

RESTORING THE PRESIDENT'S REORGANIZATION AUTHORITY

TESTIMONY BEFORE THE UNITED STATES
HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON FEDERAL WORKFORCE AND AGENCY ORGANIZATION

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Thank you for inviting me to share my comments on proposals to restore the president's reorganization authority under statute. Having watched the slow but steady fragmentation of government over the past twenty-five years, I have been drawn to the importance of reorganization authority as a tool for tightening executive performance. As we have seen in the case of homeland security, reorganization offers a significant opportunity to align agencies by mission rather than constituencies. If done well, which I believe will eventually be the judgment is the case in the homeland security arena, it can strengthen accountability, reduce wasteful duplication and overlap, tighten administrative efficiency, improve employee motivation, and provide the kind of integration that leads to impact.

The question before this Subcommittee today is not whether reorganization can provide needed improvements in government performance, however, but whether Congress should give future presidents of the United States reorganization authority of some kind. I believe the answer is yes, particularly if granted through the expedited model envisioned by the National Commission on the Public Service chaired by former Federal Reserve Board chairman Paul Volcker. As Chairman Volcker and fellow commissions Donna Shalala and Frank Carlucci testified before the full Committee in January 2003, reorganization is their number one recommendation for improving government today. As they also testified, it is also the most difficult recommendation to implement. That is why the Commission believed Congress should create a procedural presumption in favor of reorganization through enacted of a "fast-track" or expedited authority. Such a presumption would not assure that all presidential reorganizations would succeed, but it would certainly give them a fighting chance.

My support for renewed reorganization authority is based on the answers to two separate questions: (1) does reorganization hold significant promise for improving government performance, and (2) if so, how can reorganization plans be given some hope of legislative action?

1. Why Reorganize?

The threshold question in restoring some form of reorganization authority is whether there is any reason to believe that such authority holds the promise of better government performance. I believe there are at least six answers in the affirmative:

1. Reorganization can give greater attention to a priority such as homeland security or food safety. That was certainly the case in the creation of the National Aeronautics and Space Administration following the launch of Sputnik in 1957, and to the creation of the Environmental Protection Agency in 1970.

2. Reorganization can reduce overlap and duplication among widespread programs, thereby increasing accountability and efficiency. Consider, for example, the potential impact of finding some way to integrate the 1 agencies currently involved in administering the nation's 35 food safety statutes, the 15 departments and agencies currently involved in

administering more than 160 employee and training programs, or the 11 agencies and 20 offices involved in the federal government's roughly 90 childhood programs.

3. *Reorganization can create a platform for a new and/or rapidly expanding governmental activity.* That was certainly the goal in creating the Department of Housing and Urban Development in 1965. Although the federal government was involved in housing long before HUD, the new department was built as a base for what was anticipated to be a rapid rise in federal involvement.

4. *Reorganization can force greater cooperation among large, quasi-independent agencies such as the Coast Guard and Federal Aviation Administration.* That was certainly the goal of the early reorganizations of energy agencies, which eventually spurred creation of the Department of Energy. And it was the goal in creating the Department of Transportation in 1966.

5. *Reorganization can create greater transparency in the delivery of public goods and services to and on behalf of the public?* That was clearly the goal in creating the Department of Health, Education, and Welfare in 1953, which was originally submitted as a reorganization plan before emerging as separate legislation.

6. *Reorganization can improve employee satisfaction and performance.* Surveys of federal employees suggest that roughly a third (1) cannot easily describe the mission of their organizations, and, therefore, (2) cannot easily describe how their jobs personally contribute to the mission of their organizations. Assuming that employees who know their mission are more satisfied and productive, reorganization can be a source of improved performance.

Despite this endorsement, it is important to note that reorganization is not a palliative for poorly designed programs, inadequate funding, or contradictory statutes. Merely combining similar units will not produce coherent policy, nor will it produce greater performance, increase morale, or raise budgets. It most certainly will not make broken agencies whole. If an agency is not working in another department, there is no reason to believe that it will work well in the new department. Conversely, if an agency is working well in another department or on its own as an independent agency, there is no reason to believe that it will continue to work well in the new department.

2. *How to Reorganize?*

If one believes that reorganization holds significant promise for improving government performance, the question becomes how to assure that reorganizations have at least some chance of passage. The answer, I believe, is restoration of presidential reorganization authority.

The history of reorganization authority suggests four lessons in drafting a new version of the reorganization authority that existed in one form or another from 1930 to 1984.

First, there has only been one moment in history when the president was given "permanent" reorganization authority, and that authority, contained in the 1932 Economy Act, was repealed nine months later. To the contrary and with but one exception in 1953 which Congress immediately

modified, Congress has always restricted reorganization authority to the term of the president in office.

Second, Congress has always reserved a substantial, if expedited, role for itself in considering reorganization. Every reorganization bill since 1939 has carried some form of legislative veto or review, whether a single or dual-house veto, in either a disapproval or approval mode. Lacking such a formal mechanism for review following the U.S. Supreme Court decision in *Chada v. INS*, Congress allowed the authority to lapse. Reorganization did not grind to a halt, however. Congress created a new mechanism for expedited review of military reorganizations under the Base Realignment and Closure Act of 1988, and used an expedited review process for House consideration of the Homeland Security Act of 2002.

