OFFICE OF THE ATTORNEY GENERAL
STATE OF INDIANA

302 W. WASHINGTON ST. 5TH FLOOR
INDIANAPOLIS, IN 46204-2770

TODD ROKITA
ATTORNEY GENERAL

May 12, 2025

The Honorable Russell R. Vought
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Submitted via Regulations.gov

Re: Request for Information: Deregulation, 2025-06316 (90 FR 15481)

Dear Director Vought:

We, the undersigned Attorneys General for the States of Indiana, Alabama, Arkansas, Florida, Georgia, Idaho, Louisiana, Mississippi, Missouri, Montana, Nebraska, South Carolina, and Texas applaud the administration's efforts to streamline the Federal Register by removing burdensome and inefficient regulations that hinder economic growth, limit opportunities for American workers and businesses, and vacate rules that violate Americans' liberties. Reducing unnecessary federal regulation is essential to unleashing America's full potential and President Trump's America First priorities.

States, like Indiana, want to end regulations that obstruct the economic growth of our state's agriculture, manufacturing, energy, and other sectors. We also are particularly concerned about federal regulations, rules, or guidance that impede our ability to enforce state laws. In the first several months, the administration made great strides to remove unnecessary and wasteful regulations. But many remain in effect or were challenged by the states. Vacating these rules also means dismissing many of the legal challenges by the states and others concerning their legality. We selected several rules to bring to your attention that are particularly pressing from the states' perspective, but we also encourage a far broader and more comprehensive rollback of many other Biden initiatives. We recommend that the Office of Management and Budget ("OMB") rescind the following rules:

I. HIPPA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32,976 (April 26, 2024).

This rule, enacted in reaction to and obstruction of the United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, should be vacated or rescinded by the OMB as soon as possible.[1] The rule, issued under the Health Insurance Portability and Accountability Act

[1] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

("HIPAA"), interferes with a state's ability to ensure abortion providers follow state laws. Specifically, the rule prohibits covered entities from disclosing protected health information when it will be used: (1) to conduct a criminal, civil, or administrative investigation into any person for the various acts concerning reproductive health care; or (2) to impose criminal, civil, or administrative liability on any person for such acts.[2] This rule impedes state efforts to protect prenatal life and maternal health and is the subject of multiple lawsuits across the country.

The Office of the Indiana Attorney General plays a critical role in the enforcement of abortion laws designed to protect fetal life and maternal health. The Office has the authority to receive, investigate, and prosecute complaints against medical professionals for performing illegal abortions and other related violations.[3] Since the rule was promulgated, Indiana healthcare providers have outright refused to provide documents to the State, thereby hindering the enforcement of state abortion laws. Also, Indiana healthcare providers have refused to submit Terminated Pregnancy Reports ("TPR") required by state law to the Indiana Department of Health, which provides critical information for public health monitoring and the enforcement of public health laws concerning abortion.[4] These TPRs serve a twofold purpose: (1) "the improvement of maternal health and life through the compilation of relevant material life and health factors and data" and (2) "to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of law."[5]

The Indiana Attorney General, along with Attorney General Lynn Fitch of Mississippi, and seventeen (17) other states, sent a letter to former Secretary of Health and Human Services, Xavier Becerra, calling on the Department of Health and Human Services to rescind the rule.[6] Yet, it remains active in the Federal Register. On January 17, 2025, Tennessee, Indiana, and 13 other states filed a lawsuit against the U.S. Department of Health and Human Services ("HHS") challenging the rule.[7] The case is still pending in summary judgment briefing. Because of its extremely burdensome nature, the OMB should rescind the HIPPA Privacy Rule to Support Reproductive Healthcare.

