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Congress Must Rein in President Biden's Regulatory Spending Spree To Tame Inflation

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KEY FINDINGS

THE **VOLUME AND COST** OF REGULATIONS HAVE REACHED **RECORD HIGHS**.

PRESIDENT BIDEN IS ON A **RECORD-SHATTERING REGULATORY SPENDING SPREE**.

PRESIDENT BIDEN'S HYPERREGULATION IS **LEADING TO HIGHER INFLATION**.

CONGRESS CAN **BUILD ON LESSONS LEARNED FROM STATES' REGULATORY REFORMS**.

THE BOTTOM LINE:

FEDERAL LAWMAKERS SHOULD REIN IN COSTLY RULES TO RESTORE LEGISLATIVE OVERSIGHT AND ACCOUNTABILITY.

Introduction

America was founded on the principles of limited government, dividing power among the legislative, executive, and judicial branches. But over time, Congress has unlawfully delegated its lawmaking power to administrative agencies, allowing for an unaccountable "fourth branch" to develop.[1] Today, unelected bureaucrats promulgate rules that carry the force and effect of law through notice-and-comment rulemaking and effectively make law by issuing "guidance" documents not subject to the same notice requirements.[2] Unsurprisingly, the volume of federal regulations has only ballooned over time, with the number of regulations consistently growing over the decades.[3]

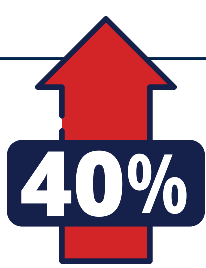
But the growing number of regulations is only part of the problem. In addition to the costs to personal freedom, many regulations come with huge price tags, costing federal taxpayers billions of dollars every year.[4] This is especially troubling during a time of high gas prices and skyrocketing inflation.[5] Making matters even worse, President Biden is on a regulatory spending spree, adding more than $200 billion in new regulatory costs during his first year alone.[6] With no end in sight to Biden's runaway regulatory spree, Congress needs to act now to reclaim its lawmaking power and rein in out-of-control regulations.

PRESIDENT BIDEN IS ON A REGULATORY SPENDING SPREE, ADDING MORE THAN $200 BILLION IN NEW REGULATORY COSTS DURING HIS FIRST YEAR ALONE.

The volume and cost of regulations have reached record highs

The size of the regulatory state has reached record highs. The Code of Federal Regulations, which codifies all current federal regulations, already spans more than 105 million words across nearly 190,000 pages.[7-8] Those pages include more than 1.3 million regulatory mandates and restrictions.[9-10] Nearly half of those mandates and restrictions flow from just five federal agencies, with the Environmental Protection Agency leading the pack.[11]

The volume of regulations has soared by nearly 40 percent in the last two decades, with no sign of slowing down.[12] In 2021, the Federal Register published nearly 75,000 pages of new proposed and final regulations, executive orders, presidential proclamations, and agency notices.[13]



THE VOLUME OF REGULATIONS HAS SOARED BY NEARLY 40 PERCENT IN THE LAST TWO DECADES.

The sheer volume of regulations alone is overwhelming, making it impossible for a person to know and follow every rule to which they are subject. But discordance between the rule of law and "rule by regulation" is only part of the problem. The cost to federal taxpayers to develop, administer, and enforce these regulations has more than tripled since 2000—reaching nearly $80 billion per year by 2021.[14] Worse yet, these costs only account for a subset of federal agencies that primarily regulate the private sector, excluding several major agencies, such as the Internal Revenue Service, Social Security Administration, Department of Defense, and the Centers for Medicare & Medicaid Services.[15]

But the direct costs to create and enforce regulations tell only part of the story. Americans spend more than 10 billion hours on regulatory compliance paperwork alone, costing more than $140 billion every year.[16] When accounting for compliance costs, economic losses, and other costs, federal regulations cost Americans an estimated $2 trillion each year.[17-21]

Unfortunately, these costs will only continue to soar higher, as President Biden has issued more costly regulations than any other president in modern American history.

