

HSA@20 Episode Companion: Government Reorganization

March 20, 2023

This Insight accompanies the “Reorganization” episode of The Homeland Security Act at 20 podcast series and includes background information on the issues discussed during the podcast.

Click this [link](#) to ask questions, provide feedback, or offer suggestions for future topics. You can also e-mail the podcast team at HSA20@loc.gov. Thank you for your engagement.

Homeland Security Act (HSA) Development

Consideration of reorganization began before the terrorist attacks of September 11, 2001 (9/11).

- [U.S. Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction \(Gilmore Commission\)](#)
 - Chairman, then-Virginia Governor James Gilmore.
 - Authorized by the [Strom Thurmond National Defense Authorization Act for Fiscal Year 1999](#) (Sec. 1405).
 - The second of five reports, issued in December 2000, called for a “National Office for Combatting Terrorism” in the Executive Office of the President with a Senate-confirmed director.
 - Representative Ike Skelton’s H.R. 1292 (107th Congress) would have directed the White House to “designate a single official in the United States Government to be responsible for, and to report to the President on, homeland security.”
- [U.S. Commission on National Security/21st Century \(Hart-Rudman Commission\)](#)
 - Co-chairs, former Senators Gary Hart and Warren Rudman.
 - Its third of three reports, issued in February, 2001, called for a “National Homeland Security Agency.”
 - Representative Mac Thornberry’s H.R. 1158 (107th Congress) would have created such an entity, made of:
 - the Federal Emergency Management Agency,
 - the U.S. Customs Service,

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- the Border Patrol of the Immigration and Naturalization Service,
 - the U.S. Coast Guard,
 - the Critical Infrastructure Assurance Office and the Institute of Information Infrastructure Protection of the Department of Commerce, and
 - the National Infrastructure Protection Center and the National Domestic Preparedness Office of the Federal Bureau of Investigation.
- Examples of hearings:
 - Joint hearing with subcommittees from the House Committee on Transportation and Infrastructure, and House Committee on Government Reform, *Combating Terrorism: Options to Improve Federal Response*, 107th Cong., 1st Sess., April 24, 2001.
 - Senate Committee on the Judiciary, Subcommittee on Technology, Terrorism, and Government Information, *Homeland Defense: Exploring the Hart-Rudman Report*, 107th Cong., 1st Sess., April 3, 2001.

After 9/11, the legislative process accelerated:

- President George W. Bush signed [Executive Order 13228](#) establishing the Office of Homeland Security, headed by former Pennsylvania Governor Tom Ridge (October 8, 2001) – he would later [establish his opposition to further reorganization](#).
- Senators Joseph Lieberman and Arlen Specter’s S. 1534 (107th Congress), the Department of National Homeland Security Act of 2001 (October 11).
- Senators Lieberman, Specter, and Bob Graham’s S. 2452 (107th Congress), the National Homeland Security and Combating Terrorism Act of 2002 (May 2, 2002).
- Representative Thornberry’s companion bill, H.R. 4660 (also May 2), was largely the same as S. 2452.
- President Bush [reversed his position](#), and proposed [the Department of Homeland Security](#) (June 6), submitting draft legislation to Congress June 18.
- H.R. 5005, the Homeland Security Act of 2002, was introduced June 24.
- The bill advanced under an expedited procedure:
 - Nine House committees were to provide input to a nine-member ad hoc panel chaired by the Majority Leader by July 12.
 - The ad hoc panel was to produce a bill by July 21 – the bill was marked up July 19, reported on July 24, and voted on after debate under a structured rule on Friday, July 26.
- The original Senate timeline was for floor votes before recess began on August 2.
 - The Senate was unable to get cloture on the bill before the midterm elections.
 - The Senate ultimately passed a House-revised version in a lame-duck session.
- P.L. 107-296, was enacted November 25, 2002.

HSA Reorganization in Context

Prior creation of other large organizations by legislation since 1947:

- 1947 – Department of Defense (National Security Act of 1947, P.L. 80-253)
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- 1965 – Department of Housing and Urban Development (Housing and Urban Development Act, P.L. 89-174)
- 1966 – Department of Transportation (Department of Transportation Act, P.L. 89-670)
- 1977 – Department of Energy (Department of Energy Organization Act, P.L. 95-91)
- 1979 – Department of Health and Human Services and the Department of Education (Department of Education Organization Act, P.L. 96-88)
- 1988 – Department of Veterans Affairs (Department of Veterans Affairs Act, P.L. 100-527)

Creation of other large organizations by presidential reorganization authority since 1947:

- 1953 – Department of Health, Education, and Welfare
- 1970 – Environmental Protection Agency
- 1979 – Federal Emergency Management Agency

Note: Presidential reorganization authority expired in 1984.

HSA Section 1502 Presidential Reorganization Authority

- The President had to submit a plan laying out “[any consolidation, reorganization, or streamlining of agencies transferred to the Department](#)” within 60 days of enactment.
- He could then modify that plan until it became effective, or up to 12 months after the HSA’s enactment, whichever came first.
 - [Reorganization Plan for the Department of Homeland Security](#) (November 25, 2002); and
 - [Reorganization Plan Modification for the Department of Homeland Security](#) (January 30, 2003).

HSA Section 872 Secretarial Reorganization Authority

- Allows the DHS Secretary to redelegate functions, and to establish, reorganize, or abolish department subunits. For most of these actions, [Section 872](#) does not specify that the authority cannot be used to change arrangements established by statute – it just says you cannot abolish a subunit, program, or function established or required to be maintained by statute.
- The DHS Secretary exercised [Section 872](#) authority on nine occasions—including the major “[Second Stage Review](#)” (a.k.a. “2SR”) reorganization in 2005-2006.

Limitations on Sec. 872

- HSA Sections 821 and 888 state that the U.S. Coast Guard and the U.S. Secret Service, “shall be maintained as ... distinct entit[ies] within the Department.”
 - Furthermore, HSA Section 888 restricts transfers of U.S. Coast Guard assets, authorities, functions, and capabilities, or changes in missions, except as specified in future laws.
- The Post-Katrina Emergency Management Reform Act (PKEMRA) included a specific exemption from Section 872 for FEMA (6 U.S.C. 316(b)).
- Use of Sec. 872 was first blocked by an appropriations rider (P.L. 110-28, §3501), which has been repeated almost every year since. Exceptions:

- - FY2017 – not included; and
 - FY2022 – exception included for establishment of the Office of Health Security (P.L. 117-103, Div. F, §513).
- The rider as drafted for FY2023 blocks the availability of funds “to carry out section 872 ... unless explicitly authorized by Congress.”

FOR MORE INFORMATION

- For more information on government reorganization, see CRS Report R44909, *Executive Branch Reorganization*, by Henry B. Hogue.
- For more episodes of this podcast series, search “HSA@20” on the CRS website.

NEXT EPISODE

March 27, 2023: Personnel

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Author Information

William L. Painter, Coordinator
Specialist in Homeland Security and Appropriations

Henry B. Hogue
Specialist in American National Government

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