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IT'S TIME TO REACT—REAUTHORIZING EXECUTIVE AUTHORITY TO CONSOLIDATE TASK: ESTABLISHING RESULTS AND SUNSET COMMISSIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE FEDERAL WORKFORCE AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

H.R. 3276

TO PROVIDE FOR THE ESTABLISHMENT OF RESULTS COMMISSIONS TO IMPROVE THE RESULTS OF EXECUTIVE BRANCH AGENCIES ON BEHALF OF THE AMERICAN PEOPLE

AND ON

H.R. 3277

TO PROVIDE FOR THE ESTABLISHMENT OF THE SUNSET COMMISSION TO REVIEW AND MAXIMIZE THE PERFORMANCE OF ALL FEDERAL AGENCIES AND PROGRAMS

SEPTEMBER 27, 2005

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IT'S TIME TO REACT—REAUTHORIZING EXECUTIVE AUTHORITY TO CONSOLIDATE TASK: ESTABLISHING RESULTS AND SUNSET COMMISSIONS

TUESDAY, SEPTEMBER 27, 2005,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2247, Rayburn House Office Building, Hon. Jon Porter (chairman of the subcommittee) presiding.

Present: Representatives Porter, Davis of Illinois, Norton, and Mica.

Staff present: Ronald Martinson, staff director; Chad Bungard, deputy staff director; Christopher Barkley, professional staff member; Chad Christofferson, clerk; Krista Boyd, minority counsel; Tania Shand, minority professional staff member; and Teresa Coufal, minority assistant clerk.

Mr. PORTER. I would like to bring the meeting to order. The hearing today is entitled, "It's Time to React—Reauthorizing Executive Authority to Consolidate Task: Establishing Results and Sunset Commissions." I would like to thank everyone for being here today.

I think it is time to get up. I appreciate everyone being here today. Really, I think it is very timely based upon the current deficit and the current problems we are having funding the Federal Government and programs across the country. As a member of Government Reform, I think it is also very germane that we look closely and look at ways to try to reduce fraud and abuse.

But before we get into the substance of the hearing, I want to convey my profound condolences to the victims of Hurricane Rita and their families who suffered such great personal loss, and those of Katrina. I would also like to acknowledge that some of our subcommittee members and witnesses who represent flooded areas are unable to be with us today because they are back home where they should be, and that is attending to the urgent need of their constituents and their families.

Through the years, Congress has created Federal programs to meet pressing needs but has often lacked the big picture perspective. The unfortunate consequences are rampant overlap and duplication in Federal programs. In 2003, the National Commission on

the Public Service issued a report entitled, "Urgent Business for America," and indeed it is urgent business.

The highly esteemed bipartisan commission comprised of numerous formerly high ranking officials of the Clinton, Reagan, and Bush, Sr., administrations, as well prominent Members of Congress from both sides of the aisle, recommended that "A fundamental reorganization of the Federal Government is urgently needed to improve its capacity for coherent design and efficient implementation of public policy."

The Commission found extensive evidence of duplication and overlap throughout the Federal Government which resulted in a waste of limited resources, an inability to accomplish national goals, impediments to effective management, and a danger to our national security and defense. This must come to an end. Now with hurricane recovery costs escalating, cutting out wasteful programs takes on a whole new meaning and is now getting much needed congressional attention.

Members ranging from the Republican Study Committee to Minority Leader, Nancy Pelosi, are calling for the costs of the cleanup to be offset in the Federal budget. Unfortunately, it is often the case that when Congress acts hastily to either add or cut programs, the unseen effects are not felt until it is too late in many cases. We in Congress need to be thoughtful in making considerations of where to trim and what programs we should cut. This is where the two proposals that we are discussing today can play a very important role.

First, H.R. 3276, the Government Reorganization and Improvement of Performance Act will help us to get a grip on wasteful government spending by authorizing the President to reorganize and streamline Federal programs and agencies. Specifically, the bill will allow the President to propose the creation of results commissions for the purpose of reviewing a specific program area.

Once approved by Congress, the results commissions would recommend to the President plans for reorganizing duplicate Federal program areas. The President would have the option of forwarding the recommendations to Congress, which then could vote them up or down without an amendment. This proposal has been supported by huge majorities of both parties in Congress through the years. Similar bills in recent history have passed Congress by overwhelming majorities or even at times without one dissenting vote.

Finally, the substance of this proposal was supported by the National Commission on Public Service. It is obvious that the constituency for this bill is the average American taxpayer who rightly expects his or her money to be spent wisely, and we owe them just that.

The other bill we will consider is H.R. 3277, the Federal Agency Performance Review and Sunset Act, or the Sunset Act. This bill would establish a sunset commission to review each Federal agency for its efficiency and continued need. After an agency is reviewed, it would have to be positively reauthorized by Congress. Without congressional action, any agency not reauthorized would be terminated within 2 years of review by the sunset commission. That is pretty serious.

This past April, Chairman Alan Greenspan testified before the Senate Budget Committee with regard to reforming the budget process. What was missing in government, he stated, was a systematic review of all Federal programs. He said Congress might want to require that existing programs be assessed regularly to verify that they continue to meet their stated purposes and cost projections. The Sunset Act is expressly consistent with this analysis and would bring light of review and accountability to Federal programs and result in considerable cost savings to the taxpayer.

I look forward to hearing from our very distinguished panel of experts today who will provide their views and certainly their experience.

In my backup, in a letter that I sent to members of the committee, I did list a few areas as examples, Federal program areas in need of review, as an example, the results commission. There are 19 Federal programs throughout the government focused on substance abuse programs. There are 90 early childhood programs existing and 11 Federal agencies with 20 different offices; 86 teacher training programs exist in 9 different agencies; 27 different programs and services to prevent teen pregnancy exist in HHS alone; 50 different programs to aid the homeless are operated by 8 different Federal agencies; 541 clean air, water, and waste programs are managed by 29 agencies.

Now, my intention is not to discount the importance of programs on substance abuse, or on childhood development programs, or teachers training programs, or teen pregnancy programs, or the homeless, or even clean air and water. The importance of this hearing and the bills that we are considering today is to look at the duplication and make sure that we are doing it properly. We may need 19 different programs for substance abuse, but let us find out if we actually do. That is the purpose of the bill, that is the purpose of the hearing, and that is the purpose of the results commission.

Again, I appreciate your all being here today. I am sure we could talk for hours about government waste and priorities. Unfortunately, we don't have hours. We do have a couple of hours today and some experts. I would formally now like to bring the meeting together because we have a quorum present, and I would like to introduce our ranking member, Mr. Danny Davis, if he has any comments this afternoon.

[The prepared statement of Hon. Jon C. Porter and the texts of H.R. 3276 and H.R. 3277 follow:]

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"It's Time to REACT—Reauthorizing Executive Authority to Consolidate Task: Establishing Results and Sunset Commissions"

Subcommittee on the Federal Workforce and Agency Organization
Chairman Jon C. Porter
September 27, 2005

I would like to thank everyone for being here today as we discuss two important pieces of legislation before the Government Reform Committee. Before we get into the substance of the hearing, I want to convey my profound condolences to the victims of Hurricane Rita and their families who suffered such great personal loss. I wish also to acknowledge that some of our Subcommittee members and witnesses who represent flooded areas are unable to be with us because they are back home attending to the urgent needs of their constituents.

Through the years, Congress has created federal programs to meet pressing needs but has often lacked the 'big picture' perspective. The unfortunate consequence is rampant overlap and duplication in federal programs. In 2003, the National Commission on the Public Service issued a report titled, *Urgent Business for America.* And, indeed, it is urgent business. This highly esteemed bi-partisan commission, comprised of numerous formerly high-ranking officials of the Clinton, Reagan and Bush I administrations, as well as prominent members of Congress from both sides of the aisle, recommended that "fundamental reorganization of the Federal Government is urgently needed to improve its capacity for coherent design and efficient implementation of public policy." The Commission found extensive evidence of duplication and overlap throughout the Federal government that has resulted in a waste of limited resources, an inability to accomplish national goals, impediments to effective management and a danger to our national security and defense. This must come to an end.

Now, with hurricane recovery costs escalating, cutting out wasteful programs takes on a whole new meaning and is now gaining much needed Congressional attention. Members ranging from the Republican Study Committee to Minority Leader Nancy Pelosi are calling for the cost

of the clean-up to be offset in the Federal budget. Unfortunately, it is often the case that when Congress acts hastily to either add or cut programs, the unseen effects are not felt until it is too late. We in Congress need to be thoughtful in making considerations of where to trim and what programs to cut.

This is where the two proposals that we are discussing today can play an important role. First, H.R. 3276, the "Government Reorganization and Improvement of Performance Act," or the GRIP Act. The GRIP Act will help us get a "grip" on wasteful government spending by authorizing the President to reorganize and streamline Federal programs and agencies. Specifically, the bill would allow the President to propose the creation of Results Commissions for the purpose of reviewing a specific program area. Once approved by Congress, the Results Commissions would recommend to the President plans for reorganizing duplicative Federal program areas. The President would have the option of forwarding the recommendations to Congress, which could then vote them up or down without amendment.

This proposal has been supported by huge majorities of both parties in Congress. Similar bills in recent history have passed Congress by overwhelming majorities, or even at times without one dissenting vote. And finally, the substance of this proposal was supported by the National Commission on the Public Service. It is obvious that the constituency for this bill is the average taxpayer, who rightly expects his or her money to be spent wisely, and we owe them that.

The other bill we will consider is H.R. 3277, the "Federal Agency Performance Review and Sunset Act," or the Sunset Act. The bill would establish a Sunset Commission to review each Federal Agency for its efficiency and continued need. After an agency is reviewed it would have to be positively reauthorized by Congress. Without congressional action, any agency not reauthorized would be terminated within two years of review by the Sunset Commission.

This past April, Chairman Alan Greenspan testified before the Senate Budget Committee with regard to reforming the budget process. What was missing in government, he stated, was a systematic review of all Federal programs. He said, "[Congress] might want to require that existing programs be assessed regularly to verify that they continue to meet their stated purposes and cost projections." The Sunset Act is expressly consistent with this analysis, and would bring light of review and accountability to Federal programs, and result in considerable cost savings to the taxpayer.

I look forward to hearing from our very distinguished panels of expert witnesses who will provide for us their views on these bills.

I

109TH CONGRESS
1ST SESSION

H. R. 3276

To provide for the establishment of Results Commissions to improve the results of executive branch agencies on behalf of the American people.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2005

Mr. PORTER (for himself, Mr. TOM DAVIS of Virginia, and Mr. BRADY of Texas) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To provide for the establishment of Results Commissions to improve the results of executive branch agencies on behalf of the American people.

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 "Government Reorga-
5 nization and Improvement of Performance Act".

6 **SEC. 2. RESULTS COMMISSIONS.**

7 (a) ESTABLISHMENT OF COMMISSIONS.—

1 (1) PROPOSAL AND TRANSMITTAL.—The Presi-
2 dent—
3 (A) may propose the establishment in the
4 executive branch of one or more commissions
5 for the purpose of improving the overall effec-
6 tiveness, efficiency, or accountability of execu-
7 tive branch operations through reorganization,
8 with each such commission being known as a
9 "Results Commission"; and
10 (B) may transmit such proposal to Con-
11 gress for expedited consideration under section
12 3.
13 (2) REASONS FOR ESTABLISHING RESULTS
14 COMMISSIONS.—In each proposal to establish a Re-
15 sults Commission, the President shall describe the
16 agencies or programs being proposed for the Results
17 Commission to study. In making a proposal to estab-
18 lish a Results Commission, the President shall iden-
19 tify areas where multiple Federal programs have
20 similar, related, or overlapping responsibilities that
21 are under the jurisdiction of multiple executive
22 branch agencies and committees of Congress, and
23 areas where reorganization may improve the overall
24 effectiveness, efficiency, or accountability of execu-
25 tive branch operations.

1 (b) PROCEDURE FOR MAKING RECOMMENDATIONS
2 FOR IMPROVEMENTS IN EXECUTIVE BRANCH PERFORM-
3 ANCE.—

4 (1) The President may, from time to time in his
5 discretion, submit to a Results Commission estab-
6 lished pursuant to this section one or more specific
7 proposals to improve the performance of the execu-
8 tive branch by reorganizing agencies or programs in
9 the areas that the Results Commission is authorized
10 to study.

11 (2) After receiving a specific proposal from the
12 President under paragraph (1), a Results Commis-
13 sion shall evaluate the proposal and shall provide a
14 response to the President on the proposal, including
15 any changes that the Commission may wish to rec-
16 ommend. The Commission may recommend changes
17 or additions to the proposal, and shall explain and
18 justify any such recommended changes or additions,
19 only if the Commission believes that such changes
20 are necessary to better accomplish the stated pur-
21 pose of the President's reorganization proposal.

22 (3) If the President disapproves the rec-
23 ommendations of the Results Commission, in whole
24 or in part, the President may transmit to the Re-
25 sults Commission the reasons for that disapproval.

1 The Commission shall then transmit to the Presi-
2 dent a report responding to the President's concerns
3 and any changes in its recommendations.
4 (4) The President may transmit to Congress for
5 expedited consideration under section 3 a copy of all
6 of the final recommendations of each Results Com-
7 mission, together with legislation to accomplish those
8 recommendations.
9 (c) MEMBERSHIP, POWERS, AND OTHER MAT-
10 TERS.—
11 (1) IN GENERAL.—Each Results Commission
12 shall be composed of seven members, who shall be
13 appointed within 60 days after the date of the enact-
14 ment of the Act establishing the Commission.
15 (2) APPOINTMENTS.—(A) The President shall
16 appoint the seven members, who shall serve at the
17 pleasure of the President, as follows:
18 (i) One in consultation with the majority
19 leader of the Senate.
20 (ii) One in consultation with the minority
21 leader of the Senate.
22 (iii) One in consultation with the Speaker
23 of the House of Representatives.
24 (iv) One in consultation with the minority
25 leader of the House of Representatives.

(v) Three other members.

(B) Any vacancy on a Commission shall be filled in the manner in which the original appointment was made.

(3) CHAIR AND VICE CHAIR.—The President shall designate one member of each Results Commission to serve as Chair and one member as Vice Chair.

(4) LENGTH OF SERVICE.—The members of each Results Commission shall serve at the pleasure of the President.

(5) VACANCIES.—Any vacancy on a Results Commission shall be filled in the manner in which the original appointment was made.

(6) TERMINATION.—Each Results Commission shall cease to exist within nine months after the date it commences operations, unless provided otherwise in law.

(7) DUTIES.—Each Results Commission is authorized to—

(A) evaluate the merits of a specific proposal by the President for governmental reorganization; and

(B) provide views to the President on the proposal, including any changes or additions to

1 the proposal that the Commission may wish to
2 recommend.
3 (8) POWERS RELATING TO OBTAINING INFOR-
4 MATION FROM FEDERAL AGENCIES.—
5 (A) IN GENERAL.—Each Results Commis-
6 sion is authorized to secure directly from any
7 executive department, bureau, agency, board,
8 commission, office, independent establishment,
9 or instrumentality of the United States Govern-
10 ment, information, suggestions, estimates, and
11 statistics for purposes of carrying out its duties.
12 Each department, bureau, agency, board, com-
13 mission, office, independent establishment, or
14 instrumentality shall, to the extent authorized
15 by law, furnish such information, suggestions,
16 estimates, and statistics directly to the Commis-
17 sion, upon request made by the chair or any
18 other member designated by a majority of the
19 Commission.
20 (B) RECEIPT, HANDLING, STORAGE, AND
21 DISSEMINATION.—Information shall be received,
22 handled, stored, and disseminated only by mem-
23 bers of the Commission and its staff consistent
24 with all applicable statutes, regulations, and
25 Executive orders.

1 (9) PUBLIC HEARINGS AND MEETINGS.—

2 (A) PUBLIC HEARINGS.—Each Results
3 Commission shall hold public hearings and
4 meetings to the extent appropriate. Any such
5 public sessions shall be conducted in a manner
6 consistent with the protection of information
7 provided to or developed for or by the Commis-
8 sion as required by applicable law.

9 (B) NONAPPLICABILITY OF FEDERAL AD-
10 VISORY COMMITTEE ACT.—The Federal Advi-
11 sory Committee Act (5 U.S.C. App.) shall not
12 apply to any Results Commission.

13 (10) INTERNAL PROCEDURES.—

14 (A) PROCEEDINGS.—Each Results Com-
15 mission shall commence operations within 6
16 months after the date of enactment of the Act
17 establishing the Commission and shall meet pe-
18 riodically at the call of the Chair.

19 (B) QUORUM.—Four members of a Results
20 Commission shall constitute a quorum but a
21 lesser number may hold hearings.

22 (11) PERSONNEL MATTERS.—

23 (A) TRAVEL EXPENSES.—The members of
24 each Results Commission shall be allowed travel
25 expenses, including per diem in lieu of subsist-

1 ence, at rates authorized for employees of agen-
2 cies under subchapter I of chapter 57 of title 5,
3 United States Code, while away from their
4 homes or regular places of business in the per-
5 formance of services for the Commission.
6 (B) DIRECTOR.—The Chair of each Re-
7 sults Commission may, without regard to the
8 civil service laws and regulations, appoint and
9 terminate a Director for the Commission. The
10 Director shall be paid at a rate not to exceed
11 the Level II of the Executive Schedule.
12 (C) STAFF.—The Director may appoint
13 and compensate staff for each Results Commis-
14 sion in accordance with section 3161 of title 5,
15 United States Code.
16 (D) APPLICABILITY OF CERTAIN CIVIL
17 SERVICE LAWS.—The Director and any staff of
18 each Results Commission shall be employees
19 under section 2105 of title 5, United States
20 Code, for purposes of chapters 63, 81, 83, 84,
21 85, 87, 89, and 90 of that title.
22 (E) DETAIL OF GOVERNMENT EMPLOY-
23 EES.—Any Federal Government employee may
24 be detailed to the Commission without reim-
25 bursement, and such detail shall be without

1 interruption or loss of civil service status or
2 privilege.
3 (F) PROCUREMENT OF TEMPORARY AND
4 INTERMITTENT SERVICES.—The Chair of each
5 Results Commission may procure temporary
6 and intermittent services under section 3109(b)
7 of title 5, United States Code, at rates for indi-
8 viduals which do not exceed the daily equivalent
9 of the annual rate of basic pay prescribed for
10 Level II of the Executive Schedule under sec-
11 tion 5316 of such title.
12 (12) OTHER ADMINISTRATIVE MATTERS.—
13 (A) POSTAL AND PRINTING SERVICES.—
14 Each Results Commission may use the United
15 States mails and obtain printing and binding
16 services in the same manner and under the
17 same conditions as other departments and
18 agencies of the United States.
19 (B) ADMINISTRATIVE SUPPORT SERV-
20 ICES.—Upon the request of a Results Commis-
21 sion, the Administrator of General Services
22 shall provide to the Results Commission, on a
23 reimbursable basis, the administrative support
24 services necessary for the Results Commission
25 to carry out its duties.

1 (C) AUTHORIZATION OF APPROPRIA-
2 TIONS.—Such sums as may be necessary are
3 authorized to be appropriated for the purposes
4 of carrying out the duties of each Results Com-
5 mission. Such funds shall remain available until
6 expended.