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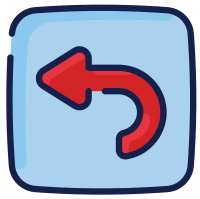
President Biden has launched a record-shattering regulatory spending spree

The size of the regulatory state has exploded, and the Biden administration is accelerating that growth at breakneck speed. The Obama administration finalized more than 29,000 new regulations over the course of eight years—one new page of regulations added every 20 minutes of his presidency.[22-23] In the average year during the Obama era, bureaucrats adopted new regulations with a price tag of more than $100 billion.[24] But these regulatory records would be shattered by the Biden administration just a few years later.

When President Trump took office, he immediately froze all proposed and pending regulations until his administration could review them.[25] The Trump administration then quickly withdrew or delayed more than 1,500 regulatory actions planned by Obama-era bureaucrats.[26] Trump issued an executive order creating a federal regulatory budget to control both the number of regulations and cost of compliance with regulations.[27] The order established a "one-in, two-out" policy, which required agencies to eliminate at least two old regulations for every new regulation, while also requiring agencies to offset any new regulatory costs with savings from deregulatory actions, effectively setting a cap on new costs.[28-29]

Trump also issued executive orders prohibiting federal agencies from issuing binding rules through regulatory and sub-regulatory guidance and requiring agencies to provide more transparency for regulations and guidance by making current guidance readily available to the public on searchable databases.[30-31] Over the course of the next four years, the Trump administration would finalize more than 500 deregulatory actions, lowering regulatory costs by nearly $200 billion.[32]



ON HIS VERY FIRST DAY IN OFFICE, BIDEN ISSUED AN EXECUTIVE ORDER UNDOING THE TRUMP ADMINISTRATION'S WORK TO ESTABLISH REGULATORY BUDGETS FOR FEDERAL AGENCIES.

But these deregulatory successes were immediately wiped out by President Biden's record-shattering regulatory spending spree. On his very first day in office, Biden issued an executive order undoing the Trump administration's work to establish regulatory budgets for federal agencies, along with several other regulatory reform initiatives.[33]

President Biden is issuing more costly regulations than any other president in modern American history. The Federal Register published more than 72,000 pages of new regulations, executive orders, and agency notices in President Biden's first year—a record high.[34] Those new regulations were also far more likely to carry a hefty price tag. In 2021, the Biden administration finalized 69 economically significant regulations—regulations that carry a $100 million annual price tag or have a substantial effect on the economy—more than triple the number finalized in President Trump's first year.[35]

