



AMERICANS *for* PROSPERITY

September 15, 2025

Submitted via Regulations.gov

Nicholas Schilling Jr.
Supervisory Official
Department of Justice
Office of Legal Policy
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Re: Comment on Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce (Docket No. OLP182)

Dear Mr. Schilling:

Americans for Prosperity (AFP), the nation's largest grassroots organization dedicated to breaking barriers to opportunities, appreciates the opportunity to respond to the Department of Justice's (DOJ) Request for Information (RFI) regarding state laws that significantly and adversely affect the national economy or interstate commerce. AFP believes peeling back burdensome regulations is an essential step toward reigniting the American Dream. Drawing from AFP's 38 official state chapters and footprint in all 50 states, the examples below outline specific state regulatory problems adversely impacting the national economy and interstate commerce, as well as broad regulatory process opportunities that can help address regulatory burdens across all policy areas. We also believe states have a key role to play in stemming regulatory abuses, and it may not always be proper for the federal government to intervene.

Housing Restrictions Undermine Interstate Labor Mobility and Economic Dynamism

1. **Conservation and Environmental Regulations Lower the Supply of Housing:** Certain state-level environmental review laws—such as California's CEQA and Vermont's Act 250—impose procedural burdens that delay or deter housing development. These laws often require extensive environmental assessments and open projects to litigation, even when zoning reforms have been enacted to encourage housing growth. For example, Vermont's Act 250 requires larger housing and commercial development proposals to undergo significant environmental and conservation reviews,¹ and leaves the developments open to lawsuits and litigation.²

¹ Act 250, 10 V.S.A. ch. 151 (1970).

² See Carly Berlin, *After years of appeals, Vermont Supreme Court ruling clears pathway for Putney affordable housing project*, VT DIGGER (Nov. 19, 2024), <https://vtdigger.org/2024/11/19/after-years-of-appeals-vermont-supreme-court-ruling-clears-path-for-putney-affordable-housing-project>.

2. **Building Code Regulations:** Building codes are often adopted at the state level, not the local level. Most states follow the International Residential Code (IRC) for residential development and the International Building Code (IBC) for all other buildings. The IRC is significantly more flexible and less burdensome than the IBC, yet most multifamily housing (including triplexes, fourplexes, etc.) are categorized under the IBC. The IRC allows duplexes and townhomes to be classified as residential.

The limitations of the IRC have significantly increased regulations on “missing middle” housing, even though a triplex or fourplex is more similar in structure to a single-family home than to a high-rise apartment or office building. In 2024, North Carolina passed a bill allowing buildings with four or fewer units to use the IRC, significantly reducing building requirements on new missing middle units.³ Other states should do the same, and the federal government should encourage, but not require, the IRC.

Additionally, single-staircase apartment buildings are illegal in most states, even though such buildings are numerous in European cities. Most states require apartment buildings to have at least two means of exit (and thus, at least two staircases) for fire safety, yet this increases costs and limits the number of apartment buildings in cities. Studies have shown that single-stair buildings don’t have greater fire escape risks.⁴ AFP helped pass bills allowing single-stair buildings (in buildings up to six stories) in Texas and New Hampshire this year. All states should follow suit.

3. **Modular Home Regulations:** Modular homes are prefabricated homes constructed off-site that do not have to sit on a permanent chassis. Unlike manufactured homes on permanent chassis (that are regulated federally by HUD), modular homes are regulated at the state and local levels. Some states, such as Oregon and Massachusetts, add additional state-level requirements to some modular homes that do not extend to onsite constructed homes.⁵ Ideally, modular homes should not be subject to more stringent zoning and building code regulations than those imposed on on-site constructed homes. As modular homes can be constructed in factories across the country, modular home regulation directly affects interstate commerce.

These regulatory hurdles reduce housing supply and increase costs, thereby impeding labor mobility and economic growth across state lines. The federal government, through its housing-related agencies, should advise states on the policy reforms to reduce regulatory barriers, promote housing affordability, and enhance interstate labor mobility.

For more information about AFP’s perspective on housing regulation, please contact Ilana Blumsack at IBlumsack@afphq.org.

