

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-381 }

REFORMING GOVERNMENT ACT OF 2018

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3137

TO PROVIDE FOR REFORMING AGENCIES OF THE FEDERAL
GOVERNMENT TO IMPROVE EFFICIENCY AND EFFECTIVENESS



NOVEMBER 26, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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REFORMING GOVERNMENT ACT OF 2018

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 3137]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3137) to provide for reforming agencies of the Federal Government to improve efficiency and effectiveness, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 3137 is to provide authority for the President to submit government reorganization proposals to Congress for expedited consideration. This bill provides the expedited reorganization authority for up to two years upon enactment and requires that the President provide certain information to Congress as a condition before Congress can use the expedited authority to consider the proposal.

II. BACKGROUND AND THE NEED FOR LEGISLATION

On March 13, 2017, President Donald Trump signed Executive Order 13781 “to improve the efficiency, effectiveness, and accountability of the executive branch by directing the Director of the Office of Management and Budget [(OMB)] to propose a plan to reorganize governmental functions and eliminate unnecessary agencies . . . components of agencies, and agency programs.”¹ To help inform the Federal Government reorganization plan, the Executive Order directed the head of each Federal agency to submit to OMB a plan to reorganize its agency to maximize efficiency, effectiveness, and accountability.² OMB directed agencies to submit plans that meet the following objectives:

[c]reate a lean, accountable, and more efficient government that works for the American people; [f]ocus the Federal government on effectively and efficiently delivering those programs that are the highest needs to citizens and where there is a unique Federal role rather than assuming current programs are optimally designed or even needed; [a]lign the Federal workforce to meet the needs of today and the future rather than the requirements of the past; and [s]trengthen agencies by removing barriers that hinder front-line employees from delivering results.³

The Executive Order directed OMB to issue a notice in the *Federal Register* soliciting public comments for suggestions on the individual agency plans and to consider these public comments when developing the Federal Government reorganization plan.⁴ The Executive Order instructed OMB to consider:

whether some or all of the functions of an agency, a component, or a program are appropriate for the Federal Government or would be better left to State or local governments or to the private sector through free enterprise; (ii) whether some or all of the functions of an agency, a component, or a program are redundant, including with those of another agency, component, or program; (iii) whether certain administrative capabilities necessary for operating an agency, a component, or a program are redundant with those of another agency, component, or program; (iv) whether the costs of continuing to operate an agency, a component, or a program are justified by the public benefits it provides; and (v) the costs of shutting down or merging agencies, components, or programs, including the costs of addressing the equities of affected agency staff.⁵

On June 21, 2018, OMB issued its Federal Government reorganization plan, entitled, “Delivering Government Solutions in the

¹ Exec. Order No. 13781, 82 Fed. Reg. 50, 13959 (Mar. 16, 2017).

² Exec. Order No. 13781, 82 Fed. Reg. 50, 13959 (Mar. 16, 2017).

³ Memorandum from Mick Mulvaney, Director, Off. of Mgmt. and Budget, Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce, M-17-22 (Apr. 12, 2017).

⁴ Exec. Order No. 13781, 82 Fed. Reg. 50, 13959 (Mar. 16, 2017).

⁵ Exec. Order No. 13781, 82 Fed. Reg. 50, 13959 (Mar. 16, 2017).

21st Century: Reform Plan and Reorganization Recommendations.”⁶ In the report, OMB noted:

[T]he public still believes that the Federal Government serves critical roles, and in some areas performs them well. However, public trust in the Federal Government has declined over the last decade, calling into question how well the current organizational constructs of Government are aligned to meet Americans’ needs in the digital age.⁷

OMB also noted that this reorganization plan serves as “a cornerstone to build productive, bipartisan dialogue around realigning the Federal Government mission delivery model to make sense in the 21st Century.”⁸ In this plan, the Trump Administration offered 32 cross-agency ideas for reorganizing the Federal Government and 50 agency-specific proposals to achieve more efficient and effective government operations for the public.⁹

The Committee held a hearing on July 18, 2018, to examine the Administration’s reorganization plan with OMB Deputy Director for Management Margaret Weichert.¹⁰ Ms. Weichert noted in her testimony that the reform proposal is a “starting point for public dialogue” and further testified:

