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Moving Toward More Capable Government: A Guide to Organizational Design

New Ways to Manage Series

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The PricewaterhouseCoopers Endowment for
The Business of Government

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FOREWORD

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On behalf of The PricewaterhouseCoopers Endowment for The Business of Government, we are pleased to present this report by Thomas H. Stanton, "Moving Toward More Capable Government: A Guide to Organizational Design."

This important report serves as an excellent companion piece to another recently published Endowment report, "Applying 21st-Century Government to the Challenge of Homeland Security," by Elaine C. Kamarck of Harvard University. The Stanton report examines the organizational dilemma frequently faced by government: when to create or restructure a government agency or instrumentality. The Kamarck report examines three new forms of government that do not involve the creation of new government organizations or instrumentalities: reinvented government, government by network, and government by market. Read together, these two new reports provide valuable insights to public sector executives on how various tools and changes in government organizations can be applied to developing creative solutions and interventions to national problems.

The Stanton report is indeed timely. Recent days have seen the creation of a new government agency, the Transportation Security Administration, and the President's proposal to create a Department of Homeland Security. In addition, the Federal Bureau of Investigation recently went through its own restructuring. Other government organizational changes have also been proposed by a variety of congressional committees and commissions to enhance the nation's capacity to respond more effectively in the area of homeland security. Future days will clearly see increased interest in the important topic of government organization. We trust that the Stanton report will stimulate enlightened discussion about the creation or restructuring of government agencies and government instrumentalities in the years ahead.

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EXECUTIVE SUMMARY

This is a guide to design of public and private organizations that carry out public purposes. When organizational change is appropriate, restructuring can have a profound and beneficial impact on performance. There are a number of sound reasons to create a new organization or to reorganize. These include the need to: (1) combine related programs from disparate governmental units to provide an organizational focus and accountability for carrying out high-priority public purposes, (2) help assure that information flows to the proper level of government for consideration and possible action, (3) change policy emphasis and assure that resources are more properly allocated to support high-priority activities, and (4) determine who controls and is accountable for certain governmental activities.

In organizational design, the key is to fit the appropriate organizational form to the purposes to be achieved. This is not always easy. Policy makers frequently reach for organizational answers that may compound rather than alleviate issues of capacity, including the creation of governing boards. This happened to the Internal Revenue Service in 1998, for example. Many problems do not have solutions that involve organizational design. Elements such as leadership, quality of personnel and systems, level of funding, and freedom from unwise legal and regulatory constraints may be as important as organizational structure in the search for solutions to many problems that confront government agencies and programs. Also, reorganization can be costly and disruptive.

Experience provides some lessons about preferred organizational forms. As a general rule, it is better to link a governmental organization to a cabinet department than to leave it independent. An independent agency cannot call on a larger department to try to offset the pull of influential narrow interests. Also as a general rule, a single administrator rather than a multi-member board best governs a federal agency with operating responsibilities. A board generally reduces such an agency's capacity and accountability.

The government corporation is an organizational form that can be quite helpful in supporting the operations of an agency that provides business-type services. The government corporation can keep its accounts and manage its affairs on a businesslike basis. A government corporation that is financially self-sustaining does not need annual appropriations of scarce taxpayer dollars; instead it can fund itself from revenues that it generates from its activities.

Sometimes policy makers may find it attractive to delegate performance of public purposes to a private organization. The instrumentality of government is an organizational category that includes a variety of nongovernmental organizations that carry out public purposes as defined by law.

Most companies and other private organizations do not conduct activities that are considered to involve public purposes. By contrast, an instrumentality is a private organization whose activities federal law directs so that it serves public purposes. Federal instrumentalities tend to be prevalent in the financial sector. They include Federal Reserve Banks, the Securities Investor Protection Corporation, government sponsored enterprises (GSEs), and commercial banks. Nonfinancial instrumentalities of government include the Corporation for Public Broadcasting, the Legal Services Corporation, the American National Red Cross, and the National Park Foundation.

Some inherently governmental functions, and especially those that involve the exercise of discretion in applying government authority or making decisions for the government, are not suitable candidates for delegation to a private organization. Also, if government turns an activity over to the private sector, the performance of that activity will change in response to the incentives created by private ownership. Investor-owned companies will seek to carry out only those activities that are profitable. Any instrumentality, whether for-profit, cooperative, or nonprofit, must be designed with careful attention to accountability if it is to succeed in serving its public purposes.

Assuming that a decision is made to create a private government instrumentality to carry out public purposes, the next question is whether that organization can earn enough revenues to cover its costs. Only then can it be financially viable. The government needs to assure: (1) that the instrumentality carries out high-priority public purposes, and (2) that it does so in a prudent financial manner. The latter issue is especially important for depository institutions and GSEs because of the government backing of insured deposits and the perception of implicit government backing for GSE obligations.

Once instrumentalities have become established, both the executive branch and the Congress can find it difficult to influence their activities, either with respect to serving high-priority public purposes or with respect to reducing financial exposure from their activities. When an organization has served its public purposes, or when those purposes no longer have a high public priority, then an end to instrumentality status is called for. Instrumentalities that have completed the transition to completely private companies include the National Consumer Cooperative Bank and the College Construction Loan Insurance Corporation (Connie Lee). Sallie Mae, a GSE, is in the process of giving up its government sponsorship and instrumentality status.

