

any publicly available reports by the agency's Inspector General concerning agency program performance;

(v) monitor implementation by agencies of the policy set forth in section 1 of this order and report thereon from time to time as appropriate to the Director, or when appropriate to the President through the Director, at such times and in such formats as the Chair may specify, together with any recommendations of the Council for more effective implementation of such policy;

(vi) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency to implement the policy set forth in section 1 of this order; and

(vii) obtain information and advice, as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, from:

(A) State, local, territorial, and tribal officials; and

(B) representatives of entities or other individuals.

(e)(i) To the extent permitted by law, the Office of Management and Budget shall provide the funding and administrative support the Council needs, as determined by the Director, to implement this section; and

(ii) the heads of agencies shall provide, as appropriate and to the extent permitted by law, such information and assistance as the Chair may request to implement this section.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law (including laws and executive orders relating to the protection of information from disclosure) and subject to the availability of appropriations.

(c) In implementing this order, the Director of National Intelligence shall perform the functions assigned to the Director of National Intelligence by the National Security Act of 1947, as amended ([former] 50 U.S.C. 401 *et seq.*) [now 50 U.S.C. 3001 *et seq.*], consistent with section 1018 of the Intelligence Reform and Terrorism Prevention Act (Public Law 108-458), and other applicable laws.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.⁴

§ 1116. Agency performance reporting

(a) The head of each agency shall make available on a public website of the agency and to the Office of Management and Budget an update on agency performance.

(b)(1) Each update shall compare actual performance achieved with the performance goals established in the agency performance plan under section 1115(b) and shall occur no less than 150 days after the end of each fiscal year, with more frequent updates of actual performance on indicators that provide data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden.

(2) If performance goals are specified in an alternative form under section 1115(c), the results shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.

(c) Each update shall—

(1) review the success of achieving the performance goals and include actual results for the 5 preceding fiscal years;

(2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals during the period covered by the update;

(3) explain and describe where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 1115(c)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used)—

(A) why the goal was not met;

(B) those plans and schedules for achieving the established performance goal; and

(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

(4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 of this title;

(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management;

(6) describe how the agency ensures the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—

(A) the means used to verify and validate measured values;

(B) the sources for the data;

(C) the level of accuracy required for the intended use of the data;

(D) any limitations to the data at the required level of accuracy; and

(E) how the agency has compensated for such limitations if needed to reach the required level of accuracy; and

(7) include the summary findings of those program evaluations completed during the period covered by the update.

(d) If an agency performance update includes any program activity or information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is properly classified pursuant to such Executive Order, the head of the agency shall make such information available in the classified appendix provided under section 1115(e).

(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of agency performance updates under this section shall be performed only by Federal employees.

(f) Each fiscal year, the Office of Management and Budget shall determine whether the agency programs or activities meet performance goals and objectives outlined in the agency performance plans and submit a report on unmet goals to—

(1) the head of the agency;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committee on Oversight and Governmental Reform of the House of Representatives; and

(4) the Government Accountability Office.

(g) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 1 fiscal year, the head of the agency shall submit a performance improvement plan to the Office of Management and Budget to increase program effectiveness for each unmet goal with measurable milestones. The agency shall designate a senior official who shall oversee the performance improvement strategies for each unmet goal.

(h)(1) If the Office of Management and Budget determines that agency programs or activities have unmet performance goals for 2 consecutive fiscal years, the head of the agency shall—

(A) submit to Congress a description of the actions the Administration will take to improve performance, including proposed statutory changes or planned executive actions; and

(B) describe any additional funding the agency will obligate to achieve the goal, if such an action is determined appropriate in consultation with the Director of the Office of Management and Budget, for an amount determined appropriate by the Director.

(2) In providing additional funding described under paragraph (1)(B), the head of the agency shall use any reprogramming or transfer authority available to the agency. If after exercising such authority additional funding is necessary to achieve the level determined appropriate by the Director of the Office of Management and Budget, the head of the agency shall submit a request to Congress for additional reprogramming or transfer authority.

(i) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 3 consecutive fiscal years, the Director of the Office of Management and Budget shall submit recommendations to Congress on actions to improve performance not later than 60 days after that determination, including—

(1) reauthorization proposals for each program or activity that has not met performance goals;

(2) proposed statutory changes necessary for the program activities to achieve the proposed level of performance on each performance goal; and

(3) planned executive actions or identification of the program for termination or reduction in the President's budget.

(Added Pub. L. 111-352, §4, Jan. 4, 2011, 124 Stat. 3871.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1116, added Pub. L. 103-62, §4(b), Aug. 3, 1993, 107 Stat. 288; amended Pub. L. 106-531, §5(a)(1), (b), Nov. 22, 2000, 114 Stat. 2539; Pub. L. 107-296, title XIII, §1311(b), Nov. 25, 2002, 116 Stat. 2290, related to program performance reports, prior to repeal by Pub. L. 111-352, §4, Jan. 4, 2011, 124 Stat. 3871.

Statutory Notes and Related Subsidiaries

MERIT SYSTEMS PROTECTION BOARD

Pub. L. 112-199, title I, §116(b), Nov. 27, 2012, 126 Stat. 1474, provided that:

“(1) IN GENERAL.—Each report submitted annually by the Merit Systems Protection Board under section 1116 of title 31, United States Code, shall, with respect to the period covered by such report, include as an addendum the following:

“(A) Information relating to the outcome of cases decided by the Merit Systems Protection Board during the period covered by such report in which violations of section 2302(b)(8) or (9)(A)(i), (B)(i), (C), or (D) of title 5, United States Code, were alleged.

“(B) The number of such cases filed in the regional and field offices, and the number of petitions for review filed in such cases, during the period covered by such report, and the outcomes of any such cases or petitions for review (irrespective of when filed) decided during such period.

“(2) FIRST REPORT.—The first report described under paragraph (1) submitted after the date of enactment of this Act [Nov. 27, 2012] shall include an addendum required under that paragraph that covers the period beginning on the effective date of this Act [see Effective Date of 2012 Amendment note set out under section 1204 of Title 5, Government Organization and Employees] and ending at the end of the fiscal year in which such effective date occurs.”

§ 1117. Exemption

The Director of the Office of Management and Budget may exempt from the requirements of sections 1115 and 1116 of this title and section 306 of title 5, any agency with annual outlays of \$20,000,000 or less.

(Added Pub. L. 103-62, §4(b), Aug. 3, 1993, 107 Stat. 289.)

Statutory Notes and Related Subsidiaries

CONSTRUCTION

No provision or amendment made by Pub. L. 103-62 to be construed as creating any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in such capacity, and no person not an officer or employee of the United States acting in such capacity to have standing to file any civil action in any court of the United States to enforce any provision or amendment made by Pub. L. 103-62, or to be construed as superseding any statutory requirement, see section 10 of Pub. L. 103-62, set out as a Construction of 1993 Amendment note under section 1101 of this title.

§ 1118. Pilot projects for performance goals

(a) The Director of the Office of Management and Budget, after consultation with the head of each agency, shall designate not less than ten agencies as pilot projects in performance measurement for fiscal years 1994, 1995, and 1996. The selected agencies shall reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

(b) Pilot projects in the designated agencies shall undertake the preparation of performance plans under section 1115, and program performance reports under section 1116, other than section 1116(c), for one or more of the major functions and operations of the agency. A strategic plan shall be used when preparing agency performance plans during one or more years of the pilot period.

(c) No later than May 1, 1997, the Director of the Office of Management and Budget shall submit a report to the President and to the Congress which shall—