Message

From: POLITICO Pro Energy [politicoemail@politicopro.com]
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To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy: Interior rejected staff advice on casino, docs show — Pruitt's science directive slowed by industry concerns — Francis Brooke: Rookie of the year

By Kelsey Tamborrino | 04/20/2018 05:43 AM EDT

With help from Anthony Adragna

YOU NEVER KNOW WHAT YOU'RE GONNA GET: Interior officials reversed course on plans from two American Indian tribes to build a casino last year, new documents show. The heavily redacted documents released via FOIA show officials rejected recommendations from federal experts on Indian gaming, Pro's Nick Juliano reports, raising further questions about whether Interior Secretary Ryan Zinke and his political appointees caved to lobbying pressure from MGM Resorts International.

The tribes' treatment is now the subject of an Interior inspector general investigation, a spokeswoman told Nick. And while the documents don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming, they do show that the career staffers were circulating what they labeled as "approval" letters just 48 hours before their bosses refused to either OK or reject the tribes' application, leaving the casino in legal limbo.

No direct effort by MGM to lobby experts in BIA's Indian gaming office can be seen in the docs, but they show a timeline that indicates Interior officials closest to gaming issues were ready to side with the tribes after about six weeks of internal review. The department arrived at the opposite conclusion less than 48 hours after their recommendations went to Associate Deputy Secretary James Cason, a veteran of three Republican administrations, who was one of President Donald Trump's first hires at the department.

The emails also indicate even Interior career staff were unsure how they would explain the sudden about-face from higher-ups. "As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote to a colleague who wondered how he should answer questions. And "like Forrest Gump, say: 'that's all I've got to say about that.'" Read more.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and NRECA's Kirk Johnson knew all the states with just one representative in the House: Alaska, Delaware, North Dakota, South Dakota, Montana, Vermont and Wyoming. For today: Who was the Senate majority leader whose father served as chief justice? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO Space is our new weekly briefing on the policies and personalities shaping the second space age. Sign up today.

CONCERN ON ALL FRONTS: Scientists aren't the only ones expressing concern with EPA Administrator Scott Pruitt's plans to revise how the agency considers outside research, emails show. As the administrator weighs next steps on a scientific transparency directive announced earlier this year — which is expected to require that the raw data for all studies be publicly available and peer-reviewed — members of Pruitt's staff expressed concern it could block their own use of industry data, Pro's Annie Snider reports.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office, voiced concerns after she received a draft of the not-yet-released policy on Jan. 31. The directive in question has origins in legislation introduced by Rep. Lamar Smith during the Obama administration, but its requirements would exclude a great deal of data about pesticides and toxic chemicals that Beck's office considers when determining whether a substance is safe or must be restricted. "These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote in an email to an official in EPA's office of research and development. "The directive needs to be revised." Read more here.

THE ROOKIE: The energy industry is unsure what to make of the relatively unknown Francis Brooke , who will soon replace Mike Catanzaro as the top White House energy aide. A 28-year-old former baseball pitcher, Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and George David Banks. But Pro's Ben Lefebvre and Eric Wolff report energy lobbyists worry his promotion could leave them without steady hands to steer the White House as big decisions on the coal industry, biofuels and energy trade pile up — especially in the crucial run-up to the midterm elections. "It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so." Read more.

WHAT'S THE HOLD UP? House Natural Resources Chairman Rob Bishop says a comprehensive GOP energy bill is "being held up" until the Pentagon weighs how offshore drilling near Florida could affect national security, following backlash from the offshore proposal that led two Florida Republicans to pursue a permanent moratorium. A pending energy bill, H.R. 4239 (115) , is one potential vehicle to extend that moratorium. Bishop told Anthony he is waiting for a Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the results of the study would help determine next steps on the moratorium.

— **On the anniversary of the Deepwater Horizon oil spill**, New Jersey Gov. Phil Murphy is expected to sign into law today a bill that bans offshore drilling in state waters. The Center for American Progress, in anticipation of the legislation, cheered the move. Florida Sen. Bill Nelson, meanwhile, marked the anniversary by joining legislation Thursday intended to block the oil industry from rolling back Interior drilling safety rules adopted in response to the spill.

TRAVEL COMPANIONS: In preparation for a planned trip that was later canceled because of Hurricane Harvey, Pruitt spent nearly $45,000 to fly five people to Australia, according to Reuters. While not a violation of government policy, Reuters reports two of Pruitt's aides and three security agents flew on business-class tickets costing roughly $9,000 to set up advance meetings for the administrator. Pruitt was scheduled to participate in environment-related meetings with Australian officials.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox told Reuters Hurricane Harvey, which caused major flooding in Texas, caused him to cancel the trip and instead go to Corpus Christi to assess the agency's relief efforts. "This is not news," he said, adding Pruitt's team was "adhering to the federal government's travel policy."

WHAT ABOUT HIS EMAILS? EPA told Senate Environment and Public Works Chairman John Barrasso that all of Pruitt's four emails were searched whenever there was a FOIA records request, but that a "full review" is being conducted just to make sure. "As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries," Steve Fine, EPA's deputy chief information officer, wrote in a letter released by Barrasso.

DEMS WADE INTO WEST VIRGINIA PRIMARY: Republicans aren't the only ones trying to meddle in West Virginia's Senate primary. National Democrats are also jumping into the game, POLITICO's Alex Isenstadt reports, with an effort launched Thursday that could be designed to help coal baron Don Blankenship

win the Republican nomination. Washington-based super PAC Duty and Country has begun airing ads hitting the other two GOP contenders in the field: Rep. Evan Jenkins and state Attorney General Patrick Morrisey, ahead of the state's May 8 primary. But Blankenship was notably omitted from their target list, Alex writes. Read more.

