

GAO

Testimony

Before the Committee on Rules,  
House of Representatives

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GOVERNMENT  
MANAGEMENT

Observations on the  
President's Proposed  
Freedom to Manage Act

Statement of David M. Walker  
Comptroller General of the United States





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Mr. Chairman and Members of the Committee:

Good afternoon. I appreciate the opportunity to discuss the Freedom to Manage legislative proposal transmitted by the President to the Congress. Both this Congress and the Administration are to be commended for increasing the focus on how to improve the efficiency and effectiveness of the federal government as we move into the 21<sup>st</sup> century. GAO has sought to assist the Congress and the executive branch in considering the actions needed to support the transition to a more high performing, results-oriented, and accountable federal government. We believe that it is crucial for both the Congress and the executive branch to work together in a constructive manner on “good government” issues that are designed to help achieve continuous improvement of the federal government. At the same time, the Congress has authorization, appropriation, and oversight roles that must be considered in connection with any related matters.

The fundamental issue raised by this proposed legislation is not whether government operations can and should be improved, but rather, how best to deal with these issues. The Administration’s proposal would fundamentally alter the process by which the Congress and the executive branch typically interact in connection with a potentially broad range of management-related legislative proposals. Therefore, the question at hand is whether and how the Congress wishes to change the nature of its normal deliberative process. Importantly, the proposal is very open-ended in the range of proposed changes to the management and organization of the federal government that could be presented to the Congress for expedited consideration.

My statement today will focus on several key issues:

1. A comprehensive review, reassessment, and reprioritization of what government does and how it does business is clearly warranted. This is especially vital in view of changing priorities and the compelling need to improve the efficiency and effectiveness of government in light of our long-range fiscal challenges.
2. The Freedom to Manage proposal was evidently motivated, in part, by a desire to eliminate wasteful, redundant, and inefficient reporting and other mandates. GAO has previously recommended to the executive branch that a comprehensive and governmentwide review in this area was appropriate. As a result, the Administration’s decision to conduct such a review has great merit.

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3. While the thrust of this review is desirable and some expedited congressional consideration may well be appropriate for specific issues, the Congress has an important role to play in management reform initiatives, especially from an authorization and oversight perspective. The following points are relevant:
- The Freedom to Manage Act is very broad in scope and contains several provisions that would significantly affect the scope and timing of related congressional debate and involvement in connection with a range of related legislative proposals.
  - While in the past the Congress has adopted “fast track” approaches for specific areas, the design and broad scope of this proposal would alter the relative influence of the Congress on the administration in addressing a broad range of federal management issues. Depending on the nature of the legislative proposals that will be submitted, they could have profound implications for the relative role the Congress plays in developing legislation and conducting oversight to enhance the performance and ensure the accountability of the executive branch.

Presumably, the Congress will want to obtain the input of GAO and/or other parties before enacting any substantive proposals. As a result, any expedited consideration timeframes should allow for a reasonable period of time for this to occur.

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## Reassessing Government Operations to Improve Management and Efficiency

The Congress and the Administration face a series of daunting strategic and operational challenges to improve the performance and accountability of the federal government.<sup>1</sup> The federal government must continue to implement, and as appropriate enhance, the already enacted statutory management framework designed to maximize the performance and assure the accountability of the federal government. Meeting the challenges of the 21st century will also require repositioning government to address a range of key themes outlined in GAO’s strategic plan for supporting the Congress. Addressing these challenges will require a fundamental review, reassessment, and reprioritization of the government’s roles and responsibilities.<sup>2</sup> The federal government will need to enhance interagency coordination and integration activities, work better with other levels of

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<sup>1</sup> See *High Risk Series: An Update* (GAO-01-263, Jan. 2001) and *Major Management Challenges and Program Risks: A Governmentwide Perspective* (GAO-01-241, Jan. 2001)

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government, with nongovernmental organizations, and with the private sector—both domestically and internationally—to achieve results and desired outcomes.

The statutory framework and other legislation enacted during the 1990s demonstrate the Congress' capacity to deal with both specific program and governmentwide management reform proposals. Through the creation of the existing statutory framework, the Congress sought to improve the fiscal, program, and management performance of federal agencies, programs, and activities. For example, the Government Performance and Results Act (GPRA) is a central component of the existing statutory management framework, which includes other major elements, such as the Chief Financial Officers (CFO) Act, and information resources management improvements, such as the Clinger-Cohen Act. These laws provide information that is pertinent to a broad range of management-related decisions to help promote a more results-oriented management and decision-making process.