7 (d) EXPEDITED CONGRESSIONAL REVIEW PROCE-
8 DURES.—In reviewing proposals by the President to estab-
9 lish a Results Commission and in reviewing proposals by
10 the President to implement reorganizations recommended
11 by a Results Commission, the Congress shall follow the
12 expedited review procedures set forth in section 3 of this
13 Act.

14 **SEC. 3. EXPEDITED CONGRESSIONAL REVIEW PROCE-**
15 **DURES.**

16 (a) DEFINITIONS.—

17 (1) RESOLUTION OF APPROVAL.—

18 (A) IN GENERAL.—For the purposes of
19 this section, the term "resolution" means only
20 a joint resolution described in either subpara-
21 graph (B) or (C).

22 (B) JOINT RESOLUTION RELATING TO ES-
23 TABLISHING RESULTS COMMISSION.—For pur-
24 poses of subparagraph (A), a joint resolution

1 described in this subparagraph is a joint resolu-
2 tion—
3 (i) which does not have a preamble;
4 (ii) the title of which is as follows:
5 "Joint resolution establishing the Results
6 Commission proposed by the President
7 under the Government Reorganization and
8 Improvement of Performance Act";
9 (iii) the matter after the resolving
10 clause of which is as follows: "That Con-
11 gress establishes a Results Commission
12 proposed by the President, as follows, that
13 was transmitted on _____ under the
14 Government Reorganization and Improve-
15 ment of Performance Act:", the blank
16 space being filled in with the appropriate
17 date; and
18 (iv) the remaining text of which con-
19 sists of the complete text of a legislative
20 proposal transmitted by the President
21 under section 2(a)(1).
22 (C) JOINT RESOLUTION RELATING TO AP-
23 PROVING REORGANIZATION PROPOSAL.—For
24 purposes of subparagraph (A), a joint resolu-

1 tion described in this subparagraph is a joint
2 resolution—
3 (i) which does not have a preamble;
4 (ii) the title of which is as follows:
5 "Joint resolution approving the reorganiza-
6 tion proposals of the President under the
7 Government Reorganization and Improve-
8 ment of Performance Act";
9 (iii) the matter after the resolving
10 clause of which is as follows: "That Con-
11 gress approves the reorganization pro-
12 posals of the President, as follows, that
13 were transmitted on _____ under the
14 Government Reorganization and Improve-
15 ment of Performance Act:", the blank
16 space being filled in with the appropriate
17 date; and
18 (iv) the remaining text of which con-
19 sists of the complete text of a legislative
20 proposal transmitted by the President
21 under section 2(b)(4).
22 (2) LEGISLATIVE DAY.—For the purposes of
23 this section, the term "legislative day" refers to any
24 day on which either House of Congress is in session.

1 (b) INTRODUCTION AND REFERENCE OF RESOLU-
2 TION.—
3 (1) Not later than the first day of session fol-
4 lowing the day on which a resolution is transmitted
5 to Congress under section (2)(a)(1) or (2)(b)(4), the
6 resolution shall be introduced (by request)—
7 (A) in the House of Representatives by the
8 chairman of the Committee on Government Re-
9 form, or by a member or members of the House
10 designated by such chairman; and
11 (B) in the Senate by the chairman of the
12 Committee on Homeland Security and Govern-
13 mental Affairs, or by a member of members of
14 the Senate designated by such chairman.
15 (2) A resolution with respect to a Results Com-
16 mission or a reorganization proposal shall be re-
17 ferred to the Committee on Government Reform of
18 the House of Representatives and the Committee on
19 on Homeland Security and Governmental Affairs of
20 the Senate (and all resolutions with respect to the
21 same commission or proposal shall be referred to the
22 same committee) by the Speaker of the House or the
23 President of the Senate, as the case may be. The
24 committee shall makes its recommendations to the
25 House of Representatives or the Senate, respectively,

1 within 75 calendar days of continuous session of
2 Congress following the date of such resolutions's in-
3 troduction.

4 (c) EXPEDITED PROCEDURES RELATING TO DIS-
5 CHARGE OF COMMITTEE CONSIDERING RESOLUTION,
6 PROCEDURE AFTER REPORT OR DISCHARGE OF COM-
7 MITTEE, DEBATE, AND VOTE ON FINAL PASSAGE.—Sec-
8 tions 911 and 912 of title 5, United States Code, shall
9 apply to a resolution introduced pursuant to subsection
10 (b)(1). In applying such sections—

11 (1) the term "resolution" means a resolution
12 described in subparagraph (B) or (C) of subsection
13 (a)(1) of this section; and

14 (2) the term "reorganization plan" means a leg-
15 islative proposal to establish a Results Commission
16 transmitted under section 2(a)(1), or a reorganiza-
17 tion proposal transmitted under section 2(b)(4).

18 (d) EFFECTIVE DATE, PUBLICATION, EFFECT ON
19 OTHER LAWS, PENDING LEGAL PROCEEDINGS, AND UN-
20 EXPENDED APPROPRIATIONS.—Sections 906 and 907 of
21 title 5, United States Code, shall apply to a resolution in-
22 troduced pursuant to subsection (b)(1). In applying such
23 sections—

1 (1) the term "resolution" means a resolution
2 described in subparagraph (C) of subsection (a)(1)
3 of this section; and
4 (2) the term "reorganization plan" means a re-
5 organization proposal transmitted under section
6 2(b)(4).

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I

109TH CONGRESS
1ST SESSION

H. R. 3277

To provide for the establishment of the Sunset Commission to review and maximize the performance of all Federal agencies and programs.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2005

Mr. BRADY of Texas (for himself, Mr. TOM DAVIS of Virginia, and Mr. PORTER) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for the establishment of the Sunset Commission to review and maximize the performance of all Federal agencies and programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Agency Performance Review and Sunset Act".

1 **SEC. 2. SUNSET COMMISSION TO REVIEW AND MAXIMIZE**
2 **THE PERFORMANCE OF ALL FEDERAL AGEN-**
3 **CIES AND PROGRAMS.**

4 (a) SCHEDULE FOR REVIEW OF AGENCIES AND PRO-
5 GRAMS.—The President may submit to Congress a sched-
6 ule for reviewing the performance of, and need for, execu-
7 tive branch agencies and programs at least once every 10
8 years. In considering the schedule, Congress shall follow
9 the expedited review procedures set forth in section 3.

10 (b) SUNSET OF EXECUTIVE BRANCH AGENCIES AND
11 PROGRAMS.—Each executive branch agency and program
12 shall—

13 (1) be reviewed by the Sunset Commission ac-
14 cording to the schedule enacted in a joint resolution
15 described in section 3(a); and

16 (2) except as provided in subsection (h), be
17 abolished two years after the date that the President
18 submits to Congress the report required pursuant to
19 subsection (i) covering the agency or program, un-
20 less the agency or program is reauthorized by law
21 after such submission or the two-year period is ex-
22 tended for an additional two years by law.

23 (c) ESTABLISHMENT OF COMMISSION.—There is
24 hereby established a commission to be known as the "Sun-
25 set Commission".

1 (d) MEMBERSHIP, POWERS, AND OTHER MAT-
2 TERS.—
3 (1) MEMBERSHIP.—
4 (A) IN GENERAL.—The Sunset Commis-
5 sion shall be comprised of seven members, who
6 shall be appointed within 180 days after the
7 date of enactment of this Act.
8 (B) APPOINTMENTS.—The President shall
9 appoint the seven members of the Sunset Com-
10 mission, as follows:
11 (i) One in consultation with the ma-
12 jority leader of the Senate.
13 (ii) One in consultation with the mi-
14 nority leader of the Senate.
15 (ii) One in consultation with the
16 Speaker of the House of Representatives.
17 (iv) One in consultation with the mi-
18 nority leader of the House of Representa-
19 tives.
20 (v) Three other members.
21 (C) CHAIR AND VICE CHAIR.—The Presi-
22 dent shall designate one member of the Sunset
23 Commission to serve as Chair and one member
24 as Vice Chair.

1 (D) LENGTH OF SERVICE.—The members
2 of the Sunset Commission shall serve at the
3 pleasure of the President. Each member shall
4 serve for a term not to exceed three years, un-
5 less reappointed by the President.
6 (E) VACANCIES.—Any vacancy on the
7 Commission shall be filled in the manner in
8 which the original appointment was made.
9 (2) POWERS RELATING TO OBTAINING INFOR-
10 MATION FROM FEDERAL AGENCIES.—
11 (A) IN GENERAL.—The Sunset Commis-
12 sion is authorized to secure directly from any
13 executive department, bureau, agency, board,
14 commission, office, independent establishment,
15 or instrumentality of the United States Govern-
16 ment, information, suggestions, estimates, and
17 statistics for purposes of carrying out its duties.
18 Each department, bureau, agency, board, com-
19 mission, office, independent establishment, or
20 instrumentality shall, to the extent authorized
21 by law, furnish such information, suggestions,
22 estimates, and statistics directly to the Commis-
23 sion, upon request made by the chair or any
24 other member designated by a majority of the
25 Commission.

1 (B) RECEIPT, HANDLING, STORAGE, AND
2 DISSEMINATION.—Information shall be received,
3 handled, stored, and disseminated only by mem-
4 bers of the Commission and its staff consistent
5 with all applicable statutes, regulations, and
6 Executive orders.
7 (3) PUBLIC HEARINGS AND MEETINGS.—
8 (A) PUBLIC HEARINGS.—The Sunset Com-
9 mission shall hold public hearings and meetings
10 to the extent appropriate. Any such public ses-
11 sions shall be conducted in a manner consistent
12 with the protection of information provided to
13 or developed for or by the Commission as re-
14 quired by any applicable statute, regulation, or
15 Executive Order.
16 (B) NONAPPLICABILITY OF FEDERAL AD-
17 VISORY COMMITTEE ACT.—The Federal Advi-
18 sory Committee Act (5 U.S.C. App.) shall not
19 apply to the Sunset Commission.
20 (4) INTERNAL PROCEDURES.—
21 (A) MEETINGS.—The Sunset Commission
22 shall meet periodically at the call of the Chair.
23 Such meetings may include public sessions as
24 described in paragraph (3)(A).

1 (B) QUORUM.—Four members of the Sun-
2 set Commission shall constitute a quorum but a
3 lesser number may hold hearings.
4 (5) PERSONNEL MATTERS.—
5 (A) TRAVEL EXPENSES.—The members of
6 the Commission shall be allowed travel ex-
7 penses, including per diem in lieu of subsist-
8 ence, at rates authorized for employees of agen-
9 cies under subchapter I of chapter 57 of title 5,
10 United States Code, while away from their
11 homes or regular places of business in the per-
12 formance of services for the Commission.
13 (B) DIRECTOR.—The Chair of the Com-
14 mission may, without regard to the civil service
15 laws and regulations, appoint and terminate a
16 Director for the Commission. The Director shall
17 be paid at a rate not to exceed the Level II of
18 the Executive Schedule.
19 (C) STAFF.—The Director may appoint
20 and fix the compensation of additional per-
21 sonnel without regard to chapter 51 and sub-
22 chapter III of chapter 53 of title 5, United
23 States Code, relating to classification of posi-
24 tions and General Schedule pay rates, except
25 that the rate of pay for the Director and other

1 personnel may not exceed Level II of the Exec-
2 utive Schedule.
3 (D) APPLICABILITY OF CERTAIN CIVIL
4 SERVICE LAWS.—The Director and any staff of
5 the Commission shall be employees under sec-
6 tion 2105 of title 5, United States Code, for
7 purposes of chapters 63, 81, 83, 84, 85, 87, 89,
8 and 90 of that title.
9 (E) DETAIL OF GOVERNMENT EMPLOY-
10 EES.—Any Federal Government employee may
11 be detailed to the Commission without reim-
12 bursement, and such detail shall be without
13 interruption or loss of civil service status or
14 privilege.
15 (F) PROCUREMENT OF TEMPORARY AND
16 INTERMITTENT SERVICES.—The chair of the
17 Commission may procure temporary and inter-
18 mittent services under section 3109(b) of title
19 5, United States Code, at rates for individuals
20 which do not exceed the daily equivalent of the
21 annual rate of basic pay prescribed for Level II
22 of the Executive Schedule under section 5316
23 of such title.
24 (6) OTHER ADMINISTRATIVE MATTERS.—

1 (A) POSTAL AND PRINTING SERVICES.—
2 The Sunset Commission may use the United
3 States mails and obtain printing and binding
4 services in the same manner and under the
5 same conditions as other departments and
6 agencies of the United States.
7 (B) ADMINISTRATIVE SUPPORT SERV-
8 ICES.—Upon the request of the Sunset Com-
9 mission, the Administrator of General Services
10 shall provide to the Sunset Commission, on a
11 reimbursable basis, the administrative support
12 services necessary for the Sunset Commission to
13 carry out its duties.
14 (C) AUTHORIZATION OF APPROPRIA-
15 TIONS.—Such sums as may be necessary are
16 authorized to be appropriated for the purposes
17 of carrying out the duties the Commission.
18 Such funds shall remain available until ex-
19 pended.
20 (7) SUNSET OF COMMISSION.—The Sunset
21 Commission shall terminate on December 31, 2026,
22 unless reauthorized by law.
23 (e) REVIEW OF EFFICIENCY AND NEED FOR EXECU-
24 TIVE BRANCH AGENCIES AND PROGRAMS.—

1 (1) IN GENERAL.—The Sunset Commission
2 shall review agencies and programs in accordance
3 with the criteria described in subsection (f). The
4 Sunset Commission shall consider recommendations
5 made by the President to the Commission for im-
6 proving the performance of the agencies or programs
7 being considered.

8 (2) USE OF EVALUATIONS AND ASSESS-
9 MENTS.—In its deliberations, the Sunset Commis-
10 sion may consider any publicly available agency or
11 program evaluations and assessments, including
12 those that the Office of Management and Budget
13 has undertaken in consultation with the affected
14 agencies of the Federal Government. Such Office of
15 Management and Budget assessments shall evaluate
16 the purpose, design, strategic plan, management,
17 and results of the program, and such other matters
18 as the Director of the Office of Management and
19 Budget considers appropriate, as well as make rec-
20 ommendations to improve the efficiency and effec-
21 tiveness of the assessed programs.

22 (3) REPORT TO THE PRESIDENT.—The Sunset
23 Commission shall submit to the President not later
24 than August 1 of each year a report containing

1 (A) its assessment of each agency and pro-
2 gram reviewed during the preceding 12 months
3 pursuant to the schedule for review (if any) ap-
4 proved by a joint resolution described in section
5 3(a); and
6 (B) its recommendations on how to im-
7 prove the results that each agency and program
8 achieves and whether to abolish any agency or
9 program.
10 (4) LEGISLATION.—The Sunset Commission
11 shall submit to the President with its report any leg-
12 islation needed to carry out its recommendations.
13 (5) PROPOSALS TO ABOLISH AGENCIES OR PRO-
14 GRAMS.—Prior to recommending the abolition of any
15 agency or program, the Sunset Commission should,
16 as it considers appropriate:
17 (A) conduct public hearings on the merits
18 of retaining the agency or program;
19 (B) provide an opportunity for public com-
20 ment on the option of abolishing the agency or
21 program;
22 (C) offer the affected agency an oppor-
23 tunity to comment and to provide information
24 supporting its views;

1 (D) review the assessments described in
2 paragraph (2) of this Act; and
3 (E) consult with the Government Account-
4 ability Office, the relevant Inspectors General,
5 and the relevant committees of Congress.
6 (f) CRITERIA FOR REVIEW.—The Sunset Commission
7 shall use the following criteria to evaluate each agency or
8 program:
9 (1) Whether the agency or program as carried
10 out by the agency is cost-effective and achieves its
11 stated purpose or goals.
12 (2) The extent to which any trends, develop-
13 ments, or emerging conditions affect the need to
14 change the mission of the agency or program or the
15 way that the mission is being carried out by the
16 agency.
17 (3) The extent to which the agency or program
18 duplicates or conflicts with other Federal agencies,
19 State and local government, or the private sector.
20 (4) The extent to which the agency coordinates
21 effectively with State and local governments in per-
22 forming the functions of the program.
23 (5) The extent to which changes in the author-
24 izing statutes of the agency or program would im-
25 prove the performance of the agency or program.

1 (6) The extent to which changes in the manage-
2 ment structure of the agency or program or its
3 placement in the Executive Branch are needed to
4 improve the overall efficiency, effectiveness, or ac-
5 countability of executive branch operations.
6 (g) AGENCY AND PROGRAM INVENTORY–.—
7 (1) PREPARATION.—Within 6 months after the
8 date of the enactment of this Act, the Director of
9 the Congressional Research Service, with the assist-
10 ance of the Comptroller General, shall prepare an in-
11 ventory of all executive branch agencies and pro-
12 grams. Six months prior to the time that the Sunset
13 Commission is scheduled to begin its review of an
14 agency or program, the Director of the Congres-
15 sional Research Service, with the assistance of the
16 Comptroller General, shall update the section of the
17 inventory pertaining to that agency or program.
18 (2) PURPOSE.—The purpose of the agency and
19 program inventory is to advise and assist the Sunset
20 Commission, the President, and Congress in car-
21 rying out the requirements of this Act.
22 (3) INVENTORY CONTENT.—The agency and
23 program inventory shall include for each agency and
24 program a list of citations of all authorizing statutes
25 of the agency or program.

1 (h) EXEMPTION.—

2 (1) REGULATIONS.—No regulations to protect
3 the environment, health, safety, or civil rights shall
4 be abolished under this Act.

5 (2) ENFORCEMENT.—No program related to
6 enforcing regulations referred to in paragraph (1)
7 shall be abolished under this Act unless provision is
8 made for the continued enforcement of those regula-
9 tions.

10 (i) SUBMISSION OF COMMISSION REPORT TO CON-
11 GRESS BY PRESIDENT.—Not later than September 1 of
12 each year, the President shall submit to Congress the re-
13 port submitted to the President by the Commission pursu-
14 ant to subsection (e)(3) and any legislation needed to ac-
15 complish the recommendations of the Sunset Commission.