— **Fox News Channel announced Thursday** its "America's Election Headquarters 2018" midterm election series would kick-off in West Virginia, with a GOP Senate primary debate on May 1. Candidates will need to reach a 10 percent threshold in a Fox poll next week to be invited to the debate.

ABOUT THAT CRA THREAT: Sen. Lisa Murkowski doesn't sound super gung-ho about using the Congressional Review Act on a 2016 plan from the Bureau of Land Management (that GAO concluded last year met the definition of a federal rule). "Obviously, we've got some issues that need to be resolved in the Tongass and whether this is the best way to do it is something we've been analyzing," she told reporters. Of course, floor time in the Senate is a valuable commodity so carving out time for the Alaska-centric issue may be a heavier lift. Background here on the Senate Republicans' new novel push to undo federal rules.

IT'S ALMOST EARTH DAY: Sunday marks Earth Day, where the Earth Day Network is using the date to promote its goal of ending plastic pollution. The organization says more than 1 billion people from 192 countries will take part in the event on April 22. For its part, EPA promotes a list of Earth Day events here.

CFA FLAGS FUNDRAISER AT PRUITT CONDO: Washington-based watchdog group Campaign for Accountability filed a complaint Thursday with the FEC against GOP Sen. Mike Crapo and Vicki Hart, the lobbyist co-owner of the controversial condo where Pruitt lived. The complaint alleges Crapo and Hart violated the Federal Election Campaign Act and FEC regulations when they failed to disclose improper in-kind contributions. Read it here.

GOING PUBLIC: The Sierra Club filed a lawsuit for documents related to EPA's Office of Public Affairs after EPA failed to respond to its FOIA requests concerning whether the agency improperly — and potentially illegally — used the Office of Public Affairs' staff time to promote topics outside the scope of the office. Read it here.

MAIL CALL! BIRD IS THE WORD: Sixty-two Democrats, led by Rep. Alan Lowenthal, sent a letter to Zinke on Thursday regarding Interior's interpretation of the Migratory Bird Treaty Act. "We ask that you continue to enforce this foundational bird conservation law as every administration from across the political spectrum has done for more than forty years," the letter says.

— **Thirty-one outdoor businesses** will send this letter to Zinke today, calling on DOI to acknowledge the role of the outdoor recreation industry in its proposal to reverse the Methane Waste Prevention Rule. They request best practices are implemented to improve air quality in oil fields across the country, among other issues.

SPEAKING OF METHANE: Earlier this week BP released its "advancing the energy transition" report, committing to near-term carbon reductions and setting a target methane intensity of 0.2 percent and holding it below 0.3 percent. The Environmental Defense Fund highlights the report Thursday in a post arguing on the next frontier of methane targets, as annual shareholder resolution meetings are on the horizon.

SOLAR BILL SPOTLIGHT: Democratic Rep. Jacky Rosen introduced the bipartisan "Protecting American Solar Jobs Act," H.R. 5571 (115) this week, which would repeal tariffs introduced by the Trump administration on imported solar panels. It would undo increases in duty and a tariff-rate quota on certain crystalline silicon photovoltaic cells.

QUICK HITS

— Explosion reported at Valero oil refinery in Texas, NBC.

— Girl Scouts to press EPA on coal ash, WCIA.

— Wehrum: EPA "still thinking about" Obama mercury standards, E&E News.

— Otter poop helps scientists track pollution at a Superfund site, Scientific American.

— Trump's looming trade war gives Democrats an opening in farm country, Reuters.

— Forget rising interest rates, banks are still loving solar power, Bloomberg.

HAPPENING TODAY

8:30 a.m. — Elemental Excelerator holds Earth Day Energy Summit, Hawaii

8:45 a.m. — Brookings holds a discussion on "A new EIB bond product in support of the Global Goals: Building a sustainable financial system," 2175 K St NW

9:00 a.m. — The George Washington University Elliott School of International Affairs discussion on "The French Leadership on Global Climate Actions," 1957 E Street NW

12:00 p.m. — Environmental Law Institute conference of lawyers committed to addressing the climate emergency, 2000 H Street, NW

12:30 p.m. — John Hopkins School of Advanced International Studies discussion on renewable energy's future in Puerto Rico, 1619 Massachusetts Avenue NW

1:00 p.m. — Global American Business Institute discussion on Korea's long-term natural gas plan, 1001 Connecticut Avenue NW

1:30 p.m. — House Transportation and Infrastructure Water Resources and Environment Subcommittee field roundtable on "America's Water Resources Infrastructure: Concepts for the Next Water Resources Development Act, Part II," Coos Bay, Ore.

THAT'S ALL FOR ME!

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https://www.politicopro.com/newsletters/morning-energy/2018/04/interior-rejected-staff-advice-on-casino-docs-show-177901

Stories from POLITICO Pro

Zinke's agency held up Indians' casino after MGM lobbying Back

By Nick Juliano | 02/01/2018 05:00 AM EDT

Two casino-owning American Indian tribes are accusing Interior Secretary Ryan Zinke of illegally blocking their plans to expand operations in Connecticut — a delay that stands to benefit politically connected gambling giant MGM Resorts International.

The Interior Department's refusal to sign off on the tribes' plans for a third Connecticut casino came after Zinke and other senior department officials held numerous meetings and phone calls with MGM lobbyists and the company's Republican supporters in Congress, according to a POLITICO review of Zinke's schedule, lobbying registrations and other documents. The documents don't indicate whether they discussed the tribes' casino project.