The Congress has played a central role in management improvement efforts throughout the executive branch and has acted to address several individual high-risk areas through both legislative and oversight activities. This Administration appears to be taking these important areas very seriously in setting the President's Management Agenda and working to implement it. Several areas, such as governmentwide human capital management, correspond to areas that we have designated as high-risk. In addition, we have been engaged in ongoing efforts to work with the Office of Management and Budget (OMB) in a constructive manner on a range of "good government" issues. The Administration has also signaled its intent to undertake a comprehensive review of the performance and relevance of the base of government programs and operations as part of the budget process—a review that is both important and necessary.

Just as the Congress has legislated tools to help improve management and program delivery, there is little doubt that some legislative provisions currently exist that may impede more economical, efficient, and effective government operations. Presumably, this is the premise behind the Freedom to Manage Act. However, as we reported in 1997, when OMB attempted to implement a related legislative managerial accountability and flexibility pilot project, agencies generally found that many of these

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<sup>2</sup> GAO's *Strategic Plan, 2000-2005*.

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requirements had been self-imposed and, as a result, they could implement needed changes themselves by revising internal procedures or eliminating unnecessary regulations.<sup>3</sup> More importantly, as submitted, the Freedom to Manage Act would allow the Administration to propose a broad range of both substantive and nonsubstantive proposals. It would also provide a vehicle to propose new legislation, as well as repeal or revise existing legislation.

I would like to commend the Administration for introducing a companion bill, the Managerial Flexibility Act. By way of contrast to the Freedom to Manage Act, this bill would make statutory changes to promote a specific set of management reforms in the areas of human capital, budgetary accounting, and property management. Greater flexibility would be provided to executive branch managers to address discrete management functions with defined and discrete goals and purposes. For example, the proposed early retirement and buy-out authorities both make appropriate recognition of the need to consider employee skills and knowledge, in addition to longevity, when making such decisions. Although we may have some suggestions for changing specific provisions and for other possibilities that should be covered, on the whole this bill constitutes an important step in addressing some of the long-standing challenges within the federal government.

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## Provisions That Constrain Congressional Involvement

The Freedom to Manage Act contains several provisions that would significantly limit traditional congressional debate and involvement. As noted above, this bill has a very broad scope and would establish an expedited legislative process to consider a broad range of proposals, including eliminating or reducing barriers to efficient government operations posed by existing laws as well as new and potentially substantive and controversial reform proposals. For example, the Administration's proposals could apply to organizational structures, program consolidations, program or regulatory requirements, reporting provisions, and delivery mechanisms. The act could affect both agency-specific and governmentwide policies, and could be used to eliminate or modify existing laws, whether in authorization or appropriation acts, as well as to provide new authorities.

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<sup>3</sup> *GPRA: Managerial Accountability and Flexibility Pilot Did Not Work as Intended* (GAO/GGD-97-36, April 10, 1997).

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Traditionally, congressional and executive branch considerations of policy trade-offs are needed to reach a reasonable degree of consensus on the appropriate federal response to any substantive national need. The provisions of this legislation mandate that any proposal submitted by the President under this act must be introduced into the Congress within a short time frame, and reported out of Committee within a specified time period. Floor consideration would follow soon thereafter—apparently regardless of other matters pending before the Congress. The amount of time for debate is severely restricted, and amendments are not in order. These very tight time frames may—depending on the nature and scope of the proposals—prevent the Congress from fully considering the proposals’ key implications or obtaining necessary analysis and perspective from GAO and others. Congressional deliberative processes serve the vital function of both gaining input from a variety of clientele and stakeholders affected by any changes and providing a check and counterbalance to the executive branch. This normal legislative process is not a model of efficiency but it does help ensure that any related actions have broad support.

Restrictions on Committee consideration and/or amendments can change the legislative process with its normal give and take into an expedited referendum on the President’s proposals. Under the Administration’s bill the authorizing committees would be cut out of the process. Essentially, this would limit the Congress’ ability to garner valuable input through conducting hearings and other means. This is especially true in connection with proposals for new authorities versus those proposals designed to revise or repeal outdated, redundant, or inefficient reporting requirements. Moreover, it could undermine support for some proposals by forcing “all or nothing” choices on legislative packages.

