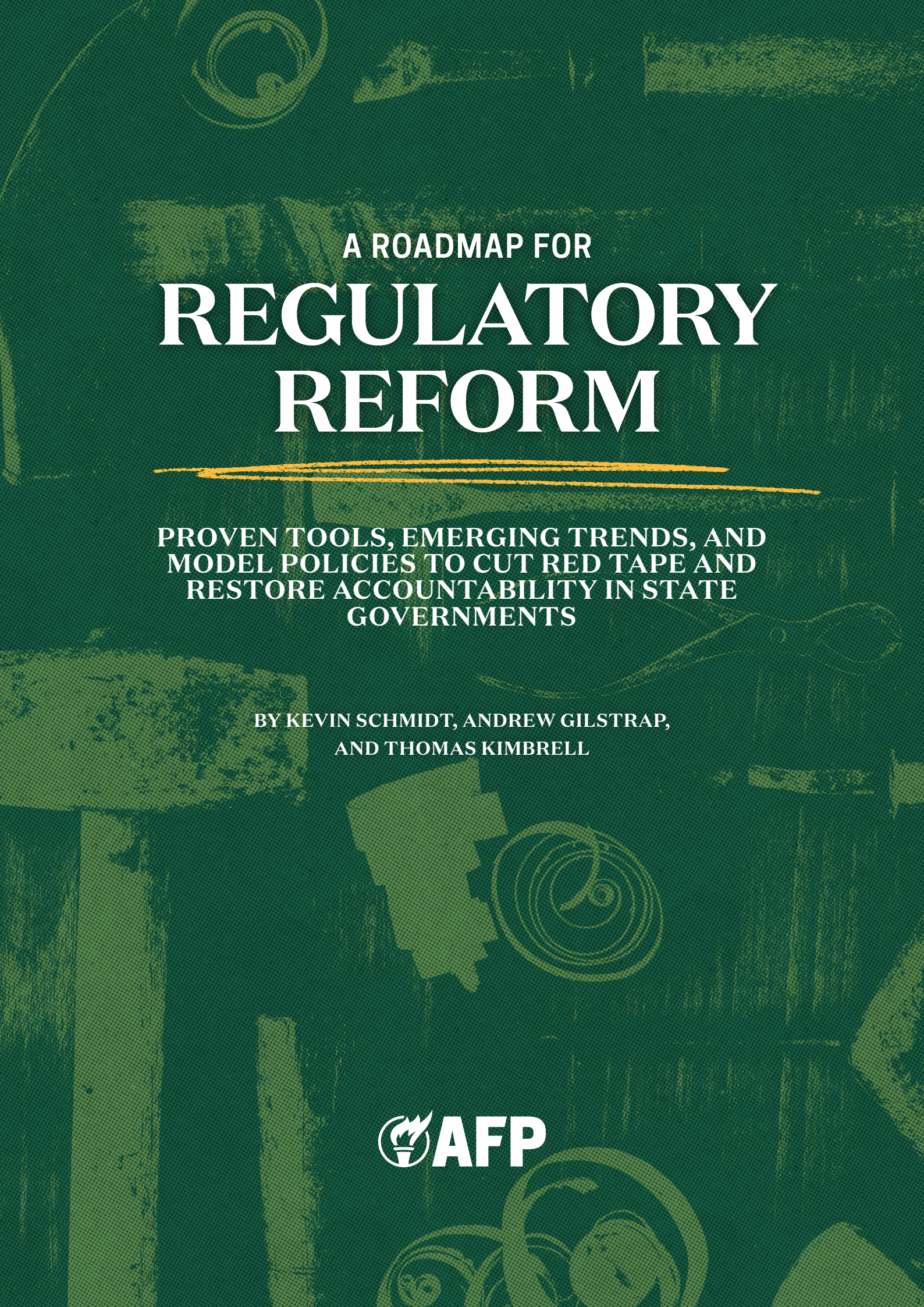


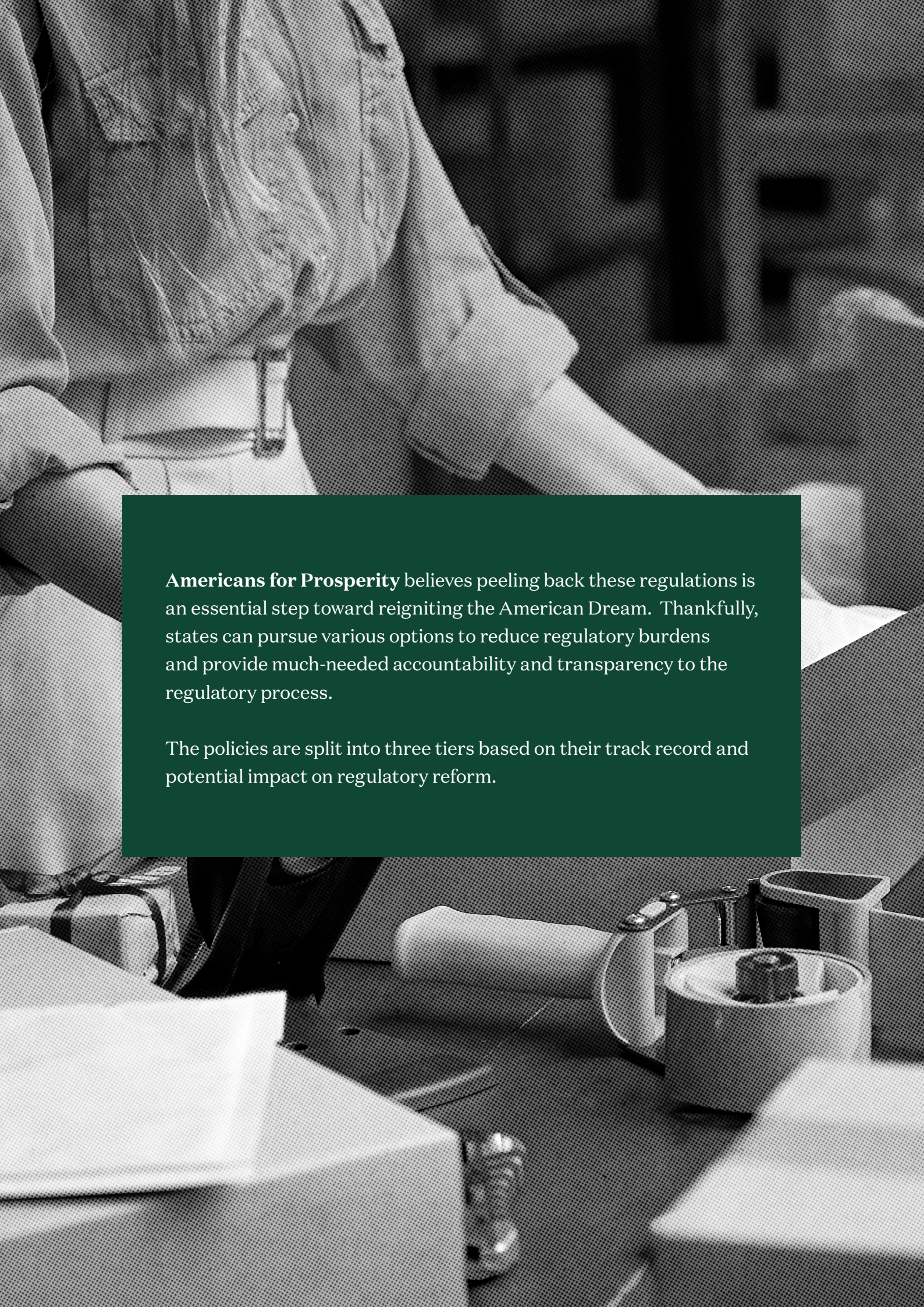
A ROADMAP FOR REGULATORY REFORM

PROVEN TOOLS, EMERGING TRENDS, AND MODEL POLICIES TO CUT RED TAPE AND RESTORE ACCOUNTABILITY IN STATE GOVERNMENTS

BY KEVIN SCHMIDT, ANDREW GILSTRAP, AND THOMAS KIMBRELL

AFP

Across the United States, millions of regulations and restrictions are holding back innovation, entrepreneurship, and prosperity.



Americans for Prosperity believes peeling back these regulations is an essential step toward reigniting the American Dream. Thankfully, states can pursue various options to reduce regulatory burdens and provide much-needed accountability and transparency to the regulatory process.

The policies are split into three tiers based on their track record and potential impact on regulatory reform.

TIERS

3 TIERS OF REGULATORY REFORM

TIER 1: High Impact Reforms

- **REINS Act:** Nine states have adopted laws requiring legislative approval for major regulations, ensuring costly rules receive democratic oversight.
- **Ending Judicial Deference:** Seventeen states have eliminated or limited judicial deference to agency interpretations of law, thereby restoring judicial independence and fairness in regulatory disputes.
- **Regulatory Sunset Laws:** Six states require periodic review and automatic expiration of regulations, reducing outdated or redundant rules. Texas' program has eliminated 42 agencies and saved over $1 billion since 1977. Sixteen states have a limited regulatory sunset, typically related to the reauthorization of various boards and commissions.

TIER 2: Targeted Reforms

- **Regulatory Budgeting:** Four states have implemented or experimented with caps or offset requirements on regulatory burdens (e.g., requiring the elimination of three regulations for every new one). These systems limit cumulative red tape by requiring cost offsets for new rules.

