



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

May 29, 2024

The Honorable Jodey Arrington  
Chairman  
Committee on the Budget  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your April 29, 2024 letter regarding the Administrative Pay-As-You-Go Act of 2023 (the “Act”).<sup>1</sup>

This Administration shares the goal of meaningful deficit reduction, and has demonstrated that we can achieve this goal while investing in America. The annual deficit is over \$1 trillion lower than when President Biden took office, and the President has enacted roughly \$1 trillion in additional deficit reduction measures, including the spending caps enacted in the Fiscal Responsibility Act (FRA). As set forth in the proposed Budget of the U.S. Government for Fiscal Year 2025, the Administration proposes another roughly \$3 trillion in savings over the next 10 years.

Since the passage of the FRA, OMB has faithfully implemented the Administrative Pay-As-You-Go Act, including in issuing guidance to agencies as directed by the Act.<sup>2</sup> In light of the concerns expressed in your letter, it is important to clarify what the Act requires.

As your letter acknowledges, the Act applies only to a limited subset of agency actions: final rules that increase spending from mandatory appropriations (*i.e.*, “direct spending”) above certain thresholds. The Act does not cover rules unless they increase direct spending, regardless of their effects on discretionary spending, revenues, or their other economic effects. And as noted above, the Act only applies above certain thresholds: it exempts rules with direct spending increases of less than \$1 billion over the next 10 fiscal years, beginning with the remainder of the current fiscal year, or of less than \$100 million in any of those 10 fiscal years.

In addition, as your letter acknowledges, the Act grants the OMB Director “broad authority” to waive the Act’s requirements if necessary for the delivery of essential services or for effective program delivery, and specifies that waiver determinations shall be published in the *Federal Register*. Consistent with these parameters, I have granted

---

<sup>1</sup> Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, div. B, title III.

<sup>2</sup> OMB, Memorandum M-23-21, *Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023* (Sept. 1, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/09/M-23-21-Admin-PAYGO-Guidance.pdf>.

five waivers, as reflected in the final rules' preambles in the *Federal Register*.<sup>3</sup> Finally, if the Act does apply to a discretionary agency action and a waiver has not been granted, the Act requires that agencies submit only a "written notice" containing "a proposal" to undertake an offset.

The Act was carefully negotiated as part of a larger deal struck in the Fiscal Responsibility Act of 2023. Any suggestion that the Act applies to a broader set of rules, or requires actions not specified in the Act's text, ignores the plain language of the Act and the compromise that it reflects.

Your letter also references certain "economically significant or major" rules identified in a November 2023 Government Accountability Office (GAO) report, but the rules GAO identified did not necessarily fall within the Act's limited scope, and the GAO report did not suggest to the contrary. Rather, GAO's list included rules finalized between June 3 and November 3, 2023 that were designated as "major" under the Congressional Review Act or "significant" under section 3(f)(1) of Executive Order 12866. Critically, these designations depend on the expected overall economic effects of a rule rather than the criteria relevant to the Act's applicability—*i.e.*, increases in direct spending. Designation of a rule as major or significant does not imply that it has any direct spending effects, let alone direct spending increases that exceed the Act's thresholds.

If you have any further questions, please contact the Office of Legislative Affairs at [OMBLegislativeAffairs@omb.eop.gov](mailto:OMBLegislativeAffairs@omb.eop.gov).

Sincerely,

A handwritten signature in black ink that reads "Shalanda D. Young". The signature is written in a cursive, flowing style.

Shalanda D. Young  
Director

---

<sup>3</sup> HHS, *Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality*, 89 Fed. Reg. 41002, 41266 (May 10, 2024); SSA, Final Rule, *Intermediate Improvement to the Disability Adjudication Process*, 89 Fed. Reg. 27653, 27664 (Apr. 18, 2024); HHS, *Medicaid Program; Streamlining the Medicaid, Children's Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes*, 89 Fed. Reg. 22780, 22865 (Apr. 2, 2024); HHS, *Medicare Program; Calendar Year (CY) 2024 Home Health (HH) Prospective Payment System Rate Update*, 88 Fed. Reg. 77676, 77874 (Nov. 13, 2023); Dep't of Ed., *Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program*, 88 Fed. Reg. 43820, 43867 (July 10, 2023).

Identical Letter Sent To:

The Honorable Jack Bergman