

Calendar No. 559

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 117-207

FEDERAL AGENCY PERFORMANCE ACT OF
2022

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4167

TO IMPROVE PERFORMANCE AND ACCOUNTABILITY IN
THE FEDERAL GOVERNMENT, AND FOR OTHER PURPOSES



NOVEMBER 17, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

39-010

WASHINGTON : 2022

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FEDERAL AGENCY PERFORMANCE ACT OF 2022

NOVEMBER 17, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4167]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4167) to improve performance and accountability in the Federal Government, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 4167, the *Federal Agency Performance Act of 2022*, provides additional transparency, accountability, and priorities for the federal government in order to improve the performance and program outcomes of federal agencies. This bill builds on the foundation set by the Government Performance and Results Act Modernization Act of 2010, or “GPRAMA,” by requiring regular strategic reviews of each agency’ performance goals and increasing the amount and quality of data posted on Performance.gov, which is the federal government’s central website to track both agency-specific and govern-

ment-wide performance.¹ Additionally, the bill updates several other portions of GPRAMA to address recommendations by the Government Accountability Office (GAO). These recommendations include requiring one or more agencies be designated as federal government priority goal leaders, improving capacity and expertise for agency Performance Improvement Officers, and ensuring agency performance goals are supported by evidence-building activities.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Since 2011, GAO has routinely found that both agency and government-wide implementation of GPRAMA requirements have been somewhat successful. However, there are still longstanding challenges in effective execution of federal performance priorities. The changes the bill makes are largely based on outstanding GAO recommendations that would improve Office of Management and Budget (OMB) oversight of agency performance planning and execution and increase transparency and accountability for agency performance goals.² These recommendations support a more holistic, integrated, and successful performance planning and management process in the federal government.

OMB has administratively created and implemented strategic reviews of agency performance plans to improve the implementation of GPRAMA. This bill codifies the requirements of the strategic reviews and provides additional direction on how agencies develop, execute, and continuously evaluate the performance goals of the Administration. The bill also makes necessary changes to GPRAMA to ensure that there is greater involvement and support by necessary political and career officials to drive agency performance outcomes.

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D–MI) introduced S. 4167, the *Federal Agency Performance Act of 2022*, on May 10, 2022, with Senator Mike Braun (R–IN). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 4167 at a business meeting on May 25, 2022. The bill was ordered reported favorably by voice vote *en bloc*. Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Lankford, Romney, Scott, and Hawley were present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section cites the short title of the bill as the “*Federal Agency Performance Act of 2022*.”

Sec. 2. Establishment of strategic reviews and reporting

Subsection (a) codifies the strategic review process that has been used by OMB to ensure routine assessments and, where necessary, corrections to agency activities in support of achieving their performance goals. The section also requires that the appropriate sen-

¹Pub. L. 111–352 (2011).

²Government Accountability Office, *Performance.gov: Long-Term Strategy Needed to Improve Website Usability* (GAO–16–693) (August 2016).

ior officials in each agency are responsible for supporting the agency's priority goals.

Subsection (b) requires a summary of findings of the agency review.

Sec. 3. Revisions to the Federal Performance Website

This section makes sure that the Performance.gov website complies with federal mandates for all .gov websites. This section also requires the preservation of required performance-related information from previous Administrations.

Sec. 4. Federal Government priority goals

This section makes technical changes to 31 USC 1115(a) to ensure that all federal government priority goals are tied explicitly to the President's Budget and have milestones that can be achieved within a single Presidential term.

Sec. 5. Federal Government priority goal co-leaders

This section requires that, for every government-wide priority goal, that there be at least one official from OMB and one official from an agency that serve as co-leaders.

Sec. 6. Establishment of Deputy Performance Improvement Officers

This section requires the head of each agency to appoint a Performance Improvement Officer (PIO). The section also requires the appointment of a Deputy PIO if the PIO is not a career employee and that the Deputy PIO be a career employee.

Sec. 7. Repeal of outdated pilot projects

This section repeals two outdated pilot projects for performance goals and performance budgeting that are no longer authorized.

Sec. 8. Clarifying amendments

This section makes clarifying amendments to ensure stronger integration between strategic plans and requirements for agency evidence-building activities and makes a technical change to clean up a typographical error in GPRAMA.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 9, 2022.

Hon. GARY C. PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed table summarizing estimated budgetary effects and mandates information for some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 117th Congress.

