

111TH CONGRESS
1ST SESSION

H. R. 2142

To require the review of Government programs at least once every 5 years for purposes of assessing their performance and improving their operations, and to establish the Performance Improvement Council.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2009

Mr. CUELLAR (for himself and Mr. MOORE of Kansas) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To require the review of Government programs at least once every 5 years for purposes of assessing their performance and improving their operations, and to establish the Performance Improvement Council.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Government Effi-
5 ciency, Effectiveness, and Performance Improvement Act
6 of 2009”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) AGENCY.—The term “agency” means—

2 (A) an executive agency as defined in sec-
3 tion 105 of title 5, United States Code, other
4 than the Government Accountability Office; and

5 (B) the United States Postal Service and
6 the Postal Regulatory Commission.

7 (2) AGENCY PERFORMANCE IMPROVEMENT OF-
8 FICER.—The term “agency performance improve-
9 ment officer” means an employee of an agency who
10 is a member of the Senior Executive Service or
11 equivalent service, and who is designated by the
12 head of the agency to carry out the duties set forth
13 in section 5 of this Act.

14 **SEC. 3. FINDINGS AND PURPOSES.**

15 (a) FINDINGS.—Congress finds the following:

16 (1) A lack of efficiency, effectiveness, and ac-
17 countability in some Federal programs undermines
18 the confidence of the American people in the Gov-
19 ernment and reduces the Federal Government’s abil-
20 ity to adequately address public needs.

21 (2) To restore the confidence of the American
22 people in its Government and to increase the Fed-
23 eral Government’s ability to adequately address vital
24 public needs, the Federal Government must contin-

1 ually seek to improve the efficiency, effectiveness,
2 and accountability of Federal programs.

3 (3) With the passage of the Government Per-
4 formance and Results Act of 1993, Congress di-
5 rected the executive branch to seek improvements in
6 the performance and accountability of Federal pro-
7 grams by having agencies focus on strategic objec-
8 tives and annual program results.

9 (4) The requirements of the Government Per-
10 formance and Results Act have produced an infra-
11 structure of outcome oriented strategic plans, per-
12 formance measures, and accountability reporting
13 that serve as a solid foundation for agencies working
14 with Congress to achieve long-term strategic goals
15 and improve the performance of Federal programs.

16 (5) Congressional policy making, spending deci-
17 sions, and program oversight have been handicapped
18 by insufficient attention to program performance
19 and results.

20 (6) While improvements have been made in the
21 development of outcome-oriented strategic plans,
22 performance measures, and accountability reporting
23 for individual programs, progress is still needed to
24 ensure that programs are periodically evaluated in a
25 systematic, consistent, and transparent manner, and

1 that performance information is used to inform con-
2 gressional decisionmaking in conducting program
3 authorization, appropriation, and oversight.

4 (7) Periodic performance assessments of Fed-
5 eral programs provide critical information on wheth-
6 er a program is achieving its performance objectives
7 and help Congress and the executive branch identify
8 the most pressing policy and program issues and de-
9 termine if specific operational, financial, or strategic
10 reforms are needed to increase a program's effi-
11 ciency and effectiveness.

12 (8) Programs performing similar or duplicative
13 functions that exist within a single agency or across
14 multiple agencies should be identified and their per-
15 formance and results shared among all such pro-
16 grams to improve their performance and results.

17 (b) PURPOSES.—The purposes of this Act are as fol-
18 lows:

19 (1) To improve the Government Performance
20 and Results Act of 1993 by implementing a program
21 assessment process that seeks to assess each Federal
22 program on a periodic basis with a particular focus
23 on the following:

24 (A) The clarity of purpose and objectives
25 of the program.

1 (B) The quality of the program design.

2 (C) The quality of strategic and perform-
3 ance planning and goals for the program.

4 (D) The quality of the management and
5 organizational design of the program.

6 (E) The effectiveness of the program in
7 reaching its stated objectives.

8 (2) To utilize the information gathered during
9 the assessment process to help agencies make in-
10 formed management decisions, improve the effective-
11 ness of agency and program operations (particularly
12 for those programs that are deemed poorly per-
13 forming), and submit evidence-based funding re-
14 quests.