By requiring an expedited congressional vote on presidential proposals without amendment, the Freedom to Manage bill would alter the traditional role of the Congress in the legislative process. The President would gain substantial leverage to define the issues and the Congress’ ability to consider carefully any proposal or to build consensus as to the right approach to a problem would suffer.

The bill appears to be based on two assumptions: (1) that many management problems stem from accumulation of incremental legislative provisions over time and (2) that the regular legislative process for deliberating presidential proposals is unduly slow and cumbersome. However, it is worth remembering that the Congress has often achieved major changes in highly charged and complex areas through the normal

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deliberative processes—welfare and telecommunications reform are two examples. Moreover, special procedures were not needed to prompt the Congress to pass the existing statutory management framework mentioned earlier. In fact, the passage of these keystone legislative initiatives and the subsequent persistent oversight provided by congressional committees has propelled the Congress into a major leadership role in governmentwide management reform efforts.

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## Implications for Congressional Oversight

Given the breadth of this legislation, the key question is not whether statutory changes in organizations, program or regulatory requirements, or delivery mechanisms are warranted but rather whether the Congress wishes to change the nature of its deliberative process to address the broad, undefined array of issues that might conceivably fall under the rubric of government efficiency. Every administration has defined an agenda for management improvement in its own way. Therefore, the key issue at hand is how to make changes and reforms and what the respective roles of the Congress and the executive branch should be in this process.

I do not want to suggest that expedited consideration of proposals is never warranted. Making difficult decisions to reform specific areas is never easy given the many stakeholders, agencies, and congressional committees involved. It is important to recognize that in the past the Congress has designed procedures to bind itself when it deemed it necessary and appropriate. However, the broad scope and generality of the Freedom to Manage Act is not linked to the same type of discrete initiatives that supported earlier modifications of legislative procedures. For example, the Base Realignment and Closure Commission was established because the Congress, the applicable administration, and the Department of Defense all agreed that military operations would be more efficient if existing excess capacity were eliminated and savings generated from this action were channeled to other uses and that the traditional legislative process would not work in this case. Once agreement was reached on the nature of the problem and its solution, the Congress established the Commission to select the bases for closure and agreed to an up-or-down vote on the Commission's report *in toto*. The Congress and the President agreed on the policy objective and the general scope and nature of the likely proposals in advance. As a result, the Congress agreed on the need to modify its procedures to achieve the agreed upon objectives. In specific cases, developing expedited procedures can hold some promise if the approaches are linked to a set of discrete initiatives and the Congress and other

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stakeholders agree on the general objectives served by proposals in advance.

Going forward, the Congress may well find that expedited procedures may be warranted if the approaches are linked to a set of discrete problems and initiatives. For instance, we have pointed to the need to rationalize federally owned infrastructure to address excess and outdated facilities in areas ranging from military bases, to regional offices, to veterans hospitals to post offices. Addressing these issues may very well call for a process similar to the national base closure commissions to expedite consideration of consolidation and streamlining proposals. Similarly, to address long-standing strategic human capital management problems in the federal workforce, the Congress may find it advisable to turn to a commission to help scope out the more fundamental challenges and develop a comprehensive reform proposal for legislative consideration.

In summary, the Freedom to Manage Act has a very broad scope. It also asks for streamlined and very expeditious consideration by the Congress, irrespective of the substantive nature of the proposal and upon other matters pending before the Congress. As the tragic events of September 11 have made us increasingly aware, congressional priorities and the agendas of the two houses of the Congress can change quickly. Given the need to position our government to address new challenges and heightened public expectations, both the Congress and the Administration need to find ways to reach consensus on specific overarching national goals. As a result, proposals for sweeping changes to create new authorities or reform existing authorities must be examined in terms of their effect on the balance of power between the Congress and the President. The proposed bill, by design, would provide significant new power to the President to not only initiate changes, but also to affect the ultimate debate and outcome.

Only the Congress can decide whether it wishes to limit its powers and role in this way. As part of the legislative branch, I obviously have some concerns about any serious diminution of your authority. In addition, I obviously want GAO to have a reasonable amount of time to help the Congress assess any related legislative proposals before you are required to act. This can only be determined through a considered analysis of specific revision, repeal, or authorization proposals. Finally, while we believe that the comprehensive review being orchestrated by the Administration is appropriate, it is important that the concept of “freedom to manage” not be used as a means to try and achieve “freedom from oversight.”

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Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Committee may have.

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