- **Red Tape Reduction Programs:** Six states have implemented goal-oriented efforts — often through executive orders — to reduce discretionary rules by a set percentage, usually around 25%.

TIER 3: Emerging Opportunities

- **Regulatory Sandboxes:** Sixteen states have experimented with universal or industry-specific sandboxes to foster innovation by temporarily waiving regulatory requirements.

- **Transparency for State and Federal Guidance Documents:** Currently, only Alaska and Virginia publicly disclose guidance documents that shape agency policy. AFP recommends a model policy requiring state agencies to publish these directives in an indexed, centralized portal online.

- **Bureaucrats Pay Attorney's Fees for Rights Violations:** States should require agencies to pay attorney's fees when a citizen successfully challenges an agency action, especially in cases where the agency acted outside its legal authority or in bad faith.

- **Explicit Legislative Authorization for Rule Promulgation:** Agencies should not be permitted to issue binding rules based on broad or vague statutory purposes; they must have specific rulemaking authority granted by the legislature.

- **State Regulations Not Exceeding Federal Standards:** States should prohibit state agencies from adopting regulations that are more stringent than federal standards, unless they meet a strict set of conditions.

- **Robust Standing Committee Oversight:** State legislatures should create strong standing committees to oversee, review, and approve agency rulemaking.

  This report provides model legislation, success stories, and additional resources to equip reform-minded policymakers. While many tools require executive or legislative action to be effective, sustained use and refinement based on data and experience are critical to long-term success.

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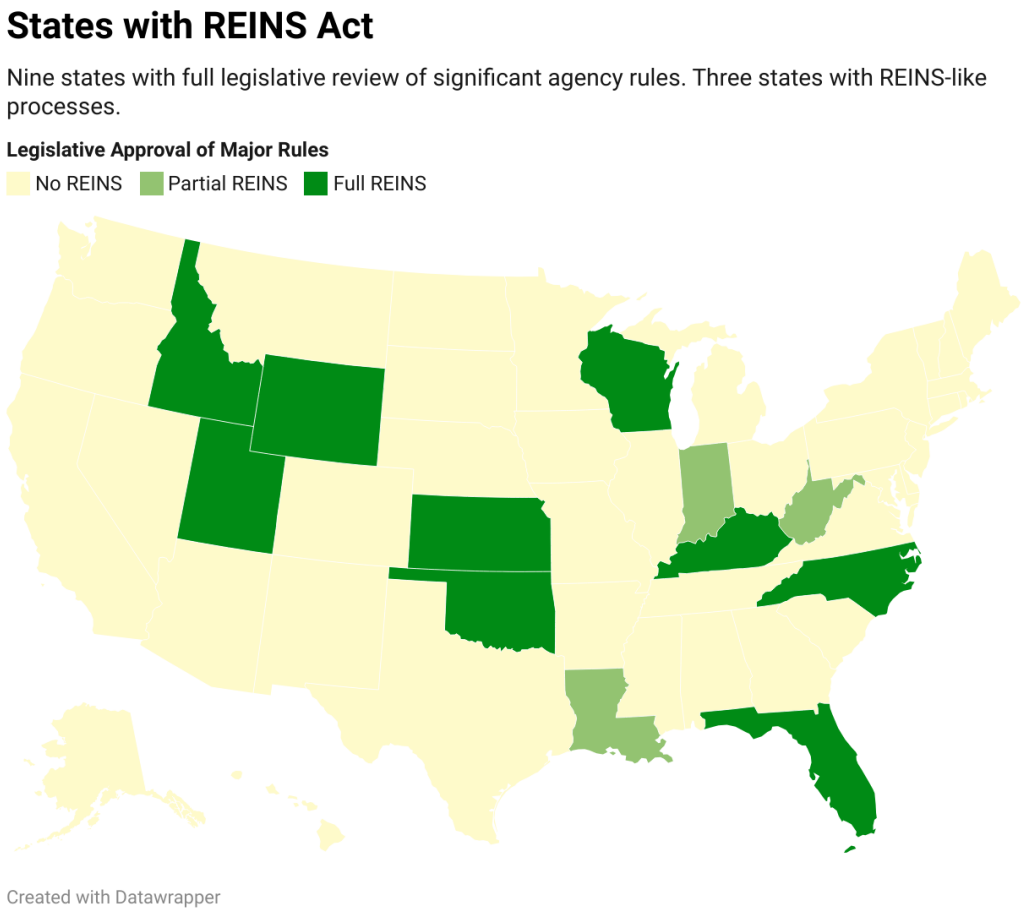
TIER 1

