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## **Federal Program Performance Review: Some Recent Developments**

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# Federal Program Performance Review: Some Recent Developments

## Summary

On February 25, 2004, H.R. 3826, the Program Assessment and Results Act (PARA), was introduced, to require the Office of Management Budget (OMB) to review government programs at least once every five years for purposes of evaluating their performance. The bill would amend the Government Performance and Results Act of 1993 (P.L. 103-62, known as GPRA), to create a statutory process resembling the Program Assessment Rating Tool (PART), first used by OMB during preparation of the FY2004 budget. H.R. 3826 would not, however, mandate the use of PART specifically.

On May 19, 2004, a House subcommittee held markup on H.R. 3826, and approved the bill, as amended, by voice vote. Full committee markup followed on June 3, 2004, with the bill, as further amended, voted to be reported favorably. A Senate companion bill, S. 2898, was introduced on October 5, 2004. On October 8, 2004, a written report to accompany H.R. 3826 was filed (H.Rept. 108-768). The bill as reported would amend GPRA to require the OMB director to review, to the maximum extent practicable, each federal program (as defined by OMB) at least once every five years. In conducting each assessment, OMB would coordinate with the relevant agency head to determine the programs to be reviewed, and to evaluate the purpose, design, strategic plan, management, and results of the program. In developing criteria for identifying programs to be assessed each year, the director would consider the advantages of reviewing programs with similar purposes or functions the same year. At least 90 days prior to completing the annual assessments, a listing of programs under review and the criteria being used would be available on the OMB website, and OMB would also “provide a mechanism” for public comment on the programs and criteria. The assessments would be performed only by federal employees, and the results would be transmitted to Congress along with the next budget submission of the President. PARA would further amend GPRA to require submission of strategic plans covering four years, to be submitted by September 30 following a year when there is a presidential election.

Various subjects are of potential interest in considering H.R. 3826. One issue is its relationship with GPRA and PART. Some suggest that PARA builds and improves upon the GPRA framework and is needed to ensure that coordinated program reviews continue. Others point out that the PART process, which PARA resembles, is not well integrated with GPRA, and that PARA, unlike GPRA, does not require consultation with Congress and other stakeholders. Additional concerns include avoiding partisanship in the review process and protecting the role of Congress. Finally, frameworks for systematic review of federal programs developed previously in sunset bills may be of interest in PARA deliberations. For example, in 1978, S. 2 (95<sup>th</sup> Congress), as passed by the Senate, devised a 10-year schedule for review and reauthorization of most federal programs based on categories of function and subfunction in the FY1979 federal budget.

This report will be updated as events warrant.

## Contents

Background .....	1
GPRA .....	1
PART .....	2
Developments in the 108 <sup>th</sup> Congress .....	4
House Subcommittee Action .....	4
Full Committee Action in the House .....	5
Senate Companion Bill and House Report .....	6
Possible Concerns .....	6
Relationship of PARA with GPRA and PART .....	7
Statutory Program Review by OMB and the Role of Congress .....	8
Previous Review Frameworks in Sunset Legislation .....	9

# Federal Program Performance Review: Some Recent Developments

## Background

In the 108<sup>th</sup> Congress, Representative Todd Platts, along with Representative Tom Davis, introduced H.R. 3826, the Program Assessment and Results Act (referred to as PARA, or sometimes just PAR). The bill would amend the Government Performance and Results Act (GPRA)<sup>1</sup> to require that the Office of Management and Budget (OMB) review federal programs on a five-year cycle. Provisions in the bill resemble the Program Assessment Rating Tool (PART), currently used by OMB as a component in the budget formulation process, although PART is not explicitly referenced.

In order to place recent activities in Congress and in the executive branch relating to review of federal programs in perspective, this report considers briefly some background on GPRA and PART. The report then traces the development of H.R. 3826 in the 108<sup>th</sup> Congress and discusses some concerns that have been raised regarding the legislation.

