



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

THE DIRECTOR

September 1, 2023

M-23-21

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: SHALANDA D. YOUNG 

SUBJECT: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023

This memorandum provides guidance to agencies regarding implementation of the Administrative Pay-As-You-Go Act of 2023 (the “Act”). See Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, div. B, title III.

Section 264 of the Act requires the Director of the Office of Management and Budget (OMB) to issue instructions regarding the implementation of the Act. This guidance is effective immediately. The directives set forth in this memorandum that supplement the requirements of the Act—*e.g.*, that agencies submit certain information regarding the direct spending effects of their rules to OMB (see sections III.D and III.E below)—apply to all rules that have not yet been submitted to the Office of Information and Regulatory Affairs (OIRA) as of the date of this memorandum. These supplemental directives do not apply to proposed rules that have already been submitted to OIRA, but agencies must still comply with any applicable requirements of the Act before finalizing such rules. This guidance expires on December 31, 2024, the date on which the Act expires.

**SUMMARY**

The Act applies to a limited subset of agency actions: it applies to final rules that increase spending from mandatory appropriations (“direct spending”) above certain thresholds. Agencies must notify OMB, no later than the notice-of-proposed-rulemaking stage where applicable, of the agency’s preliminary determination of whether the Act applies and the basis for that determination. Where the Act does apply, agencies must either request and obtain a waiver from OMB under the statutory criteria for waivers, or identify in a notice submitted to OMB one or more agency actions that would offset that direct spending increase associated with the rule under consideration. Grants of waivers must be published in the *Federal Register* when a rule is finalized, but proposed offsets need not be. These provisions expire December 31, 2024. Materials requested in this memorandum should be sent to your OIRA desk officer, as outlined below.

## GUIDANCE

### I. Background

The Administrative Pay-As-You-Go Act of 2023 requires agencies to provide certain information to the Director of OMB before finalizing certain administrative actions that increase direct spending, subject to specified exemptions and waivers, through December 31, 2024. Section 264 of the Act requires the Director of OMB to issue guidance to agencies regarding the implementation of the Act, which this memorandum provides.

### II. Summary of Steps for Evaluating the Act's Applicability

In determining whether the Act applies to a given agency action, agencies should ask the following questions, each of which is addressed in more detail in the sections that follow:

**1. *Is my agency subject to the Act?*** The Act applies to executive departments and agencies, but not to independent regulatory agencies as defined in 44 U.S.C. § 3502. (See section III.A of this memorandum.)

**2. *Is this agency action a “rule”?*** The Act applies only to actions that meet the definition of a “rule” under the Congressional Review Act (CRA), 5 U.S.C. § 804(3). If the agency determines that the action is not a rule under the CRA, no further steps are required. (Section III.B.)

**3. *Is the rule being “finalized”?*** When the Act applies, its procedural requirements must be satisfied prior to a rule being “finalize[d].” For notice-and-comment rulemakings, an agency should be prepared to discuss with OMB the agency’s preliminary evaluation regarding the Act’s requirements at the time of the agency’s submission of a draft notice of proposed rulemaking, and must submit a written determination of the applicability of the Act’s requirements no later than the agency’s submission of a draft final rule. Further, in certain cases the agency may be asked to submit to OMB additional information during the review process for the proposed rule to allow sufficient time for OMB review prior to the rule being finalized. (Section III.C.)

**4. *Does the rule increase “direct spending”?*** The Act applies only to rules that increase the Federal Government’s “direct spending”—*i.e.*, mandatory net outlays—relative to specified baselines. Mandatory outlays and mandatory offsetting collections/receipts should all be considered when determining the direct spending effect of a rule. No steps under the Act are necessary for rules that will not increase direct spending, regardless of their effects on discretionary spending, revenues, or their other economic effects. If an agency determines that a rule it intends to issue is not subject to the Act because it will not increase direct spending, it should inform OMB of that determination at the earliest appropriate stage, as discussed in more detail below. (Section III.D.)

5. ***Do either of the Act’s exemptions apply?*** Even for actions that increase direct spending, the Act does not apply if the direct spending increase is: (1) less than \$1 billion over the next 10 fiscal years, beginning with the remainder of the current fiscal year, *or* (2) less than \$100 million in any one of those 10 fiscal years. No further steps under the Act are necessary if either exemption applies. If an agency determines that a rule is not subject to the Act because it falls within one of these exemptions, it should inform OMB of that determination at the earliest appropriate stage, as discussed in more detail below. (Section III.E.)