16 **SEC. 3. EXPEDITED CONGRESSIONAL REVIEW PROCE-**
17 **DURES.**

18 (a) DEFINITIONS.—

19 (1) RESOLUTION OF APPROVAL.—For the pur-
20 poses of this section, the term "resolution" means
21 only a joint resolution—

22 (A) which does not have a preamble;

23 (B) the title of which is as follows: "Joint
24 resolution approving the schedule for reviewing
25 the performance of, and need for, executive

1 branch agencies and programs under the Fed-
2 eral Agency Performance Review and Sunset
3 Act";
4 (C) the matter after the resolving clause of
5 which is as follows: "That Congress approves
6 the schedule for reviewing the performance of,
7 and need for, executive branch agencies and
8 programs on _____ under the Federal
9 Agency Performance Review and Sunset Act:",
10 the blank space being filled in with the appro-
11 priate date; and
12 (D) the remaining text of which consists of
13 the complete schedule for the reviews submitted
14 under section 2(a).
15 (2) LEGISLATIVE DAY.—For the purposes of
16 this section, the term "legislative day" refers to any
17 day on which either House of Congress is in session.
18 (b) INTRODUCTION AND REFERENCE OF RESOLU-
19 TION.—
20 (1) Not later than the first day of session fol-
21 lowing the day on which a resolution is submitted to
22 Congress under section (2)(a)(1), the resolution
23 shall be introduced (by request)—
24 (A) in the House of Representatives by the
25 chairman of the Committee on Government Re-

1 form, or by a member or members of the House
2 designated by such chairman; and
3 (B) in the Senate by the chairman of the
4 Committee on Homeland Security and Govern-
5 mental Affairs, or by a member of members of
6 the Senate designated by such chairman.
7 (2) The resolution shall be referred to the Com-
8 mittee on Government Reform of the House of Rep-
9 resentatives and the Committee on on Homeland Se-
10 curity and Governmental Affairs of the Senate (and
11 all resolutions with respect to the same schedule for
12 reviews shall be referred to the same committee) by
13 the Speaker of the House or the President of the
14 Senate, as the case may be. The committee shall
15 makes its recommendations to the House of Rep-
16 resentatives or the Senate, respectively, within 75
17 calendar days of continuous session of Congress fol-
18 lowing the date of such resolutions's introduction.
19 (c) EXPEDITED PROCEDURES RELATING TO DIS-
20 CHARGE OF COMMITTEE CONSIDERING RESOLUTION,
21 PROCEDURE AFTER REPORT OR DISCHARGE OF COM-
22 MITTEE, DEBATE, AND VOTE ON FINAL PASSAGE.—Sec-
23 tions 911 and 912 of title 5, United States Code, shall
24 apply to a resolution introduced pursuant to subsection
25 (b)(1). In applying such sections—

1 (1) the term "resolution" means a resolution as
2 defined in subsection (a)(1) of this section; and
3 (2) the term "reorganization plan" means a leg-
4 islative proposal containing a schedule for review
5 submitted under section 2(a).
6 (d) EFFECTIVE DATE, PUBLICATION, EFFECT ON
7 OTHER LAWS, PENDING LEGAL PROCEEDINGS, AND UN-
8 EXPENDED APPROPRIATIONS.—Sections 906 and 907 of
9 title 5, United States Code, shall apply to a resolution in-
10 troduced pursuant to subsection (b)(1). In applying such
11 sections—
12 (1) the term "resolution" means a resolution as
13 defined in subsection (a)(1) of this section; and
14 (2) the term "reorganization plan" means a leg-
15 islative proposal containing a schedule for review
16 submitted under section 2(a).

○

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. I appreciate your calling this hearing.

This hearing will be very helpful as we continue to examine how to make the Federal Government more effective and efficient. In April 2003, the full committee held a hearing on reorganizing the government. At that hearing, Comptroller General David Walker stressed that, above all else, all segments of the public that must regularly deal with their government—individuals, private sector organizations, State and local governments—must be confident that the changes that are put in place have been thoroughly considered and that the decisions made today will make sense tomorrow.

Many experts like some of the witnesses who will testify before us today support granting the President's reorganization authority. However, there are those of us who have serious concerns about granting the President a too broad reorganization authority. I believe that everyone would agree that overlapping and duplicative government programs are problematic, but it is important to consider how much authority the President should be given to reorganizing the Federal Government and what role should Congress have in framing the reorganization.

It is indeed appropriate for Congress to examine how the executive branch is organized. Congress already has the authority to reorganize Federal agencies under regular order. Granting broad reorganization authority to the White House raises serious concerns regarding the balance of powers between the executive and legislative branches of government.

I too look forward to the testimony that will come from our witnesses today. Again, I thank you for calling this hearing and look forward to its implementation. I yield back any additional time.

Mr. PORTER. Thank you, Mr. Davis.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. Thank you for conducting this hearing today and also looking at the important issue of finding a mechanism to consolidate some of the duplicating agencies and activities of our Federal Government. You have pointed out a host of Federal program areas which may be in need of a review.

Sometimes Congress doesn't conduct the proper oversight. Sometimes Congress only continues programs, does not sunset programs, and continues to increase the funding of programs. This does give our Chief Executive the opportunity to look at these programs, and make recommendations, and then also seek a close examination of the results and also in the light of duplication.

The worst part about these programs, for example, substance abuse, where you cited we have 19 or 90 early childhood programs, 86 teacher training programs, like you said, they all have good intentions. But the worst part about this where they do, in fact, duplicate, we are spending an inordinate amount of money on administration and also operation and duplication, where our intent is to help those who need childhood early education assistance, to help those that need substance abuse prevention, helping the homeless and others that you cited. So I think that the legislation is also a proposal that is well-balanced because, again, it does keep Congress in the process.

I am anxious to hear the testimony. I thank you for encouraging a review of legislation initiatives like this that will make a difference. Hopefully, we will be able to perform our responsibility better, and these agencies will be more efficient and less duplicative in their operation and organization. Thank you.

Mr. PORTER. Thank you.

Congresswoman Holmes Norton.

Ms. NORTON. Thank you very much, Mr. Chairman, and I appreciate the focus of the subcommittee on efficiency in government. I think that those of us who believe that government is important and necessary have a particular obligation to see that government is efficient. Those who don't think government matters very much, it seems to me, will take an inefficient government and have a reason for just getting other programs. So I feel a special kinship to your concern here.

I also believe that I have seen a troubled agency up close. I came to head an agency which was troubled, and I had to do very hard things. At the time, it was during the Carter administration. Among the things we had to do was consolidate parts from other agencies.

And do you know what, Mr. Chairman? My party controlled the Presidency, and it controlled both branches of government, and that is how we did. Now, it does seem to me that you are in something like that position today. I find it very interesting that this kind of proposal comes up at this time.

The harder the proposal, what you will find troubling many Members, Mr. Chairman, is the notion of expedited procedures. Now, the Congress has used expedited procedures. I have gone back to Georgetown, where I was a full time professor of law and still teach one course there as a tenured professor. I teach a course about separation of powers.

The thesis is that separation of powers government is so unwieldy in a world of instant communication, instant technology, global economy, that if we don't make it work better, the very structure we have could mean that we will be left behind. So I am very interested in this notion of even expedited procedures.

We discuss the use of the expedited procedure for trade. We discuss how you better use it for trade because if the President is engaging in trade negotiations, and he says I can't really tell you how this will come out, we aren't going to get very far in a world where trade is done across global lines. We used it in BRAC, and Congress, itself of course, is responsible for the BRAC Procedure. Mr. Johnson, whom we will be hearing from soon, has called a spade, a spade here, that we are looking for something like that for our programs, period.

The real question in a separation of powers government that is also democratic is raised by how far you want to go in using expedited procedures. It is a very serious question. It is as if none of us sat through the reorganizations we have just gone through.

We did them. We did the reorganization that, in fact, was the largest reorganization since the Department of Defense was created. We did it in the way we usually do it. As a matter of fact, if I recall correctly, it was the Democrats who thought that reorganization ought to occur, and the President said yes. Then when it

occurred, there were differences, and we did them the old-fashioned way.

It takes me back to the cliche: Democracy is a terrible system except for all the alternatives. Mr. Chairman, I hope I am not looking in the face of an alternative here. I would be shocked if my colleagues on the other side of the aisle were as willing to give up as much of their responsibility as would occur when all of these programs were put under BRAC-type procedures as would be indicated if we approve this bill.

The notion that we are a very political body, yet that comes as a democracy, and therefore we don't want to get rid of many programs is, in fact, the case. Mr. Chairman, however, I don't think any of us are naive enough to believe that the only programs that would somehow find their way off the table would be the inefficient programs, and there would be no political content to some of these programs, including programs that some members of this body think never should have been enacted in the first place.

How many times do I have to hear that the war on poverty was a total failure, that none of those problems should have taken place? The whole notion that programs that one side favors, and programs that another side favors would go into some kind of efficiency matrix, and that is how decisions would be made, and we don't need democracy any more, we don't need oversight any more, we don't need the President cracking the whip on his own agencies any more, that is very troubling to me.

Look, we can go to a parliamentary system if you want one because that is the way a parliamentary system works. I try to teach my students, these are law students, and we are trying to learn how to work more efficiency within the law and the system. I teach them that a parliamentary system is better suited to a global economy, but I have not given up hope that a separation of powers economy can work today. These bills appear to give up those hopes.

Essentially, we are talking about a kind of government-wide BRAC, where the President puts it forward. Sure, we can overturn him if you can get two-thirds here and two-thirds in the Senate. My friends, when is the last time you saw that kind of a process go on here? It should not be more difficult to deal with programs that are inefficient.

It should not be so difficult to deal with programs that are inefficient that we would have to create a procedure that would make it more difficult for some programs, and I submit many programs, to survive than it would be to get on the Supreme Court of the United States because you have to get two-thirds here and two-thirds there. Or else, in effect, the Executive rules the roost. My friends, the Executive will not always be you. One day, the Executive will be on our side, and I wonder what you would think of such reorganizations if that were the case.

Thank you, Mr. Chairman.

Mr. PORTER. Thank you. I appreciate everyone's comments.

I would like to add, for historical perspective, previous votes of Congress on fast-track reorganization. If we go back to 1977, the Senate voted 94 to 0, and the House passed by voice vote, with Mr. Waxman voting in favor by the way, a separate bill, which was a Democratic-controlled Congress, for fast-track authority.

In 1984, the Senate by voice vote did the same and the House the same by voice vote. There is no question that there is a time and a place. To my friend and colleague, and actually my Congresswoman here in the District, I certainly respect her concerns, and I also share that we have to be very, very cautious. Everyone wants us to cut wasteful government spending, but no one wants us to cut their program.

As we move forward, again in concurrence with my friend and colleague from D.C., we want to make sure that the pendulum doesn't swing too far, because as we look at programs, certainly there are duplications, and there is a concern, always a concern about the political aspects, in that if there is a favored program or a program that someone doesn't like.

I share your concern. I think we have to be very cautious as we move forward, but I think this is a program that we are trying to emulate that has been very successful for multiple administrations. But again, we have to be cautious because there are a lot of wonderful programs that we would not want to become a victim of a political process.

We just want to make sure if we are helping unwed mothers, or we are helping teachers or students, that we are able to give them the best programs without unnecessary duplication because that creates hardship to those individuals also. So again, I share similar concerns with my colleagues. We want to make sure that we do it right, and that is why we are having these hearings. So I appreciate your comments, and they are very well taken.

I would like to move into some procedural matters. I would like to ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the record, that any answers to written questions provided by the witnesses also be included in the record; without objection, so ordered. I would also ask unanimous consent that all exhibits, documents, and other materials referred to by Members and the witnesses may be included in the hearing record, that all Members be permitted to revise and extend their remarks; without objection, so ordered.

It is a practice of the subcommittee to administer the oath to all witnesses. So if you would all please stand, I will administer the oath.

[Witnesses sworn.]

Mr. PORTER. Thank you. Let the record show the witnesses have answered in the affirmative. Of course, you can please be seated.

Because of the number of witnesses we will have here today, I would ask that all witnesses tailor their oral testimony to 5 minutes. Again, we could talk about this for hours, days, weeks, and months possibly, but your submitted statements will be part of the record and part of the deliberation. So we would ask that you keep your comments to 5 minutes. I would also like to make special note that we had originally planned for Member Brady to testify today on bill H.R. 3277, but with the recent events in his home State, he was unable to attend. So he would be with us if he could.

On our first panel is no stranger to the committee and to Congress. We appreciate having here, Mr. Johnson, who is Deputy Director for Management at the Office of Management and Budget.

Please, Mr. Johnson, if you would give us your testimony. Thank you, Clay.

STATEMENT OF CLAY JOHNSON III, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. JOHNSON. Mr. Chairman, Ranking Member Davis, members of the committee, thank you for having me here today.

One thing I think we can all agree on is that we share the same goal, which is we want to spend the taxpayers' money wisely. A lot of attention is being devoted today to how we spend going forward and in the past month how we spend the Katrina moneys most wisely. I would suggest that it is equally important for us to be focused on how we spend all of our money. The results and sunset commissions can help us do just this, can help us spend the money more wisely than we are spending it now.

I am going to make my verbal comments very, very brief because I want to get into, with your questions, some of the issues that you have raised here in your opening statements. But I do want to say here at the beginning that these commissions, in our opinion, help programs work better. These are more about getting programs to work better, to remove duplication, to improve performance. The focus is primarily on performance, than it is on getting rid of programs, and improving efficiency. The primary focus is on improved performance. We want to get a better return on the taxpayers' money.

Second, these programs are used by approximately half the States. To my knowledge there is no concern, or history has shown that there has been no diminution in the relative role of Congress versus the executive branch in these States or the other way around. There is no reason to believe that these commissions, the sunset commissions and the results commissions, can't work as well here as they work at the States. The only reason that they would work less well is if we are truly not interested in spending money wisely, and I know that is not true.

Also, I would like to make the point that these commissions should be popular with Republicans and Democrats, Liberals and Conservatives. These programs are about improved performance. Ron Martinson, this ties back to your comment to me a year and a half ago, which is results are something that both sides of the aisle can agree with.

If you are a big government or a little government person, you want to focus on results. If you are a Liberal or Conservative, Republican or Democrat, you want results. So this is maybe little, or not, a partisan issue, what we are going to talk about in here. Most of the discussion, I suspect, will be on how to best focus on getting our programs and our money to be spent even more wisely.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Johnson follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF **MANAGEMENT** AND BUDGET
WASHINGTON, D.C. 20503

Testimony of the Honorable Clay Johnson III
Deputy Director for Management
Office of Management and Budget

before the

House Committee on Government Reform
Subcommittee on the Federal Workforce and Agency Organization

September 27, 2005

Congress and the Administration want to spend the taxpayers' money wisely. Establishing Results and Sunset commissions would help us achieve this goal.

Katrina has sharpened everyone's focus on spending the taxpayers' dollars wisely. The public, the media and every elected official rightly demand that scarce public funds be spent on real needs and that we get what we pay for. We should be held accountable for what we accomplish with all areas of public spending, not just disaster spending. The taxpayers deserve a thoughtful, regular review of their government's spending. The process of regularly reviewing programs will help us figure out how to make them better every year.

Sunset Commission
The Sunset Commission will regularly ask whether programs are working and recommends that programs be retained, reformed, or terminated based on their performance and efficiency. It will ensure that Congress and the Executive Branch ask of programs, at least once a decade, whether or not we have provided taxpayers a good return on their investment. As the Government Accountability Office (GAO) suggests, "A periodic reexamination offers the prospect of addressing emerging needs by weeding out programs and policies that are outdated or ineffective."[1] The bipartisan Sunset Commission will recommend ways existing agencies and programs can improve effectiveness, and propose to restructure or terminate agencies and programs that are unable to demonstrate adequate performance.

Results Commissions
The bipartisan Results Commission will study and recommend ways to make similar programs more effective and efficient. This Commission will consider Administration proposals to improve performance by restructuring or consolidating agencies or programs. If reform is achieved through consolidation or restructuring, that will reduce unnecessary costs for American taxpayers and improve the results we achieve.

A Results Commission is needed because, as GAO has said, "The fragmentation of Federal programs reflects a policymaking process that is overly stovepiped by agency and program, with insufficient focus on how individual programs contribute to overarching, crosscutting goals and missions."[2] Neither the

[1] The Government Accountability Office, "21st Century Challenges: Reexamining the Base of the Federal Government," February 2005, GAO-05-325SP.
[2] Ibid.

annual budgeting process nor the Congressional authorization process effectively looks at programs across agencies. In many cases, individual efforts may be working but overall goals might not be met in the most efficient way. We have an opportunity to improve coordination and make an even bigger impact in our most challenging policy areas.

Consistent with our focus on results, particularly in the wake of Katrina, Congress and the Executive Branch should be paying special attention to whether we are getting the most for taxpayers' dollars. We should apply this same focus to every program and program area.

I know the Congress shares the Administration's goal for improved organization and management of Federal programs. I look forward to working with this committee to achieve that objective. The Administration's proposed Government Reorganization and Program Performance Improvement Act is an important tool in that effort.

A summary of the Administration's "Government Reorganization and Program Performance Improvement Act" follows.

Government Reorganization and Program Performance Improvement Act
A Summary

The Administration proposes legislation to improve agency and program performance and to spend taxpayer money more wisely. The bill would create Sunset and Results Commissions that require Congress and the Executive Branch to regularly and formally focus on whether agencies and programs achieve desired results for the American people.

- **The Sunset and Results Commissions will help agencies and programs improve performance on behalf of the American people.** Today, more than 30 percent of government programs that are assessed are rated as ineffective or unable to demonstrate results.

The Sunset Commission Will Hold Agencies And Programs Accountable For Performance

The Sunset Commission will consider Presidential proposals to retain, restructure, or terminate government agencies or programs. To help all agencies fo
cus on results and performance, this legislation:

- Creates a seven-member, bipartisan Commission appointed by the President in consultation with the Congress.

- Authorizes Congress and the President to enact a 10-year schedule for the Administration to assess the performance of agencies and programs. Based on those assessments, the Commission will recommend ways agencies and programs can improve effectiveness and spend taxpayer dollars more wisely.

- Facilitates the reform, restructuring, or termination of agencies and programs unable to demonstrate expected performance and results in their scheduled review.

The Results Commission Process Will Reduce Unnecessary Cost and Overlap In Programs

Results Commissions established by Congress for specific programs or policy areas will consider Administration proposals to improve performance by restructuring or consolidating agencies and programs. Reform through consolidation or restructuring will reduce unnecessary costs for American taxpayers.

- Congress would approve the creation of individual Results Commissions to address a single program or policy area where duplication or overlapping jurisdiction hinder reform. For example, individual Results Commissions could be created to recommend improvements for programs that provide job training, eliminate chronic homelessness, or reduce teen pregnancy – areas where multiple programs in different agencies share the same or similar goal.

- Proposals approved by the Commissions and the President would be considered by Congress under expedited procedures.

- Each Results Commission would be bipartisan and consist of seven members appointed by the President in consultation with Congress.

Mr. PORTER. Thank you, Clay, and we appreciate your expertise. How would you handle the criticism of creating these commissions and this legislation, criticism that it is just another government program; it is another commission; it is not going to do anything? How do we handle the argument that one, they are not going to be successful; it is just going to be business as usual? Then tag onto that a concern that I, again, share with my colleagues, that this does not become a political process. If in fact it does work, how do we keep the politics out of it?

Mr. JOHNSON. Well, there is no commission that will work automatically. You put the wrong people, or provide the wrong leadership, or create the wrong mission or charter for a commission, it will fail. And so, there is nothing automatic. This is not a magic bullet.

But these are both instruments that, if the executive branch and the legislative branch both want them to be used successfully to spend the taxpayers' money, they can bring us together in a most effective fashion to do just that. And if Congress doesn't want this to work, or if on the other hand the executive branch doesn't want this to work, it will not work because Congress and the executive branch are brought together in terms of the formation of the commissions, in terms of what subjects and what programs the sunset commission takes up, and Congress has to agree with the executive branch on what results commissions objectives or areas would be addressed by the results commissions.

There is a tremendous amount of interaction between the executive and legislative branches, and if either one of the two parties wants it to not be productive, it won't be. I have no concern about the one branch of government reigning supreme over the other. You wouldn't allow that; the executive branch wouldn't allow that. These programs, these two commissions are structured to call for equal involvement in focusing on how we are spending the people's money.

I am not sure it would have made sense to propose these commissions 5, 6, 7 years ago. One of the things that we have not had in the Federal Government is consistent performance information about how programs work. We have today, or soon, we will have 80 percent of the programs, and next year we will have 100 percent of the programs, a good first step at consistent information about whether programs work or not.