**GPRA.** GPRA sought to promote greater efficiency, effectiveness, and accountability in federal spending by establishing a new framework for performance management and budgeting in federal agencies. GPRA represents the latest in a series of initiatives by the federal government, dating back some 50 years, which attempt to align spending decisions with expected results, an approach commonly referred to as “performance budgeting.” In complying with GPRA, agencies must set goals, devise performance measures, and then assess the results achieved.<sup>2</sup>

GPRA established three types of ongoing planning, evaluation, and reporting requirements for executive branch agencies: strategic plans (covering six years but to be revised at least every three years), annual performance plans, and annual reports on program performance. GPRA requires that agencies consult with Congress when developing a strategic plan, and also consider views of other interested stakeholders, such as state and local governments, interest groups, and private citizens. As specified in the law and subsequent guidance from OMB and the General Accounting Office (GAO, now known as the Government Accountability Office), an agency’s strategic plan must contain six key components:

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<sup>1</sup> P.L. 103-62; 107 Stat. 285; codified in Chapter 11 of Title 31, *United States Code*.

<sup>2</sup> For further background, see CRS Report RL32164, *Performance Management and Budgeting in the Federal Government: Brief History and Recent Developments*, by Virginia McMurtry; and CRS Report RS20257, *Government Performance and Results Act: Brief History and Implementation Activities*, by Genevieve Knezo.

- a comprehensive agency mission statement;
- agency-wide long-term goals and objectives for all major functions and operations;
- approaches or strategies to achieve the goals and objectives and the various resources needed;
- relationship between the long-term goals/objectives and the annual performance goals;
- identification of key factors, external to the agency and beyond its control, that would significantly affect achievement of the strategic goals; and
- description of how program evaluations were used to establish or revise strategic goals, and a schedule for future program evaluations.<sup>3</sup>

In a 2004 report assessing GPRA after a decade of implementation, GAO concluded that the statutory requirements under GPRA “have established a solid foundation of results-oriented performance planning, measurement, and reporting in the federal government.”<sup>4</sup> In addition, GAO said GPRA had “also begun to facilitate the linking of resources to results,” although significant implementation challenges remained. GAO reviewed then-current strategic plans and annual plans and reports for six selected agencies and noted general improvements over their initial efforts. However, GAO indicated that the evaluation component continued to be a major weakness in agency strategic plans. While the subject was generally addressed, GAO said that the strategic plans lacked critical information required by GPRA, “such as a discussion of how evaluations were used to establish strategic goals or a schedule of future evaluations.”<sup>5</sup>

**PART.** In 2002 the Bush Administration developed PART to provide more evaluation data on the results of federal programs. PART became a component in the budget and performance integration initiative of the President’s Management Agenda.<sup>6</sup> From the outset OMB stated its intent to make the PART process and evaluation scores transparent, consistent, systematic, and objective.<sup>7</sup> PART contains

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<sup>3</sup> U.S. General Accounting Office, *Agencies’ Strategic Plans Under GPRA: Key Questions to Facilitate Congressional Review*, GAO Report GGD-10-1-16 (Washington: GAO, 1997), p. 9.

<sup>4</sup> U.S. General Accounting Office, *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, GAO Report GAO-04-38 (Washington: GAO, Mar. 2004), “Highlights.”

<sup>5</sup> *Ibid.*, p. 52.

<sup>6</sup> The agenda, announced in August of 2001, contains five government-wide initiatives for improving management in the federal government, including budget and performance integration. For an overview, see CRS Report RS21416, *The President’s Management Agenda: A Brief Introduction*, by Virginia A. McMurtry.