³ See, e.g., Hayli Mace, *NC Building Code Change Makes Things Much Simpler for Many Developers and Investors*, MOVEZEN (2024), <https://movezen360.com/nc-building-code-change-makes-things-much-simpler-for-many-developers-and-investors/>.

⁴ THE PEW CHARITABLE TRUSTS, *Small Single-Stairway Apartment Buildings Have Strong Safety Record* (Feb. 27, 2025), <https://www.pew.org/en/research-and-analysis/reports/2025/02/small-single-stairway-apartment-buildings-have-strong-safety-record>.

⁵ John McMullen, *Oregon’s Prevailing Wage Proposal: A Wake-Up Call for Modular Construction*, Modular Bldg. Inst. (Jul. 1, 2025), <https://www.modular.org/2025/07/01/oregon-prevailing-wage-proposal-wake-up-call-for-modular-construction/>.

Energy Regulations That Distort Interstate Markets and Raise Costs for Consumers

1. **Renewable Portfolio Standards and Clean Energy Standards:** Renewable portfolio standards (RPS) and clean energy standards (CES) requiring electricity to be generated from low or zero-emission sources raise the cost of electricity, with economic impacts extending beyond state borders. Investor-owned utilities operating across multiple states often allocate generation costs across their entire customer base. As a result, ratepayers in states with less stringent standards may bear the financial burden of compliance costs incurred in neighboring states. According to the Lawrence Berkeley National Laboratory, 29 states and the District of Columbia have mandatory Renewable Portfolio Policies.⁶

These standards have been driven largely as a result of Environmental Protection Agency (EPA) regulations. Modification and revocation of EPA regulations, particularly those under the Clean Air Act, could help reduce the federal regulatory burden passed on to states. EPA, the Department of Energy, and the Federal Energy Regulatory Commission (FERC) are the federal agencies with subject matter expertise best situated to lawfully address these concerns within the federal government's authority.

2. **Federal Right of First Refusal (ROFR):** ROFR laws allow incumbent electric utilities the right to build electric transmission projects without having competitors bid for the project. Not only are such laws anticompetitive, but they can reduce the reliability and affordability of energy for consumers across the country.

At the federal level, even though the FERC eliminated *most* ROFR provisions with Order 1000,⁷ the order *maintains a federal ROFR* for certain upgrades to existing lines. Later, FERC issued Order 1920, which expanded the number of transmission projects that fall within the purview of the federal ROFR. Order 1920 allows a federal ROFR for any "right-sized facility".⁸ A "right-sized facility" includes an in-kind replacement of an existing transmission facility that will increase the transfer capacity.⁹

Both the DOJ and the Federal Trade Commission (FTC) have written in opposition to a federal ROFR in a comment filed with the FERC.¹⁰ The agencies noted: "With a ROFR, consumers will lose the many benefits that competition can bring, including lower rates,

⁶ GALEN BARBOSE, LAWRENCE BERKELEY NATIONAL LABORATORY, *U.S. State Electricity Resource Standards: 2025 Data Update 7* (2025), <https://emp.lbl.gov/sites/default/files/2025-08/State%20Electricity%20Resource%20Standards-2025%20Data%20Update.pdf>.

⁷ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Federal Energy Regulatory Commission, 136 FERC ¶ 61,051, Docket No. RM10-23-000; Order No. 1000, Issued July 21, 2011. Order 1000 eliminated a federal Right Of First Refusal (ROFR) for certain transmission facilities.

⁸ FED. ENERGY REG. COMM., *Building for the Future Through electric Regional Transmission Planning and Cost Allocation*, Federal Energy Regulatory Commission, 187 FERC ¶ 61,068, DOCKET NO. RM21-17-000; ORDER NO. 1920 (MAY 13, 2024).

⁹ *Id.* at IX.C., pp. 1152 -1209.

¹⁰ Comment of the U.S. Dep't of Justice & Fed. Trade Comm., Docket No. RM21-17-000. Document is undated; however, a date of 08/17/2022 is indicated in the Column titled "Filed" in online FERC records: https://elibrary.ferc.gov/eLibrary/docketsheet?docket_number=RM21-17-000&sub_docket=.

improved service, and increased innovation, leading to a more efficient, reliable, and resilient grid.”¹¹

The Department of Energy and FERC have the subject matter expertise to best lawfully reform the federal ROFR so that it is properly restricted to routine maintenance and limited upgrades.

