



U.S. House of Representatives
COMMITTEE ON THE BUDGET
Washington, DC 20515-6065

April 29, 2024

The Honorable Shalanda Young
Director Office of Management and Budget
725 Seventeenth Street NW
Washington, DC 20503

Director Young,

We write today to express serious concerns over the Office of Management and Budget's (OMB) interpretation and implementation of Administrative Pay-As-You-Go (PAYGO), as established by the Fiscal Responsibility Act (FRA) of 2023 (P.L. 118-5).¹

Over the course of many years, administrations on both sides of the aisle have increasingly implemented costly executive actions outside of Congressional authority. The Biden Administration represents a clear example of this legacy, proposing and implementing over \$2 trillion worth of spending through executive actions in just three years.² The FRA enacted an important reform to mitigate this issue. We are concerned that OMB is effectively ignoring this Congressional mandate.

Title III of the FRA includes a statutory Administrative PAYGO provision, which requires administrative actions that increase direct spending by \$1 billion over 10 years or \$100 million in any given year be offset by spending cuts or other pay-fors. The provision also grants you, as the Director of OMB, broad authority to waive Administrative PAYGO requirements if it is necessary for "essential services" or "effective program delivery."

The FRA required OMB³ and the Government Accountability Office (GAO)⁴ to publish guidance reports on how the provision is being implemented. Though Administrative PAYGO was intended to promote fiscal responsibility and transparency throughout the Executive Branch, both reports call into question whether the current interpretation of the provision is fulfilling its original intent.

¹ H.R.3746 - 118th Congress (2023-2024): Fiscal Responsibility Act of 2023." Congress.gov, Committee on Ways and Means, 3 June 2023, <https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf>.

² "President Biden's Executive Actions Have Cost Taxpayers Over \$2 Trillion" House Committee on the Budget, 26 Apr. 2024, <https://budget.house.gov/press-release/president-bidens-executive-actions-have-cost-taxpayers-over-2-trillion>.

³ Young, Shalanda D. "Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023 ." Received by Memorandum for the Heads of Executive Departments and Agencies, 1 Sept. 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/09/M-23-21-Admin-PAYGO-Guidance.pdf>

⁴Federal Rulemaking: Status of Actions to Offset Direct Spending from Administrative Rules, Government Accountability Office, 30 Nov. 2023. <https://www.gao.gov/products/gao-24-106968>.

GAO's report identified 28 "economically significant or major" rules finalized between the FRA's enactment on June 3, 2023, through November 3, 2023. The report notes that OMB utilized its waiver authority for two rules and stated that the remaining 26 did not qualify within the Administrative PAYGO threshold. In other words, OMB has decided to take no action to offset spending on any of these rules.

The two eligible rules OMB decided to waive include the Annual Medicare Home Health Prospective Payment rule and changes to the income driven repayment (IDR) student loan plans with the latter costing over \$260 billion, according to the Congressional Budget Office.⁵ Both waivers were published in the *Federal Register*, without explicitly notifying Congress. The \$260.7 billion IDR rule was "waived" by the Department of Education simply by the finalized rule stating, "The Director of OMB has waived the requirements of section 263 of the Fiscal Responsibility Act of 2023 (Pub. L. 118- 5) pursuant to section 265(a)(2) of that act."⁶ This lack of transparency cannot continue.

Even OMB's formal guidance specifically ignores the law saying it, "does not legally require agencies to move forward with, or ultimately implement, proposed offsets."⁷ OMB's interpretation exhibits a complete and total disregard of the provision and is markedly different from previous iterations of Administrative PAYGO, which promulgated the measure's intention of promoting budget-neutral policy.

In May 2005, the Bush Administration defined it as "a budget neutrality requirement" on agency actions impacting mandatory spending.⁸ The Obama Administration's budgets from fiscal years 2010 through 2017 all included Administrative PAYGO language following the May 2005 guidance, stating that "Exceptions to this requirement are only provided in extraordinary or compelling circumstances."⁹ In 2019, the Trump Administration renewed Administrative PAYGO, defining it as a "budget neutrality requirement."¹⁰ President Biden revoked this policy by Executive Order on his first day in office.¹¹

As our nation faces an unprecedented and continuously growing debt crisis, offsetting costs of administrative rules is imperative. OMB ignoring clear Congressional intent violates this directive.

⁵ Cost Estimate of H.J. Res. 88, Congressional Budget Office, 18 Sept. 2023.

<https://www.cbo.gov/system/files/2023-09/hjres88.pdf>.

⁶ Young, Shalanda D. "Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023 ." Received by Memorandum for the Heads of Executive Departments and Agencies, 1 Sept. 2023.

<https://www.whitehouse.gov/wp-content/uploads/2023/09/M-23-21-Admin-PAYGO-Guidance.pdf>

⁷ Ibid.

⁸ Bolten, Joshua B. "Budget Discipline for Agency Administrative Actions." Received by Memorandum for the Heads of Departments and Agencies, 23 May 2005. https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2005/m05-13.pdf

⁹ "Budget of the United States Government." GovInfo, www.govinfo.gov/app/collection/budget/2025.

¹⁰ Vought, Russell T. "Revoking OMB Memorandum M-05-13 and Providing Other Information on Administrative PAYGO Implementation Guidance ." Received by Memorandum for the Heads of Executive Departments and Agencies, 16 Dec. 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-06.pdf>.

¹¹ "Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation." The White House, 20 Jan. 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-revocation-of-certain-executive-orders-concerning-federal-regulation/>.

Pursuant to Rule X, the Committee on the Budget has jurisdiction over “the budget process generally,” including the executive budget process.¹² The Committee’s longstanding responsibilities in this area, also include “ensuring spending and revenue decisions are transparent and effectively carried out by the Executive Branch”.¹³ In order to conduct fiscal oversight duties, ensure Congress is not being circumvented, and increase much needed transparency to the American public, we ask that OMB provide detailed answers to the following questions by May 29, 2024:

1. Since January 2021, how many finalized rules would qualify under the FRA’s Administrative PAYGO provision?
2. Since the FRA’s Administrative PAYGO went into effect, how many qualifying rules have received waivers?
3. What are the cost estimates for each rule that was waived?

Sincerely,



Jodey Arrington
Chairman
House Budget Committee



Jack Bergman
Chair of the Oversight Task Force
House Budget Committee

¹² Constitution, Jefferson’s Manual, and the Rules of the House of Representatives of the United States, One Hundred Eighteenth Congress, page 468, at <https://www.govinfo.gov/content/pkg/HMAN-118/pdf/HMAN-118.pdf>

¹³ Authorization and Oversight Plan of the Committee on the Budget 118th Congress, House of Representatives, Committee Jurisdiction and Oversight, <https://docs.house.gov/meetings/BU/BU00/20230209/115342/HMTG-118-BU00-20230209-SD002.pdf>