

117TH CONGRESS
1ST SESSION

S. 1482

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

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2021

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

A BILL

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

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 “Administrative Pay-
5 As-You-Go Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “administrative action” includes
9 the issuance of a rule, demonstration, program no-
10 tice, or guidance by an agency;

1 (2) the term “agency”—

2 (A) means—

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

6 (ii) a “military department”, as de-
7 fined under section 102 of title 5, United
8 States Code; and

9 (B) does not include the Government Ac-
10 countability Office;

11 (3) the term “covered discretionary administra-
12 tive action” means a discretionary administrative ac-
13 tion that would effect direct spending;

14 (4) the term “direct spending” has the meaning
15 given that term in section 250(c) of the Balanced
16 Budget and Emergency Deficit Control Act of 1985
17 (2 U.S.C. 900(c));

18 (5) the term “Director” means the Director of
19 the Office of Management and Budget;

20 (6) the term “discretionary administrative ac-
21 tion”—

22 (A) means any administrative action that
23 is not required by statute; and

24 (B) includes an administrative action re-
25 quired by statute for which an agency has dis-

1 cretion in the manner in which to implement
2 the administrative action; and

3 (7) the term “increase direct spending” means
4 that the amount of direct spending would increase
5 relative to—

6 (A) the most recently submitted projection
7 of the amount of direct spending under current
8 law under—

9 (i) the budget of the President sub-
10 mitted under section 1105 of title 31,
11 United States Code; or

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

15 (B) with respect to a discretionary admin-
16 istrative action that is incorporated into the ap-
17 plicable projection described in subparagraph
18 (A) and for which a proposal has not been sub-
19 mitted under section 4(a)(2)(A), a projection of
20 the amount of direct spending if no administra-
21 tive action were taken; or

22 (C) with respect to a discretionary admin-
23 istrative action described in paragraph (6)(B),
24 a projection of the amount of direct spending

1 under the least costly implementation option
2 that meets the requirements under the statute.

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

4 (a) FINDINGS.—Congress finds the following:

5 (1) In May 2005, the Office of Management
6 and Budget implemented a budget-neutrality re-
7 quirement for executive branch administrative ac-
8 tions affecting direct spending.

9 (2) This mechanism, commonly referred to as
10 “Administrative Pay-As-You-Go”, requires each
11 agency to include 1 or more proposals for reducing
12 direct spending whenever an agency proposes to un-
13 dertake a discretionary administrative action that
14 would increase direct spending.

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

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

19 (1) institutionalize and reinvigorate Administra-
20 tive Pay-As-You-Go to keep direct spending under
21 control;

22 (2) control Federal spending and restore the
23 Nation’s fiscal security; and

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

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

6 (a) DISCRETIONARY ADMINISTRATIVE ACTIONS.—

7 (1) IN GENERAL.—Before an agency may un-
8 dertake any covered discretionary administrative ac-
9 tion, the head of the agency shall submit to the Di-
10 rector for review written notice regarding the pro-
11 posed covered discretionary administrative action,
12 which shall include an estimate of the budgetary ef-
13 fects of the proposed covered discretionary adminis-
14 trative action.

15 (2) INCREASING DIRECT SPENDING.—

16 (A) IN GENERAL.—If an agency proposes
17 to take a covered discretionary administrative
18 action that would increase direct spending, the
19 written notice submitted by the head of the
20 agency under paragraph (1) shall include a pro-
21 posal to undertake 1 or more other administra-
22 tive actions that would provide a reduction in
23 direct spending comparable to the increase in
24 direct spending attributable to the covered dis-
25 cretionary administrative action.

1 (B) REVIEW.—

2 (i) IN GENERAL.—The Director shall
3 have the discretion to determine whether
4 the reduction in direct spending proposed
5 by an agency under subparagraph (A) is
6 comparable to the increase in direct spend-
7 ing attributable to the covered discre-
8 tionary administrative action to which the
9 proposal relates, taking into account the
10 magnitude of the reduction and the in-
11 crease and any other factors the Director
12 determines appropriate.

13 (ii) NO OFFSET.—If the written notice
14 regarding a proposed covered discretionary
15 administrative action that would increase
16 direct spending does not include a proposal
17 to offset the increased direct spending, the
18 Director shall return the proposal to the
19 agency for resubmission in accordance with
20 this Act.

21 (b) NONDISCRETIONARY ACTIONS.—If an agency de-
22 termines that a proposed administrative action that would
23 increase direct spending is required by statute and there-
24 fore is not a covered discretionary administrative action,
25 before the agency takes further action with respect to the

1 proposed administrative action, the head of the agency
2 shall—

3 (1) submit to the Director a written opinion by
4 the general counsel of the agency, or the equivalent
5 employee of the agency, explaining that legal conclu-
6 sion; and

7 (2) consult with the Director regarding imple-
8 mentation of the proposed administrative action.

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

13 **SEC. 5. ISSUANCE OF ADMINISTRATIVE GUIDANCE.**

14 Not later than 90 days after the date of enactment
15 of this Act, the Director shall issue instructions regarding
16 the implementation of this Act, including how proposed
17 covered discretionary administrative actions that increase
18 direct spending and non-tax receipts will be evaluated.

19 **SEC. 6. WAIVER.**

20 The Director may waive the requirements of section
21 4 if the Director concludes that the waiver is necessary—

- 22 (1) for the delivery of essential services;
23 (2) for effective program delivery; or

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

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