HIGH IMPACT REFORMS

REINS Act

(Regulations from the Executive in Need of Scrutiny)



- Nine states with full legislative review of significant agency rules (Idaho reviews all rules).
- Three states with REINS-like processes.

One of the most impactful ways to prevent the imposition of substantial regulatory burdens is by enacting a reform proposal commonly known as the REINS Act. This reform not only slows the growth of new regulatory burdens but also ensures that democratically elected representatives have a voice in the rulemaking process.

REINS involves two main elements:

1. **Independent Economic Impact Review:** Every proposed regulation must be studied by independent bodies to determine its likely economic impact. Often housed within the state legislature, these bodies analyze the benefits and costs of proposed regulations on affected industries and communities.

2. **Legislative Approval Required for Major Rules:** Regulations are categorized as either major or minor based on their impact. Minor regulations fall below a certain threshold of impact and are vulnerable to a legislative disapproval resolution. Any member of the legislature can submit such a resolution. Regulations exceeding the threshold are categorized as *major* and require approval from both legislative chambers before implementation.

State Success Stories

Several states, including Florida, Indiana, Kansas, Oklahoma, and Wisconsin, have implemented all or part of this legislative reform.

Florida
Florida's law, enacted in 2010, coincided with a period of substantial economic expansion. According to the Foundation for Government Accountability:

> [I]n Florida, the commissioner of agriculture is an elected state official not under the policy direction of the governor. In 2021, then-commissioner Nikki Fried attempted to initiate a statewide ban on Styrofoam. The Styrofoam ban worked its way through Florida's rulemaking process and would have cost more than $1 million over five years, triggering Florida's legislative approval requirement. The legislature opted not to approve the rule, and the Styrofoam ban — and its high costs for Florida taxpayers — was defeated.

Without REINS, this million-dollar rule change would have been implemented unopposed. It would have cost taxpayers, and they would have had no say whatsoever. REINS ensures there are no costly regulations without representation.

Wisconsin
Wisconsin's REINS Act has defeated high-cost regulations, brought transparency to the rulemaking process, and tempered agency overreach. Agencies proposing rules with

a compliance cost exceeding $10 million over two years must obtain legislative approval before implementation.

For example, in 2022, Wisconsin's Department of Natural Resources proposed new PFAS drinking water standards that would have imposed significant costs on municipalities and utilities. The proposal triggered the REINS threshold, prompting legislative review and broader public scrutiny. As a result, the rule was revised to reduce its economic impact.

In a similar case, an unnecessary utility infrastructure regulation, proposed in 2021 by the Public Service Commission, would have cost ratepayers tens of millions. REINS forced a cost estimate and allowed lawmakers to stop the rule before it imposed undue financial burdens. The Act also altered agency behavior: When the Department of Agriculture considered a licensing overhaul that neared the cost limit, the agency revised the plan proactively to avoid triggering legislative intervention.

Model Policies and Resources

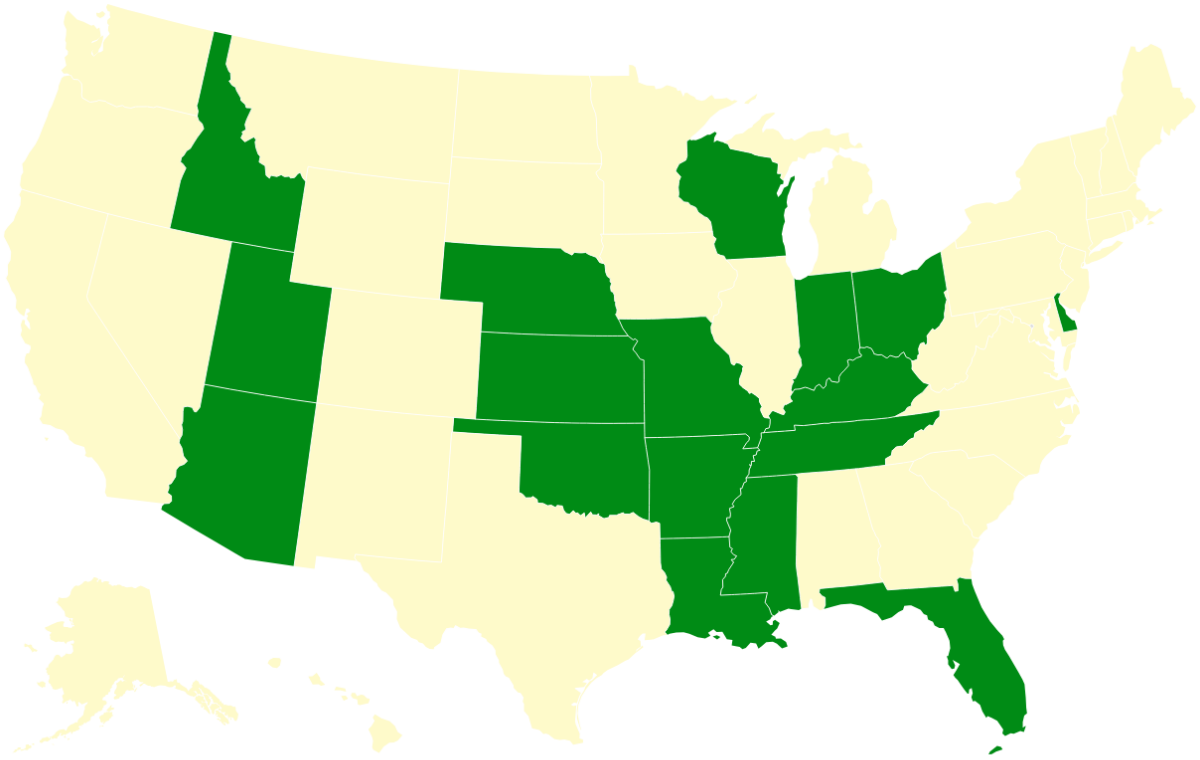
The REINS Act puts the brakes on runaway regulation by requiring legislative approval for major rules. It's a proven, constitutional way to protect taxpayers, restore democratic accountability, and ensure the regulatory state serves — not bypasses — the people.

