

# ISSUE BRIEF

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## A Model for Executive Reorganization

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Decades of ceaseless expansion of the size and scope of the federal government—undertaken by Republicans and Democrats alike—has created a bloated, expensive, and inefficient federal bureaucracy that extends far beyond its limited constitutional responsibilities. Even federal officials cannot provide an accurate count of how many departments, bureaus, agencies, and offices exist.<sup>1</sup> Many of these bodies have overlapping, if not duplicative, functions. Paring back the overgrown federal bureaucracy is a good place to start for addressing the U.S.’s spiraling national debt.

### A Comprehensive Plan for Reorganization

In March 2017, President Donald Trump issued an executive order to spur a comprehensive reorganization of the executive branch.<sup>2</sup> It instructed each federal agency head to submit a plan to improve “efficiency, effectiveness, and accountability” by June 30, 2017. Think tanks and members of the general public were also encouraged to submit plans.<sup>3</sup> The Administration is now considering how to combine and implement the best suggestions.

A comprehensive reorganization of the federal bureaucracy is a daunting task. The best chance for

a comprehensive plan to significantly improve the efficiency, accountability, and functions of the federal government is through a congressionally created, independent commission with fast-track authority. This type of commission would avoid the chief pitfalls that hampered previous government reorganization efforts and would provide an independent and insightful review and set of recommendations.

Although the obstacles to a successful government-wide reorganization are significant, both the consequences of failing to act and the benefits of establishing a more efficient, accountable, and right-sized federal government are too great to do nothing.

### History of Government Reorganizations

Prior to 1983, presidents had the power to submit a reorganization plan that would go into effect unless a majority of one chamber of Congress voted against it. If Congress took no action, the President’s suggestions would be implemented as is. This arrangement worked well, leading to the implementation of 93 separate executive reorganization plans.

In 1983, the Supreme Court upended this system. In *Immigration and Naturalization Service v. Chadha* (1983), the Court ruled that so-called legislative vetoes—the means by which Congress could stop an executive reorganization from going into effect—were unconstitutional.<sup>4</sup> Without this check at its disposal, Congress has been unwilling to give the President reorganization authority.

### Obstacles to Reorganizing the Federal Bureaucracy

Since *Chadha*, sweeping reorganization of the federal bureaucracy requires the active participation of

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Congress. Regrettably, Congress has not taken up the challenge. In fact, only when the nation is facing an existential threat does Congress agree to significant reform. For instance, the creation of the Department of Homeland Security followed the September 11 terror attacks, and the creation of the Consumer Financial Protection Board (CFPB) followed the Great Recession.<sup>5</sup> As flaws in these agencies attest, crisis is typically not the best opportunity to craft conscientious and persisting change. On the other hand, only once in the past fifty years has Congress eliminated a department—the U.S. Postal Department. Even then, it refashioned the department into a separate government entity—the U.S. Postal Service—that still plagues taxpayers today.<sup>6</sup> Why does Congress seem so committed to preserving our labyrinthine and lethargic administrative state?

**Polarization of Presidential Support.** One explanation for congressional opposition to executive reorganization is partisan opposition to the President himself. For example, President Obama asked for reorganization authority in order to consolidate six agencies that primarily regulate trade and commerce.<sup>7</sup> However, congressional Republicans, who in

principle support cutting waste and consolidating duplicative agencies, did not bring a reorganization plan to the floor for a vote. Today, strident opposition in Congress to President Trump and his agenda may lead to an opposition to an objectively sensible plan.

**Turf Protection.** Polarized as the U.S. political climate is, partisanship is not the most resilient obstacle to executive reorganization. All Members of Congress have a strong incentive to retain the size and strength of the agencies under their committee's or subcommittee's jurisdiction, or that employ people in their districts. All Members of Congress might agree with the principles behind paring back the sprawling federal bureaucracy, but each individual Member of Congress may adopt a "not in my backyard" attitude to any concrete proposal put forward, particularly if it is a stand-alone proposal as opposed to part of a comprehensive package.

