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AmericansforProsperity.org

November 9, 2021

Dear Member of Congress,

On behalf of Americans for Prosperity (AFP), I write in support of efforts to utilize the Congressional Review Act (CRA) to disapprove recent federal mandates issued under the Occupational Safety and Health Act, President Biden's [Executive Order 14042](#), and other authorities. While this letter focuses on the Occupational Safety and Health Administration's (OSHA) [COVID-19 Vaccination and Testing Emergency Temporary Standard](#) (ETS) published in the Federal Register on November 5, AFP's concerns extend to [new requirements for federal contractors](#) as well as the Centers for Medicare & Medicaid Services' (CMS) [Interim Final Rule](#) (IFR). AFP believes that [this executive overreach erodes trust when we need it most](#), and reflects an overly broad approach to our public health challenges. Resolutions of disapproval under the CRA represent an appropriate response for legislative accountability, reflecting the limited authority granted to the executive branch.

As reflected in OSHA's ETS, these heavy-handed mandates exceed agencies' statutory authority as well as eliminate or severely limit the opportunity for public participation in the rulemaking process. Congress explicitly rejected provisions directing OSHA to adopt a mandate like this in the America Rescue Plan Act of 2021 and other legislation related to COVID-19. The rulemaking process for these mandates also raise significant questions about the timing and arbitrariness of this exercise of governmental power. Both the OSHA ETS and the CMS IFR were issued, and made effective, prior to the opportunity for public notice and comment, even though both were developed months after the availability of FDA-approved vaccines, weeks after President Biden's September directive, and compliance deadlines have been delayed until January. The federal government has [missed numerous opportunities](#) to use existing emergency authorities to reduce red tape and unnecessary permitting requirements that could help facilitate economic recovery and public health.

These rules are also inconsistent with multiple federal laws and executive orders designed to ensure transparency and a regulatory system that maximizes benefits while minimizing unnecessary costs. OSHA acknowledges that this is a "major" and "economically significant" regulation that could cost entities, including many small businesses, tribal entities, and state/local governments, tens of thousands of dollars to implement. However, the agency has failed to satisfy requirements to meaningfully engage with these entities (including under the Regulatory Flexibility Act, Executive Order 13175, and Executive Order 13132) or to fully evaluate alternatives, including less restrictive options, and the cost-effectiveness of this approach (requirements under Executive Order 12866 and the Office of Management and Budget's Circular A-4). In addition, the Biden administration has also demonstrated further federal overreach and inconsistency with cooperative federalism by [threatening three](#) of the [22 states with state-run occupational safety and health programs](#) (Arizona, South Carolina, and Utah) for failure to implement the previous COVID-19 ETS.

The CRA represents the right tool for Congress to respond to this overreach. AFP supports the legislative accountability that should accompany mandates of this significance.

AFP appreciates efforts by Congress to limit this federal and executive branch overreach, and we look forward to working with your office toward ensuring accountability through the CRA.

Sincerely,