<sup>7</sup> See OMB, “Program Performance Assessments for the FY2004 Budget,” Memorandum for Heads of Executive Departments and Agencies from Mitchell E. Daniels, Jr., M-02-10, July 16, 2002. Following preliminary tests with PART in the spring, and after receiving (continued...)

four sections with a total of about 30 questions, focusing respectively on program purpose and design, strategic planning, program management, and program results and accountability. In addition to common questions raised in all reviews, PART also divides programs into seven categories and asks additional questions unique to each type of program.<sup>8</sup> OMB characterizes PART as a diagnostic tool, with a primary objective of the reviews being to improve program performance. Concurrently, “the PART assessments help to link performance to budget decisions and provide a basis for making recommendations to improve results.”<sup>9</sup> PART was used by agency program managers and OMB budget examiners to evaluate programs constituting about 20% of federal budget in the fall of 2002. On February 3, 2003, President Bush transmitted his budget for FY2004, which contained a separate volume titled *Performance and Management Assessments*.<sup>10</sup> Just over half (50.4%) of the 234 programs subject to PART evaluations in this first round were rated as “results not demonstrated,” due to inadequate performance goals or unavailability of data to provide evidence of results. Six percent of the programs were deemed “effective”; 24% were “moderately effective”; 14.5% were found “adequate”; and 5.1% were “ineffective.”

OMB staff, working with personnel in the agencies, reviewed additional programs representing another 20% of the federal budget during preparation of the FY2005 budget, along with reassessments of those programs reviewed the prior year.<sup>11</sup> The FY2005 budget, transmitted to Congress on February 2, 2004, reported about 37% of programs unable to demonstrate results, down from 50% with that rating the first year, and a modest increase in programs rated “effective.” For FY2005, almost 40% of programs subject to PART fell in the “effective” (11%) or “moderately effective” (26%) categories, while about a quarter were rated “adequate” (21%) or “ineffective” (5%).<sup>12</sup> OMB has identified 217 more programs undergoing

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<sup>7</sup> (...continued)

feedback from both agencies and outside groups, OMB released the revised version in the summer. Further revisions and refinements have occurred subsequently.

<sup>8</sup> The categories apply to both discretionary and mandatory programs and include these seven program groupings: direct federal programs, competitive grant programs, block/formula grant programs, regulatory based programs, capital assets and service acquisition programs, credit programs, and research and development programs. See OMB, “Instructions for the Program Assessment Rating Tool,” available electronically at [<http://www.whitehouse.gov/omb/part>], visited Oct. 25, 2004.

<sup>9</sup> See “Instructions for the Program Assessment Rating Tool,” available electronically at [<http://www.whitehouse.gov/omb/part>], visited Oct. 20, 2004.

<sup>10</sup> There are also relevant sections in the main *Fiscal Year 2004 Budget of the U. S. Government* volume; see “Governing with Accountability” and “Rating the Performance of Federal Programs” (pp. 35-53).

<sup>11</sup> See OMB, “Completing the Program Assessment Rating Tool (PART) for the FY2005 Review Process,” Budget Procedures Memorandum No. 861, from Richard P. Emery, Jr., Assistant Director for Budget, May 5, 2003.

<sup>12</sup> See *Fiscal Year 2005 Budget of the United States Government Analytical Perspectives* (Washington: GPO, 2004), pp. 9-22. The CD, titled “Analytical Perspectives Fiscal Year (continued...)”

PART reviews during formulation of the FY2006 budget, due to Congress by February 7, 2005.<sup>13</sup> With this third round, approximately 600 programs, comprising roughly 60% of the federal budget, will have been through PART reviews, and the plan is to continue 20% yearly expansions, so that all programs will be reviewed by submission of the FY2008 budget.<sup>14</sup>

## Developments in the 108<sup>th</sup> Congress

**House Subcommittee Action.** On February 4 and 11, 2004, the House Subcommittee on Government Efficiency and Financial Management held oversight hearings on GPRA and the President's Management Agenda. During these hearings Subcommittee Chairman Platts queried various witnesses for their views on how best to craft a statutory requirement for a coordinated program-by-program evaluation framework such as PART. OMB Deputy Director for Management Clay Johnson III testified that the PART review process offers a vehicle for improving program performance, while building on the foundation provided by the GPRA. Pledging continued attention to GPRA implementation, Mr. Johnson noted: "Codification of the requirement to conduct assessments of program performance would be a welcome complement to the statutory management framework laid by GPRA."<sup>15</sup>

