

118TH CONGRESS
1ST SESSION

S. 676

To amend sections 801 and 804 of title 5, United States Code, to include guidance issued by non-agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2023

Mr. SULLIVAN (for himself, Mrs. HYDE-SMITH, Mr. DAINES, Mr. BRAUN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend sections 801 and 804 of title 5, United States Code, to include guidance issued by non-agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Checks and Balances
5 Act”.

6 **SEC. 2. GUIDANCE ISSUED BY NON-AGENCIES.**

7 Section 801 of title 5, United States Code, is amend-
8 ed by adding at the end the following:

1 “(h) For purposes of Congressional review under this
2 chapter—

3 “(1) guidance that directs the operations of a
4 Federal agency and is issued by an entity with au-
5 thority delegated by the President shall be consid-
6 ered a rule; and

7 “(2) the entity that issues the guidance is re-
8 quired to comply with this chapter in the same man-
9 ner as a Federal agency.”.

10 **SEC. 3. DEFINITIONS.**

11 Section 804 of title 5, United States Code, is amend-
12 ed—

13 (1) by striking paragraph (1) and inserting the
14 following:

15 “(1) The term ‘Federal agency’—

16 “(A) means any agency as that term is de-
17 fined in section 551(1); and

18 “(B) includes a task force or similar entity
19 composed of members of an agency.”; and

20 (2) by adding at the end the following:

21 “(4) The term ‘guidance’—

22 “(A) means an agency statement of gen-
23 eral applicability (other than a rule that has the
24 force and effect of law promulgated in accord-

1 ance with the notice and comment procedures
2 under section 553) that—

3 “(i) does not have the force and effect
4 of law; and

5 “(ii) is designated by an agency offi-
6 cial as setting forth—

7 “(I) a policy on a statutory, reg-
8 ulatory, personnel, or technical issue;
9 or

10 “(II) an interpretation of a statu-
11 tory or regulatory issue, including a
12 personnel issue; and

13 “(B) may include—

14 “(i) a memorandum;

15 “(ii) a notice;

16 “(iii) a bulletin;

17 “(iv) a directive;

18 “(v) a letter;

19 “(vi) a no-action letter;

20 “(vii) any final agency action intended
21 to impose restrictions on the management
22 of Federal public land, including the with-
23 drawal of Federal public land; and

- 1 “(viii) any combination of the items
- 2 described in clauses (i) through (vii).”.