Federal law gives Interior just 45 days to issue a yes-or-no verdict after a tribe submits proposed changes to its gaming compact with a state, as the Mohegan and Mashantucket Pequot tribes note in a suit they filed against Zinke and the department. But the department declined to make any decision in this case, an inaction that raises questions about whether an intensive lobbying campaign by one of the gambling industry's biggest players muscled aside the interests of both the tribes and the state of Connecticut.

"I think the Department of Interior has been derelict in failing to give approval" to the tribes' request, Sen. Richard Blumenthal (D-Conn.) told POLITICO. "We asked for a meeting, but they were unresponsive. They never even responded."

Meanwhile, MGM and its allies had direct access to Interior. Zinke had multiple conversations last year with Sen. Dean Heller and Rep. Mark Amodei — two Nevada Republicans whose state is a major center of employment for MGM, and who have each tried to impede the tribes' casino plans. The company also doubled its lobbying spending and assembled a team that includes Bush-era Interior Secretary Gale Norton and Florida-based Trump fundraiser Brian Ballard.

The proposed Connecticut casino would sit on non-tribal land just across the border from a billion-dollar casino that MGM is planning in Springfield, Massachusetts. The Pequot tribe's Foxwoods Casino in Connecticut previously provoked the ire of former New Jersey casino owner Donald Trump, who complained during a 1993 congressional hearing that "they don't look like Indians to me."

An Interior spokeswoman did not respond to requests for comment, but the department is due to respond by next week to the suit the tribes filed in November. MGM has sought to join the suit on Interior's side.

MGM and its supporters say the tribes are trying to circumvent restrictions on "off-reservation" gambling while still maintaining their exclusive access to Connecticut's lucrative casino market, and that the new property would provide unfair competition to its Springfield project.

Interior officials sent the tribes encouraging signals as recently as May. But by mid-September the department reversed course, saying it would be premature to either approve or reject the plans.

"It's 100 percent about delaying us for as long as they possibly can," said Andrew Doba, a spokesman for the joint enterprise the tribes created for their new project.

The case is far from the first legal dispute to arise from Interior's role as the overseer of Indian tribes' gambling agreements with the states. Clinton-era Secretary Bruce Babbitt faced a special prosecutors' investigation after Interior rejected three Wisconsin tribes' plans for a casino that other, Democrat-supporting tribes opposed — though he ultimately was cleared. Indian gambling also played a key role in the George W. Bush-era Jack Abramoff scandal.

In the Connecticut case, the tribes have been operating two casinos — the Pequot tribe's Foxwoods and the Mohegan Sun — since the early 1990s. Their success in the market between Boston and New York provided competition to casinos in Atlantic City, including the formerly Trump-owned Taj Mahal.

As gambling spread across the U.S. in recent decades, MGM and other casino developers — including Trump — pursued projects in Connecticut but were ultimately unsuccessful. State law there limits casino ownership to the two in-state tribes and their new joint venture.

The tribes say they are fully complying with state law and the federal Indian Gaming Regulatory Act, which allows federally recognized tribes to operate casinos on their reservations or lands held in trust by the federal government. The casino they want to open is technically a commercial project that would be operated by MMCT Venture, a company jointly owned by the tribes that owns the casino site in East Windsor and entered into a development agreement with the town.

Connecticut Gov. Dannel Malloy and the state legislature signed off on that arrangement last year, so long as the tribes agreed to amend their gaming compacts that guaranteed a certain share of slot revenues would go to the state. The Indian Gaming Regulatory Act requires Interior to approve such compact amendments after a brief review window, unless the amendments violate the terms of the federal law.

The lawsuit seeks to force approval of the contract, arguing that the law does not allow Interior to refuse to render a verdict.

"IGRA and its implementing regulations leave the Secretary with no discretion to proceed in any other manner," Connecticut and the tribes argue in their lawsuit, filed in U.S. District Court for the District of Columbia on Nov. 29.

At one point, Interior seemed inclined to agree with the tribes' interpretation of the law. In a May 12 technical guidance letter to the tribes, Associate Deputy Interior Secretary James Cason acknowledged that the Indian Gaming Regulatory Act provides for a 45-day review period for compact amendments and that the department may disapprove them only for violating the act, other federal laws or trust obligations to the tribes.

While Cason stressed that his advice was nonbinding and did not constitute a preliminary decision, he endorsed earlier guidance from the Obama administration that the Connecticut amendment reflected the "unique circumstances" at play and that opening a new casino would not affect the tribes' exclusivity agreement with the state.

But the tribes' request drew opposition from out-of-state lawmakers like Heller and Amodei.

"Under that framework, the tribes seek to expand off-reservation gaming without going through the procedures mandated by" the Indian Gaming Regulatory Act, Amodei wrote in a July 28 letter to Cason, following up on a discussion earlier that day. Amodei asked whether Interior planned to allow the 45-day review period to lapse, which would allow the amendments to be "deemed approved."

Ultimately, Interior decided against approval. Acting Assistant Secretary for Indian Affairs Michael Black told the tribes in a Sept. 15 letter that approving or disapproving the amendment to their gaming compact was "premature and likely unnecessary," and said Interior had "insufficient information" to make a decision. However, he did not cite any legal justification for that move, nor did he outline what additional information the department would need.

Interior has on at least one occasion returned a gaming compact amendment rather than make a yes-or-no decision, although the circumstances were slightly different at the time. In 2013, the department told the Cheyenne-Arapaho tribes in Oklahoma that it could not process their amendments because of incomplete information. But in that case, the department replied in less than 30 days rather than wait for the entire review period to elapse, and it cited specific regulations and outlined what additional information it needed from the tribes.