The events of September 11 have brought into sharp focus the limitations on the federal government's ability to design effective organizations and working relationships with other federal agencies, with state and local governments, and with private sector organizations. The government once had substantial capacity, both in the Executive Office of the President and on Capitol Hill, to design effective governmental organizations. Such capacity must be restored—to improve the capability of government generally and of agencies responsible for national homeland security in particular. It is likely that demand for solid analysis of executive organization and management issues will continue to be strong for quite some time. We have far to go in dealing with the organizational challenges that we face.

Introduction[1]

The September 11 attack on the United States has turned issues of government capacity and organizational design into national priorities. Almost immediately after September 11, proposals to create a national Homeland Security Office and a new organization to take charge of airport security commanded the attention of policy makers. These officials faced urgent questions including: (1) whether to create new entities, (2) whether these entities might be agencies or offices or nongovernmental organizations, and (3) how best to design the organization once the larger questions had been answered.

This guide for organizational design attempts to provide a framework to assist policy makers and others who may face such questions. As the dust settles after September 11, it is likely that Americans will press for a more effective government than was required earlier. Sound organizational design is an important part of the movement toward more capable government.

When organizational change is appropriate, restructuring can have a profound and beneficial impact on the performance of an organization. On the other hand, many of the problems that beset federal agencies may not be susceptible to being solved by organizational redesign. Reorganization alone will not solve many problems of interagency coordination. Poor leadership, unmotivated staff, insufficient resources, and glacial or irrational procedures also will not be overcome just by restructuring.

There are six basic means to improve the performance of organizations that carry out public purposes:

- Redesign program components
- Redesign administrative systems
- Provide additional resources
- Improve the organization's leadership
- Improve coordination of activities of multiple organizations
- Design or restructure the organization

This report addresses only the issue of the design and restructuring of an organization. Other approaches may prove more valuable in solving the particular types of problems that many agencies now face—and may be less disruptive than reorganization.

The next section presents the context for the need for redesigning many parts of government. It looks at the nature and causes of stress on government organizations and programs that can make their current organizational structure inappropriate. That is followed by a discussion of a basic premise of organizational design: The key is to identify the organizational problem or problems that need to be remedied, and then to determine whether or not there is a beneficial and achievable organizational solution to that set of problems. This section identifies when reorganization might be helpful and also notes the shortcomings of reorganization. The focus here is on the structure of the overall government agency or bureau rather than on the organizational structure within agencies or bureaus.

This is followed by a guide to levels of analysis, from the need to obtain added managerial flexibility to the desire to change the form of government organization to the consideration of creating a private organization to carry out the intended public purposes. As a general rule, lower-level changes are easier to implement in less time.

The next section presents a guide to analysis of private organizations that carry out public purposes. It introduces the concept of the federal instrumentality, an organization that is not part of the federal government and that carries out public purposes. Instrumentalities can take a variety of forms, including the for-profit company, the cooperative, and the nonprofit organization. For-profit instrumentalities include large shareholder-owned companies such as Fannie Mae and Freddie Mac, cooperatives such as the Farm Credit System, and nonprofits such as the American National Red Cross. Although these are private organizations, they carry out public purposes that are defined in federal law. If capacity has been a major issue confronting many government agencies, the question of accountability is critical for instrumentalities.

Unfortunately, government has lost much of its former capacity to improve the design of organizations and programs so that they might operate more effectively. Neither the executive branch nor the Congress currently possesses the wealth of design talent that once existed to help policy makers and legislators create or update the legal structures that support effective administration and delivery of public services. The final section recommends that the government take steps to improve its capacity to design effective organizations and programs as an essential step in improving the capacity of government.

Organizational design in government is often a political process, and a growing body of literature exists concerning the politics of organizational design.[2] As Harold Seidman states, "[D]ecisions on program design, institutional type, organizational jurisdiction, and management systems may well determine who will control and benefit from a program and, ultimately, whether national objectives are achieved."[3]

This report does not deal with the politics of government design, except to note that the scope of any intended organizational transformation will involve considerations of the constituencies that favor or oppose particular changes. Instead, the purpose of the report is more modest: to assure that policy makers have access to a conceptual framework that helps them to make wise decisions about organizational changes to enhance the capacity of government to perform well.

Government Organizations under Continuing Stress

Many government organizations today are falling behind in the effort to keep up with demand for their services. A mere mention of some of these services, such as medical care for the elderly, tax collection, and financing for low-income housing, helps validate the observation that many government agencies are being asked to meet increasing public needs with fewer resources. Not all agencies and programs are in decline, and some would argue that, to the extent the private sector is taking up the slack, not all of the decline is bad. Nonetheless, the trend is disturbing, especially in light of the new demands for increased national security since September 11.

In architecture, form follows function. Similarly, in organizational design, form should follow purpose. Many government agencies and programs are under stress because government must carry out new purposes and functions while many old activities no longer appear appropriate. Issues of purpose are in flux in three different dimensions: (1) political disagreements about the proper role of government that can call into question the current purposes of a program or agency, (2) technological developments that can change the way that purposes are carried out, and (3) economic developments that can affect the need for government to carry out some purposes in the old ways.