6. ***If the Act applies, what further actions are necessary?*** If an agency concludes that, notwithstanding the above limitations and exemptions, the Act’s requirements will apply to a rule it plans to finalize, the agency should contact their OMB representatives (generally, their OIRA desk officer and Resource Management Officer) to discuss potential next steps necessary to comply with the Act’s requirements, as described in sections IV and V of this memorandum. Section IV describes the Act’s provision authorizing the OMB Director to waive the requirements of the Act in specified circumstances, and the process by which an agency may request a waiver. Section V provides additional information on the Act’s procedural requirements when a waiver is not issued.

### **III. The Act’s Limitations and Exemptions**

#### **A. The Act Does Not Apply to Independent Regulatory Agencies**

The Act applies to certain administrative actions taken by an “agency,” defined as “any authority of the United States that is an ‘agency’ under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of such title.” Act § 262(2). Independent regulatory agencies thus are not subject to the Act.<sup>1</sup>

#### **B. The Action Must Be a “Rule” as Defined by the Congressional Review Act**

The Act applies only to “administrative actions” that meet the definition of a “rule” under the Congressional Review Act (CRA), 5 U.S.C. § 804(3). Act § 262(1). No steps under the Act are necessary for actions that do not meet the CRA’s definition of a “rule.”

The CRA defines a “rule” by cross-referencing the Administrative Procedure Act’s definition in 5 U.S.C. § 551. *See* 5 U.S.C. § 804(3). A “rule” is “the whole or a part of an agency

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<sup>1</sup> Under 44 U.S.C. § 3502(5), an “independent regulatory agency” means the following agencies, along with “any other similar agency designated by statute as a Federal independent regulatory agency or commission”: the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Consumer Product Safety Commission, Federal Communications Commission, Federal Deposit Insurance Corporation, Federal Energy Regulatory Commission, Federal Housing Finance Agency, Federal Maritime Commission, Federal Trade Commission, Interstate Commerce Commission, Mine Enforcement Safety and Health Review Commission, National Labor Relations Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Postal Regulatory Commission, Securities and Exchange Commission, Bureau of Consumer Financial Protection, Office of Financial Research, and Office of the Comptroller of the Currency.

statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.” 5 U.S.C. § 551(4).

The CRA’s definition, however, exempts the following three categories of rules:

- (A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;
- (B) any rule relating to agency management or personnel; or
- (C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

5 U.S.C. § 804(3).

Whether a particular agency action is a “rule” under the CRA’s definition is a case-by-case determination to be made consistent with the agency’s ordinary procedures for determining whether an action is a “rule” under the CRA.

### **C. The Act Applies Only to Rules Being Finalized**

Where the Act applies, an agency must satisfy the Act’s requirements before it “finalize[s]” a covered rule. Act § 263. The Act thus does not require any steps prior to preliminary forms of agency action, such as notices of proposed rulemaking. Finalization for purposes of the Act does include issuance of an interim final rule.

To ensure sufficient time for OMB review prior to finalization—and as described in more detail below—an agency must be prepared to discuss with OMB the agency’s preliminary evaluation regarding the applicability of the Act’s requirements no later than the proposed-rule stage for notice-and-comment rules (or no later than an analogous preliminary phase for other agency actions).

For purposes of the Act, an agency “finalize[s]” a rule at the time that the rule’s final text is made available to the public. For rules that will be published in the *Federal Register*, finalization occurs when the Office of Federal Register makes the rule available for public inspection (which typically occurs shortly before publication in the *Federal Register*). For rules

that will not be published in the *Federal Register*, finalization occurs upon the agency’s public release of the document—for example, the posting of the document on the agency’s website.

Note that an agency’s finalization of a rule may occur prior to the rule becoming effective or enforceable by the agency. For instance, if a final rule were made available to the public on January 1, but the rule provides an effective date of March 1, the finalization date for purposes of the Act would be January 1.