So we will have information to sit down and look at, Republicans and Democrats, Liberals and Conservatives, legislative and executive branches, and have a most meaningful conversation about does this program work. Does it achieve the intended result at an acceptable cost? And if there is some belief that it doesn't, we can then engage in a conversation about what we need to do to change that; if it is not satisfactory, what we can do to change that.

Mr. PORTER. Excuse me, Clay. What about the argument that we will lose congressional oversight and involvement?

Mr. JOHNSON. Well, in the sunset commission, first of all, Congress has to agree on: What is a program? What will be looked at every 10 years? Do we want the Defense Department at large looked at every 10 years? Probably not.

Do we want the Commerce Department, or do we want this size of programs, or this conglomeration of programs? Congress is integrally involved and has to approve in expedited procedures what is the list of programs that will be reviewed every 10 years. Then every 10 years, one-tenth of the programs come up for review.

Then a recommendation is made, the commission reviews it, makes their determination as to whether it is a good recommendation or not, and if it is not a good recommendation, how they would amend it. That then presents certain recommendations to Congress to followup on. Congress can agree with those recommendations, can propose those reforms, or not agree. So Congress is integrally involved in any changes that take place as a result of the sunset commission's work.

Mr. PORTER. Because of up or down?

Mr. JOHNSON. No. They say this program ought to be changed by changing this statute or requiring more accountability or less accountability, whatever it is. Congress votes on that just like they do now. The one thing that happens if they don't vote in 2 years time about whether that program should be continued, it goes away.

Now, I can't imagine that presents a problem for Congress. On the Results Commission, Congress gets a vote and responds to a proposal by the executive branch as to whether to even take up an issue, whether it ought be job training or disadvantaged youth, or preschool education, or whatever. They decide whether this is a controversial or noncontroversial enough topic to even take up for consideration in a Results Commission fashion.

Then once they agree that it should be, then a commission is formed of experts. They get to have an input on who is on that panel, that seven-member commission that looks at their experts in that particular subject. Then when the proposal is put together, and it eventually comes to Congress, that is considered in an up and down vote.

So Congress' input in that is: Is it a topic we want to take up in the first place? And two, they have input as to who is on that commission. And then they can reject the recommendation at the end if they were on an expedited basis.

One of the things we have been asked is, well, why haven't we sought reorg authority like last existed, I think, in the early eighties. One of the reasons we haven't sought it is because we knew there was zero chance of it ever being approved, just for all the reasons that you talked about.

There is just no appetite for giving the executive branch reorg authority as is, unless there is a strong plan, unless if we can demonstrate a strong reason why and how we would use reorg authority to get something specific accomplished. We can talk to very specific things we would get accomplished with the use of something like the results commission.

You listed a whole bunch of areas where we have huge duplication. Maybe it is true that all these things do not duplicate, and they are all wonderfully effective programs. I think we all doubt that. GAO has listed in several occasions a long list of programs where we have 20 programs or 30 programs; and we know they work at cross purposes, they are inefficient, they overlap, they

don't overlap. They need to be thought through more intelligently. There is no mechanism now that brings us all together, all the interested parties together, to help us look at that in a meaningful fashion.

We talked about overlap. The results commission is an instrument that allows us to address the degree to which there is overlap, and the opportunity we have to not necessarily right-size but to wise-size these programs, and make them so that they are a good effective delivery of goods and services to the American taxpayer.

Mr. PORTER. Thank you, Mr. Johnson.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

Mr. Johnson, in trying to determine the efficiency and effectiveness of programs, and whether or not there is room or opportunity for consolidation, what are we looking for when we make assessments? What are we trying to find out?

Mr. JOHNSON. Well, it would depend on the program. Maybe let me talk a little bit in theoretical terms. If we looked at 20 or 30 programs, and we said: All right, do each of these programs have designed goals, designed outputs? Do they have a target audience and something specific that we are supposed to do with that target audience, so that we can measure results and hold the program manager responsible for the accomplishment of the desired goal? We would look for that.

We would look for whether programs are trying to accomplish the same goal, but it is the same target audience. Do they duplicate each other? Is one more effective than the other? Can the less effective program learn something from the more effective program? Do they have different definitions of who the target audience is? Do they have different definitions of the most effective way of delivering the desired service?

If we have something to learn, let us learn it. If we have programs working at cross purposes, let us learn that and get rid of that. If we need to bring some of them together because right now a potential citizen to be served has to go to eight different places to get all the different things related to training, childcare, or something. Why not bring them together and give them one place to go, so that we can make it easier for the customer to be served by the Federal Government?

So you get into service delivery improvements. You get into cost improvements. You get into minimizing duplication, minimizing programs that work at cross purposes. It can be any number of different things. But I know that those problems exist.

Mr. DAVIS OF ILLINOIS. Do you view the danger of simple budgetary concerns sometimes driving the ultimate decisions? I have always been amazed that we wiped out something called the OEO Poverty Programs at a time when I thought they were just beginning to prove their worth. I always felt that they didn't die, that they were killed. And now, we are back talking about poverty in a big way today.

I am saying one of the biggest discussions that we are having in this country is about poverty. And yet, when it seemed to me that we were moving in the direction of having some impact on the re-

duction of poverty, that we just iced the poverty programs and said: These things are not working. They are no good.

We are spending the money, and it is not serving the purpose. How much danger do you see there because I am still not convinced that we did the right thing when we eliminated many of the old OEO Poverty Programs?

Mr. JOHNSON. I don't know the specifics of that program, but let me make a general statement and then answer that more specifically. I don't think the amount of total budget issues will be any greater or any less with the results and sunset commissions. We are seeing less growth in our non-Defense, non-Homeland Security budgets now, and I suspect that will continue in the near future.

So we are particularly looking now for programs that don't work. If they don't work, let us get rid of them and send them on because I have a new idea. I have a new program. We are looking for sources of funds. So eliminating programs or making programs work better is a way of finding new money, a way of getting more for the money we have.

On the specific program, in what we proposed here, if a poverty program came up, and it was scheduled to go through a Sunset Review, I am imagining that in general what would happen is, it would come up. What would be proposed is, here is this program. This would go before the sunset commission.

The definition of success as stated in the bill or as implied by the bill is this: This program performs that, it performs it medium, it performs it not at all, it performs it great. And we think it could work better if this happened, or if that happened, or if we changed some things, or tightened the law, or made this more accountable, or combined with this, or whatever.

The goal, initially, would be to see if the program worked better. I can imagine that the only time you would come up with a recommendation for eliminating the program is if it totally duplicated something else, or it was just a total waste of money, and there aren't many like that. The Sunset Commission would say, we recommend that this be continued, but that these changes be considered by Congress.

So Congress would vote affirmatively that the program be continued. They would take up the proposed changes to the program. They accept them; they reject them, but Congress has a lot of say in this. That is why I think it is a misnomer here that this is a creation of lot of executive branch mandates on what happens to these programs. There is a lot of congressional involvement throughout these two processes.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

Mr. PORTER. Mr. Mica.

Mr. MICA. In looking at the proposed Government Reorganization Program Performance Improvement Act, the summary, it looks like you are doing most of your work in looking at programs just within the Federal purview, is that correct?

Mr. JOHNSON. As opposed?

Mr. MICA. Well, for example, several times you talk about Hurricane Katrina and looking at, let me see here——

Mr. JOHNSON. For State and local? States?

Mr. MICA. Yes.

Mr. JOHNSON. Twenty-five or 24 States have Sunset Commissions or something akin to that, that was what I was referring to earlier.

Mr. MICA. "Consistent with our focus on results, particularly in the wake of Katrina, Congress and the executive branch should be paying special attention to whether we are getting the most for taxpayers' dollars." But you are limiting that to Federal scope because I mean you are not getting into duplication of programs between Federal and State.

Mr. JOHNSON. No. Well, if I knew that we thought there was a program that was duplicated by a State program, or it was in conflict with a State program, I think recommendations coming out of that would be——

Mr. MICA. But that might be something that is considered also.

Mr. JOHNSON. Those conflicts would be recommended for——

Mr. MICA. I see you shaking your head, yes. Then the guy behind you, I know what he does, and he is saying no. He isn't? OK. So you are saying, yes.

Mr. JOHNSON. I don't speak for this bunch behind me.

Mr. MICA. OK.

Mr. JOHNSON. I don't have the slightest idea who they are.

Mr. MICA. All right. But you are saying, yes, that would be a consideration, that you are looking not only at——

Mr. JOHNSON. We want the Federal programs to work, and if there is something in the way the Federal program is constructed——

Mr. MICA. Well, many times, we have difficulty in sorting out what level of government is responsible. I mean Katrina, who is responsible for the levees and dams? Again, you used Katrina here in a couple——

Mr. JOHNSON. What I meant by the Katrina reference is, there is a lot of discussion now, relevant, highly relevant discussion. If we are going to spend as much money as we appear to be ready to spend on the response to Katrina, we need to make sure we have the mechanisms, the extra preventions, and the extra resources in place to ensure that we spend it wisely——

Mr. MICA. That is why——

Mr. JOHNSON. So there is a lot of interest on getting our moneys worth for all this expenditure, and that mind set should exist, I suggest, on everything the Federal Government does, just not what we do in response to a natural disaster.

Mr. MICA. But again, as you approach that problem or other issues that we get involved in, we also see this division of participation and responsibility at the Federal level. And again, I was trying to find out if you are just looking at Federal duplication in the process that you——

Mr. JOHNSON. In the results commission, we would be looking at Federal duplication, yes.

Mr. MICA. Of just Federal activities, not getting into whether the State or local?

Mr. JOHNSON. We would be looking, yes, the Federal programs focused on the same subject. Are they aligned with each other? Do they conflict with each other? Do they support one another? Are there ways they could be combined to be make it easier on the cus-

tomer, easier for the delivery of goods and services to the intended customer?

Mr. MICA. Well, again, I think we have a bigger problem in that regard, and maybe we should look at expanding the purview of this. One of the interesting things I have found, too, is where we go in and assist in some of these programs. I have found that the States turn around and reduce their participation. Substance abuse is a good one. In Florida, we put more money into Florida, not to mention——

Mr. JOHNSON. The State pays less, and so overall, no more is spent.

Mr. MICA [continuing]. Duplicating Federal programs, but then we put money in, and either the States or locals drop theirs back. HIDTA is a good example, too, of a problem that we have had. In the nineties, we created HIDTAs. It was supposed to be high intensity for focused Federal attention in an area.

Then we have ended up keeping these HIDTAs for years. If you got in the mix, I happened to get one in the mix on a heroin problem back in the nineties. We are still getting the HIDTA, and it does duplicate what is being done by the State. In some instances, it completely missed the mark of what its original intent was, and that was to go after a specific problem and target Federal resources.

If anything, I would like to see your proposal expanded because I think it limits. At least as I understand it, I would like to see it expanded, so that it could look at a wider range of problems. Clay, I have been here 13 years. I have identified the problem in most of these instances, and it is Congress; we are the guilty party. I like some of the mechanisms that remove this a bit. We have had some horrible votes here on the HIDTA issue that the administration wanted to eliminate some of the duplication, which is going for administration and overhead, and the original program not used for its purpose.

Another problem, Head Start, another very worthwhile program. You have, again, a whole host of programs that have just sort of gone along, and nobody looks at the duplicative things. Not to mention in Head Start, for example, now again, you see the States all doing their preschool programs, and we are spending $8,000 on, in many cases, a glorified babysitting program that has been part of another era and not adjusted, neither with the duplication in Federal childhood programs, not to mention the new era we are getting into with States getting into that mix.

I guess that is a question. Are you interested in taking it a step further? Do you think that would be helpful?

Mr. JOHNSON. We are interested in programs working better and if there are conflicts between how State and local and Federal programs interact with each other. The identification of that, which we get at with the PART, if they can be addressed with this, in the sunset commission or in the results commission, yes, we should do that.

Mr. MICA. So we could add something that said that they would also look at duplication beyond the Federal borders.

Mr. JOHNSON. Yes, sir.

Mr. MICA. OK. Thank you.

Mr. PORTER. Congresswoman, any questions?

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. Johnson, the difficulty I am having is basically with your submission of what amounts to an outline as testimony, as far as I can get my arms around what you are even talking about. One is left to wonder with such a drastic change that might effect each and every program in the government, whether any self-respecting congress would ever buy a pig in a poke with this kind of broad outline with no indication of how this thing would work.

For example, to use your, since you like broad concepts——

Mr. JOHNSON. We also like specific legislation which has been submitted.

Ms. NORTON. OK. Well then, you will be able to answer my questions very easily.

Using your concepts that help people to understand because if you conceptualize something, then people understand what you mean. You said that what was being proposed in the results commission was "much like the Military Base Realignment and Closure Program." As I listened to you explain to the chairman the program, I couldn't see a dime's worth of difference between what you were saying and BRAC. Could you tell me if there is anything different between, for example, your results commission and BRAC, in the way it would operate?

Mr. JOHNSON. Yes, ma'am. First of all, in the results commission, let us say we propose that food safety be addressed because there are X number of programs dealing with food safety, and there is reason to believe that they work at cross purposes, or are not properly configured, or something.

Congress can say, we are really not interested in food safety; or we are, but it is too controversial; or we have more important things; or they could decide not to even bring up the issue of food safety. In BRAC, you don't get the choice. There will be base realignments brought up. You don't get a choice to say you are not interested.

Ms. NORTON. Excuse me, who brings up food safety?

Mr. JOHNSON. We would——

Ms. NORTON. You bring it up. How then do we communicate to you that we don't want to hear it, and that is the end of it? How does that happen?

Mr. JOHNSON. I was——

Ms. NORTON. This is a results commission. You bring it up. That must be with a proposal.

Mr. JOHNSON. Yes, ma'am.

Ms. NORTON. You come up with a proposal.

Mr. JOHNSON. We propose to Congress that a results commission be formed to deal specifically with the issue of food safety. If Congress agrees to look at the issue of food safety by means of a results commission, then we set about to create a seven-person commission with input from majority and minority leadership.

Ms. NORTON. OK. So you are saying, as with a BRAC Commission, Congress has to set it up by legislation, right? In other words, you can't just do this unless a bill is passed allowing you to do it?

Mr. JOHNSON. Yes.

Ms. NORTON. All right, OK, fine. That is exactly what we did in BRAC. Once the commission is set up, and that is really my question, not how it gets started. This is still a Democratic Republic, so I didn't think you all could just fly off and do it without some authorization. I am trying to find out how it works, Mr. Johnson. Once it gets started, what is the difference between BRAC and this commission in its operation and in its relationship to the Congress of the United States?

Mr. JOHNSON. OK. Let me explain something that I don't believe is quite clear just yet. You can accept or reject specific areas of inquiry. You have no choice with BRAC. You will receive a recommendation on base closure.

Ms. NORTON. Just a moment, that much I do understand. Suppose we say, OK, we want you to look at food safety, or we want you to look at programs of one kind. When I say I am trying to understand how it operates, that is really what I mean, Mr. Johnson. I am not saying, how do you set it up.

Let us move to the next step. Once it is set up, how does it operate, and what is the difference between how it operates and BRAC? I don't think what you have told me is any different than in BRAC because we set up BRAC. So I assume we have to set up whatever is this inquiry, fine. Once we set it up, is there any difference between it and BRAC?

Mr. JOHNSON. OK. I am sorry. I am not here to upset you.

Ms. NORTON. I am not upset. This is just my way of cross-examining you. [Laughter.]

Just ask them.

Mr. JOHNSON. OK.

Ms. NORTON. Especially when you came back to me with the same thing, Mr. Johnson, when I was real clear, I thought. I am an operational person. I told you I had an outline. I just want to know whether there is any difference between how it operates. The word, operates, the operational word, I thought, that is what I want to focus on.

Mr. JOHNSON. I don't know the mechanics of BRAC, but let me describe to you the mechanics of the results commission. We propose——

Ms. NORTON. You didn't know the mechanics of BRAC, but of course, I just quoted when you cited BRAC as the way in which the commission would operate. That was your analogy, Mr. Johnson.

Mr. JOHNSON. The analogy is that a proposal comes to Congress to vote on in its entirety, up or down. That is the similarity with BRAC.

Ms. NORTON. That is what I wanted to get understood. Now let us go to what you wanted to focus on, which is how it gets set up. In your testimony, there is a reference. The word bipartisan is used. Who appoints the results commission? Who appoints the sunset commission?

Mr. JOHNSON. The President with input from majority and minority leadership in both houses.

Ms. NORTON. When I say bare bones, I mean for example, one of the things one might have expected to have in your testimony is whether this would look like other commissions or any different. For example, a commission on which I served when I was in the

government, there were more members from my party than from the minority party. So my question is this: Would this commission reflect that way of organizing?

Mr. JOHNSON. Yes, there is to be a seven-member commission. I think there are three and three. There are three members appointed by the President, and four members who are appointed by majority and minority leadership in the two houses.

Ms. NORTON. So there would be a majority always of the President's party.

Mr. JOHNSON. Yes.

Ms. NORTON. What appeals certainly to me and I think to most people is when you talk, as you do in your testimony, about performance. I understand that the performance of agencies is the President's chief responsibility. So one expects him to have agencies that perform. And if he doesn't, the buck passes to him, as the President found out about FEMA.

I want to know if in the process, for example in the sunset commission, we are told a 10-year schedule for the administration to assess the performance of agencies, does the legislation that you say has been submitted to the Congress indicate that these agencies will be given recommendations as to how to improve and that they will be judged based on whether they improve, whether or not they improve? After all, we are talking to the President about his own agencies. Is there any part of the legislation that would help agencies that are not doing as well as they should to do better?

Mr. JOHNSON. This legislation is not needed to do that. At the end of next year, 100 percent of the agencies will have clearly defined and have clearly available the assessment that was developed by them and OMB as to whether they work or not, what their performance goals are, what their efficiency goals are, the extent to which they are achieving those goals, and what opportunities they have for improving performance whether they are a top program, medium program, or bad program.

So new legislation is not required for there to be lots and lots of clarity for agency management and for Members of Congress to know whether programs are working or not.

Ms. NORTON. So by next year, you will——

Mr. JOHNSON. Eighty percent——

Ms. NORTON. You will know how many programs shouldn't be here and how many should, and you will be prepared to submit legislation to that effect because you have been doing this?

Mr. JOHNSON. We recommend every year programs to change——

Ms. NORTON. Have we gotten on the 10-year schedule? You said 10-year schedule here.

Mr. JOHNSON. We undertook, beginning in the summer of 2001, a 5-year program to evaluate all programs, a 5-year effort to evaluate all programs, 20 percent a year. Next year will be the 5th year. So we are finishing up the evaluation of the fourth quintile.

Ms. NORTON. You are in the process of helping these agencies to improve so maybe they will continue to exist.

Mr. JOHNSON. Yes, the goal is that programs not go away. The goal is that programs work. This is not about getting rid of programs. This is not about making government smaller or larger or sideways. This is about spending the money more effectively.

What happens in the State of Texas is a few things go away in the Sunset Commission but, most importantly, Congress and the executive branch—well I guess in Texas it is primarily an executive branch function—they look at ways to change the enabling legislation, to tighten the specifications, to combine them with other things, to better serve the citizens of Texas. This is not about getting rid of things or allowing things to exist. That is one possible outcome, but that is the outcome in a minority of the cases.

