118TH CONGRESS
1ST SESSION

# S. 1052

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

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IN THE SENATE OF THE UNITED STATES

MARCH 29, 2023

Mr. BRAUN (for himself, Ms. LUMMIS, and Mr. DAINES) 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’’ includes the issuance of a rule, demonstration, program notice, or guidance by an agency;

(2) the term "agency"—

(A) means—

(i) an "Executive agency", as defined under section 105 of title 5, United States Code; or

(ii) a "military department", as defined under section 102 of title 5, United States Code; and

(B) does not include the Government Accountability Office;

(3) the term "covered discretionary administrative action" means a discretionary administrative action that would effect 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 statute; and

(B) includes an administrative action required by statute 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 under current law 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 4(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 that meets the requirements under the statute.

**SEC. 3. FINDINGS; PURPOSES.**

(a) FINDINGS.—Congress finds the following:

(1) In May 2005, the Office of Management and Budget implemented a budget-neutrality requirement for executive branch administrative actions affecting direct spending.

(2) This mechanism, commonly referred to as ''Administrative Pay-As-You-Go'', requires each agency to include 1 or more proposals for reducing direct spending whenever an agency proposes to undertake a discretionary administrative action that would increase direct spending.

(3) In practice, however, agencies have applied this requirement with varying degrees of stringency, sometimes resulting in higher direct spending.

(b) PURPOSES.—The purposes of this Act are to—

(1) institutionalize and reinvigorate Administrative Pay-As-You-Go to keep direct spending under control;

(2) control Federal spending and restore the Nation's fiscal security; and

(3) ensure that agencies consider the costs of their administrative actions, take steps to offset those costs, and curtail costly administrative actions.

**SEC. 4. REQUIREMENTS FOR ADMINISTRATIVE ACTIONS THAT EFFECT DIRECT SPENDING.**

(a) DISCRETIONARY ADMINISTRATIVE ACTIONS.—

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

(2) INCREASING DIRECT SPENDING.—

(A) IN GENERAL.—If an agency proposes to take a covered discretionary administrative action that 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 comparable to the increase in direct spending attributable to the covered discretionary administrative action.

(B) REVIEW.—

(i) IN GENERAL.—The Director shall have the discretion to determine whether the reduction in direct spending proposed by an agency under subparagraph (A) is comparable to the increase in direct spending attributable to the covered discretionary administrative action to which the proposal relates, taking into account the magnitude of the reduction and the increase and any other factors the Director determines appropriate.

(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, the Director shall return the proposal to the agency for resubmission in accordance with this Act.

(b) NONDISCRETIONARY ACTIONS.—If an agency determines that a proposed administrative action that would increase direct spending is required by statute and therefore is not a covered discretionary administrative action, before the agency takes further action with respect to the proposed 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; and

(2) consult with the Director regarding implementation of the proposed 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. 5. 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 proposed covered discretionary administrative actions that increase direct spending and non-tax receipts will be evaluated.

**SEC. 6. WAIVER.**

The Director may waive the requirements of section 4 if the Director concludes that the waiver is necessary—

(1) for the delivery of essential services;

(2) for effective program delivery; or

(3) because a waiver is otherwise warranted by the public interest.

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