II. New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 88 Fed. Reg. 80,682 (November 20, 2023).

The unnecessary and burdensome regulation dubbed "Clean Power Plan 2.0" exceeds the Environmental Protection Agency's ("EPA") statutory authority to regulate coal- and natural-gas-fired plants.[8] The EPA failed to "take into account" cost and energy requirements when determining

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[2] 45 C.F.R. § 164.502(a)(5)(iii)(A).
[3] Ind. Code §§ 4-6-9, 25-22.5-8-6.
[4] Ind. Code § 16-34-2-5.
[5] *Id*.
[6] States of Mississippi, Indiana, et al., *Comments on HIPPA Proposed Rule to the U.S. Dept. of Health and Human Services* (June 16, 2023), https://content.govdelivery.com/attachments/INAG/2023/06/20/file_attachments/2530936/2023.06.16%20Comment%20Letter%20of%20the%20Mississippi%20Attorney%20General%20et%20al.%20(as%20filed).pdf.
[7] Compl., *State of Tennessee, Indiana, et al. v. U.S. Dept. of Health and Human Services, et al.*, No. 3:25-cv-00025 (E.D. Tenn. Jan. 17, 2025). Compl., State of *Missouri v. U.S. Dept. of Health and Human Services, et al.*, No. 4:25-cv-00077 (E.D. Mo. Jan. 17, 2025).
[8] 42 U.S.C. § 7411(a)(1) (2022).

the Best System of Emission Reduction, including cost and reliability concerns.[9] Ultimately, the EPA seemed "uninterested" in energy grid reliability concerns as the rule "did not study the reliability impacts of its proposal."[10]

Further, this rule conflicts with President Trump's Energy First Agenda because the rule continues to degrade an already unreliable energy grid.[11] Because Indiana plays a significant role in coal production, producing 32-35 million tons per year, this regulation considerably impacts the Hoosier state's energy production and job security.[12] Lastly, Indiana and West Virginia co-led a lawsuit challenging this rule in the U.S. Court of Appeals for the District of Columbia.[13] Currently, the Court is holding the case in abeyance as the EPA works to fix the rule.[14] On October 16, 2024, the Supreme Court denied a stay in the litigation over the Clean Power Plan 2.0 rule, Justice Kavanaugh noted that the industry would need to begin taking steps to comply in June 2025.[15] That time is nearly here—making this rule incredibly urgent for your action. Therefore, because this rule is burdensome on states' energy production, the OMB should rescind the Clean Power Plan 2.0.

III. Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40,066 (May 9, 2024).

The Nondiscrimination on the Basis of Disability Rule promulgated by the U.S. Department of Health and Human Services ("HHS") on May 9, 2024, is arbitrary and capricious, violates the separation of powers, and harms citizens and service providers who receive federal financial assistance. The rule attempted to add "gender dysphoria" to the definition of "disability" under Section 504 of the Rehabilitation Act and the Americans with Disability Act ("ADA"). HHS's action serves as a colossal power grab by the federal bureaucracy to redefine disability and sex in furtherance of a radical, woke, transgender agenda.

The rule adopts "an arbitrary and unpredictable regulatory framework, well beyond that set forth in the ADA or Rehabilitation Act."[16] The rule creates a new definition of disability without Congressional authority or approval. This regulation would force most physicians, hospitals, community clinics, outpatient facilities, child welfare services, nursing facilities, health insurance companies, and HHS facilities to make an accommodation for people claiming to be transgender or risk losing their federal funds. It places the burden on states to explain costs, identify impacted recipients, refine proposed definitions, and analyze the impact on state and local governments.[17] This kind of broad regulatory sweep by the previous Administration is unlawful. The State of Alaska, along with Indiana and eight (8) other state attorneys general, submitted a comment letter to the Department