Shortly thereafter, on February 25, 2004, Representative Platts, with Representative Davis, chairman of the full Government Reform Committee, as cosponsor, introduced H.R. 3826, the Program Assessment and Results Act (referred to as PARA, or sometimes just PAR), to require OMB to review all government programs at least once every five years for purposes of evaluating their performance. The bill would amend GPRA to codify the requirement for program reviews, but does not mandate the use of PART specifically. In his accompanying remarks, Representative Platts noted that GPRA "has laid a solid foundation for agencies working with Congress to set strategic goals and begin to utilize performance based information." With the development of PART, the Bush Administration moved beyond the GPRA requirements and introduced a system of program review for evaluating the performance and results of federal activities. According to Representative Platts, the "next logical step is to codify the requirement for a coordinated evidence-based review of programs."<sup>16</sup>

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<sup>12</sup> (...continued)

2005: Supplemental Materials," comes attached to the *Analytical Perspectives* volume.

<sup>13</sup> See "New Program Assessments Planned for FY 2006 Budget," available electronically at [[http://www.whitehouse.gov/omb/part/2006\\_program\\_list.pdf](http://www.whitehouse.gov/omb/part/2006_program_list.pdf)], visited Oct. 20, 2004,

<sup>14</sup> For further background on PART, see CRS Report RL32663, *The Bush Administration's Program Assessment Rating Tool (PART)*, by Clinton T. Brass.

<sup>15</sup> Statement of Clay Johnson III, OMB Deputy Director for Management before the House Subcommittee on Government Efficiency and Financial Management, Feb. 11, 2004. See *Should We Part Ways With GPRA: A Look at Performance Budgeting and Program Review*, hearing, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2004), p. 12.

<sup>16</sup> "Introduction of the Program Assessment and Results Act," *Congressional Record*, daily edition, vol. 150, Feb. 25, 2004, p. E226.

H.R. 3826 was referred to the Committee on Government Reform and to the Subcommittee on Government Efficiency and Financial Management. Subcommittee markup occurred on May 19, 2004. Chairman Platts offered an amendment in the nature of a substitute containing new provisions: to enhance coordination between OMB and the agency in the program review process, to outline more specific criteria to be used in evaluating programs and in the report to Congress, to add a termination date, and to effect further technical changes. This manager's amendment was approved by voice vote. The subcommittee also approved by voice vote an amendment offered by ranking member Edolphus Towns, requiring the OMB director to publish notice of programs slated for review, performance goals, and review criteria, and to provide a 60-day period for public comment. Then the director would publish in the *Federal Register* for each program under review in a given year the final performance goals, assessment criteria, and a summary of public comments.<sup>17</sup>

**Full Committee Action in the House.** Markup of H.R. 3826 by the Government Reform Committee followed on June 3, 2004, during which Representative Platts offered another manager's amendment in the nature of a substitute, making additional changes in the bill as approved by the subcommittee the previous month. Language in the substitute softened the requirement to review each program at least once every five years, by inserting "to the maximum extent practicable." The substitute offered to the full committee also changed the provisions of the Towns amendment, adopted during subcommittee consideration, to require that the OMB director post on the agency's website and submit to designated congressional committees, at least 90 days prior to completion of the assessments, a list of programs under review that year and the criteria used to assess the programs, and also to provide some mechanism for public comment. In contrast, the Towns amendment established a more formal 60-day period for public comment, and required that OMB include a summary of comments received with the publication of the final listing of programs, performance goals, and review criteria. The substitute amendment was approved by voice vote. Representative Towns offered an amendment to the substitute, to restore the original language of his amendment as approved by the subcommittee, but the amendment failed by a recorded party-line vote of 9 Democrats to 16 Republicans. An amendment by Representative Henry Waxman to require that the program reviews mandated by the bill be performed by the agencies rather than by OMB was rejected by voice vote. Two amendments offered by Representative Chris Van Hollen were subsequently withdrawn, following majority agreement that the language would be included in the bill as reported. One of the amendments required that PARA reviews be considered as inherently governmental functions, only to be performed by federal employees, and the other provided for a classified appendix to PART reviews, as needed, to make available to Congress the classified information without public disclosure. The Government Reform Committee voted to report H.R. 3826, as further amended, favorably, by voice vote.<sup>18</sup>