- Pacific Legal Foundation:
  - Model State REINS Act and Backgrounder
  - Legislative Oversight of Regulations: A 50-State Survey
- Ballotpedia: Overview of State REINS Laws
- Foundation for Government Accountability: Why the REINS Act?
- Examples of Current State REINS Laws:
  - Kansas REINS (2024): House Bill 2648
  - Florida REINS (2010): Chapter 2010-279
  - Indiana REINS-style law (2024): Senate Enrolled Act 4

Ending Judicial Deference to State Agencies

States that Ended Judicial Deference

17 states ended judicial deference to state agencies. In the past two years, seven states enacted legislation ending judicial deference.



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- 17 states ended judicial deference to state agencies.
    - Six state judiciaries limited deference to agencies.
    - 10 states enacted legislation limiting deference to agencies.
    - One state, Florida, limited deference through a ballot measure.
- In the past two years, seven states enacted legislation ending judicial deference.

In many states, courts and judges improperly defer to regulatory agencies. This systemic bias against citizens undermines equality before the law and abdicates the judiciary's duty to interpret the law.

In 2024, the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* ended *Chevron* deference, a legal doctrine that tipped the scales in favor of federal agencies. States should also end systemic bias in state courts in favor of state agencies.

Model Language to Restore Judicial Independence

Pacific Legal Foundation:

> In interpreting a state statute, regulation, or other sub-regulatory document, a state court or an officer hearing an administrative action may not defer to a state agency's interpretation of it, and must instead interpret its meaning and effect de novo. In actions brought by or against state agencies, after applying all customary tools of interpretation, the court or hearing officer must exercise any remaining doubt in favor of a reasonable interpretation which limits agency power and maximizes individual liberty.

This model ensures that citizens — not agencies — get the benefit of the doubt when the law is unclear.

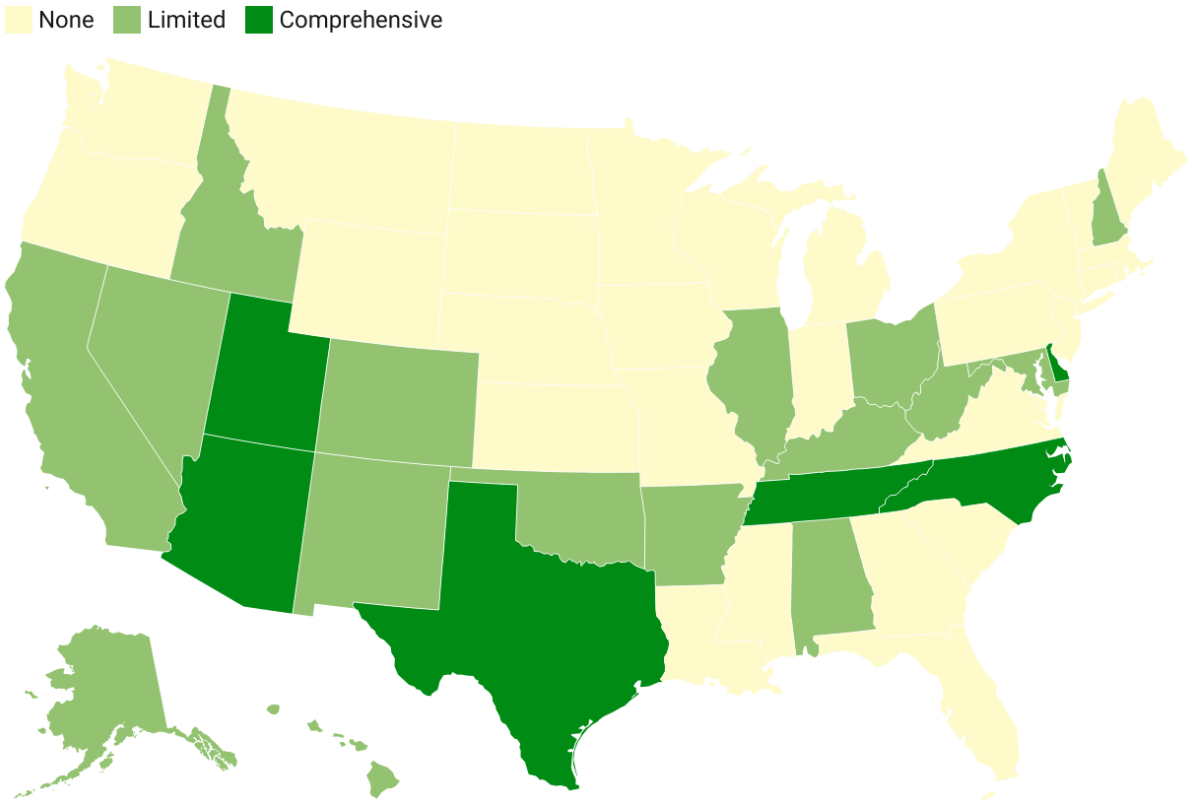
Resources

- Pacific Legal Foundation: State Deference Map
- Example Legislation Ending Judicial Deference
  - Oklahoma (2025): Enrolled House Bill No. 2729
  - Idaho (2024): House Bill No. 626

Regulatory Sunsets

States with Regulatory Sunsets

Six states have a comprehensive regulatory sunset whereby all agencies or regulations are subject to sunset review. 16 states have a limited regulatory sunset, generally related to reauthorizing various boards and commissions



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- Six states have a comprehensive regulatory sunset whereby all agencies or regulations are subject to sunset review.
- 16 states have a limited regulatory sunset, generally related to reauthorizing various boards and commissions.