Ms. NORTON. Well, I take it then that you would conclude that the huge reorganization underway in DOD, the reorganization of the Department of Homeland Security, neither of which used this process, was a failure. And for that reason, you believe we need a whole new process, BRAC process, for the entire government.

Mr. JOHNSON. No. This sunset and results commission is designed to look at, first of all, whatever Congress wants to look at. Our suggestion is that it look at programs, that it not look at entire departments. We think looking at the entire department of whatever is not a very worthwhile exercise because a department is a combination of a whole lot of different programs, some of which work, some of which don't. What we would recommend to Congress is that we focus on programs. If Congress wants to focus on overall departments, they can guide us in that direction. We suggest a programmatic focus, not a department focus.

Ms. NORTON. The sunset commission, on the other hand, would not operate that way.

Mr. JOHNSON. No. They would all be focused at programs. Sunset would focus on programs, and then the results commission would focus on areas addressed by multiple programs. So the results commission would look at job training, or rural water safety or something, rural health, an area that is served by multiple programs.

So it would be a subject matter served by multiple programs. We would look at the best way to accomplish job training, and the way to make all the programs that work on it make sense with each other. So the results program works on an area of delivery, and the sunset commission focuses on individual programs.

Ms. NORTON. Fine. I know my time is up, Mr. Chairman. Mr. Johnson, you are going to find Members like me who have been on the inside of the Federal Government very favorably disposed to the notion of trying to get rid of bad programs and consolidate programs.

I began my opening statement by saying, I believe in government. I believe we would have been better off if we had continued to improve FEMA, as it was found on its knees by the last administration, broke up, and there it is right back down. I think this notion of looking at programs constantly would help that.

I say that because you have presented this proposal to a Congress that has just done a reorganization of the two largest agencies in the entire Federal Government, where almost all the Federal employees are. It was contentious the way things are in a separation of powers government, where the parties are divided, but we somehow did it.

And I am left to wonder if you are as serious as you seem to be about improving these programs, whether you could think of a less contentious way to go about it. I think this is a radical, a radical

assault on separation of powers. I can't imagine this Congress doing it. I really can't. I can't imagine them coming up with an agreement on a set of programs and then saying, on this set of programs, up and down.

Were you watching the BRAC stuff? I mean this is the way to get people at you from all directions.

Mr. PORTER. Excuse me, Congresswoman. Because of time, if you would like to answer that question——

Ms. NORTON. It is just some friendly advice, Mr. Chairman.

Mr. PORTER. I think it is a good question. If you would like to answer the question, then we will move on. This will be your last, if you would please, Mr. Johnson.

Ms. NORTON. You are absolutely right, Mr. Chairman, and you have been most gracious.

Mr. PORTER. Thank you.

Ms. NORTON. I just ask you to look at the notion of whether or not you want to superimpose expedited procedures on what is a very important notion. When you pile that on it, it seems to me, people, large numbers of people, will look the other way.

Mr. JOHNSON. My one comment in response to that is when we were playing this out, we tried to think that Congress is not going to allow this to be one way. So at what different points should Congress be involved to have significant influence over the final decision? And we think we have done that, but obviously, we have not made our case. Quite clearly, we have not made the case to you, and I apologize for that.

Mr. PORTER. There will be further opportunity. Thank you very much for your testimony today, Mr. Johnson. Thank you.

Mr. JOHNSON. OK.

Mr. PORTER. We will move on to the second panel. On our second panel, we will hear first from Mr. Paul Light, a Paulette Goddard professor of public service at the Robert Wagner School of Public Service at New York University. Then we will hear from Mr. Tom Schatz, president of Citizens Against Government Waste; third, we will hear from Mr. Maurice McTigue, vice president for Outreach at Mercatus Center. Last, Mr. Robert Shull, director of regulatory policy, OMB Watch. We have approximately 55 minutes left to be able to use the room. So I welcome all of you.

Mr. Light.

STATEMENTS OF PAUL C. LIGHT, PAULETTE GODDARD PROFESSOR OF PUBLIC SERVICE, ROBERT WAGNER SCHOOL OF PUBLIC SERVICE, NEW YORK UNIVERSITY; THOMAS A. SCHATZ, PRESIDENT, CITIZENS AGAINST GOVERNMENT WASTE; MAURICE P. MCTIGUE, Q.S.O., VICE PRESIDENT FOR OUTREACH, MERCATUS CENTER; AND J. ROBERT SHULL, DIRECTOR OF REGULATORY POLICY, OMB WATCH

STATEMENT OF PAUL C. LIGHT

Mr. LIGHT. It is my pleasure to be before you today. I went down to the full committee room and thought for a second that all that media was for this important topic. Unfortunately, it isn't.

As I say in my testimony, I believe in the importance of reorganization as a tool to improve government performance. I believe in

the notion of establishing some sort of bipartisan commission to examine the organization of government. To a certain degree, I argue that the sunset and results commissions are too tepid for the task, that we ought to look at the organization of government as we did in the early 1950's, late 1940's, and take a look at how things are structured around mission. This was a central recommendation of the National Commission on the Public Service which was chaired by Paul Volcker and gave its report to the Government Reform Committee in January 2003.

I think the administration has gone toward the results and sunset commissions as a way of breaking this down so that it is more manageable. My general view is that, by breaking it down, you expose it to the same controversy and potential delay that you would have in any situation where you are starting reorganization from scratch.

As my colleague from OMB Watch rightly notes, Congress can currently reorganize at will; it just doesn't. And the fact that it can doesn't mean that it shall. And I think that some sort of a BRAC-style, action-forcing mechanism can be a very useful piece of legislation to improve the organization of government.

What I recommend in my testimony is that we proceed with a much more aggressive government-wide assessment of the organization of government, and rather than starting with programs as our focus, that we start with organization. Ultimately, we will get to programs. Because if you adopt a mission-centered approach to looking at reorganization, you are going to start down the same path that the administration has ended up on by looking at how programs overlay each other.

But the assumption in looking at organization first is not that programs are functioning well or not well; it is whether or not we have the organizational structures in place to allow them to function well or not well. In other words, we start with organization as our focus and look for the possible culprits, organizationally and otherwise, that might explain poor program performance.

It may well be, for example, that the reason an agency fails is because we have under-invested in its human capital. It may be that the program results are poor not because of program design, not because of poor intentions, but because we haven't invested in the organization; we haven't given it the tools and resources to do its jobs.

As I looked at the Federal Human Capital Survey that was done in 2002, looking at the data on the Federal Emergency Management Agency, I was struck by the fact that over and over we find FEMA at the bottom of the list in terms of employee attitudes regarding access to resources, access to budget, access to the basic tools that they need to be successful.

My general argument here is not to disagree with the overall notion that we need some sort of action-forcing device, and we need to get on with this task. It has been recommended to Congress repeatedly over the last 20 to 30 years. Rather, my recommendation to you is that you take a much more comprehensive approach and that you also consider the possibility that such a commission could be created within the remaining years of this administration, but

whose report would not go to the President until after this administration has left office.

That is what we were able to do in 1988 when the Senate and House agreed on creating a National Commission on Restructuring for Government. We left the decision about whether to trigger the commission into existence to the first administration to follow the Reagan administration. It happened to be the administration of George H.W. Bush and his Director of the Office of Management and Budget decided that it was not a wise investment of the administration's time.

With perfect hindsight, I wish we had not given the administration that option to trigger or not trigger the commission, and I think we missed an important opportunity to take a look at many of the problems that this subcommittee is examining today.

I will submit my full testimony for the record and be available for any questions you might have after my colleagues have testified. Thank you.

[The prepared statement of Mr. Light follows:]

RESTORING THE PRESIDENT'S REORGANIZATION AUTHORITY

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

PAUL C. LIGHT

WAGNER SCHOOL OF PUBLIC SERVICE
NEW YORK UNIVERSITY

SEPTEMBER 27, 2005

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 half, 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 not 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 that 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 ensuring 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.

Mr. PORTER. Thank you, Mr. Light. We appreciate it.
Mr. Schatz.

STATEMENT OF THOMAS A. SCHATZ

Mr. SCHATZ. Thank you very much, Mr. Chairman, Mr. Davis, and Ms. Norton. I appreciate the opportunity to testify here today. This is certainly a topic that has been the subject of much discussion over the years, not just whether we should have additional commissions, but also how to reorganize and restructure the government.

I would like to give some tribute to the Office of Management and Budget for its effort under the Performance Assessment Rating Total or the Program Assessment Rating Total. It is at least something that is there for people to look at to determine whether programs are operating efficiently or inefficiently. We would certainly like to see Congress respond to those ideas a little more expeditiously.

The President has submitted lists, as he does every year. Every President submits lists. And perhaps, it is the frustration, or in some ways lack of response, that has led to the establishment in legislation at least of sunset and results commissions. Sure, Congress could do a lot of this, but we haven't seen enough of it, and I think that is reflected in the response to the costs of the hurricanes.

People are saying: How are we going to pay for this? One way might be to eliminate low priority programs. How do we determine what those are? Whether it is the sunset and results commissions that determine that, or whether it is Congress itself, whether it is OMB, there must be some way for us to get to providing a better return on the tax dollars that we pay.

Mr. Johnson mentioned a number of States have Sunset Commissions: Alaska, Arizona, California, Colorado, Connecticut; they are listed in my testimony. Texas has had a very successful Sunset Commission over the years. As he pointed out, and as we note, those recommendations do go back through the legislature. This doesn't just happen because the executive branch asks for it.

And I would just like to respond briefly to the BRAC discussion. Congresswoman Norton, you are correct; it was controversial, but it did get done. What happened was the Pentagon's recommendations were probably altered more than past BRACs have been. I think that shows that this process does work over a period of time, in that when you are talking about the military or you are talking about serving low income individuals, one of the ways to do that is to make these programs work more effectively. We can provide more help at less expense to the taxpayers by making them work in a way that gives that money out instead of having 16 or 18 or 30 or 40 different ways of trying to do the same thing.

So, as I said, I think if Congress had been doing this all along, we might not be sitting here today, but that has not been done in a way that has satisfied a lot of people on both sides of the aisle. However we do it, whether it includes expedited procedures or not, which we think it should, whether we go to the reorganization—and I would never argue with Paul Light who has been doing this

probably longer than I have—there has to be a comprehensive way to look at this.

The last real comprehensive look at the overall structure of government from an outside commission was the Grace Commission, which is the predecessor to Citizens Against Government Waste. Congress took up a lot of those proposals. The administration took up a lot of those proposals. The first three were actually adopted by Congressman Rostenkowski as Head of the Ways and Means Committee, including a tax refund offset proposal and a computer matching program so that you could determine if somebody who had become ineligible in one Federal program could get money from another.

Some of these are simple management initiatives; some of them are complete overhauls of programs; some of them include program eliminations. But I hope we have moved beyond the discussion about whether people like government or don't like government. I think it has been made very clear by this administration that they are not going to go out and close the agencies and departments that were proposed under President Reagan's administration. We don't hear that discussion any more.

So if we can agree that these things should be done, I hope we can agree on legislation or some way to get them done, so that taxpayers will feel a little bit better about all the money that they send here in Washington. We would like to see a further analysis of what the Office of Management and Budget has proposed under PART, what Congress' reaction has been, and at the very least which of those programs could or should be eliminated even before we get to the commissions because this work needs to be done before we get to these commissions. We have, according to the Louisiana delegation, a $250 billion bill to pay for just Louisiana. Whether that is true or not, we really have to find some way to offset those expenses.

Thank you, Mr. Chairman. I appreciate the opportunity to testify, and I am happy to answer any question.

[The prepared statement of Mr. Schatz follows:]

Testimony of
Thomas A. Schatz
President
Citizens Against Government Waste
Before the House Government Reform Subcommittee on Federal Workforce and Agency Organization
September 27, 2005

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify today on behalf of the more than one million members and supporters of Citizens Against Government Waste (CAGW). We hope that this hearing will begin the process of approval for two important commissions that will act to reign in long-standing government inefficiency, ineffectiveness, and waste.

CAGW was created 21 years ago after J. Peter Grace presented to President Ronald Reagan the 2,478 findings and recommendations of the Grace Commission (formally known as the President's Private Sector Survey on Cost Control). These recommendations provided a blueprint for a more efficient, effective, and smaller government.

Since 1984, the implementation of Grace Commission and other waste-cutting recommendations has helped save taxpayers more than $825 billion. CAGW is the nation's largest nonpartisan, nonprofit organization dedicated to eliminating waste, fraud, abuse, and mismanagement in government.

CAGW is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954. The organization has not received any federal money and does not plan to receive any federal funds in the future.

Mr. Chairman, as we are all well aware, the nation has seen an alarming spending growth rate over the last 11 years. Total outlays are more than 60 percent higher in 2005 than in 1994. Without much-needed restraint, the spending spree will only continue as several financially daunting issues loom, including Social Security, Medicare, disaster relief, and military conflicts.

Despite these liabilities, Congress is still passing legislation loaded with pork. The 2005 highway transportation bill is a prime example: it contained more than 6,300 earmarks totaling more than $24 billion over the next five years. The fiscal year 2005 appropriations bills included a record 13,997 projects costing an unprecedented $27.3 billion. CAGW has already identified more than $16 billion in pork in the fiscal 2006 appropriations bills.

In a time when members of Congress should be searching for offsets for major federal obligations, they are not taking the necessary steps to get spending under control.

There are many programs that lack oversight or coordination, have outlived their effectiveness, duplicate other programs, or are simply pet projects that never served any meaningful purpose. These programs are funded even though they are ineffective and wasteful. They remain in existence in part because members of Congress have many short-term interests, while important long-term decisions are bogged down or ignored. However, there is an opportunity to change this with the proposed bills: H.R. 3276, the Government Reorganization and Improvement of Performance Act; and H.R. 3277, the Federal Agency Performance Review and Sunset Act.

The Results Commissions would form at the request of the President to investigate a specific program or programs that the President may feel is redundant, ineffective, or inefficient. Seven members would be selected by the President after consultation with congressional leaders. The Commission would then compile and analyze information concerning that program or programs and conclude by sending recommendations to the President. If the President disapproves the recommendations, the Commission would have the opportunity to respond by changing or not changing its recommendations. The Commission's recommendations would then be sent to Congress for expedited consideration. The process is similar to the Base Realignment and Closure Commission, or BRAC.

This type of commission was established in South Carolina in 2002. Governor Mark Sanford (R) created the Governor's Commission on Management, Accountability and Performance. That commission enlisted 12 bipartisan business leaders and more than 300 private volunteers to identify ineffective, inefficient, or redundant programs that could have saved South Carolina $255 million initially and $300 million every year thereafter.

The manner in which members are appointed and recommendations are made by a Sunset Commission would be nearly identical to the Results Commissions. The major difference is executive branch programs would be set to terminate at least once every 10 years and face mandatory review before that time, on a schedule determined by the President. The Commission would pass its recommendations on to the President who would submit legislation to Congress.

Sunset Commissions have been used by many states. States that currently use some form of a Sunset Commission include: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Louisiana, Maine, Maryland, Michigan, Nevada, New Jersey, New Mexico, New York, Ohio, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. In Texas, strong legislative support has meant 90 percent of the Sunset Commission's recommendations have been passed into law.

The concept of identifying effective and ineffective programs already exists at the federal level. The Performance and Assessment Ratings Tool (PART), according to the Office of Management and Budget, "was developed to assess the effectiveness of federal

programs and help inform management actions, budget requests, and legislative proposals directed at achieving results. The PART examines various factors that contribute to the effectiveness of a program and requires that conclusions be explained and substantiated with evidence. The PART assesses if and how program evaluation is used to inform program planning and to corroborate program results."

Despite some successes like the elimination of the TRIO Upward Bound Program in H.R. 3010, which passed the House on June 24, 2005, Congress has largely ignored programs identified by PART as "ineffective." Nonetheless, PART has shown results with the reforms of some programs without action by Congress. Both the Broadcasting Board of Governors and the Administration on Aging have increased their efficiency and effectiveness after PART identified areas they could improve.

CAGW does not believe symbolic commissions will suffice. Any entity created must have real teeth and autonomy. Two examples of effective commissions are the Grace Commission and the Base Realignment and Closure Commission.

During the 1980s, no major military bases were closed due to Congress's strict rules governing the procedure for closures. These procedures came about after the Department of Defense in the 1960s had the authority to close bases without the consent of Congress. When Congress became more involved in the process, political pressures and skirmishes inhibited to the progress of shutting down or realigning inefficient bases.

In 1988 the barrier was broken and Congress established the first BRAC. The bipartisan commission recommended the closure, partial-closure, or realignment of 145 military bases. Such a commission was recommended in the Grace Commission report.

Over the course of the next 13 years, with the implementation of four rounds of BRAC base closings, approximately 100, or 21 percent, of unnecessary domestic bases were closed, and the military ceased operations abroad at 960 foreign military bases. These first four rounds of closings were reported by the Government Accountability Office to save taxpayers nearly $29 billion, and will save taxpayers $7 billion a year in the future. In addition to the previous recommendations and closings, the 2005 BRAC approved 86 percent of Secretary of Defense Donald Rumsfeld's initial recommendations to the commission.

The Results Commissions' recommendation approval process would be similar to the BRAC. The Commission would collect information, deliberate, and then send their recommendations to the President, where the recommendations would receive approval or disapproval. If approved, the recommendations would be sent to Congress for a vote. In the event of disapproval, the Commission would have a period of time to revise their recommendations if they wish, and then submit them for expedited review by Congress.

There are some important similarities between these two commissions that highlight the need for the adoption of Sunset and Results Commissions.

First, the leaders of these commissions were drawn from the private sector. For the Grace Commission, they were private business leaders and executives; for BRAC, retired top admirals, generals, and military experts. This was an important part of their success, as these commissions were able to rely on the commissioners' knowledge and experience. When the purpose is to derive specific recommendations on a subject, it is only logical to seek out those with the best experience and education. That was a great advantage of these commissions, and if adopted, will be a characteristic of Sunset and Results Commissions as well.

Second, the members of these commissions were able to make appropriate and necessary recommendations without the fear of losing their next election or offending party leadership. This independence is essential for honest and valuable criticism of suspect programs.

However, Sunset and Results Commissions would not have unilateral power to cancel or modify questioned programs alone; like the Grace Commission and BRAC, such a commission would have its recommendations and proposals subject to review by Congress before they could be adopted. Even the members of the commission would have to be approved by Congress before they could begin their work.

Finally, the BRAC and Grace Commissions were given a specific task within their means to make recommendations. Sunset and Results Commissions should also focus simply on their mission. They would make their recommendations, revise them if needed, and then move on to their next subject when their task is complete.

The sources these commissions would most likely use to analyze and critique questionable programs are also a strength of these proposals. As mentioned earlier, OMB's PART is an excellent tool to help determine which programs are working. PART focuses not only on the total amount of spending a program receives, but also the quality of those dollars spent compared with the results it achieves. According to OMB, of the 60 percent of government programs so far assessed with the PART criteria, more than 30 percent are ineffective. PART would offer Sunset and Results Commissions a straightforward and efficient tool to give meaningful and significant recommendations. There are also numerous private sector analyses of programs that could be used by the commissions.

It is not the purpose of Sunset and Results Commissions to be used as a partisan tool to kill controversial programs. Their purpose is to simply analyze the effectiveness of the program based on its known costs and apparent benefits. Any attempt to make recommendations based on other criteria would be obvious and easily dismissed by Congress.