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<sup>17</sup> Zach Patton, "House Panel OKs Regular Review for Federal Programs, *Congress Daily*, May 19, 2004.

<sup>18</sup> Spencer Rich, "Panel OKs Review of Federal Programs Every Five Years," *Congress* (continued...)



**Senate Companion Bill and House Report.** A Senate companion bill, S. 2898, identical to H.R. 3826 as approved by the Government Reform Committee in June 2004, was introduced by Senator Peter Fitzgerald on October 5, 2004.<sup>19</sup> On October 8, 2004, a written report, together with minority views to accompany H.R. 3826, was filed.<sup>20</sup> The PARA measure, as reported, would amend GPRA to require the OMB director to review, to the maximum extent practicable, each federal program (as defined by OMB) at least once every five years. In conducting the program assessment, the Director of OMB would coordinate with the relevant agency head to determine the programs to be reviewed, and to evaluate the purpose, design, strategic plan, management, and results of the program, along with any other matters the OMB director might consider appropriate. In developing criteria for identifying programs to be assessed each year, the director would take into account the advantages of reviewing programs with similar purposes or functions the same year, along with the objective of assessing a “representative sample of federal spending” each fiscal year. Under stipulated circumstances, more frequent assessments of programs would be warranted. At least 90 days prior to completion of the annual assessments, a listing of programs under review and the criteria being used would be available on the OMB website, as well as provided to the House Government Reform and Senate Governmental Affairs committees; the director would also “provide a mechanism” for public comment on the programs and criteria. Only federal employees could perform the functions and activities relating to the annual program assessments and reports. The results of the reviews would be transmitted to Congress along with the next budget submission of the President. Provisions would be made for congressional access to classified information on program reviews, consistent with existing law governing such disclosure. The review requirement would expire September 30, 2013. Within six months after enactment of PARA, the Director of OMB would prescribe necessary guidance for implementation, including a definition of “program.” PARA would further amend GPRA to require submission of strategic plans covering four years, to be submitted by September 30 following a year in which there is a presidential election. This new timetable for strategic plans, if enacted, would supersede current law, whereby strategic plans cover six years, but must be revised at least every three years.

## Possible Concerns

Various subjects are of potential interest and relevance in conjunction with continuing consideration of the PARA bills. Some issues that may garner attention in this regard are identified in the discussion that follows.

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<sup>18</sup> (...continued)

*Daily*, June 3, 2004.

<sup>19</sup> Remarks by Senator Fitzgerald on introducing S. 2898, *Congressional Record*, daily edition, vol. 150, Oct. 5, 2004, pp. S10443-S10445.

<sup>20</sup> U.S. Congress, House Committee on Government Reform, *Program Assessment and Results Act*, report together with minority views to accompany H.R. 3826, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-768 (Washington: GPO, 2004).