While some regulations may be valuable and necessary, times change, resulting in outdated or redundant regulations. Instituting sunset provisions ensures regulations are reviewed regularly and obliges agencies to update or remove regulations that are no longer necessary or effective. Sunset provisions generally stipulate that all new

regulations expire five to 10 years after their implementation and often outline a process by which older existing regulations should be reviewed at regular intervals as well.

State Success Stories

Texas
Texas' sunset law serves as a model for efficiently managing the scope of government. Established in 1977, the Sunset Advisory Commission oversees a 12-year review cycle for state agencies, requiring them to justify their existence and operations. Through public hearings and performance evaluations, the process ensures agencies remain focused, efficient, and necessary.

Since its inception, this program has abolished 42 agencies, restructured over 50 agencies, and saved taxpayers over $1 billion, returning $16 for every dollar spent. Beyond fiscal savings, the sunset process fosters transparency, accountability, and a culture of efficiency within state government.

Research indicates that states with sunset laws achieve lower government spending and improved public services due to regular oversight. Texas' success demonstrates the value of applying sunset laws broadly, leveraging predictable review cycles, objective criteria, and public participation. This approach helps government remain effective, responsive, and free of unnecessary regulatory bloat.

Model Policies and Resources

- Cicero Institute:
    - Policy Memo
    - Model Legislation
    - Sunset and Cost Benefit Analysis Reforms in the State Regulatory Process
- American Legislative Exchange Council: Regulatory Sunset Act Model Policy
- Texas Sunset Advisory Commission: Impact of Sunset Reviews
- Pacific Legal Foundation: The Regulatory Sunset Act

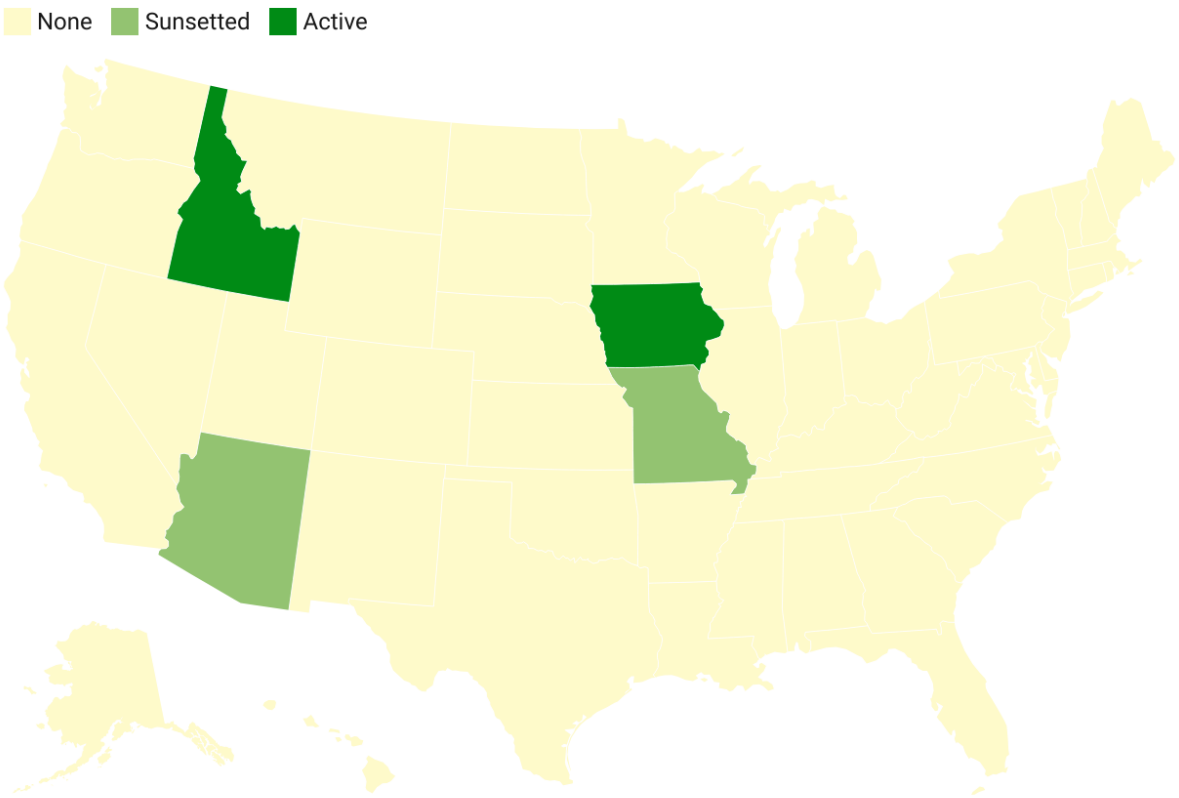
TIER 2

SECONDARY TARGETS

Regulatory Budgeting

States with Regulatory Budgeting

Two states have an active regulatory budget. Two states recently sunsetted their regulatory budgets when the executive branch changed control.



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- Two states have an active regulatory budget.
- Two states recently sunsetted their regulatory budgets when the executive branch changed control.

Regulatory budgeting is a valuable method by which states can reduce the rate of regulatory accumulation. The concepts are relatively simple but have a remarkable ability to alter the way regulators make decisions. One option is for the governor or legislature to set an annual cap on the total amount of new compliance costs associated with regulations, both at a government-wide and agency-specific level. These caps serve as guardrails for agencies as they consider which regulations to implement. Similarly, a state could require the repeal of a certain number of existing regulations before a new rule goes into effect.