At its core, reorganization aims to increase the efficiency, effectiveness, and accountability of how government serves its people. It’s not uncommon to see a large company change and realign its business model to respond to evolving technologies and customer needs. Even though its mission and priorities are different, the Federal government should be similarly responsive to changing customer expectations and technology-enabled opportunities to enhance mission delivery.¹¹

On July 26, 2018, the Committee’s Subcommittee on Regulatory Affairs and Federal Management held a hearing that focused on one of the ideas in the plan to reorganize the Office of Personnel Management (OPM) by transferring the agency’s human resources transactional services to the General Services Administration (GSA).¹² Then-OPM Director Dr. Jeff Pon testified at the hearing [m]erging certain OPM provided services with GSA functions will provide increased economies of scale and creates opportunity for

⁶ Off. of Mgmt. and Budget, Exec. Office of the President, Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations (June 21, 2018), available at <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>.

⁷ Off. of Mgmt. and Budget, Exec. Office of the President, Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations, 4 (June 21, 2018) (citing Pew Research Center, Public Trust in Government: 1958–2017 (Dec. 2017) and Pew Research Center, Government Gets Lower Ratings for Handling Health Care, Environment and Disaster Response (Dec. 2017)).

⁸ Off. of Mgmt. and Budget, Exec. Office of the President, Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations (June 21, 2018), available at <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>.

⁹ Off. of Mgmt. and Budget, Exec. Office of the President, Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations (June 21, 2018), available at <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>.

¹⁰ *Reviewing the Administration’s Government Reorganization Proposal: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 115th Cong. (2018).

¹¹ *Reviewing the Administration’s Government Reorganization Proposal: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 115th Cong. (2018) (statement of Margaret Weichert, Deputy Director for Management, Off. of Mgmt. and Budget), available at <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Weichert-2018-07-18.pdf>.

¹² *The Challenges and Opportunities of the Proposed Government Reorganization on OPM and GSA: Hearing Before the Subcomm. On Regulatory Affairs and Fed. Mgmt. of the S. Comm. on Homeland Security and Governmental Affairs*, 115th Cong. (2018).

significant cost-avoidance based on reductions in contract and IT duplication, as well as increased data sharing and availability.”¹³ GSA Administrator Emily Murphy added “[c]entralizing the transaction processing and IT for administrative functions in GSA, where it is our mission to provide excellent mission-support services, will allow for OPM to focus on their core strategic mission.”¹⁴ Dr. Pon echoed that this reorganization proposal “is an opportunity to elevate the Federal workforce management function and maximize the operational efficiency of human capital services.”¹⁵

Although the U.S. Constitution vests in Congress the authority to organize the Executive Branch,¹⁶ former presidential administrations have asked Congress to grant expedited government reorganization authority to allow it to execute cross-agency government reorganizations more efficiently. President Herbert Hoover first requested government reorganization authority, and Congress granted this request in 1932.¹⁷ The government reorganization authority allowed the President to: transfer independent executive agencies and/or their components to another executive department or executive agency; transfer executive agencies from one executive department to another executive department; consolidate or redistribute the functions of an executive department or of an executive agency, and designate and change the names and functions of any consolidated activity or agency.¹⁸ The statute authorized the President to issue an executive order directing any of these reorganization activities on his own, and required Congress to issue a resolution of disapproval within 60 days before the executive order became effective if it wanted to nullify any provision.¹⁹

From this first statute statutory grant in 1932 through the modifications made in 1984, Congress amended, extended, narrowed, or reactivated this government reorganization authority 16 times under both Republican and Democratic administrations.²⁰

The most recent version of the authority, amended in 1984 pursuant to the U.S. Supreme Court’s decision in *Immigration and Naturalization Service v. Chadha*,²¹ authorized the President to propose a reorganization plan to Congress that: transfers an agency or an agency component to another executive agency; abolishes all or part of the functions of an agency; consolidates or coordinates part of an agency or its functions with another part of the same agency; authorizes an officer to delegate any functions; or abolishes an agency or an agency component if it would no longer have any functions after effectuating the reorganization plan.²² The Presi-

¹³ *Id.* (statement of Dr. Jeff Pon, Director, Off. of Personnel Mgmt.).

¹⁴ *Id.* (statement of Emily Murphy, Administrator, Gen. Serv. Admin.).

¹⁵ *Id.* (statement of Dr. Jeff Pon, Director, Off. of Personnel Mgmt.).

¹⁶ U.S. Const. art I.