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[9] *Id*.
[10] States of West Virginia, Indiana, et al., *Comments on the Supplemental Notice of Proposed Rulemaking Titled "New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units"* (Dec. 20, 2023) (to EPA Docket No. EPA-HQ-OAR-2023-0072).
[11] *Id*.
[12] State of Indiana, *How much coal is mined in Indiana and how is it used?* (2023), https://faqs.in.gov/hc/en-us/articles/115005242268-How-much-coal-is-mined-in-Indiana-and-how-is-it-used.
[13] Petition for Review, *State of West Virginia, Indiana, et al. v. Environmental Protection Agency*, No. 24-1120 (D.C. Cir. May 9, 2024) (Entry ID 2053599).
[14] Order, *State of West Virginia, Indiana, et al. v. Environmental Protection Agency*, No. 24-1120 (D.C. Cir. Apr. 25, 2025) (Entry ID 2113035).
[15] *West Virginia, et al. v. EPA, et al.,* 604 U.S. ____ (2024) (mem.) (statement of Kavanaugh, J.).
[16] States of Alaska, Indiana, et al., *Comments on Proposed Rulemaking by Department of Health and Human Services* (Nov. 13, 2023), https://www.regulations.gov/comment/HHS-OCR-2023-0013-0763.
[17] *Id*.

of Health and Human Services raising these issues.[18] The States of Texas and Alaska, including Indiana and fourteen (14) other states, sued HHS, and that case remains pending in light of the new Administration.[19] Therefore, OMB should rescind this rule.

IV. Regulation to Implement the Pregnant Workers Fairness Act, RIN 3046-AB30, 89 Fed. Reg. 29,096 (April 19, 2024).

A bipartisan group of lawmakers passed the Pregnant Workers Fairness Act ("PWFA") to protect pregnant workers and their babies by requiring that women receive workplace accommodations for "pregnancy, childbirth, or related medical conditions."[20] But, in an extraordinary move beyond its statutory authority, the Equal Employment Opportunity Commission ("EEOC") sought to require that employers accommodate abortions by requiring states and covered employers to devote resources like extra leave time and paying for travel to assist employees with the termination of pregnancies.[21]

This rule exceeds the Commission's authority under the PWFA because the whole purpose of the statute was to protect pregnant women, not promote abortions. The EEOC's Rule also hinders the speech for those who wish to promote and protect life in the workplace by requiring that abortions be covered under the PWFA. This potentially forces prolife corporations and entities to pay for and support abortions. And the EEOC failed to consider any costs to the states or employers for implementing this rule.

The States of Tennessee, Indiana, and eighteen (18) others joined a comment letter expressing these concerns to the EEOC.[22] No action has been taken to rescind the rule. Tennessee, Indiana, and eighteen (18) other states sued the EEOC based on its guidance.[23] It was dismissed on June 14, 2024, and an appeal followed in the Eighth Circuit Court of Appeals, which reversed and remanded the case on February 20, 2025.[24] The case is still pending. Therefore, because this rule burdens states and businesses, fails to protect human life from conception to birth, and exceeds the authority of the PWFA, OMB should rescind this regulation.

V. Clarifying Eligibility for a Qualified Health Plan Through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, a Basic Health Program, and for Some Medicaid and Children's Health Insurance Programs, 88 Fed. Reg. 25,313 (April 26, 2023).

The Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") provides that only qualified aliens may receive public benefits, and it defined "qualified aliens" to include lawful permanent residents, asylees, refugees, parolees granted parole for at least one year,

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[18] *Id*.
[19] *See* Compl., *Texas, et al. v. Kennedy*, No. 5:24-cv-00225-H (N.D. Tex. Sept. 26, 2024).
[20] 42 U.S.C. § 2000gg (2022).
[21] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 28,348 (Apr. 19, 2024) (to be codified at 29 C.F.R. pt. 1636).
[22] States of Tennessee, Indiana, et al., *Comments on the Regulations to Implement the Pregnant Workers Fairness Act* (Oct. 10, 2023), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2023/pr23-44-comment.pdf.
[23] *States of Tennessee, Indiana, et al. v. Equal Employment Opportunity Commission*, No. 2:24-cv-00084 (E.D. Ark. Apr. 25, 2024).
[24] Order, *States of Tennessee, Indiana, et al. v. Equal Employment Opportunity Commission, et al.* No. 24-2249 (8th Cir. Feb 20, 2025).

