

Testimony of
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Thank you for inviting me to testify before this Subcommittee regarding the proposed homeland security reorganization. There are many in this city who favor moving forward as quickly as possible on this important legislation, and some who believe that it must be passed before September 11 in honor of the victims of the terrible attacks that make the case for action. However, such legislation can hardly be considered an honor if it is not done well.

Having studied more than a few reorganizations, I can testify that such efforts are rarely complete on signing. Congress often goes back into reorganizations to fine-tune, reconsider, and rearrange its work long after passage. That is certainly the case with the departments of Defense and Health, Education, and Welfare, for example.

Congress has returned to the Defense Department reorganization at least five times over the past fifty years, for example, starting with (1) the 1958 Department of Defense Reorganization Act (PL 85-599), which strengthened coordination among the armed services, (2) the 1980 Defense Officer Personnel Management Act (PL 96-513), which revised military promotion and retirement practices, (3) the 1985 Defense Procurement Improvement Act (PL 99-0145), which was a direct response to the procurement scandals of the early 1980s, (4) the 1985 Goldwater/Nichols Department of Defense Reorganization Act (PL 99-433), which once again sought to strengthen coordination, and (5) the 1989 Base Closure and Realignment Act (PL 100-526).

Congress has also returned to the Health, Education, and Welfare reorganization even more frequently, most notably the Department of Education Organization Act in 1979 (PL 96-88), which set asunder what President Eisenhower had joined together, and the 1994 Social Security Independence and Improvement Act (PL 103-296), which split the Social Security Administration from what had been renamed the Department of Health and Human Services in 1979.

I raise this bit of history to note government reorganizations are usually a work in progress. I cannot find a single reorganization over the past seventy years that has not been changed in some material way later on. Indeed, the U.S. Government Manual provides more than 50 pages of executive organizations terminated, transferred, or changed in name since March 4, 1933, the date of Franklin Roosevelt's inauguration. We create new agencies, then rearrange, downsize, coordinate, and terminate them. Then, more often than not, we create them again.

We will almost certainly begin thinking about how to reorganize the new Department of Homeland Security on the day we create it. Indeed, the president has anticipated just that in Sec. 733 of his proposal, which gives the new secretary truly extraordinary authority to "establish, consolidate, alter, or discontinue such organization units within the Department, as he may deem necessary or appropriate." Although the White House rightly notes that this is the same authority

granted to the secretary of Education under the 1979 statute, one must remember that the Department of Education consists of less than 5,000 employees, while the new department will start with 200,000 posts. (For whatever reason, the president did not include the new estimates of the true size of the Transportation Security Administration in his fact-sheets. Although his planners suggest that TSA will be 41,000 employees strong, the agency's own documents suggest 70,000 would be a more accurate, indeed conservative, estimate.)

It seems to me that Congress must ask five basic questions about the proposed reorganization as part of simple due diligence:

1. Should there be a reorganization at all?

The decision to create a new federal entity or reorganize existing agencies is not bound by a hard calculus, however. Rather, it involves a balancing test in which one must ask whether the nation would be better served by a new sorting of responsibilities. Simply asked, if a cabinet-level department or agency is the answer, what is the question? At least five answers come to mind.

? Creating a cabinet-level department can give a particular issue such as homeland security a higher priority inside the federal establishment. That is certainly what Congress intended when it elevated the Veterans Administration to cabinet status in 1988. Although the bill did not originate in this Committee, its members eventually concluded that veterans policy merited the heightened visibility and importance that would come with a statutory seat at the cabinet table, and the perquisites that come with it. .

? Creating a cabinet-level department can also integrate, coordinate, or otherwise rationalize existing policy by bringing lower-level organizations together under a single head. That is clearly what Congress intended in creating the Department of Energy in 1977. Congress and the president both agreed that the nation would be better served with a single entity in charge of energy policy than a tangled web of diffuse, often competing agencies. That is also what Congress tried to accomplish in establishing the Department of Defense in 1947, and the National Aeronautics and Space Administration in 1958. It is useful to note that all three of these examples were in response to perceived threats: the Cold War and communism in 1947, fears of losing the space race in 1958, and the moral equivalent of war for energy independence in 1977.