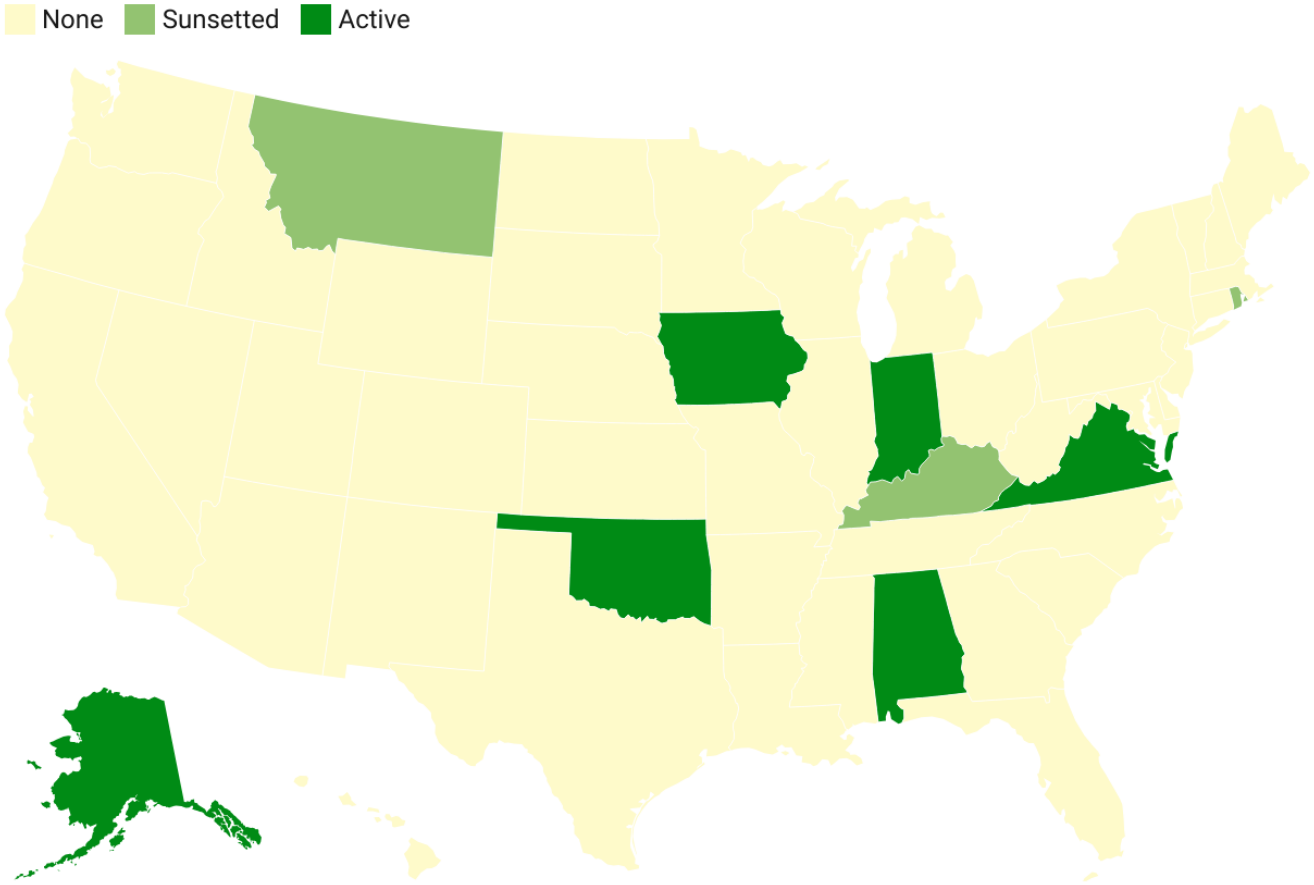
Model Policies and Resources

- Mercatus Center: QuantGov
- Ballotpedia: Regulatory budget
- James Broughel: The Regulatory Budget in Theory and Practice: Lessons from the U.S. States
- Examples of Regulatory Budgeting in the States:
  - Arizona (2020 — no longer active): If the government ever deems a new regulation absolutely necessary, it must first identify three others to eliminate. The result: New regulations will naturally mean fewer regulations.
  - Idaho Executive Order No. 2020-01 on Zero-Based Regulation (2020): "The new rule chapter that the agency finalizes must reduce the overall regulatory burden, or remain neutral, as compared to the previous rule chapter."
  - Iowa Executive Order Number 10 (2023): "Each new rule chapter finalized by the agency must reduce the overall regulatory burden, or remain neutral, as compared to the previous rule chapter."

Red Tape Rollbacks

States with Red Tape Reduction Programs

Six states have a red tape reduction program announced by their governors. Two states recently sunsetted their programs when the executive branch changed control.



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- Six states have a red tape reduction program announced by their governors.
- Two states recently sunsetted their programs when the executive branch changed control.

States should consider implementing red tape reduction initiatives to promote economic growth, streamline government, and foster prosperity to improve the lives of residents and small businesses. Regulatory codes in many states have grown steadily over decades, often without a comprehensive review or clear justification for individual rules.

Red tape reduction programs, such as those implemented in Alabama, Indiana, and Virginia, aim to eliminate outdated, duplicative, or overly burdensome regulations — often with a targeted reduction goal (e.g., 25%). These efforts can restore accountability, boost competitiveness, and ensure regulations serve the public rather than entrench bureaucracy or special interests.

While often implemented via executive orders, codifying frameworks for red tape reduction would create continuous mechanisms for regulatory oversight and promote long-term regulatory discipline and transparency across administrations.

Model Policies and Resources

- Alabama Executive Order No. 735 (2023): "[T]he executive branch of state government will endeavor, over the next two years, to reduce by twenty-five percent the number of discretionary regulatory restrictions on citizens and businesses found in the Alabama Administrative Code."