aliens granted withholding of removal, and certain battered aliens.[25] However, the Department of Health and Human Service's Centers for Medicare & Medicaid Services ("HHS") issued a rule to expand coverage under the Patient Protection and Affordable Care Act ("ACA") to qualified aliens or individuals who are "lawfully present" in the United States. HHS's definition of "lawfully present" includes individuals classified under the Deferred Action for Childhood Arrivals ("DACA") Program (even though they are not legally considered "qualified aliens" and their deportation is merely deferred), and other work-authorized aliens—all contrary to the PRWORA. The ACA itself even requires that individuals applying for a qualified health plan must be a citizen, national of the United States, or an alien lawfully present. Also under this rule, HHS attempted to expand Medicaid and the Children's Health Insurance Program eligibility to cover individuals who would otherwise be ineligible for health insurance coverage under the ACA. So, the actions taken by HHS in this rule are contrary to both the PRWORA and the ACA. A comment letter signed by Kansas, Indiana, and fifteen (15) other state attorneys general requested HHS to postpone the effective date pending judicial review. However, this rule remains active. For these reasons, OMB should rescind the rule.

VI. Reproductive Health Services, 87 Fed. Reg. 55,287 (September 9, 2022).

The U.S. Department of Veterans Affairs ("VA") adopted a rule on September 9, 2022, which authorized taxpayer-funded abortions and abortion counseling for veterans and beneficiaries. This rule exceeds the scope of the statutory authority delegated by Congress to the VA to "furnish hospital care and medical services which the Secretary determines to be needed" for certain veterans.[26] The VA implemented this rule through its definition of "medical benefits package," which covers not only veterans, but also beneficiaries under the Civilian Health and Medical Program of the Department of Veterans Affairs—including certain spouses, children, survivors, and caregivers.[27]

Previously, the VA excluded "[a]bortions and abortion counseling" from its benefits package.[28] But, with this rule, the VA expressly authorized taxpayer-funded abortions and abortion counseling. This rule disrupts the laws of states where abortion is outlawed or regulated, thereby impinging on principles of federalism because the states have inherent police powers to regulate abortion law as solidified in *Dobbs v. Jackson Women's Health Organization*.[29] The States of Mississippi, Indiana, and thirteen (13) others signed on to a comment letter expressing concerns about the rule's approval of taxpayer-funded abortions.[30] However, the rule remains active in the Federal Register. OMB should rescind this rule to ensure that the states have the power to regulate abortion, not the VA.

VII. Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47,824 (August 4, 2022).

The U.S. Department of Health and Human Services ("HHS") promulgated a rule that impacts the interpretation of Section 1557 of the Patient Protection and Affordable Care Act ("ACA"). Section

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[25] 8 U.S.C. § 1611(a) (2022).
[26] 38 U.S.C. § 1710(a)(1) (2022).
[27] 38 C.F.R. § 1781; 38 U.S.C. § 1781 (2023).
[28] 38 C.F.R. § 17.38(c)(1) (2022) (effective until Sept. 9, 2022).
[29] 597 U.S. 215 (2022).
[30] States of Mississippi, Indiana, et al., *Comments on the Interim Final Rule, Reproductive Health Services to the U.S. Dept. of Veteran Affairs* (Nov. 17, 2022), https://www.texasattorneygeneral.gov/sites/default/files/images/press/MS%20Letter%20re%20Veterans%20Affairs%20IFR%20-%20FINAL.pdf.

1557 prohibits discrimination based on "race, color, national origin, sex, age, or disability in certain health programs and activities."[31] HHS attempted to interpret Section 1557 prohibition of discrimination "on the basis of sex" to include discrimination based on "gender identity" or "sexual orientation." This interpretation of Section 1557 does not comport with the ACA as passed by Congress, improperly relies on *Bostock v. Clayton Cty., Georgia*, and generally circumvents Congress through executive action.[32]

The rule compels speech by requiring regulated parties to use preferred pronouns and mandates that covered medical entities post nondiscrimination notices and convey the federal government's messaging, without regard for those entities' points of view or for the First Amendment. The rule also inserts the government into the constitutionally protected realm of family affairs and offers little or no protection for covered entities' religious beliefs or practices. The rule substantially burdens states that regulate their own Medicaid program and other private entities. Tennessee, Indiana, and eighteen (18) other states submitted a comment letter based on these legal and constitutional issues.[33] Also, Tennessee, Indiana, and thirteen (13) other states challenged the rule.[34] The court held that the rule is beyond HHS's statutory authority, rejecting the idea that "sex" means "gender identity," and enjoined enforcement nationwide.[35] Texas and Montana separately challenged the rule and obtained a nationwide stay of it.[36] Missouri, six other States, and the American College of Pediatricians similarly challenged it.[37] Yet, the rule remains in the federal register to date, and OMB should rescind it.