#### **D. The Rule Must Increase “Direct Spending” Relative to Certain Baselines**

The Act applies only to rules that increase the Federal Government’s “direct spending” relative to specified baselines. *See* Act §§ 263, 266. Thus, two predicate questions are: (1) whether the rule affects direct spending, which means mandatory spending rather than discretionary spending; and (2) whether the rule increases direct spending relative to the applicable baseline.

##### *1. The Meaning of “Direct Spending”*

An increase to direct spending is measured in terms of mandatory net outlays—*i.e.*, an increase to mandatory outlays or a decrease in non-tax receipts. No steps under the Act are necessary for rules that will not increase Federal direct spending, regardless of the rule’s effects on discretionary spending or its other economic effects.<sup>2</sup>

The Act defines “direct spending” by cross-referencing the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), 2 U.S.C. § 900(c). *See* Act § 262(4). Under BBEDCA, the term “direct spending” means: “(A) budget authority provided by law other than appropriation Acts; (B) entitlement authority; and (C) the Supplemental Nutrition Assistance Program.” 2 U.S.C. § 900(c)(8). The Act accordingly applies only to rules that increase these particular forms of spending identified in BBEDCA—often referred to as “mandatory spending.” *See* OMB Circular No. A-11, § 20, at 8 (2023).

Mandatory or direct spending is generally provided in acts other than appropriations acts—typically authorizing legislation or a reconciliation bill. Discretionary spending is generally provided in appropriations acts. A rule that affects only an agency’s annually appropriated (discretionary) salaries-and-expenses resources, for example, would not affect direct spending. By contrast, a rule that changes eligibility requirements for a program that has permanent indefinite budget authority typically would affect direct spending. If an agency has questions about the nature of the spending affected by a rule, it should contact its OIRA desk officer and Resource Management Officer as appropriate.

A rule’s other costs and economic effects are not relevant to whether the rule increases direct spending. For example, in evaluating whether the Act applies, the agency should not

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<sup>2</sup> Although section 262(3) of the Act defines a “covered discretionary administrative action” to mean “a discretionary administration action that would *affect* direct spending,” the Act does not apply to rules unless they *increase* direct spending because section 266 of the Act exempts rules that do not increase direct spending beyond specified thresholds (as discussed in section III.E of this memorandum).

consider costs in administering the rule that come from discretionary appropriations. Likewise, the agency should not consider other economic impacts beyond the direct effect on mandatory spending, including the various categories of benefits and costs contained in regulatory impact analyses submitted pursuant to Executive Order 12866.

## 2. *Determining the Relevant Baseline*

As discussed in section III.E below, the Act applies only to rules that increase direct spending beyond specified thresholds. To determine whether a rule will increase direct spending (and if so, in what amount), the agency needs to determine the correct baseline against which to measure the rule's expected direct spending cost.

Under section 262(7) of the Act, the relevant baseline depends on the nature of the rule and on whether its cost was already incorporated in a published budget submission.

For rules that are not “required by law,” the baseline against which the cost of the rule is measured is the most recent baseline estimate published under BBEDCA—*i.e.*, either the baseline estimate in the President's Budget or in the supplemental summary of the Budget (known as the Mid-Session Review). *See* Act § 262(7)(A). If, however, the cost of the rule was incorporated into that most recent published estimate, then the baseline is the most recently published BBEDCA baseline minus the estimated direct spending cost of the rule. *See* Act § 272(7)(B). Agencies should consult with their agency budget office to determine what regulatory action, if any, was assumed in the most recent BBEDCA baseline and reflected in the most recent President's Budget or Mid-Session Review estimate, and to develop an estimate of the direct spending increase of the rule.

The baseline is calculated differently for rules that are “required by law” but “for which the agency has discretion in the manner in which to implement the administrative action.” Act § 262(6)(B). For this category of rules, the baseline is the estimated amount of direct spending “under the least costly implementation option reasonably identifiable by the agency that meets the requirements under the statute.” Act § 262(7)(C). In other words, if the agency determines that it is required by law to issue a rule, but that the law leaves the agency with discretion to determine how to effectuate that legal requirement, the agency must, to the extent practicable, ascertain the least costly implementation option that is “reasonably identifiable” and measure the direct spending increase of the rule against that least costly implementation option. In cases where there is no other implementation option that is reasonably identifiable, or where the agency determines that the rule to be finalized is the least costly option that is reasonably identifiable, the direct spending increase would be zero because there is no difference between the costs of the final rule and the baseline.