In closing, considering the costs to rebuild the Gulf States, it is imperative that as much be done as possible to reorganize the government and place programs under an regular review process. Offsets need to be found if we are to avoid financial disaster. As evidenced by previous commissions, an independent group of educated and passionate

citizens can offer viable solutions to problems. Sunset and Results Commissions, if adopted, would follow the legacy of previously successful commissions, and do a great deal to snuff out wasteful and unnecessary spending.

Mr. PORTER. Thank you, Mr. Schatz.

Mr. McTigue, welcome back. We appreciate you being with us again.

STATEMENT OF MAURICE P. MCTIGUE, Q.S.O.

Mr. MCTIGUE. Thank you very much, Mr. Chairman. Mr. Chairman, what I am seeing with this piece of legislation is something that I would call a continuum that derives from the passage in 1993 of the Government Performance and Results Act. What that act did was require that agencies start to identify results in terms of public benefits produced with the money expended on programs. And then we saw OMB starting to use that information in its PART, its Program Assessment Rating Tool, to decide whether or not programs really were effective.

Now I think we are moving to what I would call the next stage, and that next stage is to start to look at outcomes. Say, in the area of literacy, let us look at all of the programs on literacy at the same time and see which of them are most successful at making people literate; then make some assessments about whether or not if we invested more heavily in those that were most successful at making people literate, we would get a much greater public benefit.

The issue in my mind is certainly not about cuts. The issue is about benefits. Can we maximize the public benefit in each of these areas, so that we do more for the people than we are currently, and maybe we can do it with the same number of resources.

Mr. Chairman, I spent 10 years as an elected Member of Parliament in New Zealand, 4 years as a Member of Cabinet, and 4 years as an ambassador. During my period in Parliament and as a Cabinet Minister, one of the things that I was responsible for was some of this kind of reorganization.

And this is an actual case: As Minister of Labor, I had 34 programs that were designed to help people back into the work force. When we assessed those programs on how effective they were at getting people back into work, we found some of them were highly successful, some of them moderately successful, and some of them did very little at all.

By looking at those programs and identifying the four most effective programs and putting the resources into those programs, we were able to get 300 percent more people into work for the same quantity of money. Those are benefits we can't afford to give away.

We did an examination here in the year 2000, and there is a report here on it, a research project that the Mercatus Center did, and we looked at vocational training programs in the United States under the same kind of liens. You currently spend $8.4 billion on those programs, and you get 2.4 million people into work.

Of the 45 programs that are devoted to vocational training, if you picked out the three best programs, and you invested that resource in those programs, you would get 14 million people into work for the same quantity of money. Or you could maintain the current public benefit of 2.4 million people into work and free up $6 billion to spend on a higher priority. Those are choices that should be placed in front of Congress as options in my view.

And what you should be getting from results commissions are options, well-researched and well-thought out. A legislature is not the

place to do research. A legislature is the place where you make choices between different options, and that those options are soundly based and well-researched by the time that you get them.

Can I just spend a moment or two now talking about what I see as the role of the sunset commissions because I see it slightly differently to Mr. Johnson? I see it more in the light—sorry, I didn't intend the pun—of Paul Light's comments that there needs to be an examination of organizations, and certainly a wise manager constantly looks at the organizations that he or she uses in managing their enterprise to see if they are capable of doing the job.

One of the things that is not happening in the American Government at the moment is that there is nobody who is responsible for monitoring capability. If something went wrong with FEMA, and I am not sure that it did, but if something went wrong with FEMA in Louisiana, it was that it had lost some of the capability that it previously had to respond to natural disasters. And that might have been because of the emphasis that it was placing on being able to recover from terrorist acts. But there was a capability lost there in all probability.

In my view, something like the Office of Personnel Management should shift from thinking about itself as the manager of the Federal work force and think about itself in terms of: Do we have the capability in each of the government's organizations to be able to do this job effectively? The 9/11 Commission made it clear that one of the intelligence failures was something as simple as the FBI and the CIA not having translators who could convert the raw intelligence into stuff that analysts could work with. If there was somebody watching for capability, that weakness would have been picked up, and maybe September 11th wouldn't have happened.

A sunset commission that could look at organizational competency, to look at its guiding statutes and see whether or not those statutes were relevant to contemporary society, in my view could do a great deal to improve the competency of the government in delivering better services to the public at large.

If we were to do that, then it doesn't make sense just to do it once and think that it is done for all time. It is something that you have to do constantly; go back and look and your organizations and see that they are rightly structured to meet the needs and demands of today's society. If that had been happening in my view, we wouldn't be having the current debate that we are having in the United States about poverty. We would have solved that problem a long time ago.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McTigue follows:]

MERCATUS CENTER
GEORGE MASON UNIVERSITY

TESTIMONY

From

The Hon. Maurice P. McTigue, Q.S.O.
Distinguished Visiting Scholar
Mercatus Center at George Mason University

For

Committee on Government Reform
United States House of Representatives

Sub-Committee on the Federal Workforce and Agency Organization

September 27th 2005
On

"It's Time to React – Reauthorizing Executive Authority to Consolidate Tasks: Establishing Results and Sunset Commissions"

Introduction

Mr. Chairman, I welcome the invitation once again to give testimony in front of your Committee.

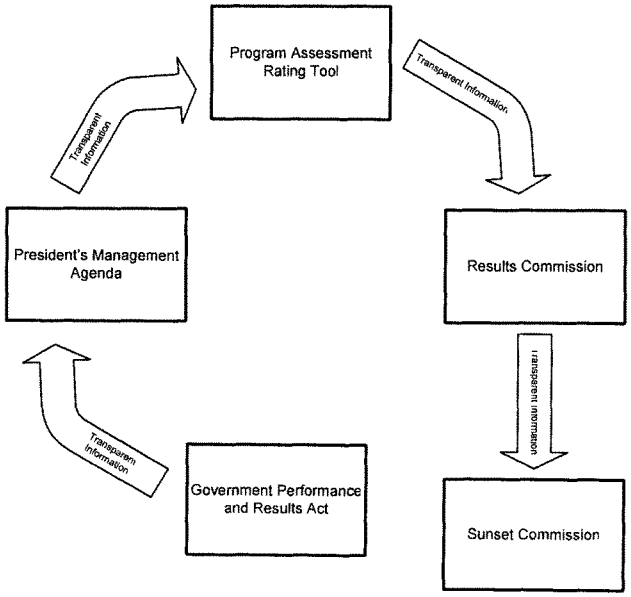
Congress and the federal government of the United States embarked on a historic course in 1993 when Congress passed the bipartisan Government Performance and Results Act (GPRA). This farsighted piece of legislation dramatically changed the basis of accountability for the federal government by shifting agencies' accountability to a focus

on results. This legislation was the first step in an evolutionary process; further initiatives will be required as the process matures.

I like to describe this process as several waves of change.

The first wave was the Government Performance and Results Act which required government agencies to identify results in the form of specific outcomes. That process is bearing fruit as agencies' abilities to identify outcomes and express them as results improve each year. I here refer the committee to the annual research study conducted by the Mercatus Center called the Performance Report Scorecard. Each year since the implementation of the Government Performance and Results Act, our study has evaluated and ranked the Annual Performance and Accountability Reports of the agencies according to their level of disclosure and focus on results in compliance with the Government Performance and Results Act.

The second wave of change was the Administration's creation of the President's Management Agenda (PMA) in 2001. One of the components of the President's Management Agenda was the implementation of "Performance Budgeting," an initiative developed in order to make results or performance a central principle in the formulation of the budget. A further step was the Office of Management and Budget's introduction of the "Program Assessment Rating Tool" (PART), which examines programs in detail to determine whether or not the program is effective. The information gathered as a result of the PART process is intended to inform the budget allocation decisions.



In my view, the next stage of the process is to build on PART and start making informed comparisons between all programs designed to impact the same outcome, even though those programs may not be identical or duplicative. This analysis can only be meaningful and effective if the process makes comparisons between the results of the programs concerned while concurrently recognizing the special character of some programs that target special groups in society.

It seems to me that this is exactly the function that a "Results Commission" should undertake.

Results Commissions

When contemplating the creation of new organizations, it is logical to start by analyzing the benefits that might arise from the existence of this new organization. If, through this analysis, the expected benefits seem substantial, the next step would be to examine how the new organization would function.

What to expect from Results Commissions

I would expect that Results Commissions would be created to examine specific outcomes that the Federal Government expends monies on to enhance the public benefit and to competently provide the following advice to Congress.

First, there should be an examination of the outcome itself to determine whether this particular issue is responding beneficially to government intervention, remaining static, or deteriorating. This examination would also identify how much progress is potentially possible, given the right mix of activity and investment.

Second, there should be an analysis of all the current federal activity directed at this outcome. Those activities should be ranked according to their degree of beneficial impact on the outcome. This would be accompanied by a cost benefit analysis identifying the cost per unit of success for each activity.

Third, if research determines there are varying degrees of effectiveness among the different activities, I would expect that the Commission's findings would include an estimate of the maximum benefit that could be provided if all the funds were concentrated on the most effective activities. I would also expect that the research would identify the public benefit forgone by the current application of funds if it is not producing the maximum possible public benefit.

How the Results Commissions should function.

As required by the bill, the results of the Commission's work would be forwarded to Congress in the form of a report by the President that Congress has the right to accept or reject. As the work of the Commission would be an exercise in evidence gathering, those selected to be part of the Commission should be demonstrably competent to do this type of research. The real value of the Results Commissions is to place in front of Congress credible, well-researched evidence with a proper cost-benefit analysis so that Congress

can make funding decisions fully informed of the potential public benefits available and the cost for each option.

According to this scenario, the evidence is compiled factually and without bias, leaving Congress to apply the appropriate political input into the final decisions. At the same time, the public gets a very transparent view of Congressional decision-making and the political values applied in the choice of certain policy outcomes.

Without some mechanism similar to a Results Commission, potentially huge public benefits will be lost. In a research study conducted by the Mercatus Center in 2000 called "Putting a Price on Performance," to which I refer the committee, we were able to demonstrate that up to five-fold gains in public benefit might be achieved by concentrating appropriation funds in programs that provided significantly greater results. Alternatively, the current level of public benefit could be maintained while simultaneously freeing up to two-thirds of the total funding for that particular outcome for application to higher priorities in the budget. Benefits of such a magnitude cannot be ignored at a time of fiscal stringency.

What is really happening here is directly linked to the fundamental change brought about by the enactment of the Government Performance and Results Act. The accountability base for political performance is moving from a judgment on the quantity of money allocated to an issue to a new base formed around a judgment on the quantity of public benefit produced by the application of that money.

Sunset Commissions

The concept of Sunset Commissions is quite different from that of the Results Commissions. Sunset Commissions would examine organizational performance. Organizations, by their very nature, are evolutionary – they never remain static. They respond to all sorts of incentives around them, sometimes appropriately and at other times inappropriately. A wise manager/owner will from time to time review his or her organizations to determine whether they are still serving the purpose for which they were created. In the government sector, the greatest risk with organization ownership is the phenomena of "mission creep."

Mission creep may take many forms. It may be an expansion of the mission itself, the acquisition of activities that have no relationship to the organization's core business, or the expansion into areas of activity where the government already owns other organizations, effectively double-funding activities, and possibly diminishing the effectiveness of both organizations. Therefore, it is very appropriate to examine on a regular basis the state of the government's ownership interest in organizations to determine if greater efficiency could be achieved by de-commissioning activity that is either inappropriate to a particular organization's core business or where another existing business has a clearly superior natural advantage in the delivery of these services.

What to expect from Sunset Commissions

The first thing to expect from a Sunset Commission should be a restatement of the mission of the organization or a statement of the reason for its existence. This should incorporate a review of the founding statute and its relevance to contemporary society.

Second, a Sunset Commission should conduct a review of the environment in which the organization operates today and the challenges the organization might face in the future. This should include advice on how to manage merging changes to maximize organizational performance.

Third, all the activities, laws, and rules that control the organization or that the organization administers should be reviewed to determine their current relevance. This process should identify all activities that are currently also carried out by other organizations and provide advice on where those activities should most appropriately reside.

Fourth, the Commission should assess the organization's effectiveness in materially improving the outcomes assigned to it through its mission. It should also examine, where appropriate, whether this organization and its mission are now redundant and should be terminated.

How Sunset Commissions should function.

The bill requires that the results of the Commission's work forms a report forwarded by the President to Congress for action. Congress has the absolute right to accept or reject the work of the Sunset Commission. As with the Results Commissions, because the activity of the commission is an evidence gathering exercise, the people selected to be part of the commission ought to be demonstrably competent to do this type of research. The real value of Sunset Commissions is to place in front of Congress credible, well-researched evidence with cost-benefit analysis so that Congress can make informed decisions based on knowledge of potential public benefits available and the cost for each option.

As with the Results Commissions, the evidence should be compiled in a factual, non-biased way, leaving Congress to apply the appropriate political input into the final decisions. At the same time the public gets a very transparent view of Congressional decision-making and the political values applied by choosing certain policy outcomes.

Conclusion

In my view, the creation of Results Commissions and Sunset Commissions is the next logical step in the evolutionary process that is leading the Federal Government of the United States towards a much more appropriate form of accountability that is more relevant to the society of the 21st Century. The critique and evaluation of the activities and assets owned by the Government of the United States is a very fitting and responsible thing for Congress to do.

Mr. PORTER. Thank you very much for your testimony.
Mr. Shull.

STATEMENT OF J. ROBERT SHULL

Mr. SHULL. Thank you, Mr. Chairman and members of the subcommittee.

We have just heard that organization should be our focus, not programs. I think that neither focus is the correct focus. The correct focus is whether or not public needs are being met. The word tool has been used by several witnesses here, and I think it is a good word because public institutions are the tools that we use to act collectively in order to address the needs that we cannot meet as isolated individuals, needs like building schools, building levies, checking private behavior like pollution that causes harm for innocents.

Now the problem here with this sunset and reorganization approach is that it does place its focus on organization, and that is entirely the wrong focus because it is as though we are looking at government management and government programs without any regard for the social context in which they were created, without any regard for any outside information whatsoever.

That is just not the way that we should be looking at things because government programs exist for a reason; they exist to meet our public needs. That is the reason why some of the themes that have come up here have taken on such a wrong focus. When we take public needs as the bottom line, it turns all of these arguments on their head.

Let us look at duplication. Now there are some programs that are effective on a national basis in the aggregate, but there are some populations that are so subordinated, disadvantaged, or discriminated against that they cannot enjoy the full benefit of those programs, even when they are truly effective nationwide.

And that is why Congress sometimes needs to create duplicative programs, the Appalachian Regional Commission, for example. The severely disadvantaged populations of Appalachia have not been enjoying many of the benefits that come from the EPA, from welfare programs, from all of the programs that should be addressing their needs. That is why Congress created the Appalachian Regional Commission: to coordinate resources, to target new resources, to serve that population.

I think the same is true for women's health programs. When the standard is the average male, our studies and our health programs are not going to serve women very well. That is why Congress has created special programs targeting women's health, targeting breast cancer. They may, on their face, look to be duplicative, but they are duplicative for a reason.

I think what is duplicative is taking on, adopting new institutions and new approaches that duplicate what we can already do and already do effectively. Congress, for example, can already reorganize government when it needs to do so and prove, with the creation of the Department of Homeland Security, that it can do so swiftly when the need arises.

I just heard that apparently legislatures are not the place for research, but the fact is this legislature has an enormous capacity for

research. The GAO is unparalleled in the quality of the studies that it conducts, and this Congress has the ability to convene hearings, to bring the public in, and to bring experts in to combine expertise and democratic participation, so that we can arrive at the best solutions for meeting public needs.

Multiplicity, we have heard about. There is a shared number of programs that serve the homeless, that serve the same issues. Think of an issue like foster care. There are many programs that serve foster care. Abused and neglected children in foster care benefit from the Title 4E Entitlement; from Title 4B Adoption Assistance, if they are that lucky; from the Chafee Independent Living Program, if that is the outcome for them; they benefit from Medicaid; they benefit from many non-profits, which are created by and thrive because of the tax code administered by the Tax Exempt Organizations Office in the IRS. It goes on and on and on.

I think we couldn't say that the sheer multiplicity of the programs serving foster children somehow means that we are doing too much for foster children, that we are devoting too many resources because I can tell you as a former child advocate, that is just not the case.

And when it comes to waste, I think that forcing programs to plead for their lives every 10 years is a waste because we will be forcing programs that we know, without a doubt, meet public needs and exist for a reason to make the case for their existence. We know we need Department of Education programs to help families put their children in college. We know that we need OSHA to keep workplaces safe. We don't need them to make the case for their continued existence.

I see my time is up, and I would be happy to answer any additional questions.

[The prepared statement of Mr. Shull follows:]

Testimony of J. Robert Shull,
Director of Regulatory Policy, OMB Watch,
before the
Subcommittee on Federal Workforce and Agency Organization
of the House Committee on Government Reform

September 27, 2005

Thank you, Mr. Chairman and members of the Subcommittee on Federal Workforce and Agency Organization, for this opportunity to testify today about sunsets and reorganization. My name is Robert Shull, and I am the Director of Regulatory Policy for OMB Watch, a nonprofit, nonpartisan research and advocacy center that for over 20 years has promoted an open, accountable government responsive to the public's needs. I also coordinate Citizens for Sensible Safeguards, a coalition of labor, environmental, consumer, and other public interest groups with millions of members nationwide, which formed in the 1990s to stop the anti-regulatory components of the Contract With America and has remained active ever since to address policies that affect the government's ability to protect the public.

H.R. 3276, the official subject of this hearing, is only one of several legislative proposals and a White House proposal that would dramatically transform the management of government programs. Because it is part of a larger trend, I would like to focus my remarks on the twin concepts of mandating automatic sunsets for government programs and giving the White House new powers to reorganize government programs.

Today, I would like to address three major points:

(1) The basic approach being discussed today — power to shut down government programs through a mandatory sunset process, and power to push sweeping reorganization plans through Congress on a no-discussion, take-it-or-leave-it basis — will not meet the proffered goals of improving government management and could, in fact, make government less effective.

(2) The specific sunset and reorganization proposals in H.R. 3276 and H.R. 3277 are particularly flawed ways of implementing the notional goals of those proposals.

(3) There are better ways of achieving the goals of accountability and effective management of government so that federal programs can respond to public needs.

I. SHUTTING DOWN PROGRAMS THROUGH SUNSETS AND TAKE-IT-OR-LEAVE-IT REORGANIZATION POWERS WILL NOT EFFECTIVELY SERVE THE GOALS OF IMPROVED GOVERNMENT.

These proposals are not new, and I anticipate that we will hear today some species of the same

arguments that have been proffered in the past in support of sunset and reorganization programs. Those arguments typically invoke principles like accountability and effective management that, at the right level of abstraction, are unimpeachable virtues. Nonetheless, the sunset and reorganization approaches are the wrong way to achieve those goals, and they suffer at the outset from a distorted vision of the role of government.

A. The sunset and reorganization proposals will not improve government programs to meet the public's needs.

Advocates of sunsets and take-it-or-leave-it reorganization invoke important goals of accountability, responsive government, and effective government management that are not well served by those approaches. In fact, the sunset and reorganization approaches can run counter to those goals.