If you wish further details, we will be pleased to provide them. The CBO staff contact for each estimate is listed on the enclosed table.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

SUMMARY ESTIMATES OF LEGISLATION ORDERED REPORTED

The Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 117th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation's estimated effects on spending subject to appropriation and on intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION

| Bill Number | Title | Status | Last Action | Budget Function | Direct Spending, 2023-2032 | Revenues, 2023-2032 | Spending Subject to Appropriation, 2023-2027 | Pay-As-You-Go Procedures Apply? | Increases On-Budget Deficits Beginning in 2033? | Mandates | Contact |
|-------------|--|------------------|-------------|-----------------|----------------------------|---------------------|--|---------------------------------|---|----------|------------------|
| S. 4167 | Federal Agency Performance Act of 2022 | Ordered reported | 05/25/22 | 800 | Between zero and \$500,000 | 0 | Not estimated | Yes | No | No | Matthew Pickford |

S. 4167 would require the Office of Management and Budget to regularly conduct strategic reviews of agencies' performance goals and to ensure that agencies follow their strategic plans. The bill also would increase the amount of publicly available performance data and would require every agency to have a performance improvement officer. CBO estimates that enacting S. 4167 would have an insignificant effect on direct spending and no effect on revenues over the 2023-2032 period. CBO has not estimated the discretionary costs of implementing the bill. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—MONEY AND FINANCE

* * * * *

Subchapter I—General Provisions

* * * * *

SEC. 306. AGENCY STRATEGIC PLANS.

(a) * * *

(1) * * *

* * * * *

(8) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations to be conducted, and citations to relevant provisions of the plans required under section 312 *as applicable*; and

(9) *with respect to the head of an agency required to develop a plan described in subsection (a) or (b) of section an assessment of the coverage, quality, methods, effectiveness, and independence of the statistics, evaluation, research, and analysis efforts of the agency, including—*

* * * * *

TITLE 31—MONEY AND FINANCE

* * * * *

Subtitle II—The Budget Process

* * * * *

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

* * * * *

Table of sections

Sec.

1101. Definitions.

* * * * *

1120. Federal Government and agency priority goals.

1121. **【**Quarterly priority progress reviews and use of performance information.**】**

Progress reviews and use of performance information.

1122. Transparency of programs, priority goals, and results.

* * * * *

SEC. 1115. FEDERAL GOVERNMENT PRIORITY GOAL CO-LEADERS.

(a) * * *

(1) * * *

(2) * * *

[(3) for each Federal Government performance goal, identify a lead Government official who shall be responsible for coordinating the efforts to achieve the goal;]

(3) for each Federal Government performance goal, identify, subject to the discretion of the Director, not fewer than lead Government officials who shall jointly be responsible for coordinating the efforts to achieve the goal, of whom—

(A) not less than 1 shall be from the Executive Office of the President; and

(B) not less than 1 shall be from an agency identified as contributing to the Federal Government performance goal described in paragraph (2);

* * * * *

SEC. 1116. AGENCY PERFORMANCE REPORTING

(a) * * *

(b)(1) Each update shall compare actual performance achieved with the performance goals established in the agency performance plan under section 1115(b) and [shall occur no less than 150 days after] *shall occur not later than 150 days after* the end of each fiscal year, with more frequent updates of actual performance on indicators that provide data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden.

(c) * * *

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(A) * * *

(B) * * *

(C) * * *

(D) * * *

(E) how the agency has compensated for such limitations if needed to reach the required level of accuracy; [and]

(7) include the summary findings of those program evaluations completed during the period covered by the update[.]; and

(8) include a summary of the findings of the review agency under section 1121(c)

(d) * * *

(e) * * *

[(f) Each fiscal year, the Office of Management and Budget shall determine whether the agency programs or activities meet performance goals and objectives outlined in the agency performance plans and submit a report on unmet goals to—

[(1) the head of the agency;

[(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

[(3) the Committee on Oversight and Governmental Reform of the House of Representatives; and

[(4) the Government Accountability Office.

[(g) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 1 fiscal year, the head of the agency shall submit a performance improvement plan to the Office of Management and Budget to increase program effectiveness for each unmet goal with measurable milestones. The agency shall designate a senior official who shall oversee the performance improvement strategies for each unmet goal.

[(h)(1) If the Office of Management and Budget determines that agency programs or activities have unmet performance goals for 2 consecutive fiscal years, the head of the agency shall—

[(A) submit to Congress a description of the actions the Administration will take to improve performance, including proposed statutory changes or planned executive actions; and

[(B) describe any additional funding the agency will obligate to achieve the goal, if such an action is determined appropriate in consultation with the Director of the Office of Management and Budget, for an amount determined appropriate by the Director.

[(2) In providing additional funding described under paragraph (1)(B), the head of the agency shall use any reprogramming or transfer authority available to the agency. If after exercising such authority additional funding is necessary to achieve the level determined appropriate by the Director of the Office of Management and Budget, the head of the agency shall submit a request to Congress for additional reprogramming or transfer authority.