¹⁷ Henry Hogue, Cong. Research Serv., R42852, Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress 5 (Dec. 11, 2012).

¹⁸ Legislative Appropriations Act for Fiscal Year 1933, Pub. L. No. 72–212, §§ 401, 403, 47 Stat. 413 (1933).

¹⁹ Legislative Appropriations Act for Fiscal Year 1933, Pub. L. No. 72–212, §§ 403, 407, 47 Stat. 413, 414–15 (1933).

²⁰ Henry Hogue, Cong. Research Serv., R42852, Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress 4 (Dec. 11, 2012).

²¹ Reorganization Act Amendments of 1984, Pub. L. No. 98–614, 98 Stat. 3192 (1984); *Immigration and Naturalization Service v. Chadha*, 419 U.S. 919 (1983) (holding the exercise of the legislative veto by Congress is unconstitutional).

²² 5 U.S.C. § 903(a). The President was not authorized to propose a reorganization plan that would create a new executive department, rename an existing executive department, abolish or transfer an executive department or independent regulatory agency, or consolidate two or more executive departments or two or more independent regulatory agencies. 5 U.S.C. § 905.

dent was required to submit the reorganization plan to Congress for approval, along with detailed information about implementation of the plan and estimates of expenditures or cost savings for the plan;²³ no more than three reorganizations plans could be pending before the Congress at any one time.²⁴

Once a plan was submitted to Congress, the House Committee on Government Operations and the Senate Committee on Governmental Affairs would have 75 calendar days of continuous session of Congress to approve or disapprove of the resolution.²⁵ If the committees did not act within this 75-day period, then the resolution would be discharged from the committee and placed on the calendar of the House or Senate.²⁶ Once there, any Member of the House or Senate could move to proceed to consideration of the bill, with the motion not being debatable.²⁷ If the motion was agreed to, debate on the resolution was limited to ten hours,²⁸ after which time a vote on final passage of the resolution must occur.²⁹ If Congress did not vote on a resolution within 90 days of the plan being submitted to Congress, or if Congress voted against the resolution, then the resolution was considered to be disapproved by Congress, and the President could not implement the reorganization plan under the expedited government reorganization authority.³⁰ The authority for Congress to receive and consider reorganization plans under this expedited congressional procedure expired on December 31, 1984.³¹

Between 1932 and 1984, presidents submitted 126 reorganization proposals to Congress, of which 93 were implemented and 33 were affirmatively rejected by Congress.³² Outcomes of the implemented reorganizations included the creation of the Executive Office of the President,³³ the Office of Science and Technology Policy in the Executive Office of the President,³⁴ the Environmental Protection Agency,³⁵ the National Oceanic and Atmospheric Administration in the Department of Commerce,³⁶ the Drug Enforcement Administration in the Department of Justice,³⁷ the Federal Emergency Management Agency,³⁸ the Office of Personnel Management, the Merit Systems Protection Board, and the Federal Labor Relations Authority (in conjunction with the Civil Service Reform Act of 1978),³⁹ and the transfer of international trade policy coordination and ne-

²³ 5 U.S.C. § 903(b).

²⁴ 5 U.S.C. § 903(b).

²⁵ 5 U.S.C. § 909–910.

²⁶ 5 U.S.C. § 911.

²⁷ 5 U.S.C. § 912(a).

²⁸ 5 U.S.C. § 912(b).

²⁹ 5 U.S.C. § 912(c).

³⁰ 5 U.S.C. § 906(a).

³¹ 5 U.S.C. § 908.

³² Henry Hogue, Cong. Research Serv., R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress 4* (Dec. 11, 2012).

³³ Exec. Order No. 8248, 4 Fed. Reg. 3864 (Sept. 9, 1939). *See also* Reorganization Plan No. 1 of 1939, 53 Stat. 1423, (1939) and Reorganization Plan No. 2 of 1939, 53 Stat. 1431 (1939).

³⁴ Reorganization Plan No. 2 of 1962, 76 Stat. 1253 (1962).

³⁵ Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (1970).

³⁶ Reorganization Plan No. 4 of 1970, 84 Stat. 2090 (1970).

³⁷ Reorganization Plan No. 2 of 1973, 87 Stat. 1091 (1973).

³⁸ Reorganization Plan No. 3 of 1978, 92 Stat. 3788 (1978).