? Creating a cabinet-level department can provide a platform for a new or rapidly expanding governmental activity. That is what drove Congress to create 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. However, Congress did not place all housing programs within the new department.

? Creating a cabinet-level department can help forge a strategic vision for governing. That is what Congress expected in creating the Department of Transportation in 1966. The federal government had been involved in building roads and bridges for almost two hundred years when Congress created the department, but needed to coordinate its highway programs with its airports, airways, rail, and coastal programs. By pulling all modes of transportation under the same organization, Congress improved the odds that national transportation planning would be

better served. Congress expected the same in not disapproving the reorganization plan that created the Environmental Protection Agency in 1970.

? Finally, creating a cabinet-level department can increase accountability to Congress, the president, and the public by making its budget and personnel clearer to all, its presidential appointees subject to Senate confirmation, its spending subject to integrated oversight by Congress and its Office of Inspector General, and its vision plain to see. Although it is tempting to believe that such accountability is only a spreadsheet away, cabinet-status conveys a megaphone that little else in Washington does. One should never discount the impact of perquisites in the political island called Washington, D.C. That is certainly what Congress intended to convey in not disapproving the reorganization plan that created the Department of Health, Education, and Welfare in 1953. It is also what it intended twenty-five years later when it split the Department of Education from that entity.

Even if one can find ample history to support the creation of a department of homeland security, it is important to note that cabinet-making is not a panacea. Merely combining similar units will not produce coherent policy, for example, 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 agency. Bluntly put, garbage in, garbage out. Conversely, if an agency is working well in another department or on its own as an independent agency, there is no reason to believe that it will continue to work well in the new agency. Again, bluntly put again, if it ain't broke, don't move it.

Caveats noted, I believe the case for a department of homeland security is compelling: (1) homeland security demands the highest possible attention, not just now, but well into the future; (2) there is a desperate need for coordination, integration, and rationalization across the many agencies involved in the endeavor; (3) there is little doubt that the federal response will expand greatly in coming years; (4) there is a clear need for a strategic vision of how best to defend our borders; and (5) there is pressing need for greater transparency and accountability in homeland security policy. A department of homeland security could provide the platform for the integrated policy this nation needs.

2. Does this reorganization go too far?

The president was quite right to note that the proposed department is the largest since 1947, at least, that is, in terms of total employees. Although there have been larger reorganizations measured by dollars, the president's proposal dwarfs all others in total number of employees (200,000), and number of agencies (22).

Impressive though it is in size and scope, I believe the reorganization goes too far. The general rule of thumb, and it is just a rule of thumb, is that such merger and acquisition reorganizations should only combine agencies that share at least 50 percent of the same mission. That is certainly the case for the Customs Service, Immigration and Naturalization Service, Border Patrol, and Transportation Security Administration, all of which share a common commitment to homeland

security. That is not the case for many of the other agencies on the transfer list, including the Agriculture Department's Plant Health Inspection Service, the Coast Guard, and Federal Emergency Management Agency (FEMA). The Coast Guard estimates that only 25 percent of its duties involve homeland security, while FEMA began its remarkable transformation to a high-performing agency in the mid 1990s by abolishing its civil defense function to concentrate on natural disasters.

It is hard to know just where to draw the line on a reorganization of this size. Depending upon the headcount estimates, roughly 75 percent of the department's budget and personnel are located in the Border and Transportation Security directorate, which contains Customs, INS, TSA, and the Border Patrol.

My inclination, and it is just that, an inclination, would be to focus the department more directly on border security and information analysis and infrastructure protection. That would mean, for example, that FEMA would remain exactly where it is, that there would be no chemical, biological, radiological, and nuclear countermeasures directorate, meaning that APHIS would also stay where it is. Although Congress could always remove the Coast Guard, FEMA, APHIS, and the other units should the reorganization prove overly broad, my preference is to start with the most logical combinations, then add as needed. In a similar vein, no pun intended, Congress can always decide later to split the national pharmaceutical stockpile from the Public Health Service.

3. Can the proposed department be effectively managed?

The president's proposal provides extraordinary authority to manage the reorganization, so much so, in fact, that one wonders whether the reorganization can be managed at all. I am concerned about several of the proposed waivers, including the Sec. 733 reorganization authority, which would give Congress just 90 days to consider the consolidation, alteration, or termination of any entity transferred to the Department and established by statute. I think that authority is much too broad, and would urge Congress to consider alternative means of giving the secretary this flexibility, perhaps through a variation of the base closure commission of 1990s.