Whether a rule is “required by law” for purposes of section 262(7)—and, if so, whether there are reasonably identifiable, less-costly implementation options—are case-by-case determinations that are made by the agency, in consultation with agency counsel.

3. *Procedure for Advising OMB That a Rule Will Not Increase Direct Spending*

If the agency determines that a rule will not increase direct spending, and therefore that the Act does not apply, it should inform OMB of that determination well in advance of the rule's finalization.

Generally, for rules subject to review under Executive Order 12866, agencies by no later than the submission of a proposed rule should inform OIRA in writing if they have determined that the rule (if finalized) would not increase direct spending. Likewise, by no later than submission of a final rule to OIRA under Executive Order 12866, agencies should confirm their initial determination, made at the proposed-rule stage, that the rule would not increase direct spending.

For rules subject to review under Executive Order 12866 that have no preliminary phase akin to a proposed rule, agencies should advise OIRA at the earliest possible stage if they have determined that the action will not increase direct spending. For rules that meet the definition of a rule but are not subject to review under Executive Order 12866, agencies should notify OIRA at the earliest possible time prior to finalizing the rule.

In advising OMB of a determination that a rule will not increase direct spending, it generally will suffice for the agency to provide OIRA written notification of the agency's determination (for example, a statement that the rule does not affect spending, or affects only discretionary spending).

**E. The Act Exempts Rules that Do Not Increase Direct Spending Beyond Specified Thresholds**

1. *Summary of the Statutory Exemptions*

Section 266 of the Act exempts otherwise qualifying rules from the Act where the direct spending cost is less than certain thresholds. Specifically, a rule is exempt from the Act's requirements if the direct spending increase is *either* (1) less than \$1 billion over the 10-year period beginning with the current year, *or* (2) less than \$100 million in any given year during such 10-year period. Act § 266. These exemptions are disjunctive; if either is met, the Act does not apply.

For purposes of Section 266, the "current year" means the remainder of the fiscal year in which the rule is finalized. Thus, for purposes of the exemptions, the 10-year period is the remainder of the fiscal year in which the rule is finalized, plus the next nine fiscal years. For FY 2024, the 10-year period would be the remainder of FY 2024 following finalization, plus all of FY 2025 through FY 2033. For a rule finalized in FY 2025, the 10-year period would be the remainder of FY 2025, plus all of FY 2026 through FY 2034.

Accordingly, under the first exemption, if a rule finalized in FY 2024 would increase direct spending by \$800 million in the 10-year period from FY 2024 through FY 2033, then the Act would not apply. The direct spending cost of the rule would be less than \$1 billion over the relevant 10-year period. Act § 266(1).

Under the second exemption, if a rule finalized in FY 2024 would increase spending by \$150 million in each of the first eight fiscal years following finalization, but would increase direct spending by \$0 in the ninth and tenth fiscal years, then the Act would not apply. Likewise, if the direct spending increase were \$0 in the remainder of FY 2024, but then \$150 million in each of the nine fiscal years thereafter, the Act again would not apply. In both scenarios, although the rule would increase direct spending by more than \$1 billion in *total* over the relevant 10-year period, the rule would increase direct spending by less than \$100 million in one or more of the years during that 10-year period, triggering the second exemption. Act § 266(2).

### *2. Determining Whether an Exemption Applies*

For rules that increase direct spending, the agency should produce an estimate of the direct spending costs of the rule in coordination with the agency's budget office. Only direct spending costs are relevant, not other costs (for example, discretionary budget authority or economic effects). Estimates of direct spending effects should be measured against the relevant baselines in millions of dollars for the 10-year window beginning in the fiscal year in which the rule is finalized.

Direct spending costs should be comprehensive; that is, if a rule would affect the direct spending of multiple agencies, the estimate should include the direct spending effects of the rule in each of those agencies. The agency should coordinate with other affected agencies to develop a joint estimate of direct spending effects; the relevant OMB representative may help coordinate.

### *3. Procedure for Advising OMB that a Rule Is Subject to an Exemption*

If the agency determines that a rule is subject to one of the Act's exemptions in section 266, it should inform OMB of that determination well in advance of the rule's finalization. In particular, the agency should provide OIRA with a short, written summary of the agency's determination that one of the Act's exemptions applies, identifying the relevant exemptions.