³⁹ Reorganization Plan No. 2 of 1978, 92 Stat. 3783 (1978). *See also* Civil Service Reform Act of 1978, Pub. L. No. 95–454, 92 Stat. 1111 (1978).

gotiations to the U.S. Trade Representative in the Executive Office of the President.⁴⁰

President Obama asked Congress to reauthorize the government reorganization authority in 2012,⁴¹ and lamented the absence of the authority:

In 1984 . . . Congress stopped granting [reorganization authority]. And when this process was left to follow the usual congressional pace and procedures, not surprisingly, it bogged down. So congressional committees fought to protect their turf and lobbyists fought to keep things the way they were because they were the only ones who could navigate the confusion. And because it's always easier to add than subtract in Washington, inertia prevented any real reform from happening. Layers kept getting added on and added on and added on.⁴²

As part of his request for the legislation to be reauthorized, President Obama indicated that his first reorganization proposal submitted to Congress would include consolidating six business and trade agencies.⁴³ Senators Joseph Lieberman and Mark Warner introduced legislation one month later in response to President Obama's request for reorganization authority.⁴⁴ The bill sought to reauthorize the 1984 government reorganization authority for a period of two years with a few modifications: it would permit the abolishment or transfer of an independent regulatory agency or consolidation of two or more independent regulatory agencies, and add a requirement that all reorganization proposals submitted to Congress by the President either result in a decrease in the number of Federal agencies or in cost savings in performing agency functions.⁴⁵

The Committee held a hearing in March 2012 to discuss the bill and President Obama's reorganization proposal, but the Committee never brought the bill to a vote.⁴⁶

Like the 2012 proposal, S. 3137 would reauthorize the 1984 reorganization authority for a period of two years and require that all reorganization proposals submitted either result in a decrease in the number of Federal agencies or in cost savings in performing agency functions. In addition, it would require the President to provide more information to Congress with a reorganization proposal, and would modify the conditions for congressional approval of a reorganization proposal.

Specifically, S. 3137 would allow the President to submit to Congress a reorganization proposal that includes the creation of a new

⁴⁰ Reorganization Plan No. 3 of 1979, 93 Stat. 1381 (1979). *See also* Henry Hogue, Cong. Research Serv., R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress 37* (Dec. 11, 2012) (citing Remarks on Government Reform, 2012 Daily Comp. Pres. Doc. 1 (Jan. 13, 2012)).

⁴¹ Press Release, President Barack Obama, *President Obama Announces Proposal to Reform, Reorganize, and Consolidate Government* (Jan. 13, 2012).

⁴² Henry Hogue, Cong. Research Serv., R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress 37* (Dec. 11, 2012) (citing Remarks on Government Reform, 2012 Daily Comp. Pres. Doc. 1 (Jan. 13, 2012)).

⁴³ Press Release, President Barack Obama, *President Obama Announces Proposal to Reform, Reorganize, and Consolidate Government* (Jan. 13, 2012).

⁴⁴ S. 2129, 112th Cong. (2012).

⁴⁵ S. 2129, 112th Cong., § 2 (2012).

⁴⁶ *Retooling Government for the 21st Century: The President's Reorganization Plan and Reducing Duplication; Hearing Before the S. Comm. on Homeland Security and Governmental Affairs, 112th Cong. 112-531* (2012).

agency that is not part of an existing executive department or agency. The bill requires the President to consult with the agencies affected by a reorganization proposal, to respond within 30 days to any congressional request for background information of a proposal, and to submit to Congress, for oversight purposes, any reorganization plan that the President intends to implement with an independent statutory authority rather than reorganization authority.

The bill prevents a Committee from discharging a proposal or a member to move to approve a proposal for 45 days unless the Congressional Budget Office (CBO) submits a cost estimate. It also clarifies that the 75-day window for committee consideration of a reorganization proposal does not begin until the expiration of this 45-day period or the issuance of a CBO cost estimate, whichever occurs earlier.

S. 3137 would extend the debate time on a reorganization proposal once the Senate or House has moved to approve the proposal to 30 hours, and prohibits any motion to limit debate.

As amended, the bill also requires a three-fifths vote in the Senate for approval, unless the resolution for the proposal is co-sponsored by five members of each political party, or independent members who caucus with one of the two parties, in which case the proposal can be approved with a simple majority vote.

Should Congress approve a reorganization proposal submitted under this authority, this bill requires the President to report to Congress within one year of approval on the implementation of the proposal and any performance improvements, costs, cost savings achieved that year, and projected cost savings over the subsequent five and ten-year periods.