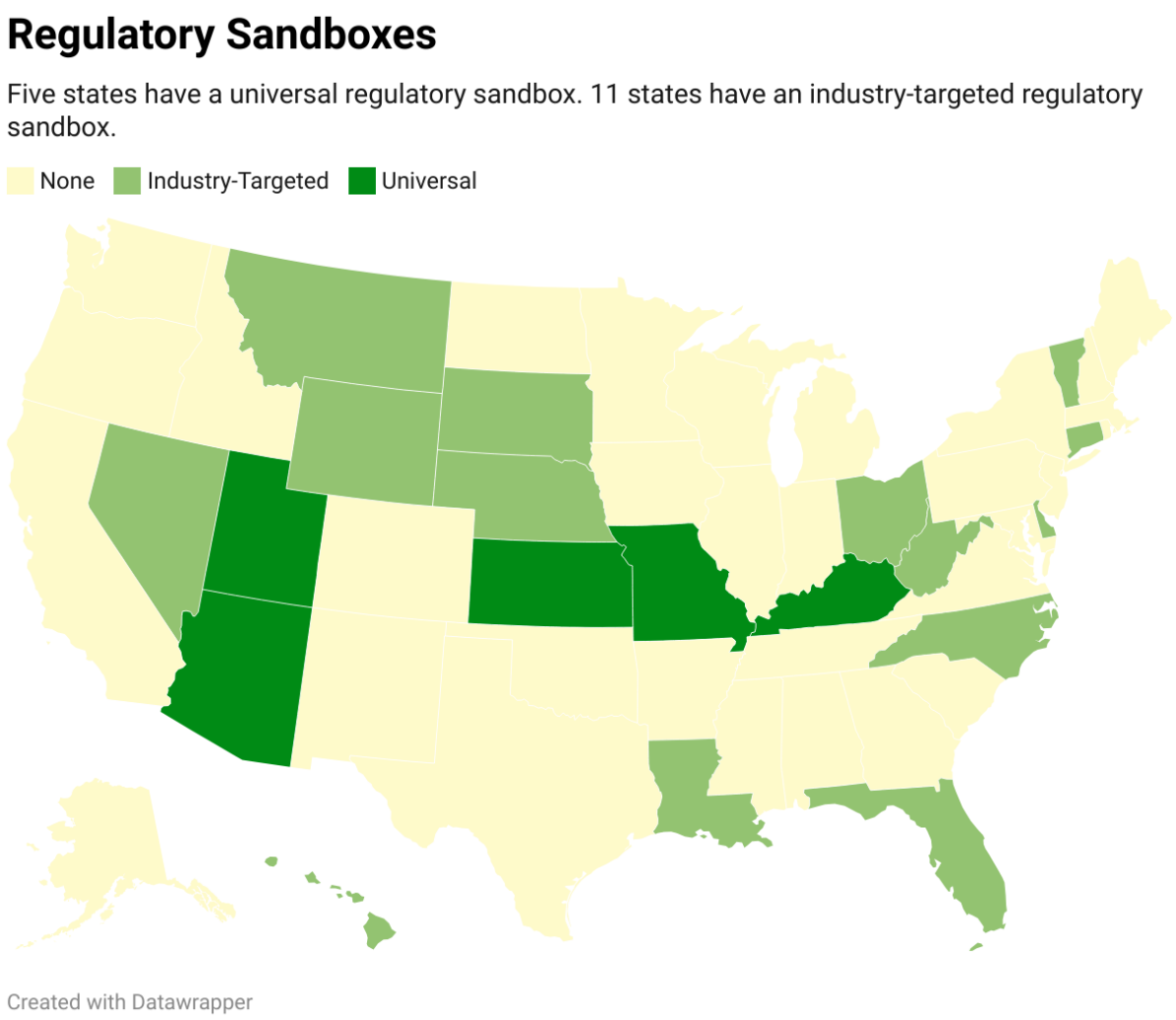
- Indiana Executive Order 25-17 (2025): "OMB is directed to establish policies and procedures for readoption review consistent with Indiana Code 4-22-2.6 and this Executive Order that include: The oversight and implementation of a 25% reduction in regulatory requirements for each agency by January 1, 2029."

- Virginia Executive Directive Number One (2022): "I hereby direct all Executive Branch entities under my authority to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."

TIER 3

OPPORTUNITIES

Regulatory Sandboxes



- Five states have a universal regulatory sandbox.
- 11 states have an industry-targeted regulatory sandbox.
- Three states have sunsetted their regulatory sandbox.

Rather than take punitive action against an innovative business, regulators should take a more hands-off, permissionless approach to new ideas or business models with which

they are less familiar. A regulatory sandbox is one approach that allows entrepreneurs or businesses with a novel idea to introduce their product or service to the market without the industry's regulatory barriers. This concept stems from the United Kingdom, which implemented its Project Innovate within the financial services sector. By the time it was fully implemented, the financial technology regulatory sandbox hosted nearly 700 participants. This was followed by nearly 57 similar programs across the world.

In the United States, several states implemented their own regulatory sandboxes: Arizona followed a similar model for its financial technology sandbox, Kentucky implemented a sandbox for the insurance industry, and Utah implemented a legal services sandbox that ultimately served 2,000 Utahns with innovative models of legal services. These sandboxes can be either industry-targeted or universal. Industries that have been included in targeted regulatory sandboxes include fintech, legal services, agriculture, technology, and energy.

Model Policies and Resources

- Libertas Institute
  - Model Language: Industry-Targeted Regulatory Sandbox
  - Model Language: Universal Regulatory Sandbox
  - 50 state map

Transparency for State and Federal Guidance Documents

State and federal agencies frequently issue guidance documents, including memoranda, bulletins, and letters that interpret and clarify statutes and regulations. These documents can also set official agency policy on important matters. Colloquially dubbed "regulatory dark matter," guidance documents vastly outnumber official regulations published in the Federal Register. Unlike regulations, guidance documents are not usually subject to the procedural requirements of the Administrative Procedure Act. A guidance document, for example, is not typically subject to a public notice-and-comment period as with formal rulemaking.

On August 4, 2025, Alaska Governor Mike Dunleavy issued Administrative Order No. 360 which requires state agencies to "post all guidance documents on the Alaska Online Public Notice System." Former Virginia Governor Terry McAuliffe issued an executive order in 2014 requiring agencies to post all guidance on the Virginia Regulatory Town Hall website. Although the order expired in 2018, Virginia agencies continue to post guidance online.