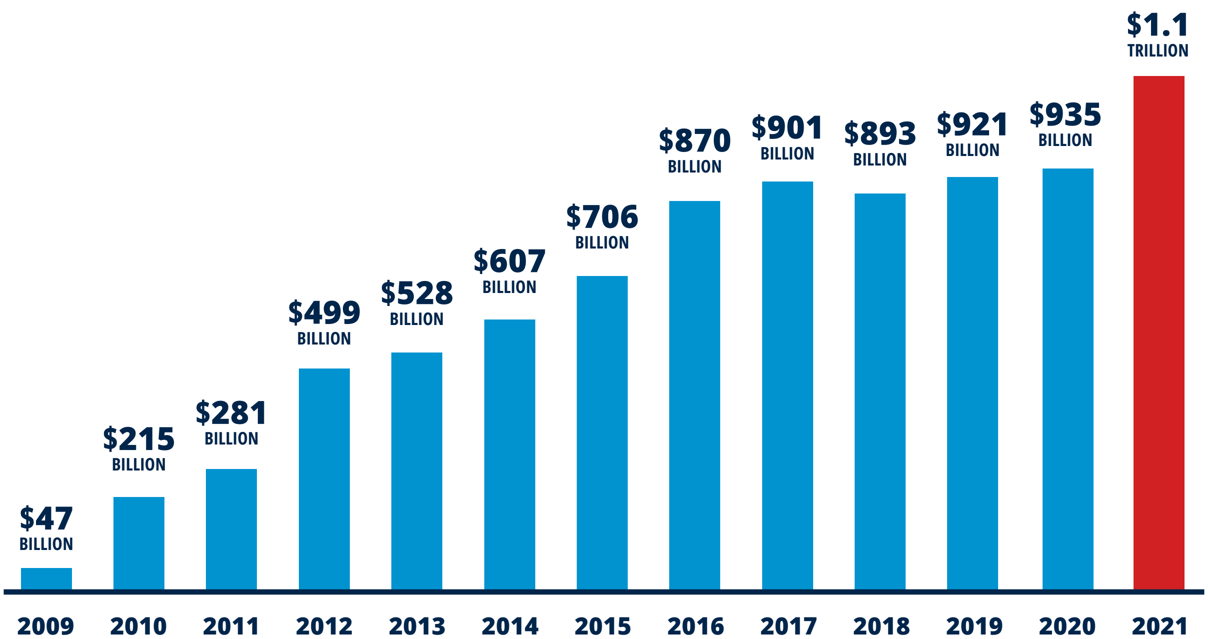
Job-Killing Regulations

President Biden has pushed through more economically significant regulations in his first year **than any other president in modern American history**.

In his first year, President Biden finalized regulations adding more than $200 billion in new regulatory costs—more than quadruple the costs added during President Obama's first year.[36] Cumulative regulatory costs have continued to climb since 2009, ballooning to $1.1 trillion under the Biden administration.[37]

NEW REGULATIONS HAVE ADDED MORE THAN $1.1 TRILLION IN COSTS SINCE 2009

Cumulative cost of new regulations since 2009, by year regulation was finalized



Source: American Action Forum

Worse yet, there is no end in sight. More than one in three regulations reviewed by Biden's Office of Information and Regulatory Affairs has been economically significant—more than double the rate of the last four administrations.[38-39]

President Biden's hyperregulation is leading to higher inflation

In 2021, inflation hit a 40-year high, with goods and services growing 7.1 percent over the year.[40] The inflation crisis has grown even worse in 2022, reaching 9.1 percent by June.[41] The Biden administration initially denied that there was even a risk of inflation, then, once it became apparent prices were rapidly rising, pivoted to promises that it would be "temporary" or "transitory."[42] Since then, the Biden administration has blamed Russia's invasion of Ukraine, oil companies, "corporate greed," and small businesses owners running local gas stations.[43-46]

Many factors are contributing to the massive inflation crisis facing everyday Americans. Expanded welfare benefits and the elimination of commonsense work requirements have exacerbated labor shortages that are driving up costs for businesses.[47] The massive increase in government spending, with President Biden's $1.9 trillion American Rescue Plan Act serving as a capstone, has played a major role.[48] Issuing moratoriums on oil and natural gas leases, revoking permits for drilling and pipelines, promoting schemes to choke off access to capital for domestic energy companies, and other tactics in President Biden's war on energy have also added fuel to the inflation fire.[49-53]

But one area that gets virtually no attention is the impact of the Biden administration's regulatory spending spree.[54]

When Washington, D.C. wraps the economy in red tape, businesses must spend massive sums on compliance. Every dollar that goes toward hiring lawyers, filling out paperwork, and redesigning products and assembly lines gets passed to consumers through higher prices. In fact, increasing federal regulations by 15 percent leads to cost hikes of consumer goods and services by a full percentage point.[55] The Biden administration's regulation obsession will only drive prices and inflation higher.

THE BIDEN ADMINISTRATION'S REGULATION OBSESSION WILL ONLY DRIVE PRICES AND INFLATION HIGHER.

Congress must rein in out-of-control regulations

Unable to secure his major policy changes through Congress after Democrats lost control of the House and then the Senate, President Obama famously quipped that he did not need to wait for legislation, because he had "a pen and a phone."[56] He elaborated that he would use that pen to "take executive actions where Congress won't."[57] President Biden appears to be following the same path, despite Democrats having control over both chambers of Congress.

But this "pen and phone" strategy only works because Congress has delegated far too much legislative authority to unchecked and unaccountable bureaucrats in federal agencies. Thankfully, Congress can rein in these out-of-control regulations by reasserting its legislative authority over major policy decisions. Recent Supreme Court decisions have affirmed that such major policy decisions rest with Congress itself, and bureaucrats cannot abuse vague, decades-old statutes to impose present-day regulations on the American people.[58]

> **Congress could begin reining in costly regulations by requiring all major rules—such as those with a price tag larger than $100 million per year—to receive congressional and presidential approval to take effect.**

Congress could begin reining in costly regulations by requiring all major rules—such as those with a price tag larger than $100 million per year—to receive congressional and presidential approval to take effect.[59-63] Congress must rein in Biden's out-of-control regulatory spending spree before it gets worse. Fortunately, federal lawmakers can build on lessons learned by states and restore legislative oversight and accountability over costly rules.