15 (3) To provide congressional policy makers with
16 information needed to conduct more effective over-
17 sight and assist in the improvement of agency oper-
18 ations, and to make performance-informed and re-
19 sults-based authorization and appropriation deci-
20 sions that improve the effectiveness of program op-
21 erations.

22 (4) To establish the Performance Improvement
23 Council as a body that will assist in the development
24 of performance standards and evaluation methodolo-
25 gies, identify best practices in Federal performance

1 management practices and facilitate the exchange of
2 information among agencies on these practices, and
3 coordinate and monitor performance assessment ef-
4 forts.

5 (5) To establish agency performance improve-
6 ment officers to supervise the performance manage-
7 ment activities of Federal agencies.

8 **SEC. 4. SENSE OF CONGRESS REGARDING THE NEED FOR**
9 **INCREASED CONSULTATION BETWEEN CON-**
10 **GRESS AND FEDERAL AGENCIES ON PER-**
11 **FORMANCE MANAGEMENT ISSUES.**

12 It is the sense of Congress that the head of each Fed-
13 eral agency should make every effort to consult with the
14 committees with jurisdiction over the agency and other in-
15 terested members of Congress each fiscal year regarding
16 the performance plan of the agency (required by section
17 1115 of title 31, United States Code).

18 **SEC. 5. PROGRAM ASSESSMENT.**

19 (a) REQUIREMENT FOR PROGRAM ASSESSMENTS.—
20 Chapter 11 of title 31, United States Code, is amended
21 by adding at the end the following new section:

22 **“§ 1120. Program assessment**

23 **“(a) ASSESSMENTS.—**The head of each Federal
24 agency, in collaboration with the Director of the Office of
25 Management and Budget, shall, to the maximum extent

1 practicable, conduct an assessment of each program of the
2 agency at least once every 5 fiscal years.

3 “(b) ASSESSMENT REQUIREMENTS.—In conducting
4 an assessment of a program under subsection (a), the
5 head of a Federal agency, in collaboration with the Direc-
6 tor of the Office of Management and Budget, shall—

7 “(1) coordinate to determine the programs to
8 be assessed; and

9 “(2) assess the program’s purpose, strategic
10 plan and objectives, organizational design, manage-
11 ment, efficiency, and effectiveness in achieving its
12 performance objectives, and such other matters as
13 the head of the agency considers appropriate, and
14 identify the program’s strengths and weaknesses and
15 factors impeding or contributing to program suc-
16 cesses.

17 “(c) DRAFT LIST OF PROGRAMS TO BE ASSESSED.—
18 The Director of the Office of Management and Budget
19 shall—

20 “(1)) make available, as part of the President’s
21 budget submission and through the Office of Man-
22 agement and Budget website, and provide to the
23 Committee on Oversight and Government Reform of
24 the House of Representatives, the Committee on
25 Homeland Security and Governmental Affairs of the

1 Senate, and the Committees on Appropriations of
2 the House of Representatives and the Senate—

3 “(A) a draft list of programs to be as-
4 sessed during the coming fiscal year; and

5 “(B) the criteria and methodology that will
6 be used to assess the programs;

7 “(2) provide a mechanism for interested per-
8 sons, including members and committees of Con-
9 gress, to comment on the programs being assessed
10 and the criteria and methodology that will be used
11 to assess the programs; and

12 “(3) along with the head of each agency, place
13 a special emphasis on the advantages of assessing
14 during the same fiscal year any programs that are
15 performing similar functions, serve similar popu-
16 lations, have similar purposes, or share common ob-
17 jectives, for purposes of identifying common chal-
18 lenges, exemplary goals and practices, common
19 measures of performance, and potential opportuni-
20 ties for the integration and consolidation of Federal
21 functions.