III. LEGISLATIVE HISTORY

S. 3137 was introduced on June 26, 2018, by Senators Ron Johnson (R-WI) and James Lankford (R-OK). The bill was referred to the Committee on Homeland Security and Governmental Affairs on June 26, 2018. Senator Heidi Heitkamp (D-ND) was added as a co-sponsor to the bill on September 27, 2018.

The Committee considered S. 3137 at a business meeting on September 26, 2018. Senator Heidi Heitkamp offered an amendment that would: prohibit the consideration of any reorganization plan until CBO issued a cost estimate for the plan; require OMB to report on the implementation of the reorganization proposal within one year of its approval by Congress; require OMB to submit to Congress, for oversight purposes, any reorganization plan that the President would implement with an independent statutory authority and an explanation of that independent statutory authority; require the President to respond within 30 days to a request from Congress for information about a plan; prohibit the consideration of a plan if the President had not completely responded to a request from Congress for background information about the plan; and require OMB to submit to Congress any alternative reorganization proposals that the President decided not to pursue in a reorganization plan. The amendment would also require three-fifths of the members of the Senate to vote for passage of the resolution.

Senator Heitkamp modified her amendment to: no longer prohibit congressional consideration of a reorganization plan if a re-

quest from Congress for background information was outstanding; no longer require submission of alternative reorganization proposals; and allow consideration of a reorganization plan upon the earlier of either the issuance of a CBO cost estimate or 45 days after submission of the plan to Congress.

At the business meeting, Committee members debated Senator Heitkamp's proposal to require a three-fifths, or 60-vote, threshold. Senator Heitkamp argued that a higher vote threshold would require that the proposals be bipartisan:

I think it is a matter of whether we want to get something done and what we do has permanency We need to sit down in a bipartisan way and com[e] to a conclusion on how we are going to structure and oversee and provide the critical kind of permanency—not permanency, but the critical stability that we can for State agencies.⁴⁷

Senators Johnson, Lankford, and Enzi spoke in support of a simple majority threshold. Senator Enzi explained further:

I have tried to do a number of reorganizations, and there is usually bipartisan opposition to a great extent, which means there is also bipartisan support to a great extent. And I do not think there is anything tougher than making some kind of a change that affects perhaps chairmanships and jurisdiction, and . . . where the whole committee might vote against it because it is infringing on a small part of their jurisdiction. You can pass it if you get 51 votes. I would rather see an amendment that says it has to be a bipartisan 51 votes. That might solve the problem rather than going to the 60 votes and maybe never being able to get any reorganization done.⁴⁸

After further discussion on the issue, Senator Heitkamp proposed modifying her amendment to require that a reorganization plan have a 60-vote threshold on the Senate floor, unless the plan is sponsored by at least five members from the majority party and five members from the minority party; in that case, the plan would need a simple majority vote on the Senate floor.

Senator Lankford concurred with this proposal, noting it was a “way to be able to make sure [reorganization] is bipartisan.”⁴⁹

The Heitkamp amendment, as modified, was adopted favorably by voice vote with Senators Johnson, Portman, Lankford, Enzi, Hoeven, McCaskill, Heitkamp, Peters, Hassan, Harris, and Jones present. The legislation, as amended, was passed by voice vote with Senators Johnson, Portman, Lankford, Enzi, Hoeven, McCaskill, Heitkamp, Peters, Hassan, Harris, and Jones present. Senator Harris voted “no” for the record.

⁴⁷ Business Meeting, S. Comm. on Homeland Security and Governmental Affairs, 115th Cong. (Sept. 26, 2018) (statement of Senator Heidi Heitkamp).

⁴⁸ Business Meeting, S. Comm. on Homeland Security and Governmental Affairs, 115th Cong. (Sept. 26, 2018) (statement of Senator Michael Enzi).

⁴⁹ Business Meeting, S. Comm. on Homeland Security and Governmental Affairs, 115th Cong. (Sept. 26, 2018) (statement of James Lankford).

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “Reforming Government Act of 2018.”

Section 2. Providing consolidation authority

Subsection (a) defines the term “efficiency-enhancing plan” and adds “creation” to the definition of “reorganization.”

Subsection (b) allows reorganization plans to create a new Executive Branch department, abolish, transfer or rename an existing Executive Branch department, consolidate two or more Executive Branch departments, or create a new Executive Branch agency that is not part of an existing Executive Branch or independent agency.