[(i) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 3 consecutive fiscal years, the Director of the Office of Management and Budget shall submit recommendations to Congress on actions to improve performance not later than 60 days after that determination, including—

[(1) reauthorization proposals for each program or activity that has not met performance goals;

[(2) proposed statutory changes necessary for the program activities to achieve the proposed level of performance on each performance goal; and

[(3) planned executive actions or identification of the program for termination or reduction in the President's budget.]

* * * * *

[SEC. 1118. PILOT PROJECTS FOR PERFORMANCE GOALS

[(a) The Director of the Office of Management and Budget, after consultation with the head of each agency, shall designate not less than ten agencies as pilot projects in performance measurement for fiscal years 1994, 1995, and 1996. The selected agencies shall reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

[(b) Pilot projects in the designated agencies shall undertake the preparation of performance plans under section 1115, and program performance reports under section 1116, other than section 1116(c), for one or more of the major functions and operations of the agency.

A strategic plan shall be used when preparing agency performance plans during one or more years of the pilot period.

[(c) No later than May 1, 1997, the Director of the Office of Management and Budget shall submit a report to the President and to the Congress which shall—

[(1) assess the benefits, costs, and usefulness of the plans and reports prepared by the pilot agencies in meeting the purposes of the Government Performance and Results Act of 1993;

[(2) identify any significant difficulties experienced by the pilot agencies in preparing plans and reports; and

[(3) set forth any recommended changes in the requirements of the provisions of Government Performance and Results Act of 1993, section 306 of title 5, sections 1105, 1115, 1116, 1117, 1119 and 9703 of this title, and this section.]

* * * * *

[SEC. 1119. PILOT PROJECTS FOR PERFORMANCE BUDGETING

[(a) The Director of the Office of Management and Budget, after consultation with the head of each agency shall designate not less than five agencies as pilot projects in performance budgeting for fiscal years 1998 and 1999. At least three of the agencies shall be selected from those designated as pilot projects under section 1118, and shall also reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

[(b) Pilot projects in the designated agencies shall cover the preparation of performance budgets. Such budgets shall present, for one or more of the major functions and operations of the agency, the varying levels of performance, including outcome-related performance, that would result from different budgeted amounts.

[(c) The Director of the Office of Management and Budget shall include, as an alternative budget presentation in the budget submitted under section 1105 for fiscal year 1999, the performance budgets of the designated agencies for this fiscal year.

[(d) No later than March 31, 2001, the Director of the Office of Management and Budget shall transmit a report to the President and to the Congress on the performance budgeting pilot projects which shall—

[(1) assess the feasibility and advisability of including a performance budget as part of the annual budget submitted under section 1105;

[(2) describe any difficulties encountered by the pilot agencies in preparing a performance budget;

[(3) recommend whether legislation requiring performance budgets should be proposed and the general provisions of any legislation; and

[(4) set forth any recommended changes in the other requirements of the Government Performance and Results Act of 1993, section 306 of title 5, sections 1105, 1115, 1116, 1117, and 9703 of this title, and this section.

[(e) After receipt of the report required under subsection (d), the Congress may specify that a performance budget be submitted as part of the annual budget submitted under section 1105.]

* * * * *

SEC. 1120. FEDERAL GOVERNMENT AND AGENCY PRIORITY GOALS

(a) * * *

(1) * * *

(2) The Federal Government priority goals shall be long-term in nature. [At a minimum, the Federal Government priority goals shall be updated or revised every 4 years and made publicly available concurrently with the submission of the budget of the United States Government made in the first full fiscal year following any year in which the term of the President commences under section 101 of title 3.] As needed, the Director of the Office of Management and Budget may make adjustments to the Federal Government priority goals to reflect significant changes in the environment in which the Federal Government is operating, with appropriate notification of Congress. *Such goals shall—*

(A) be updated and revised not less frequently than during the first year of each Presidential term;

(B) be made publicly available not less frequently than concurrently with the submission of the budget of the United States Government under section 1105(a) made during the first full fiscal year following any year during which a term of the President commences under section 101 of title 3;

(C) include plans for the successful achievement of each goal within each single Presidential term; and

(D) explicitly cite to any specific contents of the budget described in subparagraph (B) that support the achievement of each goal.

* * * * *

SEC. 1121. [QUARTERLY PRIORITY PROGRESS REVIEWS AND USE OF PERFORMANCE INFORMATION] PROGRESS REVIEWS AND USE OF PERFORMANCE INFORMATION

(a) * * *

(b) * * *

(c) *AGENCY REVIEWS OF PROGRESS TOWARDS STRATEGIC GOALS AND OBJECTIVES.—*

(1) COVERED GOAL DEFINED.—In this subsection, the term ‘covered goal’ means a goal or objective established in the strategic plan of the agency under section 306(a) of title 5.