Though guidance documents are ostensibly not legally binding, in practice, they often carry the force of law and contribute to the overregulation that defines the federal administrative state. Many of these guidance documents are sent to states to express the federal government's views on the state's obligations and programs they co-administer. Essentially, arcane federal guidance documents often impact state laws and policies.

Critically, when a guidance document imposes a fine, fee, standard, requirement, or enforcement trigger not found in a duly promulgated rule, it is not guidance — it is a regulation. Such documents must be subjected to the full rulemaking process. Agencies should not be allowed to circumvent legal procedures by dressing mandates in the clothing of "guidance."

The Trump Administration's Transparency Reform

In 2019, the Trump administration issued Executive Order 13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents." The order defined a "guidance document" to include:

> [A]ny agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation.

EO 13891 required agencies to:

- Establish uniform procedures for issuing guidance documents.
- Create public, online portals listing all guidance documents in effect.

However, in early 2021, President Biden rescinded EO 13891, eliminating the requirement for agencies to maintain accessible, centralized guidance databases. While some agencies continue to publish guidance documents voluntarily, and President Trump reversed President Biden's rescission, many agencies have removed or archived their collections entirely. Guidance portals still online include:

- Department of Agriculture
- Department of Justice

Other federal agencies, like the Department of Commerce, deleted their collections of guidance documents.

- Department of Commerce
  - Archived
  - Live

And some agencies never made the required web portals.

The Solution: Transparency at the State Level

States should act to protect residents, businesses, and local governments from hidden mandates by requiring full transparency for both federal and state guidance documents.

Minimum standards should include:

- Mandatory disclosure of all guidance documents received from the federal government.
- Mandatory publication of all state-issued guidance documents.
- A single, searchable, indexed database.
- A uniform URL structure for agency-level transparency (e.g., https://dhs.georgia.gov/guidance).
- A legal standard clarifying that any guidance document imposing requirements not found in law or regulation, or containing fines or fees, must go through the full rulemaking process.

By adopting these requirements, states can improve transparency and restore public accountability to the regulatory process.

Model Policies and Resources

- AFP's Model Legislation: Guidance Out of Darkness Act "GOOD Act"
- Right on Transparency: Model Policy endorsed by nine right-of-center organizations
- Alaska Administrative Order No. 360 (Aug. 4, 2025): "Agencies shall post all guidance documents on the Alaska Online Public Notice System."
- Virginia Executive Order 17 (2014) Development and Review of State Agency Regulations (p.11): "Agencies shall post all guidance documents or a link to each agency guidance document…on the Town Hall."

Bureaucrats Pay Attorney's Fees for Rights Violations

When individuals or businesses challenge unlawful or unjust state agency actions, they often face a significant imbalance of power and resources. Agencies can draw on public funds and institutional expertise, while citizens must bear the cost of legal representation, even when they ultimately prevail. This imbalance discourages legitimate challenges, emboldens bureaucratic overreach, and undermines the rule of law.

To restore balance and promote agency accountability, states should require agencies to pay attorney's fees when a citizen successfully challenges agency action, especially in cases where the agency acted outside its legal authority or in bad faith.

This reform would empower citizens to defend their rights and deter frivolous or punitive enforcement by agencies. Agencies should be held to the same standards as any litigant: If they act improperly, they should pay the price.

Model Legal Framework — Indiana

A state attorney's fee statute should include the following key provisions based in part on Indiana's code: IC 4-21.5-3-27.5 Attorney's fees.

1. **Mandatory Fee Shifting When Agencies Act Unlawfully**
   An administrative law judge must order a state agency to pay the reasonable attorney's fees of a prevailing party if the challenger proves any of the following:

   - The agency's action was frivolous, groundless, or pursued in bad faith.
   - The agency's action was unsupported by statute or a validly promulgated rule.
   - The agency acted outside its legal authority.

2. **Fee Awards on Judicial Review**
   A court must also award attorney's fees to a party that wins on judicial appeal of an administrative law judge ruling.

By adopting these provisions, states can enhance regulatory fairness, ensure lawful administration, and reduce the risk of agency abuse of power. This reform is a powerful tool for protecting individual rights and restoring trust in government.

Require Explicit Legislative Authorization for Rule Promulgation

In New Hampshire, the Joint Legislative Committee on Administrative Rules plays a central role in ensuring state agencies only promulgate rules explicitly authorized by statute. Agencies are not permitted to issue binding rules based on broad or vague statutory purposes; they must have specific rulemaking authority granted by the legislature. JLCAR reviews all proposed and final administrative rules to ensure they comply with legislative intent and statutory authority. If JLCAR objects to a rule, it can delay implementation and even shift the legal burden to the agency if it is challenged in court. This oversight framework effectively prevents agencies from expanding their

regulatory scope without legislative consent, thereby maintaining the legislature's proper control over policy decisions.

Model Policy:

- New Hampshire:
  - 541-A:13 Review by the Joint Legislative Committee on Administrative Rules
  - 541-A:2 Joint Legislative Committee on Administrative Rules

Limitation on Regulations More Stringent than Federal Requirements

Montana law explicitly prohibits state agencies from adopting environmental regulations that are more stringent than federal standards unless they meet a strict set of conditions. Under Montana Code Annotated § 75-5-203 (and similar statutes across environmental code sections), a state agency must demonstrate through a formal process that a stricter rule is necessary. This includes holding a public hearing, providing a detailed written justification, and presenting a cost-benefit analysis based on peer-reviewed science and economic data. The agency must show that the more stringent requirement is both technologically feasible and economically reasonable. This provision is especially important for EPA-delegated programs, as it ensures Montana's environmental rules do not exceed the federal baseline without clear legislative or scientific justification.

Model Policy:

- Montana Code Annotated § 75-5-203 — State Regulations No More Stringent Than Federal Regulations Or Guidelines

Robust Standing Committee Oversight

In Arkansas, the Legislative Council's Administrative Rules Subcommittee, in coordination with standing committees, provides strong oversight of agency rulemaking. All proposed and emergency rules must be submitted for legislative review before taking effect. Committees assess whether agencies have proper statutory authority to issue a new regulation and can recommend disapproval, which blocks implementation unless the rule is revised or later approved. Legislators can also request public hearings, legal reviews, and economic impact statements.

Model Committee Rules:

- Arkansas: Rules of the Administrative Rules Subcommittee of the Legislative Council

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