



September 25, 2024

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

The Honorable Brendan Boyle  
Ranking Member  
Committee on the Budget  
U.S. House of Representatives  
Washington, DC 20515

**Dear Chairman Arrington, Ranking Member Boyle, and Members of the Committee:**

**Thank you for the opportunity to provide input to the House Committee on the markup of bill H.R.9751. We commend the efforts of the House Budget Committee to enhance and clarify the information provided to Congress and the public by the Congressional Budget Office (CBO).**

The Biden administration's unilateral executive actions could cost taxpayers \$2 trillion over the next decade, according to an analysis by the House Budget Committee. Even if rising US debt wasn't a big issue (which it is), executive spending—without congressional approval—is a serious concern.<sup>1</sup> Unchecked executive authority undermines the constitutional balance of power and bypasses essential legislative oversight. Congress needs to step up and tighten controls on executive spending, starting with better transparency and stricter budget rules.

This week, the House Budget Committee will consider five bills to improve budget oversight. One of these bills, the Executive Action Cost Transparency Act by Rep. Ron Estes (KS), aims to shed light on the fiscal impact of major regulations and administrative actions.

### **More Transparency Needed**

From student loan bailouts to expanding Medicaid eligibility and increasing food stamp benefits, the Biden administration's rulemaking is responsible for an enormous fiscal gap, raising deficits over 10 years by \$2 trillion, according to congressional estimates.<sup>2</sup> Despite this magnitude, tracking new borrowing from costly regulations is challenging, making oversight difficult and enabling unchecked executive spending. The Executive Action Cost Transparency Act would require the CBO to regularly publish cost estimates, improving transparency and aiding in congressional oversight. As we've previously written, improved reporting on executive spending during national emergencies is further key to preventing abuse of emergency powers.<sup>3</sup> The National Emergency Expenditure Reporting Transparency Act (H.R.4615 and S.2300) by Sen. Roger Marshall (R-KS) and Rep. Paul Gosar (R-AZ) would amend the Federal Funding Accountability and Transparency Act to require reports on National Emergencies Act expenditures, increasing transparency by bringing executive emergency expenditures to light.<sup>4</sup> The House Budget Committee should consider this proposal in addition to Estes' Executive Action Cost Transparency Act.

### **Strengthening Administrative PAYGO**

Congress should go beyond increasing transparency, by enforcing a regulatory budget. Administrative Pay-As-You-Go (PAYGO) aims to offset costly executive actions by requiring that the executive branch provide alternative spending reductions for administrative rules that impose new costs exceeding a certain threshold. The Fiscal Responsibility Act (FRA) of 2023 made Administrative PAYGO a statutory requirement, but the Office of Management and Budget (OMB) has not fully complied, issuing broad exemptions and claiming agencies aren't legally required to implement offsets.<sup>5</sup> This contradicts the original intent of PAYGO, which expected agencies to offset new spending.

While the administration's excessive spending is concerning, Congress also failed to design PAYGO effectively. Statutory loopholes allow agencies to avoid offsets. By law, a rule is exempt from offsets if the direct spending increase is either:

1. Less than **\$1 billion** over the 10-year period beginning with the current year.
2. Less than **\$100 million** in any given year during such a 10-year period.

This allows agencies to strategically design or evaluate regulations in a way that would avoid triggering PAYGO requirements. For example, a rule costing \$990 million over ten years with annual costs just under \$100 million would be exempt, while a slightly more expensive rule would not. Likewise, a rule that might cost \$5 billion or significantly more over 10 years could be automatically excluded from Administrative PAYGO if a single year costs less than \$100 million. These spending exemptions are easily gamed. Additionally, the OMB can waive requirements for vague reasons, with no transparency or judicial oversight. Moreover, there is no proper scorekeeping, without which assessing the full budgetary impact of executive actions remains difficult.

Efforts to tighten Administrative PAYGO include the Strengthening Administrative PAYGO (SAP) Act.<sup>6</sup> This bill seeks to codify Administrative PAYGO into law permanently, clarify exemption thresholds, and require OMB to submit any waiver determinations along with cost estimates of exempted actions to Congress. These reforms would increase transparency and help to curb the costs of executive actions.

Congress should consider going further by replacing the current thresholds test with a simpler approach, such as only automatically exempting rules that have a 10-year cost of less than \$1 billion, to avoid gimmicky rule design. Limiting waivers only to emergency situations would better reflect the high hurdle that should be necessary to exempt new deficit spending from budget controls.<sup>7</sup> Finally, adding a running tally of new costs, like a statutory PAYGO scorecard, would add additional transparency to the process, making it easier for budget analysts, Congress, and the public to understand how executive regulations impact the budget.

### **It's on Congress to Rein in Executive Spending**

Congress must reclaim its constitutional role as the guardian of taxpayer dollars. Executive spending, unchecked by legislative oversight, threatens both fiscal responsibility and the balance of power. It's on Congress to restore accountability through tighter budget rules, transparent cost reporting, and stronger enforcement of spending controls. With trillions at stake, the need for

action is urgent—Congress must step up and rein in executive overreach. The House Budget Committee’s efforts are an important start.

Sincerely,

Romina Boccia  
Director  
Federal Budget and Entitlements Policy, Cato Institute

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<sup>1</sup> [“President Biden’s Executive Actions Have Cost Taxpayers Over \\$2 Trillion,”](#) press release, website of the House Budget Committee, April 26, 2024; Romina Boccia and Dominik Lett, [“Another CBO Report Warns of Debt Surging, As a Fiscal Crisis Brews,”](#) *Cato at Liberty* (blog), Cato Institute, June 18, 2024.

<sup>2</sup> [“President Biden’s Executive Actions Have Cost Taxpayers Over \\$2 Trillion,”](#) press release, website of the House Budget Committee, April 26, 2024.

<sup>3</sup> Romina Boccia and Dominik Lett, [“Enhancing Transparency over Emergency Spending Reporting: A Call for Executive Accountability,”](#) *Cato at Liberty* (blog), Cato Institute, October 12, 2023.

<sup>4</sup> [National Emergency Expenditure Reporting Transparency Act](#), H.R. 4615, 118th Cong. (July 13, 2023); [A bill to require that information on spending associated with national emergencies be subject to the same reporting requirements as other Federal funds under the Federal Funding Accountability and Transparency Act of 2006, and for other purposes](#), S. 2300, 118th Cong. (July 13, 2023).

<sup>5</sup> [Fiscal Responsibility Act of 2023](#), H.R. 3746, 118th Cong. (May 29, 2023); Office of Management and Budget, [Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023](#) (Washington: Office of Management and Budget, September 2023).

<sup>6</sup> [SAP Act of 2024](#), H.R. 8195, 118th Cong. (May 1, 2024).

<sup>7</sup> Romina Boccia and Dominik Lett, [“Curbing Federal Emergency Spending,”](#) Policy Analysis No. 966, Cato Institute, January 9, 2024.