Keeping government accountable

The sunset and reorganization approaches are not the best way to keep government accountable. The vision of sunsets is that programs will be forced to stop everything and plead for their lives on a periodic basis, such as the 10 years in H.R. 3277. Taking the advocates' arguments in their best light, the ideal is that programs will be forced to measure their effectiveness in the years leading up to a sunset date and will be forced to make a compelling case in order to continue to exist. Likewise, the reorganization proposals typically link reorganization plans with performance measurement data, which notionally measure programs' effectiveness. In each case, the avalanche of information triggered by the sunset and reorganization processes will, conceivably, leave us in a better position to hold our government accountable.

These approaches start from one correct premise: that information can help us hold government accountable. The problem is that, in each case, the information comes at an enormous cost. Forcing programs to divert their resources into proving the case for their continued existence means taking resources away from addressing the public's needs. In most cases, there is no need to prove that a program should continue to exist. Consider, for example, all the Department of Education programs that help families put their children in college; or the Occupational Safety and Health Administration, which is charged with keeping workplaces safe for the men and women in America who work for a living; programs that help the poor and disadvantaged find housing; programs that ensure at least one hot, nutritious meal for children in America's public schools; and on and on. There is no need to prove that we need these programs, and forcing programs to spend their resources to prove what we already know will waste those resources which should instead be flowing to the programs' missions.

Moreover, the information produced by these processes could, in fact, be meaningless. Take the performance data that H.R. 3276 or 3277 would demand. These proposals would force performance assessments of many programs every single year. There would not be any way to conduct real performance assessments that matter and produce real, meaningful information for so many programs in any year, and the result would be one-size-fits-all, simplistic rubrics like OMB's Program Assessment Rating Tool. PART, as we now know from several years of implementation, is simply

useless and is far more political than meaningful;[1] there is no basis for us to believe that any successor to PART, under these circumstances, could improve those results.

Even assuming that the Sunset Commission envisioned by H.R. 3277 or the ad hoc Results Commissions of H.R. 3276 could produce information that would be meaningful, there are limitations on the government's ability to collect the needed data. The Paperwork Reduction Act imposes serious limitations on agencies' ability to collect information of any sort — even information that is critically important to protecting the public health, safety, civil rights, and the environment. The White House Office of Management and Budget has unchecked powers to review agency information collections, even to the point of being able to change or pick and choose the questions that can be asked or rejecting an agency information collection outright. OMB could therefore politicize the information that would be used to make important decisions that the bills attempt to de-politicize by design. Another obstacle is the Data Quality Act, a piece of midnight legislation that creates a public challenge process that constrains agencies' ability to even *publish* information. Until these barriers are removed, there is little likelihood that H.R. 3276 and H.R. 3277 will yield the information we need to hold our government accountable.

Keeping government up-to-date

Another recurring argument in favor of the sunset/reorganization approaches is that we must keep our government up-to-date by deleting obsolete programs. The sunset approach disserves the goal of keeping government up to date in two significant ways:

- It is overbroad and wasteful. If there are obsolete programs that no longer serve any need, it would seem most appropriate to find some way to identify and respond to those squandered resources without wasting resources government-wide on forcing programs with proven and undisputed missions to prove that they serve real needs.

- It is a one-way ratchet biased in the direction of eliminating government programs. Government programs exist to address the public's needs. The goal of keeping government up-to-date means not just responding to obsolescence but also responding to unmet needs and emerging problems. Sunset may address obsolescence, but it does not even contemplate unmet needs. When we take the ideal of a responsive government as our starting point, the greater need is not for a sunset process but, instead, for a process of identifying unmet needs.

Keeping government efficient

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1. *See* Adam Hughes & J. Robert Shull, *PART Backgrounder* (April 2005), *available at* <http://www.ombwatch.org/article/articleview/3022/1/369?TopicID=3>.

There is little to argue with the ideal of efficiency: of course government should not squander the resources with which it is entrusted. Efficiency in the private sector typically refers to profit: businesses have an incentive to receive the highest possible revenues for the lowest possible cost, in order to realize the best bottom line. The bottom line is quite different in the public sector: what matters is less whether the programs currently in place are doing their work with a minimum of resources but, rather, whether our government is doing the most it can to address the public's needs.

When the public interest is the bottom line, all the arguments about efficiency turn on their heads. Costs do not matter in the abstract but instead in the context of government responsiveness. We must, therefore, be wary of any processes that, in the name of accountability or efficiency, come at the cost of reducing government's ability to meet the public's needs.

From this public-minded perspective on efficiency, the sunset and results processes turn out to be inefficient. The overbroad approach of government-wide sunsets will force all programs to plead for their lives—even programs for which there is no real question that we need them. The sunset process would waste government resources to prove what we already know, and the opportunity cost that comes from diverting resources away from meeting the public's needs are costs that we should not bear. Moreover, the fast-track, take-it-or-leave-it process of reorganization plans in H.R. 3276 will surely be efficient in some purely abstract way — after all, democratic deliberation is slow and rarely efficient — but it comes at the cost of democratic and responsive government, a cost that is too high for the paltry benefits from swift review of a Results Commission plan.

Keeping government effective

The primary argument for the reorganization authority of H.R. 3276 is that it will empower the White House to reorganize government programs so that they can operate more effectively. The truth in this idea is that organizing programs in the federal system can have enormous implications. Consider, for example, the case of the Federal Emergency Management Agency. Established as an independent agency — in part because the large amount of money it grants to the states was intended to be shielded, to the extent possible, from partisan politics — it was recently swept into the new Department of Homeland Security. The crisis of Hurricane Katrina has made clear that FEMA's resources were brought intact into DHS, but FEMA's mission was not.[2]

Many discussions about the size of government proceed as though size were all that matters. For example, Paul Light has tracked for several years what he calls the "thickening of government," observing, for example, that the number of executive titles has grown from 17 in 1960 to 64 in 2004, and that the USDA has the "widest" department with 299 senior titles, compared to 173 at the Department of Commerce. The underlying fault of this approach is that it treats government

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2. Bringing FEMA into DHS appears to have distorted its mission into a single-minded focus on terrorism at the expense of disaster preparedness. For example, "local officials complained that once FEMA's grant-making authority to state and local governments had been centralized in [DHS], you could get money for protective chemical suits but not for flood control." Elaine Kamarck, "Centralized Essentials," *American Prospect* Online, Sept. 22, 2005, *available at* <http://www.prospect.org/web/printfriendly-view.ww?id=10346>.

programs and their growth as a single generic question divorced from any context. The generic approach treats all programs and programmatic growth across departments without regard for the specific context in which growth is meaningful. For example, the nature of the diverse needs addressed by the Department of Agriculture is incommensurable with the needs served by the Department of Commerce. What matters is whether we have a government best positioned to meet all the needs pressed upon it, not whether one department is bigger than another.

The generic, decontextualized approach encourages a devotion to streamlining. "Streamlining" or reducing the multiplicity of federal programs into a smaller number appeals to a desire for elegance but may not serve the needs of a responsive government that meets the public's needs. The creation of the Department of Homeland Security and the establishment of the Federal Motor Carrier Safety Administration as a distinct agency are just two recent examples of an impulse to *expand* government, at least in terms of the numbers of agencies and political appointees, in order to better meet the public's needs. In each case, those in favor of the new institutions argued that an urgent national need demanded dedicated resources to a responsive federal agency that could coordinate national efforts and address the particularities of a specific issue with the necessary expertise. Creating a new agency not only assures leadership for a particular issue but can also help to establish national priorities.

Reorganization does not necessarily, however, produce better results. We have already seen how FEMA has been hobbled in part by its reorganization into DHS. The Federal Motor Carrier Safety Administration, for its part, has failed to produce the benefits expected by its redevelopment as a discrete agency; it has acted to make American highways safer by adjusting the hours of service requirements for truck drivers only because it was dragged into court and forced to do its job, and then it failed to do its job effectively (by actually *increasing* the maximum hours that trucking companies can force their drivers to work, to as much as 77 hours in a 7-day period). Structural issues clearly cannot be segregated from issues of substance, but they also cannot be a substitute for a commitment to make government address the public's unmet needs.

B. The sunset and reorganization approaches proceed from the wrong starting points.

The basic premises of the sunset and reorganization approaches lead us to these misdirected proposals. For example, they take as a given that government can be treated as conceptually autonomous, as an end to itself without regard for the purposes or political contexts in which government programs are managed. They also assume it will be easy to import models from other jurisdictions and contexts — such as the sunset approach that is modeled on a Texas state government initiative, or the results commission proposal which is clearly inspired by the private sector CEO who has unrestrained power to shift resources — without considering the specific context of the American federal government.

There are better ways to think of management reforms for the federal government. Here are just a few principles we suggest, based on OMB Watch's more than 20 years of experience in calling for an open, accountable government that is responsive to the public's needs.

(1) Government in America is not independent of the people but is, instead, the embodiment of the will of the people and pools our collective resources into forces strong enough to act against the larger forces that isolated individuals cannot surmount. FDR explained it best in a July 1933 fireside chat: "It goes back to the basic idea of society and of the nation itself that people acting in a group can accomplish things which no individual acting alone could even hope to bring about."[3] The federal government is a powerful way for the people to "act[] in a group" on a national basis to meet national needs.

(2) The unparalleled aggregation of resources that we have in our federal government entails a responsibility to use those resources to identify our unmet needs and to continue to act so that long-resolved problems do not erupt into new crises.

(3) Government programs are purposive institutions created by democratically elected representatives and their agents to respond to the public's needs. Those institutions develop, over time, capacity for action and expertise; as the public's needs change over time, programmatic capacity and expertise often are deployed for additional or revised purposes, beyond or in addition to the original purposes that animated the creation of those programs. This evolution of government programs is an efficient way to use institutional capacities and expertise that are already in place to address emerging problems.

(4) Social problems are complex, and government may need to attempt multiple approaches to solve them. When those approaches require a range of different competencies and distinct types of expertise, it may prove worthwhile to have multiple programs, even spread across multiple departments of governments or levels of government (federal, state, local), all charged with action on an issue.

(5) Some populations are particularly vulnerable and may be so structurally disadvantaged that even programs that are effective on a national basis may fail to deliver their benefits to them. A national government has an obligation to serve the needs of the nation's populace, at all social and economic strata, and may need to create additional programs that target the particular needs of the most disadvantaged or subordinated, even if other programs are already in place to address those needs for the larger population.

(6) The American democratic system is unique and may not readily accommodate ideas that have proven successful in the quite different

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3. *See* FDR, Fireside Chat, July 24, 1933.

contexts of for-profit corporations, foreign nations, or even state or local government approaches here in the United States. The corporatist model of the free-wheeling CEO who manipulates and moves resources at will is particularly inapposite given the American principles of separation of powers, in which power is shared and lines of accountability are drawn between three coequal branches, and diffusion of powers, in which authority within a branch is carefully spread so that power is not concentrated too intensely in any single office. However thrilling the experience of a management reform initiative in some other jurisdiction, we must ask whether those initiatives will be appropriate in the American federal system and comport with the basic principles of responsive government, deliberative democracy, openness, and equity.[4]

(7) Accountability means helping the people maintain control over their own government. Accountability should not, however, be the excuse for policies that divert government resources away from the important work of addressing the public's unmet needs. Given the risk that policies instituted in the name of accountability could come with costs that keep government from being responsive, it is important for any major accountability initiatives to build in reflexivity: checks that count the costs of accountability reforms, assess the performance of performance measurement rubrics, and make sure that reforms are not obstacles in the way of responsive government.

These principles should be the starting point for any serious consideration of government management and structure. They are basic considerations that are systematically ignored by the sunset and reorganization approaches. Ignoring them puts people at risk of losing the responsive, accountable government that they need and deserve.

II. H.R. 3276 and H.R. 3277 WILL GET IN THE WAY OF A RESPONSIVE GOVERNMENT THAT MEETS THE PUBLIC'S NEEDS.

The sunset and reorganization approaches of H.R. 3276 and H.R. 3277 are wrong-headed. It should be clear, then, that these bills will not advance the goal of improving government services.. As specific instances of the flawed sunset and reorganization approaches, these bills are deeply flawed. Both H.R. 3276 and H.R. 3277 would imperil the balance between the executive and legislative

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4. At a minimum, we should at least know more about the experience of those reforms on the ground. A recent survey conducted for a National Conference of State Legislatures conference revealed that, of 45 states responding, 32 states had at some point instituted a sunset process — of which 16 still maintained those processes, while *an equal number reported having eliminated their sunset programs*. At least one state reported that the sunset audits were too costly for the low return from the process. *See* <http://www.ncsl.org/programs/nlpes/training/annmeet/annmt01/thesing/sld011.htm>.

branches by concentrating power in the White House free of democratic accountability and would expose long-standing public protections to powerful special interests and industry insiders.

H.R. 3276, the "Government Reorganization and Improvement Performance Improvement Act," authorizes the President to establish a Results Commission, appointed by the President in consultation with Congress, which will review proposals submitted by the President for government reorganization. The Results Committee may amend or add to the proposal. The resulting proposal would then be fast-tracked through Congress with very limited time for debate and no option for amendments.

H.R. 3277, the "Federal Agency Performance Review and Sunset Act," requires agencies to regularly justify their continued existence. The bill establishes a Sunset Commission that will review executive agencies and programs on a ten-year schedule. Fortunately, H.R. 3277 does make an exemption for regulations that protect the environment, health, safety or civil rights. As with H.R. 3276, H.R. 3277 mandates an expedited vote, stymieing deliberation and forcing a "take-it-or-leave-it" vote with no possibility of amendments.

H.R. 3276 and H.R. 3277 are completely unnecessary; Congress already has the power to reorganize government programs when it determines the need to do so. Congress creates the agencies by statute in the first instance, and it revisits their effectiveness and continued existence each year through the budget process. The White House's proposal would usurp power from Congress by entrusting unelected commissions with important decisions about the structure and function of all government services. Such decisions are too important to be ripped from the representatives who have been democratically elected to make them. Decisions this crucial — about the priorities of the government on issues such as health care, retirement security, environmental protection, and even homeland security and defense — deserve the full debate and consideration of elected bodies. The proposal gives the White House the power to ram its proposals through Congress and imposes such severe limitations on debate that it would effectively muzzle elected representatives from speaking on these vital issues.

The language of both bills leave many terms only loosely defined, opening the door for a wide array of possible interpretations. What does it mean for a program to be "ineffective," "wasteful" or "duplicative"? Isn't it possible—if not likely—that more than one agency is necessary to meet a national objective, with each approaching a difficult problem with its own perspective and expertise? Whether a program is considered to be ineffective or wasteful is often dependent on the parameters set, and as is evinced during each appropriations process, lawmakers differ wildly on their perception of a program's success. Even the term "program" is loosely defined The ambiguous language would allow the commission, appointed by the President, to determine a program's fate based on its own agenda rather than some sort of neutral standard. Even the Congressional Research Service realized that ambiguous criteria for evaluation would hamper the success of the commissions. In a report last April, CRS explained, "General consensus among stakeholders and researchers might exist on hw to make these determinations for some 'programs' . . . . But consensus might be lacking for other

programs."[5]

Though supporters claim that these proposals will simply streamline government and increase the effectiveness of agencies and programs. In reality, this proposal would decrease their effectiveness by distracting them from their mission of protecting the public. Agencies would be required to comply with requests from sunset and results commissions for data and any other information the unelected commissions demand — even information the agencies would have to create or obtain from scratch. The result is that agency staff would be forced to divert time, energy, and resources that should be devoted to their congressionally-mandated missions of protecting the public interest. Imposing yet more analytical requirements will induce paralysis by analysis.

Although H.R. 3277 has exempted the abolition of agencies to the extent that they enforce regulations that protect public health, safety, civil rights, and the environment, those agencies are still vulnerable to reorganization by the Results Commission. Thus, even though they would not face automatic expiration every ten years, they still would be at the mercy of a commission with the power to possibly restructure them into irrelevance.

The proposal for the commissions does not stop at bypassing Congress — it also seeks to exclude public stakeholders from commenting on the priorities of the government. Both the results and the sunset commissions would be exempt from the Federal Advisory Committee Act, thus freeing them from balance and openness usually required of official government advisory panels. This would create the ultimate opportunity to put foxes in the henhouse as industry lobbyists and other special interests would have the opportunity to pack the panels and fast-track their wish-lists as legislative proposals. There are provisions for stakeholder participation and public comment periods, but they are merely optional.

III. THERE IS A BETTER WAY.

We do not need H.R. 3276 or H.R. 3277. For every goal offered as a justification for those bills, there is a better way to achieve that goal and maintain an effective, accountable, and responsive government.

Keeping government accountable

Information is the key to accountability, and one simple—and much less costly—way to get there is to strengthen the Freedom of Information Act. For example, the OPEN Government, H.R. 867 and S. 394, would strengthen the implementation of the Freedom of Information Act and help the people get the information that they want. Moreover, we could remove existing barriers to the accumulation, production, and publication of information: chief offenders are the Paperwork Reduction Act and the Data Quality Act. Additionally, we could use institutions like the GAO and the Inspectors General, which have been proven to be effective in ensuring that our government programs

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5. Congressional Research Service, "Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA) and 'Results Commissions': Analysis and Issues for Congress," updated April 1, 2005.

are accountable and address the needs that called them into existence.

Keeping government up-to-date

An effective government is not necessarily small or large, but rather it is one that is responsive to the needs of its citizens. An assessment of government should not simply look for ways to cut corners but should also seek to identify and meet the unmet needs of the public. It should determine how to better invest in America not just how best to cut back. Sunset and results commissions only attack half of the problem. A real assessment of government would seek not only to elinimate and realign government programs but would also seek to fill the gaps or reinforce programs that are underfunded or underutilized.

Keeping government efficient

Government waste is not exclusive to government programs. A proposal that was truly committed to sussing out government waste and inefficiency should also seek to eliminate corporate subsidies that fail to benefit the public. Loopholes in the tax code also provide breaks to large corporations and special interests while failing to benefit the public.

Keeping government effective

The real test of government effectiveness is whether a program is meeting the public's needs. From enforcing environmental protections to creating schools, parks, roads and hospitals to providing services to needy or at-risk communities, the federal government is many things to many people. A one-size-fits-all approach to federal management cannot address the myriad functions the federal government is asked to serve. Evaluation of programs and agencies must be individualized and responsive to the mission and purpose of the specific program. Moreover, we must be sure that our management reforms are themselves effective: we must count the costs of cost-benefit analysis, assess the results of performance measurement, and sunset any sunset processes.

I thank you for this opportunity to address the committee, and I am happy to answer any of your questions.

Mr. PORTER. Thank you very much. I would like to commend staff. I think you have put together a panel made of very diverse opinions, and I say that out of respect. It is a very valuable part of our debate today as I try to summarize some of the things that I have heard today about whether we should look at programs.

I think Mr. Johnson said we should look at programs. I think Mr. Light said we should look at organizations. Mr. McTigue, I think you said we should look at capability. Mr. Shull, I think you said that we shouldn't have them forced into saving their lives every 10 years. And Mr. Schatz, you mentioned the Grace Commission.

So having done a quick little summary, I would like to hear more about the Grace Commission. That was in the Reagan administration? Could you cover that for a moment, please?

