II

118TH CONGRESS
2D SESSION

S. 4376

To increase Government accountability for administrative actions by reinvigorating administrative Pay-As-You-Go.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2024

Mr. BRAUN introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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A BILL

To increase Government accountability for administrative actions by reinvigorating administrative Pay-As-You-Go.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Administrative Pay-As-You-Go Act of 2023’’.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ‘‘administrative action’’ means a ‘‘rule’’ as defined in section 804(3) of title 5, United States Code;

(2) the term ‘‘agency’’ means any authority of the United States that is an ‘‘agency’’ under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of such title;

(3) the term ‘‘covered discretionary administrative action’’ means a discretionary administrative action that would affect direct spending;

(4) the term ‘‘direct spending’’ has the meaning given that term in section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c));

(5) the term ‘‘Director’’ means the Director of the Office of Management and Budget;

(6) the term ‘‘discretionary administrative action’’—

(A) means any administrative action that is not required by law; and

(B) includes an administrative action required by law for which an agency has discretion in the manner in which to implement the administrative action; and

(7) the term ‘‘increase direct spending’’ means that the amount of direct spending would increase relative to—

(A) the most recently submitted projection of the amount of direct spending presented in baseline estimates as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, under—

(i) the budget of the President submitted under section 1105 of title 31, United States Code; or

(ii) the supplemental summary of the budget submitted under section 1106 of title 31, United States Code;

(B) with respect to a discretionary administrative action that is incorporated into the applicable projection described in subparagraph (A) and for which a proposal has not been submitted under section 3(a)(2)(A), a projection of the amount of direct spending if no administrative action were taken; or

(C) with respect to a discretionary administrative action described in paragraph (6)(B), a projection of the amount of direct spending under the least costly implementation option reasonably identifiable by the agency that meets the requirements under the statute.

SEC. 3. REQUIREMENTS FOR ADMINISTRATIVE ACTIONS THAT AFFECT DIRECT SPENDING.

(a) DISCRETIONARY ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Before an agency may finalize any covered discretionary administrative action, the head of the agency shall submit to the Director for review written notice regarding the covered discretionary administrative action, which shall include an estimate of the budgetary effects of the covered discretionary administrative action.

(2) INCREASING DIRECT SPENDING.—

(A) IN GENERAL.—If the covered discretionary administrative action would increase direct spending, the written notice submitted by the head of the agency under paragraph (1) shall include a proposal to undertake 1 or more other administrative actions that would provide a reduction in direct spending greater than or equal to the increase in direct spending attributable to the covered discretionary administrative action.

(B) REVIEW.—

(i) IN GENERAL.—The Director shall determine whether the reduction in direct spending in a proposal in a written notice from an agency under subparagraph (A) is greater than or equal to the increase in direct spending attributable to the covered discretionary administrative action to which the written notice relates.

(ii) NO OFFSET.—If the written notice regarding a proposed covered discretionary administrative action that would increase direct spending does not include a proposal to offset the increased direct spending as determined in clause (i), the Director shall return the written notice to the agency for resubmission in accordance with this Act.

(b) NONDISCRETIONARY ACTIONS.—If an agency determines that an administrative action that would increase direct spending is required by law and therefore is not a covered discretionary administrative action, before the agency finalizes that administrative action, the head of the agency shall—

(1) submit to the Director a written opinion by the general counsel of the agency, or the equivalent employee of the agency, explaining that legal conclusion;

(2) submit to the Director a projection of the amount of direct spending under the least costly implementation option reasonably identifiable by the

agency that meets the requirements under the statute; and

(3) consult with the Director regarding implementation of the administrative action.

(c) PROJECTIONS.—Any projection for purposes of this Act shall be conducted in accordance with Office of Management and Budget Circular A–11, or any successor thereto.

SEC. 4. ISSUANCE OF ADMINISTRATIVE GUIDANCE.

Not later than 90 days after the date of enactment of this Act, the Director shall issue instructions regarding the implementation of this Act, including how covered discretionary administrative actions that increase direct spending and nontax receipts will be evaluated.

SEC. 5. WAIVER.

(a) IN GENERAL.—The Director may waive the requirements of section 3 if the Director concludes that the waiver—

(1) is necessary for the delivery of essential services; or

(2) is necessary for effective program delivery.

(b) PUBLICATION.—Any waiver determination under subsection (a) shall be published in the Federal Register.

SEC. 6. EXEMPTION.

This Act shall not apply to administrative actions with direct spending cost of less than—

(1) $1,000,000,000 over the 10-year period beginning with the current year; or

(2) $100,000,000 in any given year during such 10-year period.

SEC. 7. JUDICIAL REVIEW.

No determination, finding, action, or omission under this Act shall be subject to judicial review.

SEC. 8. SUNSET.

This Act shall expire on December 31, 2024.

SEC. 9. GAO REPORT.

Within 180 days of the date of enactment of this Act, the Comptroller General shall issue a report on the implementation of this Act.

SEC. 10. CONGRESSIONAL REVIEW ACT COMPLIANCE ASSESSMENT.

Section 801(a)(2)(A) of title 5, United States Code, is amended by inserting after ''compliance with procedural steps required by paragraph (1)(B)'' the following: '', and shall in addition include an assessment of the agency's compliance with such requirements of the Administrative Pay-As-You-Go Act of 2023 as may be applicable''.

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