3. **State ROFR Laws:** State Right of First Refusal laws exist in:

- Alabama
- Indiana
- Michigan
- Minnesota
- Mississippi
- Nebraska
- North Dakota
- Oklahoma
- South Dakota

In 2025, the Montana legislature passed SB 355, eliminating the ROFR for public utilities regulated by the Public Service Commission. That bill was signed by Governor Gianforte on May 5, 2025.

Texas had enacted a ROFR law in the non-Electric Reliability Council of Texas (ERCOT) areas of the state, but those provisions ruled unconstitutional:

...because they violate the dormant Commerce Clause and are therefore invalid and unenforceable, to the extent they grant in-state transmission owners the exclusive right to build or acquire transmission lines in the non-ERCOT regions of Texas.¹²

This year, the DOJ’s Antitrust Division submitted a comment on Iowa Senate Study Bill 1113, which would have established a ROFR in the state for new power grid infrastructure. The letter noted that the proposed ROFR “would foreclose competition to develop and build electric transmission and thereby potentially raise prices and lower the quality of service for electricity consumers.”¹³

For more information about AFP’s perspective on energy, please contact Faith Burns at FBurns@afphq.org or James Morrone at JMorrone@afphq.org.

¹¹ *Id.*, p. 1.

¹² *Nextera Energy Capital Holdings, Inc. v. Jackson*, No. 1:19-CV-626-DII (W.D. Tex. Oct. 28, 2024) (final judgment).

¹³ U.S. Department of Justice, Antitrust Division, Letter to Hon. Henry Stone, Iowa House of Representatives; and Letter to Hon. Jesse Green, Iowa Senate, re: Iowa Senate Study Bill 1113, Each letter dated Mar. 24, 2025, <https://www.justice.gov/atr/media/1394696/dl?inline>.

Prevent the Unnecessary and Premature Throttling of AI

1. **Artificial Intelligence (AI):** AFP has analyzed over a thousand state-level bills, and the findings highlight a growing concern: there is an urgent need for a moratorium on AI-related legislation at the state level to prevent potentially harmful and premature regulation.

AI is a rapidly evolving technology, and excessive regulation can quickly become a burden. Europe serves as a cautionary example; stringent legislation there has made it more difficult for tech companies to thrive and innovate.

One of the key challenges is that much of the proposed legislation is overly broad and varies by state, which disproportionately impacts smaller companies and startups. Unlike large corporations, these businesses do not have the resources to handle complex compliance requirements across 50 states. When a startup is forced to divert limited funds away from product development and into legal compliance, innovation is stifled.

State-level regulation can seriously undermine the progress made by American firms in innovation and entrepreneurship. Legislators across the country are proposing laws that attempt to regulate a wide range of tech-related issues. However, these laws risk unintended consequences. For instance, while lawmakers may aim to regulate technologies like chatbots to protect underage users, vague definitions and broad language could inadvertently impact industries like gaming, which already have robust mechanisms in place—such as parental controls—to protect users.

2. **Age Regulation and Data Privacy:** Protecting children online is essential, but legislation aimed at this goal must be carefully designed. Poorly implemented laws can inadvertently put adults at risk, especially when sensitive personal data is collected and potentially at risk of data breaches. Similarly, many state-level privacy laws, if not thoughtfully designed, may increase risks for all users. Broad data retention mandates or vague consumer access rights can lead to the over-collection and insecure storage of personal information, while inadequate guidance on data minimization and encryption may leave companies more vulnerable to cybersecurity threats. Safeguarding children should not compromise the privacy and security of all users; better, more balanced solutions are needed.

For more information about AFP's perspective on emerging technology, please contact Mario Ottero at MOttero@afphq.org.