22 “(d) FINAL LIST OF PROGRAMS TO BE ASSESSED.—
23 By May 1 of each year, the Director of the Office of Man-
24 agement and Budget shall make available, through the Of-
25 fice of Management and Budget website, and provide to

1 the Committee on Oversight and Government Reform of
2 the House of Representatives, the Committee on Home-
3 land Security and Governmental Affairs of the Senate,
4 and the Committees on Appropriations of the House of
5 Representatives and the Senate—

6 “(1) a final list of programs to be assessed dur-
7 ing the coming fiscal year; and

8 “(2) the criteria and methodology that will be
9 used to assess the programs.

10 “(e) COORDINATION AND ESTABLISHMENT OF AS-
11 SESSMENT TEAMS.—In conducting an assessment of a
12 program under subsection (a), the head of the relevant
13 agency shall collaborate with the Director of the Office
14 of Management and Budget to establish assessment teams
15 to assess the program’s purpose, strategic plan and objec-
16 tives, organizational design, management, efficiency, and
17 effectiveness in achieving its performance objectives, and
18 such other matters as the head of the agency considers
19 appropriate, and identify the program’s strengths and
20 weaknesses and factors impeding or contributing to pro-
21 gram successes.

22 “(f) ASSESSMENT REPORTS.—(1) The results of the
23 assessments conducted during a fiscal year shall be sub-
24 mitted by the Director of the Office of Management and
25 Budget in a report to Congress at the same time that the

1 President submits the next budget under section 1105 of
2 this title after the end of that fiscal year.

3 “(2) The assessment report for each program shall—

4 “(A) include—

5 “(i) a brief summary of the program pur-
6 poses, objectives, and performance goals, as well
7 as key findings of the assessment;

8 “(ii) an assessment of the clarity of the
9 program’s purpose and the soundness of the
10 program’s organizational design and approach
11 to achieving specific long-term goals;

12 “(iii) an assessment of the quality of the
13 program’s measurable long-term and annual
14 performance measures, and the extent to which
15 necessary performance data are collected;

16 “(iv) an assessment of the extent to which
17 managers are held accountable for achieving
18 program results, and the extent to which strong
19 financial management tools are in place;

20 “(v) an assessment of the program’s effi-
21 ciency and effectiveness in achieving long-term
22 and annual performance objectives; and

23 “(vi) a summary of how the program’s
24 strengths and weaknesses are impeding or con-
25 tributing to its failures or successes, including

1 the reasons for any substantial variation from
2 the targeted level of performance of the pro-
3 gram;

4 “(B) describe the extent to which any trends,
5 developments, or emerging conditions affect the need
6 to change the mission of the program or the way
7 that the program is being carried out;

8 “(C) identify, within any program assessed, the
9 best practices conducted in the program for allo-
10 cating resources in an efficient and effective manner
11 that resulted in positive outcomes, and the key rea-
12 sons why such practices resulted in positive out-
13 comes;

14 “(D) include recommendations for program
15 modifications to improve the results that each pro-
16 gram achieves, with a special focus on opportunities
17 that might exist for the consolidation and integra-
18 tion of programs and authorities, along with an ex-
19 planation of each change and a description of its ef-
20 fect on program operations, costs, and effectiveness;

21 “(E) describe any significant limitations in the
22 assessments; and

23 “(F) be available in a searchable, online data-
24 base through the Office of Management and Budget
25 website.

1 “(g) IMPROVEMENT PLANS.—(1) Following the sub-
2 mission of any assessment report, the Director of the Of-
3 fice of Management and Budget, acting through the Dep-
4 uty Director for Management, shall work with the relevant
5 agency to develop an improvement plan that responds to
6 the assessment report and that identifies follow-up actions
7 to improve the performance of the program covered by the
8 assessment report.

9 “(2) Within 90 days after submission of an assess-
10 ment report, the Director of the Office of Management
11 and Budget shall make the improvement plan relating to
12 the report available, through the Office of Management
13 and Budget website, and submit copies of the improve-
14 ment plan to the Committee on Oversight and Government
15 Reform of the House of Representatives, the Committee
16 on Homeland Security and Governmental Affairs of the
17 Senate, and the Committees on Appropriations of the
18 House of Representatives and the Senate.

19 “(3) Each improvement plan for a program shall in-
20 clude management, organizational, or operational reforms
21 the agency will implement to improve the performance of
22 the program.