Mr. SCHATZ. Yes, Mr. Chairman. The Grace Commission was established in 1982. President Reagan established it upon Executive order, and he asked J. Peter Grace, who was then head of the Grace Co., W.R. Grace and Co., to lead this commission. They added about 2,000 volunteers, about 160 senior executives, and other leaders to examine the operations of the Federal Government.

The report had 2,478 recommendations with 3-year savings of about $424.4 billion. A number of those recommendations were implemented by President Reagan by Executive order. Others went through Congress.

Just some quick examples: BRAC itself was a recommendation of the Grace Commission; the public sale of Conrail was a recommendation; Civil Service reform; there is a long list. And of course, we have made recommendations for many other ideas to make the government more——

Mr. PORTER. Excuse me. That was initiated by President Reagan?

Mr. SCHATZ. That was initiated by President Reagan in January 1982. The report was issued in June 1984, I think March 1984 actually, and soon after that, Citizens Against Government Waste was established to followup on the implementation of those recommendations.

Mr. PORTER. Thank you.

Mr. McTigue, back to your comments. Do we have the capability? How do you see Congress interacting with the capability portion with a sunset commission, or even the efficiency? How do we get to that point? I think that is actually very similar to saying: Is the program actually being run properly and is it needed? But let us talk about capability. Explain that a little bit for how Congress can get more involved in the capability aspects.

Mr. MCTIGUE. I think that one of the things that Congress should question executives about every time they come before a committee is: Do you actually have the capability to succeed at this task? For example, one of the critical questions that wasn't asked of the intelligence agencies was: Do you have the capability to be able to translate and utilize all of the information flowing in? And the answer was: No, they didn't. So there was a fatal flaw.

One of the accountability provisions for executives should be that they have to account for the capability that their organization has now, that it needs in the future, and how they are going to be able

to get there. Those are all in my view for somebody like OPM to be thinking about the issue of human capital, human capital being the capability of an organization to achieve its goals, and reporting to the President on a regular basis saying: This organization is falling behind in its capability needs, and it needs to do all of these things if it is going to be able to meet and carry out your agenda.

Congress also should be saying the same to organizations. Have you got the human capital in place to be able to give you the advantage necessary to be able to complete all of those tasks as assigned to you? In my view, it is a new part of the management paradigm for people working both in the private sector and the public sector, but it is going to be an essential part of being able to complete tasks going into the future. And something like sunset commissions could have that as one of their charges when they look at an organization to see whether or not the capability was there to be able to carry out the particular agenda that was set.

Mr. PORTER. Thank you.

Mr. Shull, you mentioned: Are the public needs being met? I think that is actually very similar to Mr. McTigue in the capabilities. If I understood you correctly, a program should remain because it was established for the right reasons and should continue. But don't you think that we need to have a little more oversight in some of these programs that maybe have outlived their necessity, and we need to have a review of that program and that organization?

Mr. SHULL. I think that oversight is the key word. These proposals don't really create the oversight that we need. Mr. McTigue just said, or said earlier in his statement, that when he was considering capabilities as the bottom line, he suggested that something like OPM should be a single office that could ask whether or not all of our agencies have the capabilities that we need.

I just don't think that these are sort of generic questions that can be asked by neutral generalists. I just don't think that is possible. As I think members of the House, in particular, know because of their expertise that they gain through the committees of jurisdiction, that it takes a long time to learn, to master a body of knowledge in order to exercise the oversight that is necessary. This is not a neutral task that a sunset commission, that might hear claims of programs that inspect grain versus programs that protect abused and neglected children, has the expertise to do across the board. So I think that those are different questions.

Now when it comes to asking whether or not programs have outlived their usefulness, I think I would like to suggest that we have that now through the reauthorization process. Agencies like take the National Highway Safety Administration, it comes up for reauthorization every 5 years. Congress has the opportunity——

Mr. PORTER. It is supposed to come up every 5 years. I just thought I would add a little editorial.

Mr. SHULL. Right, right. And Congress, actually on a year to year basis through the budget and appropriations process, has the ability to cut things off whenever Congress determines that the need is no longer there. I think that in some cases we will find that the needs never go away. We never stop having a need for safe workplaces for the men and women of America who work for a living.

So I think that we will never run out of a need for the Occupational Safety and Health Administration. I think that there are some needs. Education, we will always need a Department of Education. There are some needs that are eternal.

Now, the ways in which those needs manifest themselves, and the ways in which programs need to address those needs, may change over time. That is something that can be addressed on an ongoing basis. The White House certainly doesn't need a commission or this sort of fast-track take it or leave it process to send proposals to Congress. The White House certainly didn't need this process when it suggested the creation of the Department of Homeland Security. I think we have processes in place right now, processes that work.

Mr. PORTER. Thank you. I appreciate it.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

Mr. Shull, I was somewhat intrigued with your notion that duplicate programs may serve a purpose and just because they are duplicate, that does not necessarily mean that they are not of value. I guess I was thinking of that because of the fact that I have been trying to deal with the specific needs of a population group called African American males, as an example.

Mr. SHULL. Right.

Mr. DAVIS OF ILLINOIS. Generally, when I come to a hearing room like this, there are very few, and I hardly ever see African American males in any substantial numbers. Or when I go to college and university campuses and look at the population there, I see very few. Then, of course, I go some other places, and I see quite a few, such as the prisons and jails and traffic courts and unemployment lines.

Yet, there are certain kinds of programs that are designed, for example, to provide opportunities for people. And yet, somehow or another, those programs, unless they are specifically designed and have some special components, will often times miss this population group. I am wondering, could you expound a bit more on your rationale for this theory that duplication need not necessarily mean that you have what you need, or you don't need something special in some instances because of all of the factors that make up an environment?

Mr. SHULL. Right. I think it is actually one of the problems that is endemic to any program design because programs are designed with a standard in mind. Unfortunately, that standard isn't always representative of the full range of a population that is supposed to be served. That is why we see it again and again and again. That is why we see recurring needs for programs that target women's health, programs that target specific populations like rural populations, very specific populations like Appalachia.

And that is why this neutral approach or this general approach, that somehow we can adopt certain standards like duplication, they have one meaning in every context. Or we can look at activities like management and somehow managing grain inspectors and managing programs that benefit foster children, somehow that is all the same activity.

Every time we take these sort of neutral government-wide approaches, we run the risk of reinscribing these same old problems. We could always run the risk of resubordinating the very populations who are supposed to be benefiting from these targeted, or supposedly duplicative, programs because they were subordinated in the first instance.

We run the risk of recreating the very problems that we have been trying to solve over the years, as actually you just mentioned when it comes to poverty programs. We were apparently on the right track, getting something accomplished, and now we need new programs targeted at the poor because we are just not doing the job any more, and because we got rid of the programs that were in place.

Mr. DAVIS OF ILLINOIS. I also saw the same thing sort of in how we used to approach what was called community health, where we had outreach workers and people who would go out and try and bring people in because somehow or another people were not coming to the clinics and they had never any experiences.

All of a sudden, that became passe. We were spending too much money. And yet, when we look at health status, we see a tremendous difference with that population group in terms of what was happening with them when the outreach was being done, and we actually saw the reduction in infant mortality, and we actually saw reduction in certain disease entities among that population group.

I wanted to quickly, though, Mr. Light, ask you. When we think of the executive branch, which is designed to propose, and then the executive branch dispose. Do you think that there might be opportunity for greater interaction in the process of development between the two as we look at what might be taking place with programs and the extent to which they have been effected?

Mr. LIGHT. I think that Congress has to be a partner in the conversation about performance assessment. The Achilles Heel to the results commission is the PART, the rating tool that OMB has developed, and I have not yet seen a credible evaluation of how good PART is at getting to the issue of performance. I would guess that it is uneven, and I would urge this subcommittee to ask the Government Accountability Office to take a look at how good the measures are and how they are done.

I would guess that they are uneven across the departments if they represent the unevenness that we have seen in the Government Results Act implementation that the Mercatus Center has been so effective in documenting. I am a believer in congressional participation and oversight, and I think you ought to get more deeply involved in these questions about how we evaluate performance.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Chairman.

Mr. PORTER. Thank you.

Congresswoman, questions?

Ms. NORTON. Thank you, Mr. Chairman. I appreciate all the testimony, and the qualifications, and the several options you have brought to the table.

Local governments have accepted the beast that is the Federal Government. In many ways you see so-called one stop shopping

places. If you go in some of those places, you would have a hard time figuring out how all of those things can be consolidated.

You look at the tragic growth of children who are raised only by their mothers, and you know that some of what she gets and must have to sustain her children must come from HHS. Some of it must come from the Labor Department because you want her to become a productive citizen. Some of it must come from the Education Department. I hope more of it would.

Most of these women are not even, under the present legislation, allowed to go to college if they are ready, so that they can do something other than the minimum wage work they have. I will tell you if you try to sit down and to consolidate these programs, I think you would have an awfully hard time.

At the level where the programs operate in the States, they have begun to understand that they are dealing with a human being, and that is not what the Federal Government is there for. The Federal Government is essentially there to provide the States and locality with what it takes to deal with human beings.

I have just a couple of questions. Mr. Light, there is a certain kind of appeal in your proposal, although one would wonder about such a proposal in the Congress today. But there certainly is a lot of appeal because it says: Look, let us look at the whole ball of wax. But it is so comprehensive. The government has become so vast.

One is left to wonder whether or not, even under the best of circumstances, such a comprehensive review would allow people to get much beyond the boxes to reach the substance of these programs. What is really appealing about what the administration says it wants to do is to look at these programs to see what works or doesn't work. Of course, it doesn't tell us much about how they do that.

At least, there is some assessment going on here. If you are looking at the whole government, you are hardly in a position to go bit by bit. What is it? We have how many employees? We have 3 million; 2 million? A lot of them are in this city, I will tell you that much.

Mr. LIGHT. That is if we can count them all.

Ms. NORTON. In any case, have you considered the difficulty of getting into the nuts and bolts of what makes government effective, if what you are looking at is everything there all at one time?

Mr. LIGHT. Well, let me first say that your notion that the modern caseworker is kind of a self-contained results commission is quite accurate. The best caseworkers are doing this analysis all the time to figure out what works and where they can get their clients the most help.

The issue about comprehensiveness and discreetness, the balance between the two, is the following, that there are some factors that clearly effect program performance that are, in fact, government-wide. Earlier this week, a colleague of mine at Princeton released a report showing that the PART scores of bureaus heading by political appointees—and I am not talking about Democrats versus Republicans; I am just saying in the bureaus headed by political appointees—were significantly and statistically lower than the PART scores headed by career civil servants.

Now, we have to drill into that more deeply to see whether or not that is, in fact, a verifiable predictor of agency performance, but it would lead us toward addressing some comprehensive issues surrounding the Presidential appointments process, which your committee as a whole and predecessors in this room, subcommittees, have struggled with, how to improve this appointments process that is so sluggish and difficult to navigate. You are trying to balance, and I think a comprehensive look at government every 50 years isn't a bad idea. Not a bad——

Ms. NORTON. It is not a bad idea. You didn't think you would have to break it down from there to go——

Mr. LIGHT. You have to break it down. You have to go down into mission. So you start with organization, but you are eventually led to mission. What is the mission of government? Could we do things better if we eliminated duplication, or is the duplication in fact intentional and purposeful? I would argue, and I haven't seen a good, aggressive study of this, that a great deal of duplication in government is quite unintentional and harmful, but it would be interesting to actually take a look at it.

We have a bias against duplication that our colleague from OMB Watch is rightfully arguing may actually be beneficial, not our bias, but the duplication. I think you have to drill down after you look comprehensively at the specific missions that we are aiming to achieve.

Ms. NORTON. I would like to ask Mr. Schatz a question. He speaks about the independence that the commissions would have. Of course, the commissions are still majority party commissions in a country which is very evenly divided, where there is a great distrust across party lines with frankly, a huge polarization even about whether government should exist or not.

Let us assume that, for the moment, you somehow get a commission that would have the confidence, enough of the confidence of the government, that one would want to listen to its recommendations. Then you say, sunset and results commissions—I am looking at your page unnumbered, but it is in your testimony—like BRAC, "such a commission would have its recommendations and proposals subject to review by Congress before they could be adopted."

Now, Mr. Shatz, when in fact, let us say our subcommittee comes to the full committee and even to the floor, in fact, there often are changes. There are amendments, even amendments proposed by the minority.

Do you think that the process we go through where somebody may have a difference, even a small difference, that she would like to offer as a change, but was told sorry, you have to vote against the whole thing or for the whole thing. I didn't know what in the world you meant when you said people like me, or somehow would be sent to review by Congress before they would be adopted, since in ordinary parlance we do usually mean that we have something to say about the guts of the proposal.

That is how compromises get done here. In order to keep the whole thing from going down, Republicans and Democrats go at various bits and pieces. And guess what? Something that neither of us really wanted, but this is a vast country with people thinking in thousands of different ways, we have somehow succeeded in get-

ting a bill out of it. Would you really want Members of Congress who might indeed be willing to vote for such a proposal be forced to vote against the whole thing, rather than have some opportunity to offer a change that the other side might take?

Mr. SCHATZ. Ms. Norton, the way this particular legislation is set up, and the up or down, what I was referring to as the sunset commission, there is a lot more opportunity for input there because you are not forced to vote up or down on the sunset commission's recommendations. In the results commission, that is the case. And I think I tried to make that clear in my statement. If I didn't, then I am making it now.

Ms. NORTON. I know I am reading from it. However, sunset and results commissions would not have unilateral power to cancel or modify questions or programs alone. "Like the Grace Commission and BRAC, such a commission would have its recommendations and proposals subject to review by Congress before they could be adopted." Yes, subject to review like everybody else who reads the newspapers. The only difference is we could say yea or nay to the whole thing.

It is a terrible, terrible misunderstanding of how this body works because the only way we are able to get bipartisanship on really hard things is to keep talking back and forth until each side gives up a little, takes a little. But when you go to up or down, you see the polarization we have in this country now. All this does is up the ante 10,000-fold because it says: In your face, take it or leave it; I don't care whether you want small changes or large changes. The only way we can get something done—I remember what you said, get it done.

Well, at least we got it done. Because you folks just can't get it done later for democracy, and this is the way the House and the Senate have worked for 200 years, absolutely 200 years. We give up on it. We are going to a procedure which allows for no compromise. There is not a single piece of legislation that would ever get out of here without compromise, and I don't know why any piece of legislation should ever get out of a legislative body which governs a country as complicated as this without some compromise from the legislative branch.

I would like to hear if you think that there is some way that we can modify this, so that you wouldn't be faced with that up and down choice, but could go with what the majority wants some of the time, and not be asked to go with it all of the time or none of the time.

Mr. SCHATZ. We just did that on BRAC.

Mr. PORTER. Excuse me, we have about 8 minutes left.

Mr. SCHATZ. OK, I will be very brief. We just did that on BRAC. As you mentioned earlier, it was controversial, but it was done. The point here is to extend that to other opportunities to reform the government, and that is what this is intended to do.

Ms. NORTON. I understand what we are doing here. I posed you a question, and you did not answer. I posed you a question about our system, and compromise, and how we get legislation done here. I posed you a question about Red States and Blue States. I posed you a question about how to bring people together. And you tell me, well, we did it in BRAC.

You know what? BRAC was the most contentious process of all time, and the notion that is the model for how we should run the United States of America. If that is your answer, thank you very much.

Let me just go on.

Mr. SCHATZ. I didn't say that is how we should run the United States of America, Ms. Norton.

Ms. NORTON. Well, we are running it——

Mr. SCHATZ. I said, this is a particular issue that needs——

Ms. NORTON. It is not a particular issue. Virtually any programs could be in it. I just have to go on. He says we have 8 minutes.

I have a question for Mr. McTigue because I heard the hint of a compromise. Forgive me for looking for things that, ways to make common cause because of members who might not agree with me on everything. You said something about, and I looked for it in your testimony and didn't see it, how Congress should be given options.

Of course, with those options and the explanation for those options, it should be asked to decide from those options, it does seem to me that would be terribly helpful. We often have to get those options from hearing testimony from various people who come before us. But the whole notion that somebody, let us take it that one of these commissions, has studied something, and here are a half dozen options. They might even say which ones they like and which.

But the notion that somehow you don't weed Congress out of the process might be more appealing to people on both sides of the aisle. I would just like to have a little more explanation of that as some kind of perhaps middle ground between the in your face, up and down process that is being offered here.

Mr. MCTIGUE. My response to that is that Congress is master of its own destiny at all times. As Members of Congress, you can vote for and against resolutions.

But I would imagine that when you actually get a report from a commission, a results commission, it is not just a one line report, saying these things are eliminated and these things are kept. It should have with it a great deal of detail that explains the thinking of the commissioners when they arrived at that particular resolution. It is quite within the hands of every Member of Congress to personally introduce legislation themselves, to implement part or to reject some of the recommendations that are made by the commission.

In addition to that, the budget process provides Congressmembers with the same option at a later date to decide to vote for or against appropriations, to increase appropriations, or to refund something that was previously defunded. It happens every year.

In fact, at the moment, Congress has in front of it about 154 recommendations from OMB in the budget that would change the traditional funding of programs. A number of those Congress has already changed. So in my view, this is a resolution that you would see that is based upon research that says: In the view of the commissioners, this will produce for Americans a better result than the current mix of programs that we are funding.

You can agree with that, or you can disagree with it. You can pick parts out of it later on and decide that you are going to implement it. It is a process that, I think, moves you forward because it brings the debate into sharp relief in terms of where are you going to get the greatest benefits.

In addition to you talked about BRAC a lot during the commission's hearings this afternoon, you also use for trade negotiations fast-track procedures that give to Congress exactly the same choice. And I think that you put together some deals with countries around the world that would never have gotten done if you didn't have that process. So it has been valuable in those circumstances, and it has allowed Congress to be able to make progress in improving relationships with many countries that wouldn't otherwise have been able to make that advance.

Ms. NORTON. It has been valuable in those processes, and I think those are appropriate processes to use. The real question is, is this up and down process the most appropriate process for other programs?

Thank you, Mr. Chairman.

Mr. PORTER. Thank you. We appreciate it. And to the full panel, we appreciate your input, very diverse, but that is what the process is all about.

In summary, I know there are some concerns about the involvement of Congress. I think Mr. McTigue is right, that the commission provides a lot of analysis for Congress to work with. But separate from the congressional body, the American people are demanding today, demanding that we reduce wasteful spending. They are demanding that their hard-earned, their dollars—the tax dollars are theirs—are spent wisely.

They also are demanding, now more than ever, that it be delivered in the most efficient, the most up to date in technology and in efficiency, that we have ever seen in the history of this country. They are demanding it, and they should expect it. That is our job as Congress, to make sure that we look at these programs and weigh the balance of what is a duplication.

And Mr. Shull, you may be right; some are probably duplication by design, but others are duplication by accident and by the system itself. We want to make sure that those foster kids get the best they can. We want to make sure that the least among us get the services they deserve. But we don't want to waste any more of our constituents' tax dollars and make sure they are done properly.

This commission does not take Congress out. It is an ability for Congress to work with the administration, whatever that administration is at the time, to come up with the best and the most efficient, but also the most capable, delivery of systems to the American people.

So I thank you all very much. It is really historic in that we are now moving and looking at legislation that has been passed in the past that has worked quite successfully, and I hope that we are able to move this forward. So thank you all very much for being here, and we appreciate future input. We appreciate it.

[Whereupon, at 4 p.m., the subcommittee was adjourned.]

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