Each of these effects makes itself felt differently. Issues of the proper role of government are reflected in the many pieces of legislation that have sought to increase government's capacity to respond to the September 11 attacks. These new proposals follow a quite different period from the 1980s and 1990s, when many policy makers had suggested that the Congress should zero out or privatize or devolve some or all of many agencies' existing program activities.

As of this writing, the public purposes of many agencies remain in flux. Policy makers still do not know, for example, exactly how many agencies or programs have a significant role to play in assuring the national defense against a new form of warfare. For an agency with security responsibilities, such as the Immigration and Naturalization Service, the increased priority placed on homeland security has called its current organizational form into question. For an agency without a clear security role, the mere fact that its purposes are called into question can have significant consequences, especially in the budgeting and appropriations process. If the Office of Management and Budget and congressional appropriators begin to question certain activities, they are likely to try to reduce their funding in favor of higher-priority programs such as those that relate directly to national security.

Technology acts to take apart old purposes and ways of doing business, and put them back together in new ways. The driving forces of some technology-based systems include new economies of scale and the superiority of information-based technologies over older approaches. The economy of the Internet and toll-free (800) numbers means that government agencies often can provide more extensive service from centralized service centers compared to traditional face-to-face meetings at a local federal office; the availability of optical imaging and electronic data interchange similarly can make many paper filing systems—and the tasks of the people who maintain them—obsolete.

Finally, the economic context for many government activities is changing at a rapid pace. Many services that the federal government provides now find themselves threatened by new forms of competition. Thus, increased consumer use of electronic transactions is eroding the Postal Service's once profitable service in delivering bills and financial payments by mail. In one area of service delivery after another, private companies are able to use new technologies to obtain customers who would have been part of the government's customer base in earlier years.

The private sector also is adept at screening customers to attract the most profitable segments among consumers of power, housing, or financial services. Thus, automated underwriting systems allow private mortgage companies to attract borrowers who formerly might have been served by the Federal Housing Administration through an FHA mortgage. The screening process leaves government with a smaller customer base composed of people and firms that the private sector considers too costly to serve. For the agencies and programs that bear the brunt of such adverse selection, a downward spiral is possible, with diminished resources available to serve an increasingly needy segment of the population.

If an organization's form should follow its purposes, and purposes are up for grabs in several major dimensions—political, technological, and economic—the results can be devastating for government agencies and programs that had been organized around old ways of doing business. It is not surprising that departments such as Housing and Urban Development (HUD) and agencies such as the Centers for Medicare and Medicaid Services (CMS, formerly HCFA) have been hammered by waves of change. The questions then become: (1) whether redesign of the organization will solve the agency's most important problems, and (2) if so, what type of organizational redesign would be most beneficial.

The Decision to Change Organizational Structure

Deciding When a New Structure Is Appropriate

There are a number of sound reasons to create a new organization or to reorganize. These include the need to:

- Combine related programs from disparate governmental units to provide an organizational focus and accountability for carrying out high-priority public purposes
- Help assure that information flows to the proper level of government for consideration and possible action
- Change policy emphasis and assure that resources are more properly allocated to support high-priority activities
- Determine who controls and is accountable for certain governmental activities.

Combine Related Programs

A panel study of the National Academy of Public Administration presented a useful set of questions to help decide when it might be beneficial to combine programs into a single department or agency[4]:

- Are the agency's programs, along with other programs that might be added from other agencies, closely related in terms of achieving broad national goals?
- Would the combination of related programs improve service delivery? Would it save money, either for the taxpayers or for those affected by the programs? Would it prevent one constituency group or profession from dominating the agency?
- Does the agency warrant independent status, whether in the cabinet or not, as compared to other agencies?
- Would cabinet status improve the leadership, visibility, and public support of the programs?
- Does the public interest require that it remain in the government (even if many of its functions are contracted), or should it be devolved or privatized?

There are a number of success stories in this regard, including the creation of the Department of Housing and Urban Development (HUD) and the Department of Transportation (DOT). The creation of DOT as a cabinet agency was the result of careful analysis and 20 years of waiting until the conditions were right to bring together disparate programs from departments including Commerce (e.g., the Civil Aeronautics Administration) and Treasury (the Coast Guard), independent agencies (the Federal Aviation Administration) and commissions (the Civil Aeronautics Board and the Interstate Commerce Commission), and one government corporation (the St. Lawrence Seaway Development Corporation). While the reorganization was a large-scale effort, the sound design of the new department (see "The U.S. Department of Transportation: A Well-Designed Department" on page 14) mitigated the disruption caused by the change. Alan Dean writes, "An executive department is usually called for when programs related to some definable government purpose become so numerous, so large, and so complex that an official of secretarial rank with enhanced access to the president is needed to provide effective oversight and coordination of program management."[5]

Assure That Information Flows to the Proper Level of Government

The creation of the position of director of the Office of Homeland Security in the White House is a classic example of this type of reorganization. The president sought to create in one place a focus for the information that would flow from several dozen federal agencies that, until September 11, had not necessarily emphasized issues of national homeland security.

