

Recommendation 23: Establish a permanent, automatic 5-year sunset provision for DoD congressional reporting requirements.

Problem

As a result of the recurring problem posed by excessive congressional reporting requirements directed at DoD, as well as Congress's struggle to restrain the growth of reporting requirements over time, the notion of an automatic sunset has periodically entered the debate. Advocates for greater discipline in the imposition of reporting requirements have argued that automatic sunsets can be an effective means to encourage Congress to regularly assess the value of a report.

Background

The Clinton Administration's 1993 *Streamlining Management Control* study recommended the adoption of an automatic sunset provision for all new reporting requirements that would "ensure that the burdens of congressionally mandated reports are controlled."¹ Acting along similar lines, Congress passed the Federal Reports Elimination and Sunset Act of 1995 (FRESA), which instituted a *catch-all sunset provision* that terminated the legal requirements for all existing periodic reports 4 years after the date of enactment.² According to the Congressional Research Service, "many periodic reporting requirements appear to have been eliminated" by FRESA.³ Between 1999 and 2008, Congress repeatedly saved certain reporting requirements from the sunset, including the entire category of reports concerning federal budgetary matters.⁴ Elimination of numerous reporting requirements due to the FRESA sunset—along with Congress's unwillingness to allow the sunset to take full effect—demonstrated both the potential of sunset provisions and their dependence on congressional support.

Findings

A sunset created by Congress will always be susceptible to the decisions of a later Congress. Inevitably, sunset provisions are only as strong as the congressional will to uphold them. Yet an automatic sunset for reporting requirements is still a useful tool for maintaining congressional discipline. A sunset forces Congress to make an active decision to explicitly reauthorize a reporting requirement, prevents the unwitting growth of reports, and imposes an evaluation of costs and benefits for determining the necessity of a report. Moreover, Congress has already shifted toward this position in recent years by including sunset provisions in new reporting requirements with increasing frequency. The panel endorses the direction of recent congressional policy and aims to build on Congress's actions. The panel's proposed sunset provision is an attempt to bolster Congress's efforts and ensure that a similar standard is applied broadly across all relevant DoD reporting requirements.

Conclusions

In support of the goals above, the structure of a sunset is important. Rather than the one-time sunset of FRESA, a permanent, recurring sunset provides a more effective mechanism for restraint. Every

¹ White House Office of the Vice President, *Streamlining Management Control – Part 2*, September 1993, accessed August 7, 2017, <https://clintonwhitehouse6.archives.gov/1994/06/1994-06-30-npr-report-on-streamlining-management-control-part-a.html>.

² Congressional Research Service, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRA Modernization Act of 2010 (GPRAMA)*, May 29, 2013, accessed August 4, 2017, <https://fas.org/sgp/crs/misc/R42490.pdf>.

³ *Ibid.*

⁴ *Ibid.*

congressional reporting requirement for DoD should be justified at regular intervals to ensure that it remains of adequate value to merit the cost in time and resources. An automatic 5-year sunset—commencing in January 2022 for existing DoD reporting requirements, encompassing all new reporting requirements, and repeating every 5 years for each report—would provide a long-term answer to the growth of reporting requirements. The sunset would establish a permanent mechanism to impede the continuation of unnecessary or obsolete congressional reports.

Implementation

Legislative Branch

- Establish a permanent, automatic 5-year sunset provision for congressional reporting requirements directed to DoD.
- Begin the 5-year period in January 2022 for existing reports, after the expiration of the current December 2021 termination deadline. Begin the 5-year period immediately for all new reporting requirements created after the date of the sunset provision’s enactment. All new and existing DoD reporting requirements would subsequently terminate automatically at the end of their respective 5-year periods unless specifically reauthorized by Congress.
- Direct DoD to provide an annual list to Congress of all reporting requirements set to terminate during the upcoming year.
- Subject all reporting requirements recommended to be made *permanent* to the automatic sunset (see Recommendation 24).

Executive Branch

- No Executive Branch changes are required.

Implications for Other Agencies

- There are no cross-agency implications for this recommendation.