VIII. Ten-Day Notices and Corrective Action for State Regulatory Program Issues, 89 FR 24714 (May 9, 2024).

The Office of Surface Mining Reclamation and Enforcement (OSMRE) finalized a rule that took regulatory authority over surface coal mining away from the states and gave more authority to the federal government. The Ten-Day Notice process is initiated when OSMRE receives information about a possible violation of the Surface Mining Control Reclamation and Act (SMCRA). OSMRE evaluates the available information and, if it determines there is a reason to believe a violation exists, it gives notice to the state regulatory authority. The state regulatory authority has ten (10) days to respond to OSMRE with its findings. This rule removed language that requires a citizen to first contact a state regulatory authority before it contacts OSMRE. The agency added language stating that all citizen complaints be considered requests for federal inspections. It dropped the requirement that a citizen must state the basis for their allegation of a possible violation. In addition, the rule expanded the instances where a Ten-Day Notice could be issued and imposed time limitations on the resolution of issues by States.

This rule removed power from the states on how to handle surface coal mining and reclamation matters and intruded on jurisdiction primarily reserved to the states. This rule greatly

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[31] 42 U.S.C. § 18116 (2022).
[32] 140 S.Ct. 1731 (2020).
[33] State of Tennessee, Indiana, et al., *Comment on Nondiscrimination in Health Programs and Activities to the Dept. of Health and Human Services* (Oct. 3, 2022), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-39-comment.pdf
[34] *States of Tennessee, Indiana, et al. v. Becerra et al*., No. 1:24-cv-00161 (S.D. Miss. May 30, 2024).
[35] *Id*. ECF Nos. 29-30.
[36] *States of Texas and Montana v. Becerra*, 739 F.Supp.3d 522 (E.D. Tex. 2024), *modified on reconsideration*, 2024 WL 4490621 (Aug. 30, 2024).
[37] *Missouri, et al. v. Becerra, et al.*, No. 4:24-cv-00937 (E.D. Mo. July 10, 2024), ECF No. 1.

affects the coal community, including coal miners in Indiana. Indiana along with (13) other states filed a petition for review on June 7, 2024, in the D.C. District.[38] The Court denied the States' motion for preliminary injunction on December 24, 2024. The parties are currently briefing cross-motions for summary judgment. Therefore, OMB should rescind the rule.

Conclusion

Thank you for considering these recommendations. We appreciate OMB's commitment to regulatory reform and stand ready to assist you in identifying additional opportunities for deregulation that will promote innovation, job creation, and economic growth in Indiana and nationwide.

Sincerely,

Todd Rokita
Attorney General of Indiana

Steve Marshall
Attorney General of Alabama

Tim Griffin
Attorney General of Arkansas

James Uthmeier
Attorney General of Florida

Chris Carr
Attorney General of Georgia

Raúl Labrador
Attorney General of Idaho

Liz Murrill
Attorney General of Louisiana

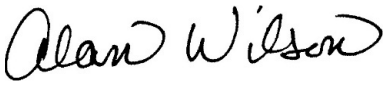
Lynn Fitch
Attorney General of Mississippi

Andrew Bailey
Attorney General of Missouri

[38] *State of Indiana, et al. v. Haaland, et al.*, No. 1:24-cv-01665 (D.D.C. filed June 7, 2024).

Austin Knudsen
Attorney General of Montana

Mike Hilgers
Attorney General of Nebraska



Alan Wilson
Attorney General of South Carolina

Ken Paxton
Attorney General of Texas