### Reasons for Hope

While daunting, the obstacles facing executive reorganization are neither unique nor insurmountable. Any piece of a President's agenda risks partisan obstruction. However, partisan conflict can

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1. Clyde Wayne Crews, "Nobody Knows How Many Federal Agencies Exist," Competitive Enterprise Institute, August 26, 2015, <https://cei.org/blog/nobody-knows-how-many-federal-agencies-exist> (accessed November 1, 2017).
  2. President Donald J. Trump, *Presidential Executive Order on a Comprehensive Plan for Reorganization of the Executive Branch*, The White House, March 13, 2017, <https://www.whitehouse.gov/the-press-office/2017/03/13/presidential-executive-order-comprehensive-plan-reorganizing-executive> (accessed November 1, 2017).
  3. For example, see David B. Muhlhausen, ed., "Blueprint for Reorganization: Pathways to Reform and Cross-Cutting Issues," Heritage Foundation *Special Report* No. 193, June 30, 2017, <http://www.heritage.org/budget-and-spending/report/blueprint-reorganization-pathways-reform-and-cross-cutting-issues>, and David B. Muhlhausen, ed., "Blueprint for Reorganization: An Analysis of Federal Departments and Agencies," Heritage Foundation *Special Report* No. 192, June 12, 2017, <http://www.heritage.org/budget-and-spending/report/blueprint-reorganization-analysis-federal-departments-and-agencies>.
  4. *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). As the Supreme Court's decision in *Chadha* points out, the Constitution specifies the procedures by which policy is to be made—a bill must pass through both houses of Congress and then be presented to the President for approval or veto. Thus, any legislative procedure that does not involve both bicameralism and presentment is unconstitutional. The Court's decision disallowed executive reorganization legislation that tasked the President with drafting a plan and presenting it to Congress, at which point either house could forestall its implementation.
  5. Even these two examples may not truly be instances of reform. For many, adding layers of bureaucracy and building new agencies is the very antithesis of the sort of executive reorganization that needs to occur. Further, some have criticized the Department of Homeland Security as creating new bureaucratic layers over less than fully complementary executive functions, and some have criticized the CFPB as unaccountable and constitutionally suspect (violating the separation of powers), and thus ripe for elimination. On this point, see Alden Abbott, "Time to Eliminate the Consumer Financial Protection Bureau," Heritage Foundation *Legal Memorandum* No. 172, February 8, 2016, <http://www.content.heritage.org/markets-and-finance/report/time-eliminate-the-consumer-financial-protection-bureau>.
  6. James Gattuso, "Can the Postal Service Have a Future?" Heritage Foundation *Backgrounder* No. 2848, October 10, 2013, [http://thf\\_media.s3.amazonaws.com/2013/pdf/bg2848.pdf](http://thf_media.s3.amazonaws.com/2013/pdf/bg2848.pdf), and Chris Edwards, "Privatizing the U.S. Postal Service," CATO Institute, April 1, 2016, <https://www.cato.org/publications/tax-budget-bulletin/privatizing-us-postal-service> (accessed November 1, 2017).
  7. News release, "President Obama Announces Proposal to Reform, Reorganize and Consolidate Government," The White House, January 13, 2012, <https://obamawhitehouse.archives.gov/the-press-office/2012/01/13/president-obama-announces-proposal-reform-reorganize-and-consolidate-gov> (accessed November 1, 2017).
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be short-circuited by legislation with broad public appeal. This is good news for executive reorganization. While the public is closely divided as to whether more or fewer government programs is preferable, most Americans agree the federal government is wasteful.<sup>8</sup> The average American thinks that over half of federal revenues are wasted.<sup>9</sup> Eliminating redundant agencies can reduce the cost of government without necessarily cutting popular government services.

### **BRAC: A Promising Framework for Comprehensive Government Reorganization**

Turf protection is not unique to executive reorganization efforts. For example, as the Cold War came to a close, Members of Congress agreed to reduce the military's physical infrastructure by closing outdated and unnecessary military facilities. However, Members of Congress who agreed in principle to reductions fought against any closures in their own backyard.

