 94, No. 4 (Jun. 2008) (online at <https://legacy.virginialawreview.org/sites/virginialawreview.org/files/889.pdf>).

³ Congressional Research Service, *Midnight Rulemaking: Background and Options for Congress* (Oct. 4, 2016) (online at <https://crsreports.congress.gov/product/pdf/R/R42612>).

⁴ 5 U.S.C. § 801-808.

⁵ *Id.*; Congressional Research Service, *Midnight Rulemaking: Background and Options for Congress* (Oct. 4, 2016) (online at <https://crsreports.congress.gov/product/pdf/R/R42612>).

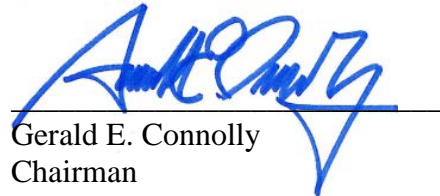
The Honorable Gene L. Dodaro

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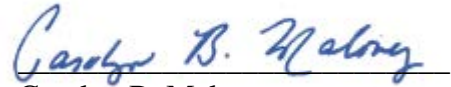
the beginning of the 117th Congress that are potentially subject to a joint resolution of disapproval during the 117th Congress.

Thank you for your attention to this matter. If you have any questions, please contact Committee staff at (202) 225-5051.

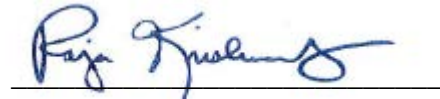
Sincerely,



Gerald E. Connolly
Chairman
Subcommittee on Government
Operations



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and
Consumer Policy



Jerrold Nadler
Chairman
Committee on the Judiciary



Jackie Speier
Member of Congress

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Jody B. Hice, Ranking Member
Subcommittee on Government Operations

The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy

The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary