



White House Overreach on AI

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Committee on Oversight and Accountability Subcommittee on Cybersecurity, Information
Technology, and Government Innovation

U.S. House of Representatives

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Dear Chairwoman Mace,

Thank you for the opportunity to provide our view on the White House overreach on AI and for holding this important hearing. The [White House Executive Order on AI](#) improperly bypasses the legislative role of congress to create miles of red tape and new far-reaching regulatory requirements for AI by executive fiat.

Defense Production Act Abuse in the Executive Order on Artificial Intelligence

The Executive Order abuses the Defense Production Act of 1950 (“DPA”) to impose restrictive regulations and reporting requirements on an emerging technology with use cases spanning the entire economy. The DPA grants the President authority to centrally plan industry for national defense purposes, but lacks checks and balances and transparency requirements, making it ripe for abuse and mismanagement.

The DPA was enacted during the Korean War to expedite and prioritize government contracts, provide purchase guarantees, and reorient supply chains to satisfy critical needs in an emergency. It is fair to ask the question, “what is the emergency around AI?”

Under the Executive Order, developers of certain AI technologies will have to submit safety test results, development plans, details of model weights, and more to government agencies. Apparently, even developers without existing government contracts will be subject to the Order’s onerous regulations. Worse, the administration is likely relying on and stretching the authorities of a rarely used but [very coercive provision](#) of the law to enact an overreaching regulatory scheme without any input from Congress.

Utah Attorney General Sean D. Reyes [led a 20-state letter](#) to Secretary Gina Raimondo of the U.S. Department of Commerce responding to the Department’s request for information on the regulation of AI:

While there is serious debate as to the best approach to regulate AI, one thing is clear—the Biden administration cannot simply bypass congressional authority to act here. Any regulation must comport with the Constitution including only authorized executive action, as well as protecting against government censorship...The Executive Order relies on a generic citation to the Defense Production Act, which allows for the federal government to promote and prioritize production, not to gatekeep and regulate emerging technologies.

In a [hearing](#) before the House Financial Services Subcommittee on National Security, Illicit Finance, and International Financial Institutions last week, [Representative Young Kim asked](#) witnesses if the DPA’s compulsory information gathering authority has been used previously on an industry not subject to DPA actions under Title I or Title III. Luke Nicasastro from the Congressional Research Service replied:

Title VII has been used historically to inform what are often referred to as industrial base assessments which have been conducted under the aegis of the Department of Commerce. You are correct that to my knowledge at least artificial intelligence has not been the subject of the application of those authorities. So, **this does raise a question as to which areas Congress believes are the most appropriate of the application of DPA authorities.** (emphasis added)

If such broad and significant oversight of AI development is warranted, then it is Congress's responsibility to do so through legislation. Biden treating AI as an emergency fabricates a never-ending crisis that transfers to the president major powers over the economy that are constitutionally reserved for Congress.

Reform Principles

Americans for Prosperity Foundation recently [launched the Emergency Powers Reform Project](#) to educate the public about the White House's rampant abuse of emergency powers, including misuse of the Defense Production Act, Strategic Petroleum Reserve, and National Emergencies Act. Congress intended for such delegations of authority to the president to be temporary to respond to emergent crises that require swift action. However, presidents are increasingly using emergency powers to address long-standing policy failures, impose policy preferences, and circumvent our system of checks and balances.

The DPA is scheduled to expire in 2025 unless reauthorized. Without [significant reform](#) that tightens definitions, gives Congress a more prominent role in the process, and provides for stronger transparency and oversight, Congress should consider allowing the DPA to lapse.

- Tighten the definitions in the statute so that the DPA is reserved only for defense purposes.
- DPA determinations should sunset after 30 calendar days unless approved by Congress. After that, determinations should sunset every six months unless reapproved by Congress.
- Require proactive transparency of actions taken under DPA authority.
 - For example, each agency with DPA authority should have a dedicated transparency website detailing its actions under DPA authority (e.g., commerce.gov/DPA or hhs.gov/DPA).
- Inspectors General should be required to conduct annual oversight over the use of the DPA in each respective agency.
- Eliminate congressional notification waivers.

We appreciate your leadership in holding a hearing on this matter. This is an incredible opportunity for Congress to assert its oversight authority over a blatantly abused law and hold the administration accountable for its attempt to bypass Congress in setting federal policy.