Many observers have urged that the director's position be established formally by law to assure the accountability of the office to the Congress and also to give it more strength in the inevitable turf battles that arise when government begins to focus on new urgent priorities. In this regard, the Office of Homeland Security could come to resemble the Office of National Drug Control Policy (ONDCP), which was established by law to help focus the efforts of numerous agencies on the issue of drug control. Besides its position in the White House, the ONDCP has authority to review budgets of federal agencies to determine the extent that they are consistent with the antidrug policies of the president.

Place Policy Emphasis on High-Priority Activities

Many times, the creation of a major new program may be accompanied by a proposed change in organization. Thus, the Clinton administration successfully sought creation of the Corporation for National and Community Service as part of the proposal to create AmeriCorps. The Bush administration sought creation of the new Transportation Security Administration in DOT as a response to the events of September 11 and the weaknesses revealed in aviation security. It is not certain that a new organization was needed in either instance; however, the creation of a new organization was a part of the emphasis given to the new activities and a way to demonstrate the administration's commitment to assuring that resources would support those activities.

The creation of the Office of Federal Housing Enterprises Oversight (OFHEO) as the safety and soundness regulator of Fannie Mae and Freddie Mac took place in part to demonstrate a new government priority on safety and soundness in the aftermath of the savings and loan debacle and also as an implicit statement that the regulatory responsibilities of the new office would have a higher priority and would gain greater resources than had been the case earlier.

Determine Control and Accountability

The creation of the Transportation Security Administration represented a significant shift in control and responsibility for aviation security, from the airlines that had hired low-cost low-performance contractors to direct federal administration of the airport and airplane security functions of some 28,000 officials in a newly created organization. The debate in the Congress concerned whether the government should contract for security services or whether federal employees should carry them out. In either event, there was substantial agreement on creating a Transportation Security Administration to assure that the government, rather than private airlines, controlled and was accountable for aviation security.

The reorganization of the U.S. Post Office Department also represented a change in control and accountability of important aspects of administration. The Postal Reorganization Act of 1970 transformed the organization from a cabinet department into an organization with the attributes of a wholly owned government corporation. This changed the method of financing and allowed the United States Postal Service (USPS) to exercise increased control over funding and operations. The new law also ended congressional control over appointments of postmasters. It depoliticized appointments, promotions, and management decisions, thereby allowing the USPS to increase its control over personnel and to make significant gains in productivity. The law also created a postal rate making process that, with all of its faults, is superior to the congressional rate making that was in place before 1970. The reorganization thus shifted accountability for major decisions concerning rates and appointments from the Congress to the USPS and the new Postal Rate Commission. Even though the reorganization was flawed in some respects,

The U.S. Department of Transportation: A Well-Designed Department

After World War II, the Office of Management and Organization in the Bureau of the Budget and the Hoover Commission began to consider the idea of creating a single department to consolidate transportation activities that were spread across numerous cabinet departments and independent agencies. When President Lyndon Johnson became interested in a legislative initiative to improve transportation, the political context was right for creation of the new department.[6]

The Department of Transportation Act of 1966 embodied a carefully designed structure that built upon many of the constituent units that were transferred from other parts of the government. The statutory constituents were largely based on modes of transportation. They originally included the Federal Aviation Administration, the Coast Guard, the Federal Highway Administration, the Federal Railroad Administration, and the St. Lawrence Seaway Development Corporation. Later additions included the Federal Transit Administration and the Federal Maritime Administration. Also, the National Highway Transportation Safety Administration was separated from the Federal Highway Administration, where it had been located for a short time. Principal operations of the Department of Transportation are conducted through these administrations.[7]

The secretary of transportation is the president's chief adviser on transportation policy. The secretary sets policies for the administrations, supported by the deputy secretary and by several assistant secretaries. Currently there are assistant secretaries for transportation policy, aviation and international affairs, governmental affairs, budget and programs, and administration. While the law specifies the responsibilities and powers of the modal administrations, the assistant secretaries function solely in a staff capacity; they do not have authority to direct the administrators who head each administration.

The secretary is free to change the duties and functions of the assistant secretaries. This allows the department to adjust to changing circumstances and priorities over the years. The statutory structure of DOT conforms to the precepts urged by the National Academy of Public Administration Standing Panel on Executive Organization and Management:

> Legislation establishing executive departments or agencies or addressing aspects of general management should to the maximum feasible extent avoid the prescription of statutory detail and should empower the agency head to make the internal arrangements best suited to the effective execution of the laws.[8]

The strength of the administration-based operating structure of the department is that each of the administrations possesses the staff and budget resources to carry out its mission. By contrast to some other departments, notably the Department of Energy with its tightly centralized structure, each of the larger DOT administrations has the ability to manage its own systems for personnel, procurement, and legal support, for example, according to policies that often may be set by the parent department. The missions of the modal administrations are different enough to merit operations through distinct organizational units. For example, the Federal Aviation Administration has quite different responsibilities and activities from the Federal Transit Administration or the Coast Guard.

On the other hand, the autonomy of the modal administrations has had disadvantages, too. It has taken years to improve intermodal transportation activities so that, for example, rail and urban transit systems link with airports in a manner that is familiar to travelers in Europe. Successive intermodal transportation acts have helped to address this concern, especially by promoting cooperation between the Federal Highway Administration and the Federal Transit Administration.