**Relationship of PARA with GPRA and PART.** The House report accompanying H.R. 3826 declares that the bill builds on the GPRA framework and is necessary to ensure the continuation of systematic program assessments in the future. According to the report, in developing and using PART, OMB has improved upon the GPRA framework with the addition of a tool for evaluating the results of discrete federal programs:

The next logical step is to codify the requirement for a coordinated evidence-based review of programs.... As such, the PAR Act is necessary to ensure that program assessments be required for this and future Administrations.... Requiring OMB to be responsible for overseeing program assessment data will be a great step forward in realizing the reforms envisioned by GPRA and will make the Federal government more efficient and results oriented.<sup>21</sup>

On its website, OMB has characterized the connection between PART and GPRA as follows: “The PART reinforces the ambitious outcome-oriented performance measurement framework developed under GPRA. Also, the PART builds on GPRA by encouraging agencies to integrate operational decisions with strategic and performance planning.... Performance measures in GPRA plans and reports and those developed or revised through the PART process must be consistent.”<sup>22</sup> As noted previously, OMB has also testified in support of a statutory requirement for program assessment similar to PART, as a compatible and desirable addition to GPRA.<sup>23</sup> While PART is not specifically mandated in PARA, the provisions in the bill are modeled on PART.

On the other hand, criticism has been voiced that PART as currently formulated is not well integrated with GPRA. According to a recent GAO report, “Agency officials we spoke with expressed confusion about the relationship between GPRA requirements and the PART process. Many view PART’s program-by-program focus and the substitution of program measures as detrimental to their GPRA planning and reporting processes.”<sup>24</sup> In another report GAO observed, “It is not yet clear the extent to which PART performance goals and measures will compete with agencies’ long-term, strategic GPRA goals and objectives that were established in consultation with Congress and other stakeholders.”<sup>25</sup>

Minority views included in the House report to accompany H.R. 3826 also pointed to differences between the GPRA requirement for input from stakeholders, the provision for public comment in the Towns amendment that was accepted in

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<sup>21</sup> Ibid., p. 6.

<sup>22</sup> OMB, “PART Frequently Asked Questions,” available electronically at [[http://www.whitehouse.gov/omb/part/print/2004\\_faq\\_html](http://www.whitehouse.gov/omb/part/print/2004_faq_html)], visited Oct. 25, 2004.

<sup>23</sup> Relevant OMB testimony by Clay Johnson III is cited above in the section on “House Subcommittee Action.”

<sup>24</sup> U.S. General Accounting Office, *Performance Budgeting: Observations on the Use of OMB’s Program Assessment Rating Tool for the Fiscal Year 2004 Budget*, GAO Report GAO-04-174, pp. 6-7.

<sup>25</sup> GAO Report GAO-04-38, p. 15.

subcommittee, and the “much weaker language in the manager’s amendment at the full Committee, which leaves to OMB the determination what is an ‘appropriate mechanism for public input.’” According to the minority views, the Towns amendment would have created a forum for public comment akin to the process frequently employed in federal rule-making activities and “an appropriate parallel to the Government Performance and Results Act’s requirement for input from stakeholders when developing strategic plans.”<sup>26</sup>

### **Statutory Program Review by OMB and the Role of Congress.**

GPRA requires agencies to set performance goals and evaluate programs results, whereas under PARA, the White House, through OMB, would determine assessment criteria and then take the lead in conducting the program reviews, albeit in coordination with the relevant agency head. The minority views in the report accompanying H.R. 3826 raised concern about possible partisanship in the arrangement for assessment, noting: “We already have seen the problems that occur when OMB reviews programs.... [The PART] process has led to questionable ratings for a number of programs.” In addition, the statutory mandate in PARA arguably might affect the constitutional separation of powers, shifting power from Congress to the executive, by directing OMB to evaluate programs without requiring any involvement by Congress. According to the minority views, such a program review process might not give adequate weight to congressional intent as reflected in authorization and appropriations laws, along with guidance provided in report language.<sup>27</sup>