Black copied Amodei and Heller on his letter but did not include any Connecticut lawmakers. (He did say a separate letter was going to Malloy, the Connecticut governor.) Zinke and Heller also spoke on the phone on Sept. 15, according to an entry on Zinke's calendar. And the day before Black sent the letter, Zinke and Cason were scheduled to meet at the White House with deputy chief of staff Rick Dearborn, although Zinke's calendar does not list the subject of the meeting.

Ahead of the decision, MGM "participated in Interior's review" through meetings and correspondence in which the company urged Interior to either return the amendments without making a decision or to disapprove them for violating the Indian Gaming Regulatory Act, according to a statement filed in court by Uri Clinton, MGM's senior vice president and legal counsel.

MGM brought on heavyweights including Norton — who disclosed her work for the company just last month — as well as Ballard, a lobbyist who has helped raise millions for Trump's campaign. MGM's spending on lobbyists for all issues more than doubled last year, to $1.5 million spread across five outside firms and its own newly formed in-house team.

An affiliated company, MGM Public Policy LLC, also paid $270,000 last year to hire a team of lobbyists from Brownstein Hyatt Farber Schreck LLP to work on issues including gaming. That's the firm at which Deputy Interior Secretary David Bernhardt worked until he joined the administration last year, though he has agreed to recuse himself from matters involving former clients of his firm without prior authorization.

"MGM Resorts last year established a public policy office in Washington to engage more directly on Federal legislative and policy issues," an MGM spokesman said in a statement. "Our advocacy activity reflected that increased engagement. As the largest employer in Nevada, part of that advocacy is routinely engaging our elected representatives."

Heller and Amodei each had multiple meetings and phone calls with Zinke last year, according to the secretary's calendar, although it's unclear whether they discussed the Connecticut casinos. On one occasion, Zinke joined Heller for dinner at a Las Vegas steakhouse on July 30, when he was in the state touring national monuments, one of several pieces of Interior's portfolio of interest to Nevada.

A Heller spokeswoman did not respond to a request for comment. But the senator has tried to advance MGM's interests in the past: In 2016, he offered an amendment to a defense bill that would have prevented Indian tribes from operating commercial casinos in the same state where they operate casinos on the reservation — precisely what the Connecticut tribes are trying to do. The amendment never came to a vote, and Heller does not appear to have ever discussed it publicly.

MGM employees and the company's political action committee have given $96,000 this cycle to Heller's reelection campaign and leadership PAC, making the company his largest single source of contributions, according to the Center for Responsive Politics. Amodei has received no donations from company employees or its PAC.

Interior's Sept. 15 decision came two weeks after Zinke invited several lobbyists for MGM to join him and other guests for a social visit on his office balcony, which overlooks the National Mall. They included, according to Zinke's calendar, Ballard and other lobbyists from his firm Florida-based firm Ballard Partners, which opened its first Washington, D.C., office in 2017. Also present were Zinke's former family attorney and a major GOP fundraiser, according to copies of the secretary's calendar.

MGM hired Ballard in March and paid the firm $270,000 last year, according to disclosure filings. Ballard was Florida finance chairman for Trump's 2016 campaign and helped organize a fundraiser at the Trump International Hotel in Washington last summer at which donors gave $35,000 to attend or $100,000 to join the host committee.

Ballard declined to discuss his work for MGM or any other client and said he could not recall the details of that particular meeting, which took place Aug. 29, according to Zinke's calendar. But Ballard said he had met Zinke and thinks "the world of him."

In October, MGM brought on Norton, who served as Interior secretary from 2001 to 2006, to lobby on issues related to the Connecticut tribes. Norton began lobbying for MGM on Oct. 25, according to disclosures filed Jan. 19.

The next day, Oct. 26, Interior officials spoke to the tribes and asked them to explain why the department was obligated to weigh in on their casino since it was being built by a commercial entity and not on tribal land.

In a brief interview last week, Norton said she did not know why her disclosure form was filed so late — lobbyists are required to file disclosures within 45 days — and she did not respond to follow-up inquiries.

Meanwhile, a new state legislative session begins in February in Connecticut. MGM plans to ask legislators there to allow an open bidding process for new casinos in the state, arguing that Interior's refusal to act shows that the state's attempt to limit casino ownership to the tribes would not work.

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Interior rejected staff advice when scuttling tribes' casino, documents suggest Back

By Nick Juliano | 04/20/2018 05:02 AM EDT

Trump administration officials rejected recommendations from federal experts on Indian gaming policy when they blocked two American Indian tribes from opening a casino last year, documents obtained by POLITICO indicate.

The heavily blacked-out documents add to questions about whether Interior Secretary Ryan Zinke and his political appointees buckled to lobbying pressure from MGM Resorts International, a gambling industry giant that is planning its own casino just 12 miles from the project proposed by the Mohegan and Mashantucket Pequot tribes.

Interior's inspector general is investigating the department's handling of the tribes' casino application, a spokeswoman told POLITICO, after Connecticut lawmakers asked the internal watchdog to look into the matter.

The documents, released under the Freedom of Information Act, don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming. But they show that the career staffers were circulating what they labeled "approval" letters just 48 hours before their political bosses reversed course and refused to either OK or reject the tribes' application — a nondecision that left the Indians' East Windsor project in legal limbo.

To fight off the potential competition, MGM spent heavily on lobbyists, including George W. Bush-era Interior Secretary Gale Norton and firms with ties to the Trump administration, while enlisting the assistance of friendly lawmakers such as Sen. Dean Heller and Rep. Mark Amodei. MGM lobbyists and the two Nevada Republicans

held a handful of meetings and conversations with Associate Deputy Secretary James Cason in the months and days before he edited Interior's letter holding up the tribes' plans.

