

REASONS TO KEEP SUNSET COMMISSIONS OUT OF BUDGET PROCESS REFORM

Despite the good government patina to their names, “sunset” and “results” commission proposals are a serious threat to the public interest. The two most recent White House budget submissions have promoted sunset commission and results commission proposals, and several pending bills would implement these concepts. Now, recent news reports from the Hill suggest that the sunset/results concepts could be pushed through budget process reform. The following is a look at the sunset/results concepts the White House proposes.

SUNSET COMMISSIONS: Forcing Programs to Plead for their Lives

Back on the treadmill every 10 years: Programs would have to plead for their lives every 10 years before a sunset commission, a standing body that would review programs on criteria such as the following:

- cost-effectiveness and achievement of stated purposes or goals;
- whether there is still a need for the program at all or for the program in its current form;
- whether the program duplicates or conflicts with other programs *or the private sector*;
- whether statutory changes would improve program performance; and
- whether the program would benefit, in general, from reorganization in the executive branch.

Death is automatic: Programs would automatically die two years after the White House submitted a sunset commission report to Congress, unless Congress affirmatively reauthorizes the program or stays its demise for an additional two years. Note that the two-year expiration applies even if the sunset commission assessment is positive.

Weak exemption for public protection programs: The administration proposal adds that any program “related to enforcing” health, safety, civil rights, or environmental regulations would be excluded from automatic sunsets “unless provision is made for the continued enforcement of those regulations.” It does not, however, require that any such “provision ... made” for continued enforcement be at the same level of funding or committed resources as the expiring program, and it does not mention programs unrelated to *enforcement* per se—such as research programs that close existing data gaps—that are still vital for sound policy.

RESULTS COMMISSIONS: Reorganizing Programs Into Irrelevance

Results = Reorganization: The White House seeks the power to empanel one or more *ad hoc* “results commissions” that would be charged with reviewing a White House-generated plan for restructuring, realigning, and consolidating government programs. The call for a commission would have to be authorized by statute, and the White House would “consult with” the minority and majority leaders of both chambers for commissioners.

White House still in charge: The commission would be free to deviate from the White House’s original plan when devising its own suggestions, but only when “such changes are necessary to better accomplish the stated purpose of the President’s reorganization proposal.”

Blank check for reorganizing government: The criteria for the results commission would be quite broad: program areas in which multiple federal programs have “similar, related, or overlapping responsibilities” under the jurisdiction of multiple executive branch agencies and committees of Congress, and program areas in which reorganization may “improve the overall effectiveness, efficiency, or accountability of Executive Branch operations.”

Giving more power to PART?: The White House has suggested that the results commissions would base their decisions on performance data, of the sort produced by the OMB Program Assessment Rating Tool. Two pending

bills that would establish similar restructuring commissions do, in fact, explicitly base commission decisions on performance data—which, in the case of PART, amounts to politically manipulable rhetoric rather than neutral information.

Ramming plans through Congress: When the results commission returns its proposal, the White House would then have the option to endorse or reject the commission's proposal. If the White House approves of a result commission proposal to restructure programs, it would then forward the proposal to Congress, where it would be fast-tracked for approval. The White House calls for such severe limitations on debate and amendment that it would essentially be able to force Congress to review government reorganization plans on a fast-track, take-it-or-leave-it basis.

PROBLEMS

There is no need for it. 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.

The creation of the Department of Homeland Security is a case in point. The White House proposed realigning a number of programs in different cabinet departments into a new cabinet-level department, and Congress followed up in record time. Congress can therefore move quickly when demonstrated need or political exigencies demand swift action. Congress should nonetheless retain the option to proceed more deliberately when White House proposals would have the effect of weakening public protections or needed services.

It would muzzle Congress when careful discussion is needed most. Decisions about the structure, function, and very existence of government services are too important to be ripped from the representatives who have been democratically elected to make them. Decisions this crucial — about the government's priorities 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 our elected representatives from speaking on these vital issues.

It would decrease agency effectiveness. Agencies would be distracted from their missions of protecting the public by defending themselves against extinction or being restructured into irrelevance. 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 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. Meanwhile, key battles that were fought and won in the past over civil rights, human services, and more would have to be fought again and again every 10 years.

It leaves room for bias. Both the sunset and results commission would be exempted from the open government and balance requirements of the Federal Advisory Committee Act. The commissions could therefore be packed with industry lobbyists and representatives from industry-funded anti-regulatory think tanks, and they could conduct their business—about important issues of the structure and function of government services—in secrecy. There are provisions in the White House proposal for public hearings and other forms of stakeholder participation, but those provisions are merely optional.

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