Similar apprehensions about H.R. 3826 were expressed in an article published by OMB Watch<sup>28</sup> with respect both to politicization and congressional prerogatives. The article contended, “Just as there has been concern that President Bush’s PART evaluation is a way of using program evaluation as a justification for cutting funding from government, PAR evaluation also suffers from a seriously lopsided balance of powers. The executive branch basically gets to decide what government should or should not be doing and how each program should best accomplish its goals.”<sup>29</sup>

In contrast to these views, the report accompanying H.R. 3826, reflecting the perspective of the majority, does not envision such potential consequences. In defending the need for the legislation, the report maintains, “Information gleaned from these program reviews will be useful across the board to all stakeholders [including Members of Congress, taxpayers, and agency officials].” The House report contends, in particular, that program reviews under PARA “will provide

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<sup>26</sup> H.Rept. 108-768, p. 18. Bill language would require the OMB director “to provide a mechanism for interested persons to comment” at least 90 days before completion of the annual reviews.

<sup>27</sup> *Ibid.*, pp. 17-18.

<sup>28</sup> OMB Watch is a nonprofit watchdog organization that says its mission is “to promote open government, accountability, and citizen participation.”

<sup>29</sup> “Office of Management and Budget May Be the Only Government Programs’ Evaluator,” *The Watcher*, April 5, 2004, available electronically at [<http://www.ombwatch.org/article/articleprint/2113/-1/211/>], visited Oct. 25, 2004.

congressional policy makers with the information needed to conduct more effective oversight, to make better-informed authorization decisions, and to make more evidence-based spending decisions that achieve positive results for the American people.”<sup>30</sup>

Meanwhile, OMB has recognized Congress as “an important partner in the PART process. The Administration is inviting Members of Congress and other stakeholders to review the PART details and provide feedback to OMB on the conclusions OMB and agencies have made in answers to PART questions.” OMB, moreover, avers the objectivity and transparency of the PART review process, and holds in general that, “because PART is an evidence-based, objective analysis, the Administration believes it is a useful tool in budget and policy formulation for all branches of government.”<sup>31</sup> Since the review process in PARA is modeled on PART, one might arguably associate OMB’s defense of PART with the PARA process as well.

**Previous Review Frameworks in Sunset Legislation.** The “sunset” label has been characterized as “the popular name for a statute which provides for the periodic termination of government agencies unless they are able to justify their existence.”<sup>32</sup> Sunset measures typically contain two basic components: an action-forcing mechanism, carrying the ultimate threat of termination, and a framework or guidelines for the systematic review and evaluation of past performance.<sup>33</sup>

A noteworthy similarity between PARA and sunset legislation is thus the codification of a requirement for systematic review and evaluation of federal programs. In considering PARA, Congress may want to examine how previous bills requiring reviews of federal programs have been structured. For example, provisions in the Sunset Act of 1978, as passed by the Senate (S. 2, 95<sup>th</sup> Congress), differed from those in H.R. 3826 in several respects, as detailed below.

**Designation of Review Agent.** In the Sunset Act, the entity charged with conducting the reviews was Congress. In H.R. 3826, the reviewer is OMB (in coordination with agency heads). Despite this fundamental difference, other features of the sunset review process may prove relevant in considering PARA.

**Timetable for Review.** The Sunset Act of 1978 would have required that virtually all federal programs be reviewed at least once every 10 years, with 20% of the programs reviewed in each biennium. H.R. 3826 provides that virtually all programs be reviewed at least once every five years, with 20% of the programs

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<sup>30</sup> H.Rept. 108-768, pp. 4, 6.

<sup>31</sup> OMB, “PART Frequently Asked Questions.”

<sup>32</sup> Anthony R. Licata, “Zero Base Sunset Review,” *Harvard Journal on Legislation*, vol. 14 (Apr. 1977), pp. 505-506.