To get around this turf protection problem, and accomplish what everyone knew was necessary, Congress created the Base Realignment and Closure (BRAC) process in 1988.

BRAC was composed of independent experts appointed by the President, with the advice of congressional leaders from both parties, and tasked with selecting military bases to be closed or realigned.<sup>10</sup> Once the commission finalized its list and the President reviewed it, the list went to Congress. Unless Congress passed a joint resolution asking the President to stop the plan in its entirety, the BRAC's recommendations would go into effect.<sup>11</sup>

This system proved effective. From 1998 to 2005, BRAC closed 130 major bases and many more minor

installations. The last round of closures alone has saved \$3.8 billion annually.<sup>12</sup>

### **Applying BRAC's Successes to a Reorganization Commission**

The goals of government reorganization are broader than eliminating unnecessary bases—or “right-sizing” the federal government in the case of reorganization. They also include eliminating waste and duplication; changing overly burdensome and unnecessary procedures; modernizing the federal government's functions; and addressing perverse and detrimental federal personnel practices. Nevertheless, a similar commission with fast-track authority could succeed in overcoming the plodding pace and status quo bias that bedevil ordinary legislation, as well as many of the obstacles specific to executive reorganization bills.

An independent commission would largely defuse partisan mistrust. Moreover, a reorganization commission's independent members would be distant enough from the Oval Office that enacting their plan would not necessarily confer a political victory on the President.

An independent commission could also work around turf protection tendencies. Asking legislators to vote to empanel a commission, rather than for the plan itself, prevents Members from knowing ahead of time what individual reforms or cuts would affect them and their districts.

The commission's recommendations should be adopted as a package, through an up-or-down vote in Congress, with no amendments. If Congress approved the package, it would be submitted to the President for his review and possible veto. As five successful BRAC rounds demonstrate, Members of Congress may be unwilling to propose changes that

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8. Pew Research Center, “With Budget Debate Looming, Growing Share of Public Prefers Bigger Government,” April 5-11, 2017, <http://www.people-press.org/2017/04/24/with-budget-debate-looming-growing-share-of-public-prefers-bigger-government/> (accessed November 1, 2017).

9. Rebecca Riffkin, “Americans Say Federal Government Wastes 51 Cents on the Dollar,” Gallup, September 4-7, 2014, <http://news.gallup.com/poll/176102/americans-say-federal-gov-wastes-cents-dollar.aspx> (accessed November 1, 2017).

10. Defense Base Closure and Realignment Act of 1990, Sec. 2902 (c)(1).

11. *Ibid.*, Sec. 2908. Although a joint resolution of disapproval could be passed on a simple majority vote, following *Chadha*, the joint resolution then requires presentation to and signature by the President. For more on this point, see Christopher Davis, “Fast Track! Legislative Procedures Governing Congressional Consideration of a Defense Base Closure and Realignment (BRAC) Commission Report,” Congressional Research Service Report for Congress No. 43102, June 10, 2013, p. 4, <https://fas.org/sgp/crs/natsec/R43102.pdf> (accessed November 1, 2017).

12. Government Accountability Office, *Military Base Realignments and Closures: Updated Costs and Savings Estimates from BRAC 2005*, GAO-12-70R, June 29, 2012, <http://www.gao.gov/products/GAO-12-709R> (accessed November 1, 2017).

will negatively affect their friends and colleagues, but they are often willing to accede to a plan put together by outside experts. Moreover, because a plan has to be considered in its totality, legislators cannot prevent changes that would preclude inclusion of their district.

Calling a vote on the creation of an independent commission rather than the implementation of a fully formed plan would also maximize popular support for such a plan as well. While the public might get lost in the weeds of an executive reorganization bill, fast-track, BRAC-style legislation simply asks whether the status quo can be improved upon.

### Possible Drawbacks

The primary downside of creating an independent executive reorganization commission is, in fact, its independence. Once the expert panel is selected, the President would be a spectator. In effect, the Administration would cede control over a major piece of its agenda. Once empaneled, a commission could put together a package of reforms that looked very different from one the Administration, congressional Republicans, or ideological conservatives might draft.

