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# How Lawmakers Can Rein in Regulations Like the Student Loan Bailout

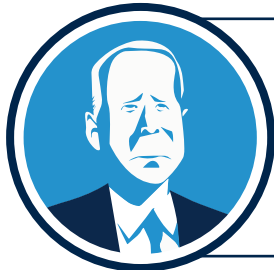
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# KEY FINDINGS



**THE STUDENT LOAN SCHEME COULD  
COST TAXPAYERS MORE THAN \$1 TRILLION.**



**THE BIDEN ADMINISTRATION USED FACT SHEETS  
AND A PRESS RELEASE TO PUSH A COSTLY  
PROGRAM AND SIDESTEP CONGRESS.**



**FEDERAL LAWMAKERS SHOULD PASS THE  
REINS ACT TO REQUIRE CONGRESSIONAL  
APPROVAL OF COSTLY REGULATIONS  
BEFORE THEY CAN TAKE EFFECT.**

## THE BOTTOM LINE:

**CONGRESS CAN REIN IN COSTLY RULES AND COMBAT  
UNLAWFUL AGENCY GUIDANCE BY REQUIRING  
APPROVAL BEFORE REGULATIONS ARE IMPLEMENTED.**

## Overview

In August 2022, President Biden announced the latest in his record-breaking spending spree—his plan to push hundreds of billions of dollars in student loan bailouts.<sup>1-2</sup> The Biden administration's sweeping plan would wipe out up to \$20,000 in student loans for millions of borrowers.<sup>3-4</sup> President Biden all but admitted the plan was illegal.<sup>5</sup> Unsurprisingly, the administration announced their plan shortly before hotly contested midterm elections.<sup>6-7</sup>

All told, the plan could carry a price tag of more than \$1 trillion over 10 years.<sup>8</sup> Hardworking Americans—including people that decided not to go to college or who have already paid off their student loans—will be left footing the bill.<sup>9</sup>

Multiple lawsuits were filed to halt the Biden administration's legally questionable student loan cancellation plan, with the Supreme Court hearing *Biden v. Nebraska* in early 2023.<sup>10-12</sup> Regardless of the case outcome, there are commonsense policies that could have put an end to the \$1 trillion scheme.



**REGARDLESS OF THE CASE OUTCOME, THERE ARE  
COMMONSENSE POLICIES THAT COULD HAVE  
PUT AN END TO THE \$1 TRILLION SCHEME.**

Federal lawmakers should pass the Regulations from the Executive in Need of Scrutiny (REINS) Act to require congressional approval of regulations that cost \$100 million or more before they can take effect. Congress should also provide clarity that guidance—like the Biden administration's student loan cancellation plan—is subject to the Congressional Review Act (CRA). To prevent bureaucrats from sidestepping the congressional review process, Congress should require significant guidance to undergo the rulemaking process. Strengthening legislative oversight on executive actions will protect taxpayers and rein in out-of-control spending.

## The Biden administration's student loan plan could cost taxpayers more than \$1 trillion

The current U.S. national debt hovers around a staggering \$31.5 trillion.<sup>13</sup> Yet President Biden is on a record-shattering spending spree. Under the Biden administration, bureaucrats have issued more costly regulations than any other president in modern history.<sup>14</sup> In 2021, agencies finalized 69 major regulations—regulations with an annual \$100 million price tag.<sup>15</sup> In just his first year, President Biden added more than \$200 billion in new regulatory costs.<sup>16</sup>

The administration's student loan scheme will only continue to fuel record-breaking federal spending.<sup>17</sup> According to the Penn Wharton Budget Model, the total price tag for the plan could be more than \$1 trillion over the next 10 years.<sup>18</sup> Worse yet, the actual cost of the plan could reach even higher.

## The Biden administration used fact sheets and a press release to sidestep Congress

Congress must authorize agencies to issue a rule. Rules have the force and effect of law, so must go through notice-and-comment procedures to allow for public input. Guidance is not subject to the same procedures as notice-and-comment rules, as it is not supposed to substantively change the law.

Guidance comes in a variety of forms, such as press releases, fact sheets, frequently asked questions, and memos. Given the lack of obstacles, agencies may use guidance to sidestep safeguards like notice and comment.<sup>19</sup> While guidance documents are not subject to the same procedural requirements as rules, they can in effect be legally binding, which allows agencies to call something “guidance” that functions like a rule.<sup>20</sup>

The Biden administration went a step further with its use of unlawful guidance by using it to thwart a citizen lawsuit. President Biden used guidance like fact sheets and a press release to initiate the costly program.<sup>21</sup> In September 2022, a citizen lawsuit was filed over the mass student loan cancellation program, and the Biden administration retroactively altered the details of the issued guidance on government websites to try to avoid litigation.<sup>22</sup>



**THE BIDEN ADMINISTRATION WENT A STEP FURTHER WITH ITS USE OF UNLAWFUL GUIDANCE BY USING IT TO THWART A CITIZEN LAWSUIT.**

## Congress can combat unlawful agency guidance

The CRA allows Congress to use expedited procedures to pass legislation to disapprove regulations.<sup>23</sup> Under the CRA, Congress can use the fast-track procedures to overturn regulations if agencies submit them to Congress.<sup>24</sup> Guidance documents are subject to the CRA—however, while agencies consistently submit notice-and-comment rules, they are less consistent in submitting guidance to Congress.<sup>25</sup>

Right now, Congress must pass legislation to disapprove a regulation. Federal lawmakers should strengthen the congressional review process by requiring major regulations—those with an annual price tag of \$100 million or more—to be approved by Congress before they can take effect.



**Federal lawmakers should strengthen the congressional review process by requiring major regulations—those with an annual price tag of \$100 million or more—to be approved by Congress before they can take effect.**



Federal lawmakers should also clarify that guidance documents are subject to the congressional review process. Though Congress has overturned guidance using congressional review procedures, it could strengthen regulatory oversight by making clear that review requirements apply to more than notice-and-comment rules.<sup>26</sup>

Unlike rules, guidance documents are not subject to the full notice-and-comment process. As a result, agencies may fail to submit costly guidance for congressional review.<sup>27</sup> To ensure agencies submit the most expensive regulations for review, Congress should force agencies to follow notice-and-comment procedures when issuing significant guidance that carries a price tag of at least a \$100 million.

## **THE BOTTOM LINE: Congress can rein in costly rules and combat unlawful agency guidance by requiring approval before regulations are implemented.**

Lawmakers should act to prevent agencies from using guidance to skirt Congress and public input. Multiple lawsuits were filed to stop the Biden administration's student loan bailouts, with the Supreme Court taking up *Biden v. Nebraska* in early 2023.<sup>28-30</sup> Regardless of the outcome, there are commonsense policies that could have stopped the \$1 trillion regulatory initiative.



**Lawmakers should act to prevent agencies from using guidance to skirt Congress and public input.**



Congress can prevent future potential vote-buying schemes by requiring congressional approval of costly rules and guidance before they are implemented. **Federal lawmakers should pass the REINS Act to require congressional approval of regulations costing \$100 million or more.** Lawmakers should also strengthen oversight on bureaucrats by clarifying that guidance documents are subject to the congressional review process and forcing agencies to follow notice-and-comment procedures when issuing significant guidance.

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