Congress can learn from states' regulatory reforms

Federal policymaking is often built on a foundation of lessons learned from states, and regulatory reform is no different. Florida, West Virginia, and Wisconsin are just some of the states that require legislative approval for major regulatory actions.[64-66]

FEDERAL POLICYMAKING IS OFTEN BUILT ON A FOUNDATION OF LESSONS LEARNED FROM STATES, AND REGULATORY REFORM IS NO DIFFERENT.

In West Virginia, an agency is "deemed to be applying to the Legislature for permission" when proposing a rule in order to promulgate the rule.[67-69] Accordingly, virtually all rules must be approved by the legislature before going into effect. Proposed rules are submitted for initial review to the Legislative Rule-Making Review Committee, which then makes recommendations to the full legislature to authorize the proposed regulations in full or in part, amend, withdraw, or reject.[70-71] If the legislature does not approve the regulation, it does not go into effect.[72]

In Florida, rules that have an adverse economic impact or regulatory costs exceeding $1 million over five years can only take effect if they are ratified by the legislature through a bill.[73-74] As a result, proposals for costly rules are subject to the political process entailed by Florida's legislative session. By only requiring legislative approval of rules that adversely affect the economy or increase regulatory costs, Florida has created a deregulatory ratchet of sorts. Governors can work to reduce burdensome regulations without legislative approval, but agencies creating new costly regulations must work with the legislature.

Over the years, Florida lawmakers have continued to build on the state's proven track record of deregulation. During then-Governor Rick Scott's first six years in office, his administration repealed nearly 5,000 regulations, reducing red tape for Floridians.[75]

DURING THEN-GOVERNOR RICK SCOTT'S FIRST SIX YEARS IN OFFICE, HIS ADMINISTRATION REPEALED NEARLY 5,000 REGULATIONS.

Just as Florida utilizes an economic threshold in its model, in Wisconsin, rules with $10 million in compliance costs over the course of two years can only take effect if lawmakers pass new legislation authorizing those regulations.[76] The legislature's Joint Committee for Review of Administrative Rules may also indefinitely object to a proposed regulation, blocking the rule until lawmakers pass new legislation authorizing it.[77]

Though state models are not always applicable at the federal level, Congress can build on the lessons learned from states' regulatory reform efforts to restore oversight, accountability, and legislative authority over costly regulations.[78] Florida, West Virginia, and Wisconsin are just a few states that have established a form of legislative approval for regulatory actions, with Arkansas, Colorado, Maine, and Utah having similar requirements.[79-85]

THE BOTTOM LINE: Federal lawmakers should rein in costly rules to restore legislative oversight and accountability.

Inflation is soaring, and Americans are struggling with the high cost of everyday items like groceries and gas. Even worse, President Biden is on an out-of-control regulatory spending spree with no end in sight. Just in his first year, Biden finalized regulations adding more than $200 billion in new regulatory costs.[86] This is more than four times the costs added during Obama's first year.[87]

Thankfully, Congress can rein in out-of-control regulations with a simple, commonsense solution. States have laid the groundwork by requiring legislative approval of major rules. Federal lawmakers should build on lessons learned by states and require approval of all major rules to restore accountability and oversight.

> **Federal lawmakers should build on lessons learned by states and require approval of all major rules to restore accountability and oversight.**

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64. Florida Statutes § 120.541(3) (2021), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100.0199/0120/Sections/0120.541.html.
65. West Virginia Code § 29A-3-9 (2022), https://code.wvlegislature.gov/pdf/29A-3-9.
66. Wisconsin Statutes § 227.139 (2022), https://docs.legis.wisconsin.gov/statutes/statutes/227/ii/139.
67. West Virginia Code § 29A-3-2 (2022), https://code.wvlegislature.gov/pdf/29A-3-2.
68. West Virginia Code § 29A-3-9 (2022), https://code.wvlegislature.gov/pdf/29A-3-9.
69. These regulatory review requirements apply to "legislative rules," defined by West Virginia law as rules with the force of law, rules that supply a basis for the imposition of civil or criminal liability, or rules that grant or deny a specific benefit.

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