A spokesman for the tribes' casino project said they were caught off guard by Interior's about-face and are glad to see the department's internal watchdog probing the matter.

"We are grateful there's an IG investigation into this issue because since last fall, none of the department's actions have passed the smell test," said Andrew Doba, a spokesman for MMCT Venture, the company the tribes formed to own and operate the new casino. "Something clearly happened to pollute the process, which should be problematic for an administration that promised to drain the swamp."

The tribes have also sued, arguing that Zinke ignored his responsibilities under the Indian Gaming Regulatory Act to either approve or reject their application in a timely manner and to act to protect the tribes' interests.

Cason and spokespeople for Interior and the Bureau of Indian Affairs did not respond to requests for comment this week.

But the emails show that even Interior's career staff was unsure how they would explain the sudden about-face.

"As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote in a Sept. 26 email to a colleague who anticipated having to answer questions about it at a gaming industry conference. And "like Forrest Gump, say: 'that's all I've got to say about that.'"

The dispute is complicated by the peculiarities of federal law on Indian gaming, which seeks to promote tribes' economic development but also discourages the spread of off-reservation gambling. The two Connecticut tribes, which already operate two lucrative casinos on their reservations, are exploring a gray area with their proposed third casino, which a jointly owned private company would operate on nonreservation land.

MGM, which plans to open a casino later this year in nearby Springfield, Mass., says the tribes' approach would set a worrisome precedent for other states.

"This is an unusual situation, and we're kind of pushing the bounds on IGRA," says Kathryn Rand, dean of the University of North Dakota School of Law and a co-director of its Institute for the Study of Tribal Gaming Law and Policy. Rand is not affiliated with MGM or the Connecticut tribes.

The newly released documents do not show any effort by MGM to make its case to experts in BIA's Indian gaming office. They also indicate that Interior officials closest to Indian gaming issues were ready to side with the tribes after about six weeks of internal review.

Instead, Interior reversed course with little official explanation less than 48 hours after their recommendations went to Cason, a veteran of the previous three Republican administrations who was one of President Donald Trump's first hires at the department.

On Sept. 11, Woodward emailed around copies of "the edited letters for Pequot and Mohegan," which he said had "been through the surname process," a system for internal review. The contents of the letters were redacted, but each was about two pages long, and file names referred to both as "draft approvl" letters.

The following day, Woodward alerted colleagues that "Jim wants some changes," referring to Cason. But on Sept. 13, Woodward still sent "approval" letters "for Mike Black's signature," referring to the then-acting

assistant secretary for Indian affairs, along with a notice the department was required to publish in the Federal Register. Again, the attachments were redacted, but each was two pages long.

A day later, "Jim's edits" came back, and the documents were no longer referred to as "approval" letters.

Instead, Black signed a one-page letter on Sept. 15 informing the tribes that it would be "premature and likely unnecessary" to weigh in on their gaming applications at all.

Returning the applications without approving or disapproving them appears to be an option Interior officials did not consider until earlier that day. A pair of redacted memos circulated that morning, including one "regarding Secretarial Authority to not act on a compact," according to its title.

It is unclear precisely what happened over those days, but by then Cason had received ample input from MGM and its allies. As early as June, Cason met with a senior adviser to Zinke and a lobbyist from Ballard Partners, a Trump-connected firm MGM hired last year, to discuss issues related to the company, according to his calendars. And he was in touch with MGM supporters several more times over the intervening months up to the days before Interior's response was being finished.

On Sept. 13, Cason met with Amodei, and the following day he had a teleconference with Heller, according to Cason's calendar. MGM is a major employer in Nevada, and both lawmakers had previously raised concerns about the Connecticut tribes' proposals and the potential expansion of off-reservation gambling.

Cason's Sept. 14 meeting with Heller included some officials who were working on the Connecticut case, according to his calendar and the BIA emails. Later that day, Cason joined Zinke at a meeting at the White House with Rick Dearborn, Trump's deputy chief of staff for policy.

The president has his own history of clashes with the Mashantucket Pequot, whose Foxwoods Casino competed with his Atlantic City properties to draw gamblers from New York City. "They don't look like Indians to me," Trump infamously declared in a 1993 congressional hearing.

Several weeks after Interior released its decision, Norton sent Zinke a 24-page memo outlining legal arguments in support of the decision on behalf of MGM. Among the evidence she cited was Trump's congressional testimony, though not that particular phrase.

"Supreme Court precedent and President Trump's testimony counsel against approving Connecticut's discriminatory framework, the sole function of which is to grant MMCT, a private corporation, a monopoly over commercial, off-reservation, state-regulated gaming," the former Interior secretary wrote in her Oct. 30 memo to Zinke.

Black's ambiguous Sept. 15 letter, which Cason had edited, left the tribes unable to proceed with their planned casino.

The tribes' lawsuit is pending in U.S. District Court for the District of Columbia, and MGM has asked to intervene in the case, although both Interior and the tribes say it does not have standing to do so.

The case hinges on dueling interpretations of the goals of the Indian gaming law — essentially, whether more weight should be given to IGRA's goal of supporting tribes' economic prospects or its prohibitions on off-reservation gaming in most circumstances.

In court filings, Interior has also stressed the importance of procedural differences between the two tribes' prior gaming agreements, which it says should prevent the Mashantucket Pequot from participating in the case at all.

While the Mohegan tribe was operating under a state gaming compact, the Mashantucket were never able to reach an agreement with Connecticut officials back in the 1980s — so Foxwoods has been operating under the terms of "secretarial procedures" authorized under a different section of the law.