After September 11, the government enacted the Transportation and Airport Security Act, creating a new Transportation Security Administration headed by an under secretary of transportation for security. Closer study of the structure of the department would have led instead to creation of an administrator for transportation security in DOT, and the lodging of greater power in the secretary, with authority to delegate. This provides a useful lesson in organizational design: Be sure to study the organizational context before proposing changes. Knowledge of the context can help to prevent confusion and problems in implementing organizational changes.

notably the creation of the Postal Rate Commission, it did provide a substantial increase in capacity for the USPS that served the public well for many years.

A very difficult reorganization to accomplish politically was the Goldwater-Nichols Department of Defense Reorganization Act of 1986. That act transformed the Joint Chiefs of Staff (JCS) from a weak coordinating body into a source of influence that could promote serious interservice cooperation. The act accomplished this by: (1) increasing the authority of the JCS chairman, (2) improving the quality of the JCS staff by requiring joint service for promotion to flag or general officer rank, and (3) granting commanders in chief of unified and specified combatant commands (CINCs) increased autonomy and authority over their joint field commands. Observers attribute a significant increase in United States military capabilities, including combined service operations in the Persian Gulf War, to the 1986 Goldwater-Nichols Act and the reform of the JCS.[9]

In summary then, while creation of new organizations such as DOT and reorganizations such as the Postal Reorganization Act of 1970 or the 1986 Goldwater-Nichols Act sometimes may be difficult to enact, they can have substantial positive benefits as long as the change in organizational structure solves a real problem that had been impeding more effective performance.

Fitting the Solution to the Problem

In organizational design, the key is to fit the appropriate organizational form to the purposes to be achieved. This is not always easy. Policy makers frequently reach for organizational answers that may compound rather than alleviate issues of capacity, including the creation of governing boards. This happened to the Internal Revenue Service in 1998, for example. The problem is compounded because of the ease with which policy makers are able to adopt such organizational "quick fixes" that can complicate rather than solve the fundamental problems that beset an agency or program. Alan Dean and others have pointed out that there is no organization that cannot be made worse through a poor reorganization.

Many problems do not have solutions that involve organizational design. Elements such as leadership, quality of personnel and systems, level of funding, and freedom from unwise legal and regulatory constraints may be as important as organizational structure in the search for solutions to many problems that confront government agencies and programs.

For example, problems of interagency coordination, in an operational sense, sometimes may require quite different solutions from a consolidation or interagency reorganization. Thus, a major concern behind the recommendation to create a national homeland security department is the fact that so many of our border agencies—including Customs, the Coast Guard, and the Immigration and Naturalization Service—do not share common communications systems or databases with one another, or with the FBI, the CIA, and other involved agencies, that would allow them to exchange information promptly and to assemble that information into patterns that could signal the likely entry into the United States of dangerous people or cargo.[10] The creation of a common department to contain some but not all of these organizations is likely to be much less effective than a concerted effort to design the appropriate systems along with the provision of adequate resources, over a period of years, develop the needed systems, and integrate them into the day-to-day operations of all of the relevant frontline agencies.

Agencies also may seek to reorganize in the belief that they can increase their ability to carry out their responsibilities. Budget and staff cuts have turned many agencies into hollow organizations. The United States Commission on National Security/21st Century found that the Department of State was "starved for resources."[11] Moreover, the commission reported, "The Customs Service, the Border Patrol, and the Coast Guard are all on the verge of being overwhelmed by the mismatch between their growing duties and their mostly static resources."[12]

The problem is not confined to agencies and departments with national security responsibilities. In 1999, a bipartisan group of 14 health-care experts published an open letter calling for increased resources to be devoted to the Health Care Financing Administration (now renamed the Centers for Medicare and Medicaid Services): "[N]o private insurer, after subtracting its marketing costs and profit, would ever attempt to manage such large and complex insurance programs with so small an administrative budget."[13]

The United States Commission on National Security/21st Century stated the general problem in stark terms: "As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis in competence in government…. Both civilian and military institutions face growing challenges … in recruiting and retaining America's most promising talent."[14]

Reorganization is not a substitute for inadequate resources in areas such as budget, staffing, or systems. Consolidation of activities into a new, larger organization, for example, may not help an agency obtain greater resources. On the other hand, carefully targeted organizational redesign sometimes can enhance the capacity of a governmental organization by fitting the structure more closely to an agency's mission and changing the method of financing. That was the case with the change in financing of the U.S. Postal Service that resulted from the Postal Reorganization Act of 1970 and its establishment as an organization with the attributes of a wholly owned government corporation.

Organizational redesign also may make a substantial contribution to enhancing an agency's flexibility, for example, by removing layers of review and delegating responsibility for personnel, contracting, and budgeting to subordinate organizational units. In the mid-1990s, the Federal Housing Administration sought to become more autonomous through transformation into a wholly owned government corporation. That initiative failed because of the opposition of key constituencies. Had it gone into effect, the FHA might have gained substantial flexibility in its operations. Indeed, as is discussed below, the government corporation is an especially flexible organizational form that is intended to be able to respond to market demand for an agency's services.