Third, Congress has restricted the purposes of reorganization in the past, most notably by prohibiting the use of reorganization plans to create or reorganize departments of government. In addition, Congress has always reserved the right to review implementation of reorganization activity under a variety of methods, including a variety of forms of notification and oversight.

Fourth, Congress has always had authority to place limits on specific reorganizations created through statute. Although Congress gave the IRS Commissioner broad authority to design and implement a new personnel system in 1998, it provided clear directions on how the new system was to work. It gave the commissioner the freedom to hire and pay his senior executives outside the civil service system, but limited the number of positions to no more than 40. It gave the commissioner authority to give those executives larger bonuses, but placed a check on the size of those awards by requiring the Secretary of the Treasury to approve any amounts that exceed more than 20 percent of executive base pay. It permitted the IRS to create new personnel demonstration projects and increase cash awards for performance, streamlined the employee disciplinary process, and gave the commissioner authority to offer employee buyouts through January 1, 2003. In sum, Congress gave the commissioner broad authority, but did so through seven pages of statutory text setting limits and informing the IRS workforce about the range of authority.

Within these limits, reorganization is an essential ally in the pursuit of greater performance in government. If done well, it can reduce needless overlap and duplication, while focusing federal employees more clearly on a specific mission. It can also tighten accountability by creating a single chain of command leading from the front-lines to the president and Congress.

The Case of FEMA

No one on this Subcommittee should believe that this kind of reorganization authority will solve persistent management problems in government. Nor should anyone believe that merely combining this agency with that, or breaking this agency out of that department, will somehow improve performance on its own.

This is certainly the lesson I take from the recent problems at the Federal Emergency Management Agency. Too many observers have already concluded that the Federal Emergency Management Agency must be set free from the Department of Homeland Security and led by a cabinet-level

officer. If FEMA had just been left alone to focus on natural disasters, or so the argument goes, it would have been faster and more certain after Hurricane Katrina came ashore.

I believe the change might weaken the agency even further, while degrading the nation's ability to respond to emergencies of any kind, terrorist or natural.

It is true that FEMA got smaller when it moved into the new department along with 21 other agencies and 170,000 federal employees. It is also true that FEMA has devoted three-quarters of its preparedness budget to terrorism, and had serious leadership problems. The day Katrina hit, FEMA had no permanent officers in charge of its operations, mitigation, and response bureaus, not to mention an acting administrator of its regional office in charge of the Gulf States east of the Mississippi.

However, independence will not cure all that ails the agency, nor will reorganization fix the many problems that we saw in the course of the Volcker Commission work. Neither will it force the president to appoint talented administrators to senior positions, for example, nor will it fill the vacancies at the top of the agency. FEMA was astutely independent on September 11th, but still did not have a permanent deputy director, associate director for preparedness, or an administrator of the federal insurance administration.

If the past is prologue, independence will not solve the agency's funding problems, either. The Social Security Administration did not find a pot of budgetary gold after it broke free of the Department of Health and Human Services in 1994, the Department of Education find new vigor when it separated from the old Department of Health, Education, and Welfare in 1978, and the new Department of Veterans Affairs faced one budget cut after another once it moved to cabinet status in 1988.

More importantly to Katrina, independence would not give FEMA the authority to tell state and local governments how to spend their preparedness money, nor allow it to target the money to high-risk areas such as New Orleans. The grants are still allocated under a pork-barrel system that gives local government nearly complete freedom to buy whatever they want.

And independence alone would not give FEMA the ability to coordinate the far-flung federal response to emergencies such as Katrina. Being effective in moments of crisis requires alertness to impending surprise, agility in moving quickly, adaptability to unexpected events such as a levee collapse, and alignment with other agencies to act without hesitation. These four pillars of organizational robustness do not reside in independence, but in investment, recruitment, and training.

Ironically, FEMA's greatest problem these days is not too little responsibility, but too much. As part of the homeland security merger, FEMA was given the twin tasks of preparedness and response. It is responsible for preparing communities for a range of catastrophes long before they hit, while being ready to move into the breach at a moment's notice. It is not terrorism that has sucked away resources and staff from FEMA, but the broad preparedness mission it inherited when it moved into the department.

If Congress wants to help FEMA recover from Katrina, it should relieve FEMA of its preparedness duties and take the agency back to a focused response and recovery agenda. It should also allow homeland security secretary Michael Chertoff to create a department-wide preparedness directorate to coordinate the grants program, prepare citizens for the first days of crisis, and protect against a variety of threats such as cyber-attacks and the use of chemical, biological, and nuclear weapons. Chertoff proposed just such a realignment last July, and could use the kind of fast-track authority imagined in the Results Commission to move this idea forward.

The sooner Congress and the president allow FEMA to refocus on its strength, the sooner the agency will be able to play its role in helping future victims of catastrophe. Keeping it under the homeland security roof not only increases the odds that the department can react with strength after the next disaster, it allows FEMA to bring its valuable expertise to bear on how the department plans for the many hazards the nation faces. Independence would merely add another set of phone numbers to the already mind-numbing list the secretary of homeland security must call to prepare, respond, and recover.