In advising OMB of a determination that a rule is exempt, it generally will suffice for the agency to provide OIRA a brief written explanation of the agency's determination—for example, an explanation of why the rule has no direct-spending effect in one or more particular fiscal years during the 10-year period beginning with the year in which the agency expects the rule to be finalized; an explanation of why the agency assesses that the effect will be less than \$100 million in at least one year; or, where needed, a year-by-year estimate for the 10 fiscal years beginning with the year in which the rule will be finalized. OMB may ask for additional information and consultation with the agency.

If an agency at the proposed-rule (or analogous preliminary) stage determined that one of the Act's exemptions applies, then the agency upon submission of a final rule to OIRA should provide a written statement confirming its initial determination. In doing so, the agency should



inform OMB of any material changes in the agency’s direct-spending estimate since the proposed-rule stage (including, for example, any material changes based on the rule’s expected date of finalization).

#### **IV. Waivers**

##### **A. Summary of Statutory Waiver Standards**

Section 265(a) of the Act authorizes the OMB Director to waive the requirements of the Act if the Director concludes that the waiver either is (1) necessary for the delivery of essential services or (2) necessary for effective program delivery.

##### **B. Process for Requesting a Waiver**

An agency that anticipates requesting a waiver from the Director should notify OMB as soon as possible during the rulemaking process. Notifying OMB as soon as possible of an agency’s intent to request a waiver will facilitate timely consideration by OMB and will enable the agency to timely prepare the written notice required by the Act if a waiver is ultimately not provided.

Agencies should consult with OMB before submitting a formal waiver request. Where, following consultation with OMB, an agency decides to formally request a waiver, the agency should submit the request to OIRA in a letter from the agency head or their designee, addressed to the OMB Director. The letter should explain the agency’s rationale for concluding that the waiver is necessary for the delivery of essential services under section 265(a)(1), necessary for effective program delivery under section 265(a)(2), or both. OMB will review the request and inform the agency whether it has been granted. If the requested waiver is not granted, OMB will consult with the agency regarding the necessary next steps, which are summarized in section V below.

##### **C. Publication of Waiver Determinations**

Section 265(b) of the Act requires that all waiver determinations be published in the *Federal Register*.

If the OMB Director has waived the requirements of the Act with respect to a rule that will be published in the *Federal Register*, the agency should include, in the preamble to the final rule itself, a concise statement that the OMB Director has waived the requirements of the Act, specifying the relevant subsection of section 265(a) under which the waiver was issued. As an instructive example, a recent Department of Education final rule stated: “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.” 88 Fed. Reg. 43820, 43867 (July 10, 2023). So long as the final rule contains such a statement regarding the Director’s waiver, the agency need not, and should not, separately publish a waiver determination in the *Federal Register* (nor will OMB do so).

For rules that the agency does not otherwise intend to publish in the *Federal Register*, but for which the OMB Director has waived the requirements of the Act, the agency should publish in the *Federal Register* a similar statement that the OMB Director has waived the requirements of the Act, specifying the relevant subsection of section 265(a) under which the waiver was issued.<sup>3</sup> This statement should be published as soon as practicable after finalization of the rule at issue.

## **V. Requirements of the Act When Applicable**

If, notwithstanding the limitations and exemptions described above, the agency in consultation with OMB determines that a rule it intends to finalize is subject to the Act, and that the Act's requirements will not be waived, then the rule is subject to the reporting requirements set forth in sections 263 and 270. Before proceeding further, agencies at this stage should contact their OIRA desk officer and Resource Management Officer regarding the Act's requirements, which are summarized here.

As described in more detail below, section 263's requirements depend on whether a covered rule is "discretionary" or "nondiscretionary." For purposes of the Act, "discretionary" rules include both rules that are not required by law as well as rules that are required by law but for which an agency has discretion in the manner in which to implement the rule. Act § 262(6). "Nondiscretionary" rules are those required by law for which the agency has no discretion regarding implementation. *See id.*

### **A. Requirements for Covered Discretionary Administrative Actions**

For discretionary rules subject to the Act, prior to finalizing the rule, the agency must submit to the OMB Director a written notice, through OIRA, that includes: (1) an estimate of the direct spending effects of the covered rule, and (2) a proposal to undertake one or more other rules that collectively would reduce direct spending by an amount greater than or equal to the increase attributable to the covered rule. *See* Act § 263(a)(1), (a)(2)(A).