On the other hand, many issues of flexibility can be addressed without going through a process of major organizational redesign. Simple delegations of authority, for example from a department to its major subordinate organizations, can relieve many agencies of layers of review that add little value to the quality of staffing, procurement, or budget decisions. The President's Management Agenda adopts a focused approach. It calls upon agencies to design and implement removal of redundant layers from their organizational hierarchies.

Life cycle is also an important issue to consider in the design or redesign of government organizations. One issue is capture. As Marver Bernstein and others have pointed out, some agencies (Bernstein wrote about independent regulatory commissions) are susceptible to capture by particular constituencies. The result can be to direct the activities of an agency or program to serve selected purposes in a different manner than if underrepresented interests had a more effective voice. Thus, as Harold Seidman observes, when designing an organization it is useful to consider whether its constituency is likely to be broad based, or whether it will represent narrow interests potentially antithetical to some of the public purposes to be accomplished.

Another life-cycle issue might be called ossification. Some agencies gain and maintain so much autonomy that they lose sensitivity to their external environment. Robert Mueller, the new head of the FBI, has been actively addressing this issue early in his tenure. Much of the frustration of the United States Commission on National Security/21st Century at the lack of coordination among agencies with security responsibilities would seem to relate to this issue. Amy Zegart, who studied the organizational design of the CIA, Joint Chiefs of Staff, and National Security Council, argues that national security organizations may find themselves beset by issues of bureaucratic "turf" that can be even more substantial than those among domestic agencies of government.

Harold Seidman notes the importance of organizational culture in organizational design. He asks two questions: (1) What is the culture and tradition of the administering department or agency?, and (2) Will it provide an environment favorable to program growth, or will it stunt development?

It can be difficult to anticipate and address issues of life cycle when creating or redesigning an organization. Nonetheless, these issues can be essential in determining the quality of an agency's performance at critical moments such as the weeks and months after September 11. They deserve thought as part of the process of organizational design.

Selecting an Appropriate Organizational Form

Once policy makers have identified the intended goals and purposes of an agency, they can look to existing organizations for possible models that they might adapt as a goal for the agency's transformation. A range of organizational forms can be constructed, from the usual government department or agency at one end to the completely private firm at the other.[15] Intermediate points along the organizational range would include independent agencies, wholly owned government corporations, and private instrumentalities of government. Note, however, that precise distinctions sometimes can be elusive. The political process tends to generate a variety of organizational types, such as the Smithsonian Institution or the Federal Reserve System, that do not fall clearly into any single organizational category.

Figure 1 presents a continuum of organizational forms from public (i.e., governmental) to private. This continuum includes some of the intermediate types of organization, such as the government corporation and the government sponsored enterprise; other forms, and especially other forms of government instrumentality, could have been included as well.

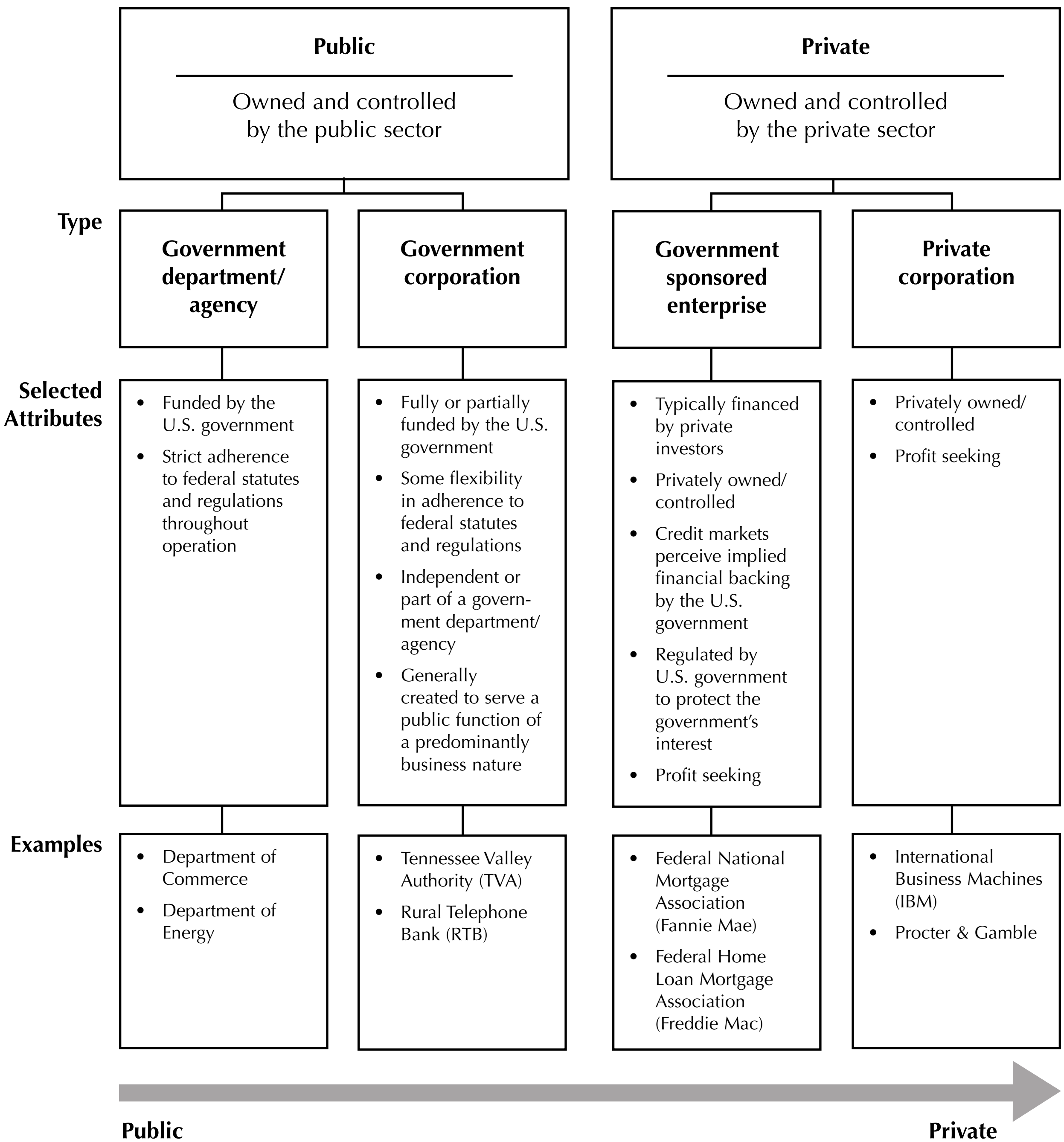
For officials of an agency that is enmeshed in restrictive laws and regulations and limited by scarce resources, it is inviting to dream of the organizational freedom enjoyed by entities such as the Federal Reserve or the Tennessee Valley Authority. Similarly, when a public priority such as airline security suddenly becomes urgent, some policy makers may grasp at the model of a government corporation or even a government sponsored enterprise to provide the organizational answers. However, caution is merited. Few federal purposes enjoy either the policy justification or the political constituency to take on such organizational forms.