The law says amendments to gaming compacts, such as the Mohegan's, must be approved within 45 days unless Interior can demonstrate that their terms violate federal law or the department's trust responsibilities to the tribe. But it contains no such deadline for secretarial procedures such as the Mashantucket Pequot's.

Interior and MGM say that because the department has no obligation to act on the Pequot's proposed amendment, the entire case is effectively moot. However, the newly disclosed emails suggest that career officials were aware of that distinction throughout their review and did not see it as a reason to deny the tribes' request.

Rand, the law school dean, said courts have not previously grappled with the issue. "That I think is a real interesting and open question that we wouldn't have a whole lot to go on," she said.

This case is also unusual because of the nature of the two tribes at issue and the lucrative market the two sides are battling over.

"That might be a bit implicit in MGM's arguments — that the Mohegans and the Pequots aren't acting like tribal governments in this enterprise, they're operating like competitors. And because of their status ... they don't need the protection that other tribes do," Rand said in an interview this week. "The counterargument, of course, is that tribal sovereignty doesn't depend on whether the tribe needs the federal government's help. Tribal sovereignty is just a fact."

Black's Sept. 15 letter also does not mention the procedural difference between the tribes as a factor in deciding to return the applications without acting on them.

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EPA emails show industry worries slowed new science policy Back

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman Lamar Smith (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA

officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House

Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA $250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Energy industry puzzles over new White House adviser Back

By Ben Lefebvre and Eric Wolff | 04/19/2018 07:14 PM EDT

The appointment of a 28-year-old former congressional staffer as the top White House energy aide left many industry lobbyists scratching their heads — and nervous that the new hire may have trouble filling the shoes of the more experienced adviser he's replacing.

The relatively unknown Francis Brooke will step into the role as replacement for Mike Catanzaro, who will exit the White House next week. Catanzaro and NSC energy adviser George David Banks, another energy adviser who departed earlier this year, have been the top two energy experts in the White House, and they'll take with them decades of experience.

Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and Banks. But energy lobbyists worry his elevation will leave them without steady hands in the White House just as the administration confronts big decisions on the coal industry, an intra-party biofuels fight and thorny energy trade issues. Putting a relative rookie into the role also shows that the administration may not devote as much attention to energy issues in the run-up to the 2018 elections, sources said.

"It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy, but who requested anonymity to discuss people he expects to work with. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so."

Brooke joins the White House with far less energy-sector experience than Banks and Catanzaro, who came to their jobs with long histories in industry and government. He started his career as an intern for Mick Mulvaney in October 2012 when the White House budget director was a South Carolina congressman. After that, he had stints as a staff assistant for Rep. Andy Barr (R-Ky.) and legislative aide for Senate Majority Leader Mitch McConnell (R-Ky.). Pence's office tapped him to be associate director of policy in February 2017.

His family was involved in international politics in the previous decade. His father, Francis Brooke Sr., helped foster the relationship between officials in the George W. Bush administration and Ahmed Chalabi, the controversial Iraqi exile who helped convince the U.S. to invade his country.

Pence's office confirmed Brooke's biographical information but did not offer further details about his time working with the vice president.

McConnell's office did not respond to questions about Brooke. A spokeswoman for Barr said Brooke had been "one of the Congressman's most trusted legislative assistants and handled a wide variety of issues including energy, environment, and health care."

Previous to that, Brooke's biggest notice came from pitching 97 innings in the 2012 season with Northwestern University, making 13 starts and ending with a 2.51 earned run average. He would later serve as a coach to the Republicans' congressional baseball team, and he was on the Arlington, Va., practice field when a gunman shot Rep. Steve Scalise of Louisiana.

Lobbyists say they worry that with the departures of Catanzaro and Banks, Brooke will not be able to help the White House navigate complex energy issues with technical details that can be headache-inducing.

"There is angst downtown that without Mike there, no one knows who is going to make the trains run on time," said Andeavor's Stephen Brown said before Brooke was officially named to the position. "Mike was always the adult in the room on energy issues with substantive knowledge, not just a political perspective."

Brooke, along with Wells Griffith, an Energy Department official on a three-month loan to the White House, will have almost no time to get acclimated to their jobs. The Department of Energy is grappling with whether to try to use emergency authority to keep economically distressed coal-fired power plants running. And the two new staffers may need to help Trump navigate the dispute between refiners seeking changes to the Renewable Fuel Standard and corn farmers who are counting on the president to live up to his promise to protect ethanol.

They will also have to cope with White House officials on trade issues, such as the steel tariffs that oil and gas companies have complained could hamper the construction of new pipelines.

But some current and former administration officials say they have confidence Brooke is up to the job. They say he worked closely with Banks and Catanzaro on all their key issues, including traveling with Banks to the U.N. climate conference at Bonn, Germany, as a key adviser.

"He knows all the players, he's been in all the meetings," said one administration source. "He has the right temperament, the right judgment. People get into these jobs and they use them for vanity tours. Brooke doesn't do that. He's going to be great."

Banks, who left the White House in February, agreed.

"I think that he's ready for the role," said Banks, former adviser to Trump on the NSC. "Francis has been deeply engaged in all of the major energy environment [initiatives]. Some people wouldn't have the experience he's had in working these issues for over a year in the White House. He's incredibly bright, disciplined person."

Critics of the administration's energy policy rollbacks hoped Brooke's lack of experience would depoliticize some of the big decisions before the administration.

"Of course it's weird that there's no senior person covering energy issues," said John Morton, former senior director for energy and climate change on the NSC during the Obama administration. "Though with this administration, it's often a blessing in disguise when a policy area gets neglected by Trump appointees, as it allows more talented career staff to manage affairs."