In estimating the direct spending effects of the covered rule, agencies should estimate the increase in direct spending attributable to the covered rule above the relevant baseline, as identified using the principles described in section III.D.2 above. The relevant direct spending effect is the net change in mandatory net outlays (including non-tax receipts) relative to that baseline over the 10-year window, beginning with the fiscal year in which the covered rule is finalized.

In developing proposals to offset the direct spending cost of the proposed rule, agencies should consult their OMB representatives regarding the timing and substance of their submissions. Proposed offsets must be within the agency's purview. In estimating reductions in direct spending that would be associated with these proposals, agencies should use the same

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<sup>3</sup> For example, such a statement could read: "On [date], [agency] issued a [document type] titled [title], available at [hyperlink]. Prior to issuance of that [document type], the Director of OMB waived the requirements of section 263 of the Administrative Pay-As-You-Go Act of 2023 (Pub. L. 118-5, div. B, title III) pursuant to section 265(a)(1)/(2) of that act."

principles as when estimating the direct spending costs of the covered rule—namely, they should estimate the net change in mandatory spending relative to the appropriate baseline over the relevant 10-year window.

The notice that agencies submit to the OMB Director with the proposed offsets should briefly summarize the one or more potential rules the agency could undertake to reduce direct spending, estimate the direct spending effect of each proposal identified, and summarize any analysis supporting those estimates.

The Act does not legally require that the agency move forward with or ultimately implement the proposed offsets. Agencies should consult with OMB on any plans to implement the proposed offsets. Upon receipt of a notice under section 263 of the Act, the OMB Director will review the notice and determine whether the agency has included sufficient offsets. Act § 263(a)(2)(B)(i). If the notice does not contain a proposal for such a reduction, the Director must return the notice to the agency for resubmission. Act § 263(a)(2)(B)(ii).

### **B. Requirements for Covered Nondiscretionary Administrative Actions**

Section 263(b) of the Act imposes a different set of requirements for rules that are “nondiscretionary,” meaning rules that are required by law and for which the agency has no discretion in how to implement the law. A rule may be nondiscretionary, for example, when undertaken pursuant to a statutory directive or a court order.

For nondiscretionary rules, prior to finalizing the rule, the agency must submit to the OMB Director, through OIRA, (1) a written opinion by the agency’s general counsel (or equivalent official) explaining the conclusion that the rule is nondiscretionary, and (2) a projection of the amount of direct spending under the least costly implementation option reasonably identifiable by the agency that meets the relevant legal requirements. Act § 263(b). Because agencies by definition have no discretion with nondiscretionary rules, it will typically be the case that the “least costly implementation option” is the same as the anticipated rule, and so these estimates will typically be \$0.

### **C. Submission of Information to GAO**

Section 270 of the Act amended a provision of the CRA, 5 U.S.C. § 801(a)(2)(A), which requires the Government Accountability Office (GAO) to submit reports to Congress regarding “major rules” as defined in the CRA. As amended, § 801(a)(2)(A) requires GAO to include in its major rule reports “an assessment of the agency’s compliance with such requirements of the Administrative Pay-As-You-Go Act of 2023 as may be applicable.” Another provision of the CRA (that the Act did not amend) provides that Federal agencies “shall cooperate with [GAO] by providing information relevant to” GAO’s major-rule reports. 5 U.S.C. § 801(a)(2)(B).

In furtherance of these provisions, when agencies submit rules to GAO pursuant to the CRA in the ordinary course, agencies generally should include a statement explaining that either: the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant

exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act.

## **VI. Other Information**

### **A. Sunset Date**

Section 268 of the Act provides that the Act expires on December 31, 2024. Rules finalized after that date will not trigger the Act's requirements.

### **B. Judicial Review**

Section 267 of the Act provides that no determination, finding, action, or omission under the Act shall be subject to judicial review.

### **C. GAO Report**

Section 269 of the Act requires GAO to issue a report on implementation of the Act within 180 days of its enactment.