The Costs of Reorganization

Besides providing benefits, even a good reorganization can involve costs. Herbert N. Jasper, an expert on government organization, has summarized some of those limitations[16]:

- Reorganization can be costly and disruptive; it may immobilize an agency for one to three years while the proposal is being formulated, debated, enacted, and implemented;
- Abolishing a government department or agency without terminating or consolidating the programs administered by the organization may cost more than preserving it.
- While there may be benefits from reorganization, there may also be losses—not just costs. That is, reorganization is a way to emphasize certain values or goals, but this means downgrading other values or goals. The Coast Guard, for example, has many responsibilities—for safety, search and rescue, maritime pollution, high-seas fishing, and oceanographic research, for example—that have little to do with border security. According to one rough estimate, only perhaps one-fifth of Coast Guard functions may relate directly to homeland security. The President's proposal to merge the Coast Guard into a new cabinet department for homeland security thus risks downgrading the other important Coast Guard functions in the effort to upgrade border security. These issues require careful analysis and judgment before making an organizational change.
- Reorganization, per se, seldom saves money. For example, combining two executive departments without other actions would save little more than the salaries of a handful of presidential appointees and their immediate staffs. Often program redesign can be much more cost-effective than reorganization.
- Efficiency, cost savings, and improved service might best be accomplished by program simplification or consolidation, rather than by merely vesting the authorities of two or more agencies in a single one. On the other hand, vesting overlapping functions in a single agency may permit the agency head to develop sound legislative proposals to rationalize the related functions.
- Executive reorganization proposals often fail because they would lead some to propose corresponding revisions in congressional committee jurisdictions. On occasion, deference to jurisdictional issues has led to the need for an agency appointee to be confirmed by two different Senate committees; this is preferable to trying to change lines of authority within the Congress.

Figure 1: The Continuum of Organizational Forms



Source: Government Corporation: Profiles of Existing Government Corporations (General Accounting Office, GAO/GGD-96-14).

Finding Organizational Solutions: The Creation or Redesign of Government Departments and Agencies

When initial analysis indicates that an organizational solution may be appropriate for the problem at hand, it may be useful to continue the analysis through different levels of organizational concern. This report can only begin to highlight some of the issues that must be considered in finding solutions to problems caused by flawed organizational structure. However, accepting that this report must adopt a high level of generality, some observations can help to illuminate the issues and tradeoffs that must be considered.

Some problems are larger than others, and organizational design needs to take this into account. In many, but not all, cases, the smaller the organizational change that will solve the most pressing problems, the easier the change may be to implement. One useful approach is to consider a series of questions that can help guide the search for an appropriate organizational solution. As can be seen in Figure 2, the questions start with the most common issues of lack of resources, capacity, and managerial flexibility, and move upwards to the highest level of question, whether the organization should be located in the public or private sector. This section looks at organizational options for governmental organizations. The section that follows looks at options for organizations in the private sector that carry out public purposes.

Figure 2: Design Questions—Government Departments and Agencies

1. What operational flexibilities does the organization require?
2. If the organization is governmental, where should it be located?
3. What governance structure is appropriate?
4. If a single administrator heads an agency, should there be a fixed term?
5. If the organization is a government agency, should it be a government corporation?
6. If the agency is not a government corporation, should its funding be changed in any other way?
7. Should the organization be part of government or private?