I am also concerned about two other waivers in the proposed legislation:

? Under the president's draft legislation, the new department would have 27 presidential appointments. The number is not unusual given the department's size and scope, but the president's appointing authority is unprecedented. Of the 27 homeland security positions, only 14 would be subject to Senate advice and consent. The rest, including 10 assistant secretaries would serve at the president's pleasure, becoming the first assistant secretaries in history to enter office without Senate review. Moreover, the secretary of homeland security would have complete freedom to determine the titles, duties, and qualifications for all 16 assistant secretaries. It is freedom that Congress has refused to give in the three most recent department bills.

? The president's proposal would also give the secretary authority to create a personnel system that is "flexible and contemporary." Although the two words are never defined, the implication is obvious: the new department would be free to design a new system from scratch. It is hard to blame the president for making the proposal. The current personnel system is beyond

comprehension. It is slow at the hiring, interminable at the firing, permissive at the promoting, useless at the disciplining, and penurious at the rewarding. The vast majority of federal employees describe the hiring process as slow and confusing, and a surprising quarter do not call it fair. And less than a third say that the federal government does a good job at disciplining poor performers.

I believe Congress should reject these proposals. The Senate cannot allow the president to appoint the first assistant secretaries in history without confirmation, and not just because such action is an affront to constitutional prerogatives. The president's proposal would create two tiers of assistant secretaries within the new department, one with all the prestige that comes from nomination and confirmation, the other a second-class status that comes from entering office through the back door.

Similarly, Congress as a whole cannot give the new secretary the unfettered civil-service waivers imagined in the legislation. The new secretary needs a workforce that hits the ground running, not one that spends its first days asking how the words "flexible" and "contemporary" might affect their future.

Congress has an obligation to do more than just say "no," however. To the contrary, it should bulldoze the bureaucratic prison that holds both appointees and employees captive.

? It could start by passing the Presidential Appointments Improvement Act co-sponsored by Senators Lieberman (D-CT) and Thompson (R-TN), and reported to the Senate floor last spring. The act would slim the government's ridiculously detailed financial disclosure form, and begin cutting down the number of presidential appointments to a more manageable number. It would also encourage the White House to streamline its own forms by asking whether the nation really needs to worry these days about whether a potential appointee has any traffic tickets over \$150 or has ever seen a marriage counselor.

? It could also take up the Federal Workforce Management Improvement Act, introduced last week by Senator George Voinovich (R-OH). The bill would give the federal government desperately needed, and clearly specified authorities for accelerating the hiring process, while paving the way for the large-scale reforms that are sure to come this fall from the National Commission on the Public Service chaired by Paul Volcker. Congress can also cherry pick from past statutes that have given other federal agencies specific authorities, most notably the 1998 Internal Revenue Service reforms, which gave the agency special authority to pay higher salaries and make faster hires.

4. Does the proposal leave anything out?

Although I believe that the president's proposal is too broad, I also believe it fails to address one key transfer: the Bureau of Consular Affairs. I am not an expert on the visa process, nor do I claim to understand the intricacies of embassy operations.

Perhaps that is why I simply do not understand how the secretary would actually use his visa-issuance authority. Under Sec. 403, the secretary is given "exclusive authority, through the Secretary of State, to issue regulations with respect to, administer, and enforce the provisions" of Sec. 104 of the Immigration and National Act and all other immigration and nationality laws. I

know of no other statute that gives one secretary of a department such authority over the secretary of another department. What if the Secretary of State refuses to issue the Secretary of Homeland Security's order, for example? It seems to me that if the president wants the Secretary of Homeland Security to issue regulations governing the functions of diplomatic and consular officers of the United States in connection with the granting or refusal of visas, the president should transfer the organizational units to the new department. That is precisely what the president proposes for the various units of other departments such as Agriculture, Health and Human Services, Treasury, and Justice.

I also noted with some chagrin that the president decided not to forward his own version of Senator Graham's legislation to create a statutory office of homeland security within the White House. Assuming that the president will continue to employ such an adviser, I believe Congress should give the adviser and his or her office the full statutory authority that it needs.