OLP Should Encourage State-Level Regulatory Reform

AFP recommends the Office of Legal Policy (OLP) actively encourage states to adopt proven regulatory reform strategies that reduce economic barriers and promote transparency. Just as the FTC and DOJ have repeatedly advised states to repeal Certificate of Need (CON) laws for

over 35 years,¹⁴ OLP should similarly advocate for reforms that eliminate outdated, anticompetitive, and opaque regulatory structures. Additionally, OLP should host a workshop on state regulatory reform endeavors with state Attorneys General focused on improving the state regulatory process with a particular emphasis on the reduction of regulatory costs, increasing transparency, and protecting due process.

AFP's Roadmap for Regulatory Reform identifies numerous policy reforms that would reduce states' adverse regulatory impact on the national economy and interstate commerce, including:¹⁵

1. Legislative approval of major regulations (REINS Act)
2. Ending judicial deference to agency interpretations of law
3. Regulatory sunsets

OLP's endorsement of these proven regulatory reform policies would be a strong signal for states to reduce burdensome or duplicative state laws and regulations while also respecting our federal system of government. Concurrently, OLP should also encourage Congress to enact regulatory reform policies like the REINS Act.

OLP Should Unleash the American Workforce Through Occupational Licensing Reform

On Labor Day, President Trump proclaimed, “[f]rom the earliest settlers, who laid the foundations of a new Nation to the innovators who built our railroads, steel mills, and skyscrapers, America’s greatness has always rested in the strength of its workforce.”¹⁶ President Trump has also championed the need for criminal justice reform, highlighted by signing the First Step Act into law in 2018.¹⁷ In signing that landmark legislation into law, President Trump noted that, “[o]ur roaring economy, for the first time ever, given many former prisoners the ability to get a great job and a fresh start.”¹⁸

OLP should prioritize furthering these two priorities by working with states and Congress to address occupational licensing issues at the state level. Many states carry occupational licensing schemes that limit and/or eliminate the chance of someone with a criminal record from obtaining permission from the government to work in a specific field. While some limitations make sense, blanket exclusions hurt competition, increase cronyism, and limit opportunities for those trying to successfully reenter society.

¹⁴ AMS. FOR PROSPERITY FOUND., *Certificate of Need Administrative Quotes* (Aug. 13, 2025), <https://americansforprosperityfoundation.org/wp-content/uploads/2025/08/AFPF-CON-AdminQuotes-081325-v2.pdf>.

¹⁵ Kevin Schmidt and Thomas Kimbrell, *A Roadmap for Regulatory Reform: Proven Tools, Emerging Trends, and Model Policies to Cut Red Tape and Restore Accountability in State Governments*, AMS. FOR PROSPERITY (Aug. 22, 2025), <https://americansforprosperity.org/policy-corner/reg-reform/>.

¹⁶ Proclamation No. 10456, 90 Fed. Reg. 55241 (Sept. 1, 2025), <https://www.whitehouse.gov/presidential-actions/2025/08/labor-day-2025/>.

¹⁷ First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, <https://www.congress.gov/115/plaws/publ391/PLAW-115publ391.pdf>.

¹⁸ President Donald J. Trump, Remarks on Criminal Justice Reform, WHITE HOUSE (Dec. 21, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-championed-reforms-providing-hope-for-gotten-americans/>.

However, the limitations on entrepreneurship created by unnecessary state occupational licensing red tape persist beyond occupational issues for reformed criminals. First, state licensing requirements have grown significantly over time. According to Dr. Alicia Plemmons, Research Fellow and Scope of Practice Coordinator at the Knee Regulatory Research Center, “[o]ne out of four people today requires a government license to earn an honest living,” a steep rise from 1950 when “that number was only one out of 20.”¹⁹

Second, and perhaps most importantly for this RFI, it has become increasingly more difficult for individuals to carry their licenses across state lines, severely limiting the mobility of families and greatly hampering interstate commerce. Indeed, this is true in many cases, even when the states have similar requirements. In one such example, a licensed massage therapist from Minnesota who moved to Ohio to be closer to family after the birth of her first child was denied a license despite having received more hours of training than required in Ohio.²⁰ Specifically, the Ohio licensing board denied her license for two reasons: (1) Ohio said Minnesota’s school year was 10 days too short for Ohio’s standards; and (2) her Minnesota license required 24 hours of massage ethics training; Ohio requires 25 hours.²¹

Compare this with bar licensing for attorneys, something the attorneys in OLP can certainly understand. In most cases, attorneys can waive into the bar of another state after practicing for a certain period of time and passing a character and fitness test. It simply should not be more difficult for massage therapists to practice in a new state than an attorney.