23 “(4) The head of the relevant agency, in collaboration
24 with the Director of the Office of Management and Budg-

1 et, shall oversee the implementation of improvement plans
2 for programs in the agency.

3 “(5) The Director of the Office of Management and
4 Budget shall make improvement plans available in a
5 searchable, electronic form through the Office of Manage-
6 ment and Budget website. The plans shall be updated pe-
7 riodically to reflect the status of follow-up actions.

8 “(h) CRITERIA FOR MORE FREQUENT ASSESS-
9 MENTS.—The Director of the Office of Management and
10 Budget shall make every effort to assess programs more
11 frequently than required under subsection (a) in cases in
12 which programs are determined to be of higher priority,
13 special circumstances exist, improvements have been
14 made, or it is determined that more frequent assessment
15 is warranted.

16 “(i) INSPECTOR GENERAL REPORT.—Each year, fol-
17 lowing the release of assessment reports, the Inspector
18 General of each agency shall submit to Congress, and post
19 on the website of the Inspector General, a report on the
20 agency’s implementation of the requirements of this sec-
21 tion and on the strengths, weaknesses, and limitations of
22 the agency’s assessment process, as well as the quality of
23 the agency’s assessment reports and improvement plans.

24 “(j) GOVERNMENT ACCOUNTABILITY OFFICE EVAL-
25 UATIONS AND REPORTS.—

1 “(1) EVALUATIONS.—

2 “(A) IN GENERAL.—After the end of each
3 of the first, second, and third fiscal years with
4 respect to which the Director of the Office of
5 Management and Budget submits one or more
6 assessment reports under subsection (f), the
7 Comptroller General of the United States shall
8 evaluate the implementation of this section,
9 with emphasis on the matters specified in sub-
10 paragraph (B).

11 “(B) MATTERS TO BE EVALUATED.—The
12 matters to be evaluated under subparagraph
13 (A) are as follows, with respect to the fiscal
14 year covered by the evaluation:

15 “(i) The criteria and methodology
16 used to conduct program assessments.

17 “(ii) The limitations of the assessment
18 process.

19 “(iii) The quality of assessment re-
20 ports and improvement plans.

21 “(iv) Agency efforts to implement fol-
22 low-up actions identified in program im-
23 provement plans.

1 “(v) The level of engagement between
2 congressional stakeholders and executive
3 branch agencies.

4 “(vi) The use of data produced
5 through the assessment process.

6 “(vii) The effectiveness of assessment
7 teams, agency performance improvement
8 officers, and the Performance Improve-
9 ment Council in improving agency per-
10 formance management efforts.

11 “(2) REPORTS.—The Comptroller General shall
12 submit to Congress a report on the results of each
13 evaluation conducted under paragraph (1). The re-
14 port shall include a list of recommendations on ways
15 to improve the assessment process and the oper-
16 ations of agency performance improvement officers
17 and the Performance Improvement Council.

18 “(k) CLASSIFIED INFORMATION.—(1) With respect
19 to program assessments conducted during a fiscal year
20 that contain classified information, the President shall
21 submit on the same date as the report is submitted under
22 subsection (g)—

23 “(A) a copy of each such assessment (including
24 the classified information), to the appropriate com-

1 mittees of jurisdiction of the House of Representa-
2 tives and the Senate; and

3 “(B) consistent with statutory law governing
4 the disclosure of classified information, an appendix
5 containing a list of each such assessment and the
6 committees to which a copy of the assessment was
7 submitted under subparagraph (A), to the Com-
8 mittee on Oversight and Government Reform of the
9 House of Representatives and the Committee on
10 Homeland Security and Governmental Affairs of the
11 Senate.

12 “(2) Upon request from the Committee on Oversight
13 and Government Reform of the House of Representatives
14 or the Committee on Homeland Security and Govern-
15 mental Affairs of the Senate, the Director of the Office
16 of Management and Budget shall, consistent with statu-
17 tory law governing the disclosure of classified information,
18 provide to the Committee a copy of—

19 “(A) any assessment described in subparagraph
20 (A) of paragraph (1) (including any evaluation not
21 listed in any appendix submitted under subpara-
22 graph (B) of such paragraph); and

23 “(B) any appendix described in subparagraph
24 (B) of paragraph (1).