<sup>33</sup> In the 95<sup>th</sup> Congress the Senate passed a sunset bill, S. 2, by vote of 87-1, and sunset measures have been introduced in each ensuing Congress. For further discussion of sunset proposals, see CRS Report RL31455, *Federal Sunset Proposals: Developments in the 94<sup>th</sup> to 107<sup>th</sup> Congresses*, by Virginia A. McMurtry.

reviewed each year. Both measures similarly would divide the universe of federal programs into five groups, but the Sunset Act provided two years for review of each group, whereas H.R. 3826 would see a group reviewed every year.

**Exemptions from Review.** The Sunset Act specifically exempted from review certain types of programs: interest on the federal debt, Social Security and federal retirement and disability programs, Medicare, civil rights programs and enforcement, judicial administration, veterans' benefits, and income tax refunds. The intent arguably was to protect "essential programs" from termination, not to exempt them necessarily from program evaluation. Perhaps the concept, if not the legislative content of provisions, for exemptions from review in the 1978 legislation may be of continuing interest in devising a statutory requirement for program review.

H.R. 3826 contains no such categorical exemptions, but the provision indicating that all federal programs should be reviewed "to the maximum extent practicable" gives OMB a measure of discretion to exclude certain programs from the analysis. According to the House report accompanying H.R. 3826, this clause was intended "to give minimum flexibility to the Director should a special circumstance arise where an assessment of a certain programs is deemed unneeded." The report goes on to say that the clause "to the maximum extent practicable" was "not intended to give the Director wholesale flexibility or the ability to exempt any programs from review without a legitimate reason. Should the director seek to exempt any program from this review he shall notify the Congress ... in writing explaining the specific reasons why the review is deemed unneeded."<sup>34</sup> With the House committee report expressing such concern regarding the discretion given OMB to waive program reviews unilaterally, previous language in proposed sunset bills may be relevant to further consideration of PARA. Earlier sunset bills contained provisions creating statutory parameters for possible exemptions from program review.

**Rationale for Devising Groups.** The Sunset Act specifically delineated the programs to be reviewed each biennium by budget function and subfunction, as set forth in the FY1979 budget, grouping similar programs in the same review period while balancing the workloads of congressional authorizing committees who would be conducting the reviews. In contrast, H.R. 3826 gives OMB discretion to decide which 20% of federal programs are to be reviewed in a given year. The approach of referencing budget functions and subfunctions in statutory language might offer an alternative framework for review of federal programs that would allow less latitude for OMB in deciding which programs to review in a given year, and, concurrently, help ensure the review of related programs with similar functions in the same cycle.

**Impact of Reviews.** The Sunset Act contained an automatic termination feature, with programs expiring unless they were specifically renewed by law. H.R. 3826 contains no similar program termination provision.<sup>35</sup> Instead, as is the case currently with PART, the information derived from the reviews conducted pursuant

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<sup>34</sup> H.Rept. 108-768, p. 9.

<sup>35</sup> In H.R. 3826, however, the entire review process would end in 2013, basically after two review cycles, unless Congress acted to extend it.

to the requirements in H.R. 3826 is expected to be used by OMB in preparing the President's budget. OMB has substantial discretion in how the PART scores are used, and has emphasized that the program evaluation data will never be the only consideration in budget deliberations. For example, the documentation accompanying the FY2005 budget provided the following explanation of how PART scores affect budget decisions:

PART ratings do not result in automatic decisions about funding. Clearly, over time, funding should be targeted to programs that can prove they achieve measurable results. But a PART rating of Ineffective or Results Not Demonstrated may suggest that greater funding is necessary to overcome identified shortcomings, while a program rated Effective may be in line for a proposed funding decrease.<sup>36</sup>

With or without input from PART or PARA, OMB retains substantial discretion regarding the use of program performance information in preparing the President's budget. It will arguably require attentive congressional oversight to assess how performance information has been translated into dollars in the President's budget recommendations. Likewise, Congress may determine the extent to which performance data from PART or PARA are taken into account in the authorizations and appropriations processes.

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<sup>36</sup> *Fiscal Year 2005 Budget ... Analytical Perspectives*, p. 13.