Congress can mitigate the risk of the commission abusing its independence. Legislation should specify that a commission's plan must enhance efficiency and that it not create any new agency. Congress could also set certain budget savings benchmarks for the commission. It is also important to remember Morton Blackwell's famous aphorism: "Personnel is policy."<sup>13</sup> Because of the great responsibility invested in them and the difficulty of blocking their recommendations, it is critical to select trusted experts with a history of tackling government waste and inefficiency.

Congress should not include so many provisos and parameters that a reorganization commission's recommendations are essentially predetermined. The commission's independence is what makes it the most viable avenue toward reform. Uncertainty about which agencies will be cut, and which congressional committees will see their jurisdiction shrink, will help minimize opposition from bureaucrats and politicians.

### Recommendations

To accomplish reorganization of the federal government, Congress should work to accomplish the following:

- **Establish** an independent commission to submit a comprehensive proposal for reorganizing the federal government.
- **Specify** the guiding principles of the commission's recommendations as:
  - Limiting the federal government's role to its constitutionally defined responsibilities;
  - Eliminating waste, duplication and inefficiencies; and
  - Ending programs that show favoritism to select individuals or groups as opposed to creating opportunity for all Americans.
- **Stipulate**, within those principles, certain goals such as:
  - Cutting waste by consolidating duplicative agencies and programs;
  - Defining clearly and logically the jurisdiction of remaining agencies to limit confusion and inefficiency caused by fragmentation;
  - Decreasing the size and overall budget of the executive branch; and
  - Ensuring a specified minimal level of long-term taxpayer savings.
- **Require** that the commission's recommendations will be considered under fast-track procedures that ensure an up-or-down vote in Congress.
- **Indicate** ahead of time that the package will be voted on as a whole without amendments. Opening the door to amendments would almost cer-

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13. Morton C. Blackwell, "The Laws of the Public Policy Process," Leadership Institute, March 19, 2015, <https://www.leadershipinstitute.org/img/laws/LI%20Laws%20of%20the%20Public%20Policy%20Process.pdf> (accessed November 1, 2017).

tainly cause lawmakers to kill, one by one, most of the commission's necessary and meaningful reform proposals.

- **Advance** certain criterion and measures, such as:
  - Preventing the creation of any new agencies;
  - Achieving a minimum level of budgetary savings over a specified period; and
  - Remedying highly problematic policies such as the federal government's flawed personnel system.

The sooner Congress acts, the better. If policymakers were to establish a government reorganization commission before the end of the year, its recommendations could be incorporated into the fiscal year 2019 budget.

## Conclusion

Given the success of BRAC in accomplishing necessary but difficult choices, the BRAC commission

has been proposed as a model for everything from spending cuts and welfare reform to deregulation.<sup>14</sup> Creating an independent commission, and fast-tracking its recommendations, exploits bipartisan consensus on the need to pare back the overgrown federal bureaucracy. It also avoids the pitfalls that have forestalled significant executive reorganization in the past. By asking Members of Congress to approve the creation of an independent commission, rather than creating a plan themselves or authorizing a presidential reorganization, legislators are more likely to put principle ahead of parochialism and partisanship and finally accomplish meaningful government reform to better respect hard-working taxpayer dollars.

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14. Romina Boccia, "How Congress Can Improve Government Programs and Save Taxpayer Dollars," Heritage Foundation *Backgrounder* No. 2915, June 10, 2014, <http://www.heritage.org/taxes/report/how-congress-can-improve-government-programs-and-save-taxpayer-dollars>; Jerry Brito, "Running for Cover: The BRAC Commission as a Model for Federal Spending Reform," *The Georgetown Journal of Law and Public Policy*, Vol. 9, No. 131 (2010); and Wayne Crews and Ryan Young, "A Model for Rolling Back Outdated Regulations," *The Washington Times*, June 3, 2014, <http://www.washingtontimes.com/news/2014/jun/3/crews-young-a-model-for-rolling-back-outdated-regu/> (accessed November 1, 2017).