1 “(3) In this subsection, the term ‘classified informa-
2 tion’ refers to matters described in section 552(b)(1)(A)
3 of title 5.

4 “(1) INHERENTLY GOVERNMENTAL FUNCTIONS.—
5 The functions and activities authorized or required by this
6 section shall be considered inherently Governmental func-
7 tions and shall be performed only by Federal employees.

8 “(m) TERMINATION.—The requirements of this sec-
9 tion shall terminate on September 30, 2019.”.

10 (b) GUIDANCE.—Not later than 6 months after the
11 date of the enactment of this Act, the Director of the Of-
12 fice of Management and Budget shall prescribe guidance
13 to implement the requirements of section 1120 of title 31,
14 United States Code, as added by subsection (a), including
15 guidance on a definition of the term “program”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 11 of title 31, United States
18 Code, is amended by adding at the end the following:

“1120. Program assessment.”.

19 **SEC. 6. STRATEGIC PLANNING AMENDMENTS.**

20 (a) CHANGE IN DEADLINE FOR STRATEGIC PLAN.—
21 Subsection (a) of section 306 of title 5, United States
22 Code, is amended by striking “No later than September
23 30, 2007,” and inserting “Not later than September 30
24 of each year following a year in which an election for
25 President occurs, beginning with September 30, 2009,”.

1 (b) CHANGE IN PERIOD OF COVERAGE OF STRA-
2 TEGIC PLAN.—Subsection (b) of section 306 of title 5,
3 United States Code, is amended to read as follows:

4 “(b) Each strategic plan shall cover the four-year pe-
5 riod beginning on October 1 of the year following a year
6 in which an election for President occurs.”.

7 **SEC. 7. IMPROVING GOVERNMENT PERFORMANCE.**

8 (a) IMPROVING GOVERNMENT PERFORMANCE.—
9 Chapter 11 of title 31, United States Code, as amended
10 by section 4, is further amended by adding at the end the
11 following new section:

12 **“§ 1121. Improving government performance**

13 “(a) DUTIES OF AGENCY PERFORMANCE IMPROVE-
14 MENT OFFICERS.—Subject to the direction of the head of
15 the agency, each agency performance improvement officer
16 shall—

17 “(1) supervise the performance management ac-
18 tivities of the agency, including development of the
19 agency’s strategic plans, annual performance plans,
20 and annual performance reports as required by law;

21 “(2) advise the head of the agency, with respect
22 to a program administered in whole or in part by the
23 agency, whether—

1 “(A) the performance plans required under
2 section 1115 of this title and the strategic plans
3 required under section 306 of title 5 are—

4 “(i) sufficiently aggressive toward full
5 achievement of the purposes of the pro-
6 gram; and

7 “(ii) realistic in light of authority and
8 resources provided for the operation of the
9 program; and

10 “(B) means for measurement of progress
11 toward achievement of the goals are sufficiently
12 rigorous and accurate;

13 “(3) convene relevant agency personnel regu-
14 larly throughout each year to—

15 “(A) assess the performance of programs
16 administered in whole or in part by the agency;
17 and

18 “(B) consider means to improve the per-
19 formance and efficiency of programs;

20 “(4) assist the head of the agency in the devel-
21 opment and use within the agency of performance
22 measures in personnel performance appraisals, and,
23 as appropriate, other agency personnel and planning
24 processes; and

1 “(5) assist the head of the agency in overseeing
2 the implementation of the improvement plans re-
3 quired under section 1120 of this title.

4 “(b) ESTABLISHMENT AND OPERATION OF PER-
5 FORMANCE IMPROVEMENT COUNCIL.—

6 “(1) The Director shall establish, within the Of-
7 fice of Management and Budget for administrative
8 purposes only, a Performance Improvement Council,
9 in accordance with this section.

