

117TH CONGRESS  
2D SESSION

# S. 4427

To amend sections 801 and 804 of title 5, United States Code, to include guidance issued by non-agencies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 16, 2022

Mr. SULLIVAN (for himself, Mr. MARSHALL, Mrs. HYDE-SMITH, Mr. BRAUN, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To amend sections 801 and 804 of title 5, United States Code, to include guidance issued by non-agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Checks and Balances  
5 Act”.

6 **SEC. 2. GUIDANCE ISSUED BY NON-AGENCIES.**

7 Section 801 of title 5, United States Code, is amend-  
8 ed by adding at the end the following:

1 “(h) For purposes of Congressional review under this  
2 chapter—

3 “(1) guidance that directs the operations of a  
4 Federal agency and is issued by an entity with au-  
5 thority delegated by the President shall be consid-  
6 ered a rule; and

7 “(2) the entity that issues the guidance is re-  
8 quired to comply with this chapter in the same man-  
9 ner as a Federal agency.”.

10 **SEC. 3. DEFINITIONS.**

11 Section 804 of title 5, United States Code, is amend-  
12 ed—

13 (1) by striking paragraph (1) and inserting:

14 “(1) The term ‘Federal agency’—

15 “(A) means any agency as that term is de-  
16 fined in section 551(1); and

17 “(B) includes a task force or similar entity  
18 composed of members of an agency.”; and

19 (2) by adding at the end the following:

20 “(4) The term ‘guidance’—

21 “(A) means an agency statement of gen-  
22 eral applicability (other than a rule that has the  
23 force and effect of law promulgated in accord-  
24 ance with the notice and comment procedures  
25 under section 553) that—

1 “(i) does not have the force and effect  
2 of law; and

3 “(ii) is designated by an agency offi-  
4 cial as setting forth—

5 “(I) a policy on a statutory, reg-  
6 ulatory, personnel, or technical issue;  
7 or

8 “(II) an interpretation of a statu-  
9 tory or regulatory issue, including a  
10 personnel issue; and

11 “(B) may include—

12 “(i) a memorandum;

13 “(ii) a notice;

14 “(iii) a bulletin;

15 “(iv) a directive;

16 “(v) a letter;

17 “(vi) a no-action letter; and

18 “(vii) any combination of the items  
19 described in clauses (i) through (vi).”.

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