Next Steps

The promise can only be realized with great care in the exercise of the authority. It is perfectly reasonable, for example, to require that all reorganization plans meet certain standards before transmittal. Toward that end, this Subcommittee might wish to give the executive branch clear guidance on the structure of new personnel systems envisioned in any reorganization, while restating existing standards regarding financial management, information security, and other administrative requirements.

Within those guidelines, it is also imperative that Congress give reorganization plans expedited consideration in the legislative process. Such consideration can be created under several options suggested by the Volcker Commission. It is relatively easy to construct a fast-track mechanism to give Congress enough time to review a reorganization plan, whether through a Base Closure and Realignment Act mechanism requiring an up-or-down vote on all elements of a plan, or through some kind of “most-favored” status requiring expedited consideration in the legislative process.

Ultimately, reorganization is best seen as merely one of several steps for improving organizational performance. It may create a greater presumption in favor of performance, but can only succeed if this and other committees are successful in helping the executive branch achieve its other management goals. At the same time, the executive branch cannot achieve its other management goals, most notably the strengthening of human capital, if it does not undertake the aggressive restructuring that reorganization authority would encourage.

Management improvement and reorganization are, therefore, two sides of the same coin. It makes no sense to improve recruiting systems if new employees are condemned to work in poorly structured departments with fuzzy missions and needless layers of political and career bureaucracy. At the same time, it makes no sense to streamline agencies and endure the political battles of reorganization if management systems continue to creak along at sub-glacial speed. Why bother to

reorganize if human capital continues to atrophy? Why bother to invest in human capital if the bureaucracy continues to stifle performance?

Results, Sunsets, and Reorganizations

Let me now turn to the specific proposal at hand. Should Congress authorize the president to create result and sunset commissions on a case-by-case basis for dealing with specific reorganization problems?

I do understand the sensitive nature of these tasks, and can well understand why a series of targeted commissions might yield better results than a Base Closing and Realignment Commission approach. My worry, however, is that such targeted efforts will become bogged down in the parochial interests of the committees, agencies, and interest groups that originally created the fragmentation that such reorganizations are designed to remedy. I also worry that the terms “results” and “sunset” themselves will provoke intense debate. A reorganization by any other name angers just the same.

This is why I prefer a much more aggressive, government-wide approach modeled on the BRAC idea. Built from an astutely bipartisan commission, and fueled by evidence-based assessments, a government-wide reorganization effort could create the needed discipline to produce forward progress.

I should note that Congress created just such a commission under the 1988 Department of Veterans Affairs Act. The commission, which was named the “National Commission on Executive Organization and Structure,” was seen as essential for addressing many of the problems raised in H.R. 3276. Under Section 1 (d), its mandate covered the entire spectrum of concerns that face the federal government to this day:

(d) FUNCTIONS OF COMMISSION. -- The Commission shall examine and make recommendations with respect to --

(1) the organization of the executive branch, including the appropriate number of departments and agencies, the organizational structure of each such department and agency, the advisability of reorganizing or abolishing any such department or agency, and the advisability of establishing any new executive department or agency;

(2) the internal administrative structure of departments and agencies, including the appropriate number of administrative units and their responsibilities, the appropriate number of administrative layers and positions, the conditions governing the management and appointment of such layers and positions, the advisability of setting fixed targets for reducing such layers and positions, and the advisability of creating, consolidating, and/or abolishing specific units of departments and agencies;

(3) the most effective and practicable structure of the Executive Office of the President for conducting oversight of the executive branch, including examination of the need for an Office of Management, and criteria for use by such Office in evaluating and overseeing the performance of the executive branch;

(4) the most effective and practicable structure of the President's cabinet and means of operation of such cabinet, including recommendations concerning the number, composition, and duties of the members of such cabinet.

Under an agreement with the Reagan Administration, the actual start-up of the commission was left to the incoming administration, be it Democratic or Republican. Unfortunately, at least by my view, the first Bush Administration decided not to authorize creation of the commission, and the commission was never created.

My view is that the decision not to launch the commission was one of the great missed opportunities in recent administrative history. Even if the commission had not produced a single reorganization plan, it would have conducted the analysis needed for enhanced oversight as the nation entered the post-Cold War period, and all at a cost not to exceed \$2.5 million. How many millions and billions have we spent on the inefficiencies that we have tolerated over the ensuing years? How much more effective would the federal government have been if the commission had been allowed to do its work in creating a mission-centered government? Would it have anticipated the rising tide of terrorism and moved to create a tighter organizational structure that might have mitigated, if not prevent the September 11 attacks? Would it have reduced the overlap exposed in so many of our recent government failures?

No one can know the answers. But perhaps it is time for this kind of sweeping review. Launched in the coming year, such a commission could time its work for review after the 2008 presidential election when Congress might be in a temperament to consider an up-or-down reorganization of the federal establishment. Although I stand in favor of the results and sunset legislation before this Subcommittee, I would recommend a stronger dose of action, and encourage the Subcommittee to consider a broader approach.