(2) REVIEW.—Not less frequently than annually and consistent with guidance issued by the Director of the Office of Management and Budget, the head and Chief Operating Officer of each agency, shall—

(A) for each covered goal, review with the appropriate agency official responsible for the covered goal—

(i) the progress achieved toward the covered goal—

(I) during the most recent fiscal year; or

(II) from recent sources of evidence available at the time of the review; and

(ii) the likelihood that the agency will achieve the covered goal;

(B) coordinate with relevant personnel within and outside the agency who contribute to the accomplishment of each covered goal;

(C) assess progress toward each covered goal by reviewing performance information and other types of evidence relating to each covered goal, such as program evaluations and statistical data;

(D) identify whether additional evidence is necessary to better assess progress toward each covered goal, and prioritize the development of the evidence described in subparagraph (C), such as through the plans required under section 312 of title 5, if applicable;

(E) assess whether relevant organizations, program activities, regulations, policies, and other activities contribute as planned to each covered goal;

(F) as appropriate, leverage the assessment performed under subparagraph (E) as part of the portfolio reviews required under section 503(c)(1)(G);

(G) identify any risks or impediments that would reduce or otherwise decrease the likelihood that the agency will achieve the covered goal; and

(H) for each covered goal at greatest risk of not being achieved, identify prospects and strategies for performance improvement, including any necessary changes to program activities, regulations, policies, or other activities of the agency.

(3) *SUPPORT.*—In fulfilling the requirements of paragraph (2), the head and Chief Operating Officer of each agency shall be supported by—

(A) the Performance Improvement Officer of the agency;

(B) as appropriate, the Chief Data Officer, Evaluation Officer, Program Management Improvement Officer, and Statistical Official of the agency; and

(C) any other senior agency official designated by the head of the agency, the sustained involvement of whom may help the agency increase the likelihood of achieving 1 or more covered goals.

* * * * *

SEC. 1122. TRANSPARENCY OF PROGRAMS, PRIORITY GOALS, AND RESULTS

(a) * * *

(1) * * *

(2) * * *

(A) * * *

(B) * * *

(C) make the information required to be included on the single website under subparagraph (A) and the information in the program inventory required under subparagraph (B) available as an open Government data asset; **[and]**

(D) at a minimum—

(i) update the information required to be included on the single website under subparagraph (A) on a quarterly basis; and

(ii) update the program inventory required under subparagraph (B) on an annual basis**[.]**; and

(E) ensure that the website described in subparagraph (A) conforms with the requirements for websites under sec-

tion 3(a) of the 21st Century Integrated Digital Experience Act (44 U.S.C. 3501 note).

- (3) * * *
- (4) * * *

(A) [archive and preserve the information included in the program inventory required under paragraph (2)(B) after the end of the period during which such information is made available under paragraph (3); and] *archive and preserve—*

(i) *the information included in the program inventory required under paragraph (2)(B), including the information described in paragraph (3), after the end of the period during which that information is made available; an*

(ii) *the information included in the single website under paragraph (2)(A) in accordance with subsections (b) and (c) after the end of the period during which such information is made available on the website; and; and*

- (b) * * *
- (c) * * *

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *

(5) [the results achieved during the most recent quarter and overall trend data compared to the planned level of performance;] *the results achieved toward the priority goals developed under section 1120(a)(1)—*

(A) *during the most recent quarter and overall trend data for each quarter compared to the planned level of performance; and*

(B) *at the end of the 4-year Federal Government priority goal period compared to the overall planned level of performance;*

[(6) an identification of the agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities that contribute to each Federal Government priority goal;]

(6) *the results achieved toward the goals and objectives established in the strategic plan of the agency under section 306(a) of title 5—*

(A) *during the most recent quarter and overall trend data for each quarter compared to the planned level of performance; and*

(B) *at the end of the 2-year agency priority goal period compared to the overall planned level of performance.*

* * * * *

SEC. 1124. ESTABLISHMENT OF DEPUTY PERFORMANCE IMPROVEMENT OFFICERS

- (a) * * *

[(1) ESTABLISHMENT.—At each agency, the head of the agency, in consultation with the agency Chief Operating Officer,

shall designate a senior executive of the agency as the agency Performance Improvement Officer.】

(1) *ESTABLISHMENT.*—At each agency, the head of the agency, in consultation with the Chief Operating Officer of the agency, shall designate—

(A) a Performance Improvement Officer, who shall be a senior executive of the agency; and

(B) if the Performance Improvement Officer designated under subparagraph (A) is not a career appointee of the Senior Executive Service, a Deputy Performance Improvement Officer, who shall be a career appointee of the Senior Executive Service.

(2) * * *

(3) *DEPUTY PERFORMANCE IMPROVEMENT OFFICER.*—A Deputy Performance Improvement Officer designated under paragraph (1)(B) shall support the Performance Improvement Officer in carrying out the functions of the Performance Improvement Officer under paragraph (2).

* * * * *