Subsection (b) amends the current reorganization authority statute to require the President to consult with agencies that would be affected by a reorganization plan and, in its proposal submitted to Congress, to describe how OMB will measure the performance of implementation of the reorganization plan.

Section 3. Duration and scope of authority

Subsection (a) provides the President with reorganization authority for up to two years after enactment of this bill and requires that any plan submitted to Congress must be certified by the OMB Director as likely to result in a reduction in the number of agencies or cost savings. Any reorganization proposal submitted to Congress will be subject to the congressional approval process under the reorganization authority. The President will also be required to provide to Congress, for oversight purposes, any reorganization plan that the President will implement under an independent statutory authority and an explanation of that independent statutory authority.

Subsection (b) requires the President to submit to Congress a report on the implementation of a reorganization plan within one year after receiving Congressional approval. This report must describe the steps taken for implementation, any performance improvements that have occurred as a result, the costs expended for implementation, and any cost savings achieved as a result. The report must also include five and ten-year projections of cost expenditures for implementation and savings to be achieved.

Subsection (c) reactivates the statutory rules of the Senate and the House of Representatives for consideration of reorganization plans for up to two years after enactment of this bill.

Subsection (d) removes the reference to the 20th century in the date for the terms to be used in the joint resolution of a reorganization plan.

Subsection (e) updates the names of the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives in 5 U.S.C. §910. This subsection also requires CBO to conduct a financial analysis of the reorganization proposal, during which the 75-day period for congressional consideration will be suspended. Congress may move to discharge the resolution if CBO

issues a score or if 45 days have passed since the resolution was referred to the committee.

Subsection (f) extends the period of debate for a resolution from 10 hours to 30 hours and bars any motion to limit debate. Under this subsection, if a resolution has 5 cosponsors from the Senate majority party and 5 cosponsors from the Senate minority party, or independent members who caucus with one of the two parties, then a simple majority is needed for passage. If a resolution has any fewer than five cosponsors from either party, then three-fifths of the members of the Senate must vote for passage.

Section 4. Severability

This section provides that, in the event any provision or application of a provision of this bill is held to be unconstitutional, the remainder of this bill shall not be affected.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 22, 2018.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3137, the Reforming Government Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 3137—Reforming Government Act of 2018

S. 3137 would amend federal law concerning the authority of the President to reorganize the federal government. Specifically, the bill would authorize the President to develop a plan to reorganize the federal government and to present that plan to the Congress under an expedited legislative procedure. The new authority would last for two years after enactment. The Administration would need to report regularly to the Congress on the status, costs, and savings of any resulting reorganization. Finally, the Congressional Budget

Office would be required to prepare a financial analysis of any reorganization plan submitted to the Congress under S. 3137.

CBO has no basis to estimate the number of government reorganizations that may be proposed under the bill. Executive Order 13781 required the Office of Management Budget to develop a plan to reorganize the executive branch. That plan was released in June 2018. Any significant budgetary effects from implementing government reorganization plans would depend on future legislation. Thus, CBO estimates that implementing S. 3137 would have no significant effect on the federal budget because it would not expand the duties of executive agencies.

Enacting S. 3137 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 3137 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 3137 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 9—EXECUTIVE REORGANIZATION

* * * * *

Table of Sections.

Sec. 901. * * *

Sec. 902. * * *

Sec. 903. [Reorganization plans] *Reorganization plans; permissible actions.*

Sec. 904. [Additional contents of the reorganization plan] *Contents of reorganization plans; amendment procedures.*

* * * * *

Sec. 902. Definitions.

* * * * *

(1) * * *

[(2) “reorganization” means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and] (2) “*efficiency-enhancing plan*” means a reorganization plan that the Director of the Office of Management and Budget determines will result in, or is likely to result in—

(A) a decrease in the number of agencies; or

(B) cost savings in performing the functions that are the subject of that plan;”

(3) “officer” is not limited by section 2104 of this title [.]]; and

(4) “reorganization” means a transfer, consolidation, coordination, authorization, abolition, or creation, referred to in section 903 of this title.

Sec. 903. Reorganization plans; permissible actions.

[(a) Whenever] Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

(1) * * *

* * * * *

(5) the authorization of an officer to delegate any of his functions; [or]

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions [.]]; or

(7) the creation of a new agency that is not a component or part of an existing executive department or independent agency.

