

RESTORING THE PRESIDENT'S REORGANIZATION AUTHORITY

TESTIMONY BEFORE THE UNITED STATES
HOUSE GOVERNMENT REFORM COMMITTEE

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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 been before this Committee and others regarding the Department of Homeland Security, I can testify to the importance of reorganization 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 is the case in homeland security, 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 Committee today is not whether reorganization can provide needed improvements in government performance, however, but whether Congress should give the President of the United States reorganization authority of some kind. I believe the answer is absolutely 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 this Committee last month, 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 the enacting 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 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. Bluntly put, garbage in, garbage out. 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 and this Committee 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.

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 Committee 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?

The fact that this Committee is moving forward on both issues simultaneously speaks well to a possible renaissance in public service at the federal level. It is only by creating work that matters that the federal government will be able to recruit its fair share of workers who excel.