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Bishop: Drilling moratorium holding up energy bill vote in House Back

By Anthony Adragna | 04/19/2018 05:32 PM EDT

House Natural Resources Chairman Rob Bishop says a wide-ranging GOP energy bill is "being held up" until the Pentagon weighs in on how offshore drilling near Florida could affect national security.

The Trump administration earlier this year proposed allowing drilling in the Eastern Gulf of Mexico after an existing moratorium expires in 2022. Although Interior Secretary Ryan Zinke quickly backed away from the idea, the resulting firestorm led two Florida Republicans to pursue a permanent moratorium, which they said has the backing of Speaker Paul Ryan.

A pending energy bill, H.R. 4239 (115), is one potential vehicle to extend the moratorium. But Bishop, a strong supporter of the oil industry, did not include any limits on offshore drilling when the bill passed out of his committee last year.

The Utah Republican told POLITICO this week he is waiting for the Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the report's findings would influence "how to move forward on a potential agreement regarding the future of the Eastern Gulf once the moratorium expires in 2022."

Oil and gas leasing within 125 miles off the Florida coastline and areas of the Gulf of Mexico is currently off limits until 2022.

Bishop said in the interview Wednesday that the absence of House Majority Whip Steve Scalise (R-La.), lead sponsor of the legislation, for surgery is an additional factor in getting the bill floor time.

WHAT'S NEXT: When the measure will get floor consideration remains unclear.

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Report: EPA spent $45,000 on Australia trip Pruitt canceled Back

By Emily Holden | 04/19/2018 05:34 PM EDT

Five EPA employees spent $45,000 traveling to Australia last year to prepare for a trip by EPA Administrator Scott Pruitt that was ultimately canceled, Reuters reported today.

The two advance team aides and three security agents spent about $9,000 each on business-class tickets to fly to Australia in August, an expense that is permitted under government rules on flights lasting 14 hours or more. The two EPA staffers were advance director Millan Hupp, the Oklahoma aide who followed Pruitt to Washington and has drawn scrutiny for receiving a large raise, and Kevin Chmielewski, the former deputy chief of staff for operations who was dismissed and is now acting as a whistleblower to lawmakers about Pruitt's spending habits.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox said Pruitt did not go to Australia because of Hurricane Harvey. Pruitt traveled from his home in Tulsa, Okla. to Corpus Christi, Texas, to assess relief efforts on Aug. 30, according to his schedule and flight records.

Pruitt spent at least $105,000 on first class flights and at least $3 million on a round-the-clock security detail. Records show about one-quarter of the $120,000 costs for a trip to Italy in June for a G-7 environment meeting was to cover Pruitt's security. EPA's inspector general and various other government officials are investigating Pruitt's travel and spending.

Flight vouchers EPA has shared with lawmakers show Pruitt originally intended to travel to Sydney and Melbourne from Aug. 31 through Sept. 8 to "discuss best practices regarding the environmental operations" within the country.

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EPA tells Barrasso all Pruitt's emails searched for FOIA Back

By Alex Guillén | 04/19/2018 05:24 PM EDT

EPA today told Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) that all four of Administrator Scott Pruitt's emails were searched whenever there was a Freedom of Information Act records request, but that a "full review" is being conducted just to make sure.

"As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries. That practice has not changed under Administrator Pruitt's leadership," Steve Fine, EPA's deputy chief information officer, wrote in a letter released today by Barrasso.

Fine added: "However, in response to your concern, my office is conducting a full review of the searches conducted regarding FOIA requests seeking Administrator Pruitt's records. If additional documents exist, we will contact the relevant requesters, and we will update you once our review is complete."

"I look forward to receiving the findings of the agency's full review that's being conducted in response to my letter," Barrasso said in a statement.

WHAT'S NEXT: Fine did not say how long EPA's review of FOIA request fulfillment will take.

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Democrats meddle in West Virginia's GOP Senate primary Back

By Alex Isenstadt | 04/19/2018 04:23 PM EDT

National Democrats launched a campaign Thursday to intervene in the upcoming West Virginia Senate GOP primary — an effort that could be designed to help recently imprisoned coal baron Don Blankenship win the Republican nomination.

Duty and Country, a Washington-based Super PAC, began airing TV and web ads savaging the two mainstream Republican candidates, Rep. Evan Jenkins and state Attorney General Patrick Morrisey, who are competing in the May 8 primary. Left off the group's target list, however, was Blankenship, who spent one year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers.

In propping up Blankenship, the Democratic Party is wading into an intensifying GOP civil war. Republicans are growing increasingly worried about Blankenship, who has been gaining traction in the primary. GOP officials in Washington are concerned that if Blankenship wins the nomination, he'll ruin the party's prospects of defeating Democratic Sen. Joe Manchin in November.

Last week, national Republicans launched a super PAC named Mountain Families PAC aimed at stopping Blankenship. The organization, which is staffed by consultants who've previously worked for a political group aligned with Senate Majority Leader Mitch McConnell, has begun airing TV commercials accusing Blankenship of contaminating drinking water by pumping toxic slurry while setting up a separate piping system to his mansion.

The Democratic group is spending over $380,000 to air the commercials. One of the TV spots says that as the former head of West Virginia State Medical Association, Jenkins pushed doctors to use an insurance company that overcharged, allowing his organization to profit. Another ad describes Morrisey as a carpetbagger, calling him a "millionaire New Yorker and former lobbyist who came down here and ran for office with no idea of the real challenges West Virginians face."

The Democratic group has also begun sending out mailers describing Jenkins as "part of the swamp, part of the problem."

A Duty and Country spokesman, Mike Plante, said the group had no plans to go after Blankenship and was instead focused on his two rivals.