【The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.】

[(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President’s message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the imple-

mentation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

[(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903–905 of this title, which modifications or revisions shall thereafter be treated as part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.]

Sec. 904. [Additional contents of reorganization plans] Contents of reorganization plans; amendment procedures.

[A reorganization plan transmitted by the President under section 903 of this title—]

(a) *A reorganization plan prepared by the President under section 903—*

[(1) may, subject to section 905, change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

[(2) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other types of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

[(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

[(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

[(5) shall provide for terminating the affairs of an agency abolished.]

(1) shall be transmitted by the President (bearing an identification number) to Congress together with a declaration that, with respect to each reorganization included in the plan, the President has found, in consultation with the affected agencies, that the reorganization is necessary to carry out a policy set forth in section 901(a);

(2) shall be delivered to both Houses on the same day and to each House while it is in session;

(3) shall specify, with respect to each transfer, consolidation, coordination, authorization, abolition, or creation of a function

included in the plan, the statutory authority for the exercise of the function;

(4) shall—

(A) provide a financial analysis estimating any reduction or increase in expenditures (itemized so far as practicable) associated with maximizing the net benefits of implementation of the plan, using both quantitative and qualitative measures, according to cost-benefit analysis practices set by Executive orders and the Office of Management and Budget; and

(B) describe any improvements in management, delivery of Federal services, or execution of the laws and any increases in efficiency of Government operations that are expected to be realized as a result of the reorganizations included in the plan;

(5) shall include an implementation section that shall—

(A) describe in detail—

(i) the actions necessary or planned to complete the reorganization;

(ii) the anticipated nature and substance of any orders, directives, or other administrative or operational actions that are expected to be required for completing or implementing the reorganization; and

(iii) any preliminary actions that have been taken in the implementation process;

(B) contain a projected timetable for completion of the implementation process; and

(C) describe how the affected agencies and the Office of Management and Budget will measure performance of the implementation of the reorganization plan;

(6) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(7) shall provide for the transfer of unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, to the extent—

(A) with respect to unexpended balances, the balances will be used for the purposes for which the appropriation was originally made; and

(B) the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective;

(8) shall provide for terminating the affairs of an agency abolished;

(9) may, subject to section 905, change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head; and

(10) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other types of reorganization) if the President finds, and in his message transmitting the plan

declares, that by reason of a reorganization made by the plan the provisions are necessary.

【A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of the agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.】

(b) Not later than 30 days after the date of the request, the President shall submit to Congress any background or other information requested by Congress in connection with its consideration of a reorganization plan.

(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which a reorganization plan is transmitted to Congress, unless a resolution described in section 909 relating to the plan has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903 and 905 and this section, which modifications or revisions shall thereafter be treated as part of the reorganization plan originally transmitted and shall not affect the time limits otherwise provided for in this chapter. The President may withdraw the plan any time before the end of the period of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(d) A reorganization plan transmitted by the President in accordance with subsection (a)(10)—

(1) may not eliminate an enforcement function or statutory program;

(2) may provide that the head of any agency be an individual or a commission or board with more than 1 member; and

(3) in the case of an appointment of the head of such an agency—

(A) may not fix the term of office at more than 4 years;

(B) may not fix the rate of basic pay to be in excess of the amount found by the President to be applicable to comparable officers in the executive branch; and

(C) if the appointment is not to a position in the competitive service, shall require appointment to the position to be by the President, by and with the advice and consent of the Senate.

(e) Not more than 3 reorganization plans may be pending before Congress at 1 time.

Sec. 905. Limitation on powers.

(a) * * *

(1) 【creating a new executive department or renaming an existing executive department,】 abolishing or transferring an 【executive department or】 independent regulatory agency, or

all the functions thereof, or consolidating ~~two or more executive departments or two~~ 2 or more independent regulatory agencies, or all the functions thereof;

* * * * *

~~[(5) creating a new agency which is not a component or part of an existing executive department or independent agency;]~~

~~[(6)] (5) increasing the term of an office beyond that provided by law for the office; or~~

~~[(7)] (6) dealing with more than one logically consistent subject matter.~~

(b) A provision contained in the reorganization plan may take effect only ~~[if the plan is transmitted to Congress (in accordance with section 903(b)) on or before December 31, 1984.]~~ *if the plan is—*

(1) transmitted to Congress (in accordance with section 904 on or before the date that is 2 years after the date of enactment of the Reforming Government Act of 2018; and

(2) an efficiency enhancing plan.