10 “(2) The Performance Improvement Council
11 shall consist exclusively of—

12 “(A) the Deputy Director for Management
13 of the Office of Management and Budget, who
14 shall serve as Chair;

15 “(B) such agency performance improve-
16 ment officers as determined appropriate by the
17 Chair; and

18 “(C) such other full-time or permanent
19 part-time employees of an agency as determined
20 appropriate by the Chair with the concurrence
21 of the head of the agency concerned.

22 “(3) The Chair or the Chair’s designee shall
23 convene and preside at the meetings of the Perform-
24 ance Improvement Council, determine its agenda, di-
25 rect its work, and establish and direct subgroups of

1 the Performance Improvement Council, as appro-
2 priate to deal with particular subject matters, that
3 shall consist exclusively of members of the Perform-
4 ance Improvement Council.

5 “(4) To assist in implementing the require-
6 ments of sections 1115, 1116, 1117, 1120, and
7 9703 of this title and section 306 of title 5, the Per-
8 formance Improvement Council shall—

9 “(A) develop and submit to the Director of
10 the Office of Management and Budget, or when
11 appropriate to the President through the Direc-
12 tor of the Office of Management and Budget, at
13 times and in such formats as the Chair may
14 specify, recommendations concerning—

15 “(i) performance management policies
16 and requirements; and

17 “(ii) criteria for evaluation of program
18 performance;

19 “(B) facilitate the exchange among agen-
20 cies of information on performance manage-
21 ment, including strategic and annual planning
22 and reporting, to accelerate improvements in
23 program performance;

1 “(C) monitor the assessments of Federal
2 programs required under section 1120 of this
3 title;

4 “(D) to facilitate keeping the public in-
5 formed, and with such assistance of heads of
6 agencies and agency performance improvement
7 officers as the Director of the Office of Man-
8 agement and Budget may require, develop an
9 Internet website that provides the public with
10 information on how well each agency performs
11 and that serves as a comprehensive source of
12 information on—

13 “(i) agency strategic plans;

14 “(ii) annual performance plans and
15 annual performance reports;

16 “(iii) program assessment reports re-
17 quired under section 1120 of this title;

18 “(iv) the status of the implementation
19 of improvement plans required under sec-
20 tion 1120 of this title; and

21 “(v) consistent with the direction of
22 the head of the agency concerned after
23 consultation with the Director of the Office
24 of Management and Budget, any publicly
25 available reports by the agency’s Inspector

1 General concerning agency program per-
2 formance;

3 “(E) monitor implementation by agencies
4 of the policy set forth in sections 1115, 1116,
5 1117, 1120, and 9703 of this title and section
6 306 of title 5 and report thereon from time to
7 time as appropriate to the Director of the Of-
8 fice of Management and Budget, or when ap-
9 propriate to the President through the Director
10 of the Office of Management and Budget, at
11 such times and in such formats as the Chair
12 may specify, together with any recommenda-
13 tions of the Council for more effective imple-
14 mentation of such policy; and

15 “(F) obtain information and advice, as ap-
16 propriate, in a manner that seeks individual ad-
17 vice and does not involve collective judgment or
18 consensus advice or deliberation, from—

19 “(i) State, local, territorial, and tribal
20 officials; and

21 “(ii) representatives of entities or
22 other individuals.

23 “(5)(A) To the extent permitted by law, the Of-
24 fice of Management and Budget shall provide the
25 funding and administrative support the Council

1 needs, as determined by the Director of the Office
2 of Management and Budget, to implement this sec-
3 tion.

4 “(B) The heads of agencies shall provide, as ap-
5 propriate and to the extent permitted by law, such
6 information and assistance as the Chair may request
7 to implement this section.”.

8 (b) GUIDANCE.—Not later than 6 months after the
9 date of the enactment of this Act, the Director of the Of-
10 fice of Management and Budget shall prescribe guidance
11 to implement the requirements of section 1121 of title 31,
12 United States Code, as added by subsection (a).

13 (c) CONFORMING AND CLERICAL AMENDMENTS.—

14 (1) Section 1115(g) of title 31, United States
15 Code, is amended by striking “1119” and inserting
16 “1121”.

17 (2) The table of sections at the beginning of
18 chapter 11 of title 31, United States Code, is
19 amended by adding at the end the following:

“1121. Improving Government Performance.”.

○