"We made the strategic decision based on data that shows that either Patrick Morrisey or Evan Jenkins is more likely to be the nominee, so that's where we're focusing our attention," he said.

Duty and Country appears to have close ties to the national Democratic Party. In its federal filings, it lists the same downtown Washington address as other major party groups, including Senate Majority PAC, the main Democratic super PAC devoted to electing Senate Democrats.

In another twist, West Virginia attorney Booth Goodwin, who served as U.S. attorney in the case against Blankenship, is listed as the group's treasurer.

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GOP maneuver could roll back decades of regulation Back

By Zachary Warmbrodt | 04/17/2018 10:16 AM EDT

Republicans are preparing to open a new front in their push to roll back regulations across the government, using a maneuver that could enable them to strike down decisions by federal agencies that reach back decades.

As soon as Tuesday, GOP senators, backed by President Donald Trump, will use the Congressional Review Act to topple safeguards issued by the CFPB in 2013 that were intended to discourage discrimination in auto lending.

While Republicans in the Trump era have already taken advantage of the 1996 law to remove more than a dozen recently issued rules, this would be the first time that Congress will have used it to kill a regulatory policy that is several years old.

Now, actions going back to President Bill Clinton's administration could be in play under the procedure GOP lawmakers are undertaking, forcing numerous agencies to reconsider how they roll out new regulations.

"It's a hugely important precedent," Sen. Pat Toomey (R-Pa.), the architect of the effort, said in an interview. "It's potentially a big, big opening."

While conservatives are applauding the effort as a way to rein in rogue bureaucrats and boost the economy, consumer advocates are warning that the consequences could be dire.

"This takes an already incredibly dangerous law and cranks it up to 11," said James Goodwin, senior policy analyst at the Center for Progressive Reform.

Republicans are leveraging two key provisions of the Congressional Review Act.

They're again taking advantage of fast-track authority that allows a simple majority of the Senate to pass a resolution rolling back a rule if the vote occurs within a window that's open for no more than a few months. The provision enables senators to avoid a filibuster.

But the more novel use lies in the law's requirement that federal agencies submit rules to Congress for their potential disapproval. Republicans have landed on a way to target a wide array of decisions — including regulatory guidance — that haven't typically been implemented as formal rules under the Administrative Procedure Act.

"You have this unimaginably large universe of stuff that is now eligible for repeal under the CRA," Goodwin said, citing a hypothetical Occupational Safety and Health Administration workplace safety poster as a potential example. "Agencies don't submit all this stuff because it would be an administrative nightmare."

In the case of the auto-lending policy, the CFPB released it as a guidance document rather than a formal rule governed by the notice-and-comment requirements of the APA. As such, it wasn't technically submitted to lawmakers for the purposes of the Congressional Review Act. That means the clock for congressional review never started.

That changed last year. For advocates of deregulation, the stars had aligned thanks to the ascendance of a Republican president eager to roll back rules and the Republicans retaining control of Congress.

Toomey, the former president of the conservative Club for Growth, went on the hunt for ways the GOP could take advantage of its congressional majority to eliminate federal rules.

He found a way to wield the power that the Congressional Review Act gives a majority of the Senate to sidestep obstruction via filibuster when it comes to years-old regulatory actions.

To do so, he asked the Government Accountability Office to determine whether the CFPB auto-lending guidance qualified as a rule for the purposes of the Congressional Review Act. In December, GAO told him that

it did in fact satisfy the legal definition of a rule, starting the clock for Republicans to undo it without having to seek any help from Democrats.

"When regulators regulate by guidance rather than through the process they're supposed to use, which is the Administrative Procedure Act and do a proper rulemaking, they shouldn't be able to get away with that," Toomey said. "If we can get a determination that the guidance rises to the significance of being a rule, then from that moment the clock starts on the CRA opportunity."

Amit Narang, regulatory policy advocate at Public Citizen, said it "is really going to open up a Pandora's box." Public Citizen and 60 other advocacy groups covering the gamut of finance, the environment, labor and gay rights are calling on Congress to oppose the CFPB rollback, saying it would set a dangerous precedent.

They warned it would put at risk not only protections for workers, consumers, minorities and the environment, but also regulatory certainty for businesses.

"Expanding the power of the CRA to overturn guidance from decades ago will threaten protections hardworking families rely on, making it harder for middle class Americans to get ahead and responsible businesses to follow the law," Sen. Sherrod Brown (D-Ohio) said.

Critics have also questioned the need to undo the CFPB auto-lending guidance because the bureau is now led by a Trump appointee, acting Director Mick Mulvaney, who could eliminate it himself. Mulvaney told lawmakers last week he was reviewing the policy. The National Automobile Dealers Association and the American Financial Services Association are supporting the rollback of the anti-discrimination measure, arguing that the way the CFPB crafted the guidance was flawed.

The Senate opened debate on the bill Tuesday following a 50-47 procedural vote. Sen. Joe Manchin (D-W.Va.) was the only Democrat to support moving forward with the legislation.

Other lawmakers have begun to test the waters. In November, GAO in a response to a request from Sen. Lisa Murkowski (R-Alaska) confirmed that a 2016 plan from the Bureau of Land Management was a rule for the purposes of review under the CRA. A spokeswoman for Murkowski did not respond to a request for comment.

Paul Larkin, a senior legal research fellow at the Heritage Foundation, has been advocating for Congress to take advantage of this deregulatory pathway in the Congressional Review Act, saying it could force agencies to comply with formal rulemaking requirements and help the economy by cutting red tape.

"This would indicate that Congress believes it can reach back beyond what the conventional wisdom was," he said.

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