(c) Any reorganization plan prepared by the President (in accordance with section 903 and subsection (a) of this section) that purports to advance the policies described in section 901(a) shall be subject to the approval process under this chapter, absent an independent statutory authority to implement the plan. If the President implements a reorganization plan that advances policies described in section 901(a) and relies on an independent statutory authority, the President shall transmit to Congress an explanation of the plan and its independent statutory authority consistent with the requirement of section 903 and 904 and this section, which Congress may use, at its discretion, to conduct oversight of the reorganization plan for any purpose consistent with the mandates of Congress under Article I of the Constitution of the United States.

Sec. 906. Effective date and publication of reorganization plans.

(a) * * *

* * * * *

(e) Not later than 1 year after the date on which a reorganization plan takes effect, and upon request by any Member of Congress, the President shall transmit to Congress a report describing in detail—

(1) the steps taken to implements the reorganization plan;

(2) any improvements to performance that occurred as a result of implementation of the reorganization plan;

(3) the costs expended and amounts saved during the period beginning on the date on which the reorganization plan took effect and ending on the date on which the report is submitted; and

(4) the costs projected to be expended and amounts projected to be saved during—

(A) the period beginning on the date on which the reorganization plan took effect and ending on the date that is 5 years after that effective date; and

(B) the period beginning on the date on which the reorganization plan took effect and ending on the date that is 10 years after that effective date.

* * * * *

Sec. 908. Rules of the Senate and House of Representatives on reorganization plans.

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with [section 903(b) of this chapter] on or before December 31, 1984] *section 904*) on or before the date that is 2 years after the date of enactment of the *Reforming Government Act of 2018*.

* * * * *

Sec. 909. Terms of resolution.

For the purpose of sections 908 through 912 of this title, “resolution” means only a joint resolution of the Congress, [the matter after the resolving clause of which is as follows: “That the Congress approves the reorganization plan numbered _____ transmitted to the Congress by the President on _____, 19____.”], and includes such modifications] *the matter after the resolving clause of which is as follows: “That the Congress approves the reorganization plan numbered _____ transmitted to the Congress by the President on _____, .”, and includes such modifications* and revisions as are submitted by the President under [section 903(c) of this chapter] *section 904(c)*. The blank spaces are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

* * * * *

Sec. 910. Introduction and reference of resolution.

(a) No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under section [903] *904*, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the [Government Operations Committee of the House] *Committee on Oversight and Government Reform of the House of Representatives*, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the [Governmental Affairs Committee of the Senate] *Committee on Homeland Security and Governmental Affairs of the Senate*, or by a Member of Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the [Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House] *Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives*, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution’s introduction.

(c)(1) *After a resolution with respect to a reorganization plan is referred to committee under subsection (b), the Congressional Budg-*

et Office shall perform a financial analysis of the reorganization plan.

(2) The 75-day period under subsection (b) and section 911 shall be tolled and it shall not be in order in the Senate or House of Representatives for a committee to report or for a Member to move to discharge a resolution until the earlier of—

(A) 45 days after the date on which the resolution was referred to the committee; or

(B) the date on which the committee receives the financial analysis of the Congressional Budget Office.

* * * * *

Sec. 912. Procedure after report or discharge of committee; debate; vote on final passage.

(a) * * *

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than **ten** 30 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion to further limit debate **is in order and not debatable** *is not in order*. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

[(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.]

(c)(1)(A) In the Senate, immediately following the conclusion of the period of debate on a resolution relating to a reorganization plan under subsection (b), including any debate on any motions and appeals, and a single quorum call at the conclusion of the debate, if requested in accordance with the rules of the Senate, the Senate shall vote on passage of the resolution.

(B) A vote under subparagraph (A) shall be agreed to only upon the affirmative vote of three-fifths of the Members, duly chosen and sworn, unless the resolution is cosponsored by not less than 5 Senators who are members of, or caucus with, the party in the minority in the Senate and by not less than 5 Senators who are members of, or caucus with, the party in the majority in the Senate, in which case the resolution shall be agreed to upon an affirmative vote of a majority of those voting, a quorum being present.

(2) In the House of Representatives, immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the House of Representatives, the House of Representatives shall vote on passage of the resolution.