AFP recommends that the Department of Labor and any other relevant agencies work with governors and state licensing agencies to advise states on reviewing their occupational licensing laws and tailoring them only to limit denials of certain occupational licenses if the crime is directly related to the duties of the job itself. States should also accept out-of-state licenses for certain occupations, as Arizona and Florida have done (universal occupational licensing). This recommendation follows a 2020 Executive Order from President Trump that called for similar measures and actions.²²

DOJ Should Address Overcriminalization by States, Focusing on Laws that Criminalize Everyday Business Activity

Overcriminalization—considered the overuse or misuse of criminal law to address societal problems—is a fundamental threat to the legitimacy of our justice system. The rightful role of federal and state criminal laws is to promote public safety. Unfortunately, state governments have turned thousands of everyday actions into crimes for the sake of discouraging disfavored behavior rather than out of a compelling public safety concern.²³

¹⁹ STAND TOGETHER, *Occupational Licensing Reform Can Unlock Economic Abundance*, <https://standtogether.org/stories/the-economy/occupational-licensing-reform-can-unlock-economic-abundance>.

²⁰ *Id.*

²¹ *Id.*

²² Exec. Order No. 13966, 85 Fed. Reg. 81777 (2020), <https://www.govinfo.gov/content/pkg/FR-2020-12-17/pdf/2020-27948.pdf>.

²³ THE HERITAGE FOUNDATION, *Heritage Explains: Overcriminalization* (last visited Sept. 15, 2025), <https://www.heritage.org/crime-and-justice/heritage-explains/overcriminalization>.

To make matters worse, in addition to the state-level overcriminalization, cities and counties have also increasingly resorted to criminalizing violations of ordinances, imposing disproportionately serious consequences for relatively minor misconduct, such as overgrown lawns or unapproved outbuildings that do not pose major public safety threats. One mother in Heber City, Utah, was recently summoned to court with three class B misdemeanor charges after her dog escaped from her front yard, violating several local ordinances in the process.

With so many laws on the books, Americans are at increasing risk of unknowingly committing crimes and suffering serious consequences they might otherwise avoid. Federal and state criminal laws typically do not distinguish between crimes committed intentionally, recklessly, or accidentally. Leaving this distinction out of our criminal code leads to unjust charges that undermine the legitimacy of the public's respect for the law.

AFP recommends that the Department of Justice work with state Attorneys General and relevant state agencies to help launch "Count the Crimes" efforts at the state and local level in order to document the size of state and local criminal codes and regulatory rules that carry criminal penalties. While AFP supports Representative Chip Roy's (R-TX) Count the Crimes to Cut Act of 2025 and encourages DOJ to support the legislation as well,²⁴ DOJ is fully capable of taking these measures unilaterally.

AFP further encourages DOJ to work with state Attorneys General to create default *mens rea* standards for any crime or regulation carrying a criminal penalty. The codification of *mens rea* standards would ensure all Americans have the fair notice required under the Constitution, while also affording the judicial system docket relief by creating clear standards. DOJ can—and should—similarly work with Congress to pass Representative Andy Biggs' Mens Rea Reform Act of 2025, which would achieve a similar goal at the federal level.²⁵

For more information about AFP's perspective on criminal justice and licensing, please contact Greg Glod at GGlod@afphq.org or Austen Bannan at ABannan@afphq.org.

Conclusion

AFP commends the Administration's efforts to reduce burdensome red tape that holds back economic progress. If you have questions about this comment, please contact us at KSchmidt@afphq.org or GOwens@afphq.org and we can connect you with AFP's policy expert on that issue area. Thank you for your attention to this matter.

Sincerely,

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²⁴ The Count the Crimes to Cut Act of 2025, H.R. 2159 (2025), <https://www.congress.gov/bill/119th-congress/house-bill/2159>.

²⁵ The Mens Rea Reform Act of 2025, H.R. 59 (2025), <https://www.congress.gov/bill/119th-congress/house-bill/59/text>.