1. What operational flexibilities does the organization require?

Over the years, governmental organizations have become enmeshed in a web of legal restrictions that combine to limit their ability to carry out their missions. Some of these restrictions result from program failures that policy makers then address through tight financial controls that begin to impede program operations far beyond the scope of the original problem. Other restrictions come about when a crosscutting law inadvertently covers programs for which it is not suitable. The Federal Credit Reform Act, which requires complex accounting on the basis of annual appropriations, applies by its terms also to financially self-sustaining government corporations that are supposed to achieve operating flexibility through multiyear budgeting. The result of this otherwise beneficial law is to force some government corporations into the constraints of funding through the annual appropriations process.

The George W. Bush administration recognizes the importance of addressing legal constraints that may not add value to the operations of a particular organization. The President's Management Agenda for fiscal year 2002 proposed legislation that would create expedited procedures so that the administration could submit requests for legislative relief that could be addressed promptly by the Congress.

The Clinton administration also recognized this problem. One proposal of Vice President Gore's National Performance Review was to create a new organizational form, known as the performance-based organization, or PBO. Only two PBOs were enacted into law, the Office of Federal Student Aid in the Department of Education and the Patent and Trademark Office in the Department of Commerce. In practical effect for many agencies, the consideration of PBO status involved an invitation to obtain needed management flexibilities, especially in personnel actions and contracting, in return for a commitment to achieving performance goals.

For the Office of Federal Student Aid, the conversion to PBO status has provided an opportunity to reorganize the office and to experiment with new contracting approaches. On the other hand, the creation of a PBO has proved tricky in one major respect. The PBO concept is premised on the assumption that policy issues, which remain with the larger department, can be separated from operations, which are the province of the PBO. Unless designed correctly, the details of a PBO statute can create bureaucratic fault lines between the PBO and its parent department that create tensions and confuse rather than streamline organizational relationships. Both current PBOs would seem to manifest this difficulty.

For many government agencies, the achievement of operating flexibilities will not require such a large-scale redesign of the organization. Again the solution must fit the problem. An organizational solution is not appropriate merely to alleviate some statutory or departmental constraint that impedes effective operations. Rather, as the President's Management Agenda for FY 2002 suggests, a more targeted solution is called for, such as specific improvements in administrative or program delivery systems or perhaps some form of delayering of the department to remove redundancies in tasks between the larger department and the subordinate agency. The Congress recently has shown itself open to providing increasing numbers of excepted service positions for agencies that otherwise might not be able to recruit needed specialists with important technical or financial skills, for example. In obtaining such relief, it is wise to consider the admonition of public administration expert Ronald Moe, who counsels that—as with organizational redesign—targeted relief should rest upon well-considered principles rather than a simple desire to rid oneself of constraints that may have been intended to promote accountability in the operations of government as a whole.

2. If the organization is governmental, where should it be located?

As a general rule, it is preferable to link a governmental organization to a cabinet department, rather than leaving it independent. That said, organizational change might be appropriate when an activity becomes an orphan within its cabinet department. Competition among organizations within a department can deprive an agency or activity of access to funding, personnel, contracts, or other needed resources. This was a problem for the U.S. Coast Guard, for example, when it was part of the

Treasury Department. Once the agency transferred to the new Department of Transportation, the Coast Guard underwent a significant transformation in role and mission. As the United States Commission on National Security/21st Century properly pointed out, after some years the Coast Guard once again became neglected in the competition for resources, this time within the Department of Transportation.

A strong cabinet secretary can defend the department against encroachment from outside forces. By contrast, an independent agency cannot call on a larger department to try to offset the pull of narrow interests that may have influence over the relevant congressional subcommittees. Independent agencies may have other difficulties as well. With exceptions, such as the Social Security Administration, the National Aeronautics and Space Administration, and the Small Business Administration, the Congress may place a board structure at the top of an independent agency. Thus, independent agencies with operating responsibilities, such as the Export-Import Bank of the United States, the Tennessee Valley Authority, the Pension Benefit Guaranty Corporation, and the Federal Retirement Thrift Investment Board, all are governed by boards of directors. In most cases, as will be discussed below, the creation of a board reduces rather than enhances the capacity and accountability of a government agency.

3. What governance structure is appropriate?

As a general rule, a single administrator rather than a multi-member board best governs a federal agency. An agency governed by a board can lose capacity in several ways. The process of filling political appointments can be very slow. When seats on a board remain vacant, an agency can find its activities constrained by the inability to obtain a quorum to vote on important matters.

Harmful vacancies also can occur if a board consists of ex officio members who are too busy to attend regular board meetings. Alternatively, ex officio members of a government board will send subordinates who may lack the authority to act on their own. The Pension Benefit Guaranty Corporation (PBGC), for example, is supposed to be governed by a board consisting of three cabinet

Governance of an Operating Agency: The Choice Between a Single Administrator and a Board

The National Academy of Public Administration submitted a report to the Congressional Panel on Social Security Organization in which it stated that:

> [T]o the extent that management needs dictate the form of leadership, it is strongly advocated that a single commissioner be appointed and that the use of a board be avoided as neither necessary nor desirable.

The report made the following points about the choice between a single administrator and a board:

1. In management terms, the most important point is that it is almost universally agreed that single administrators are far more effective and accountable than multi-person boards or commissions, bipartisan or otherwise.
2. Again in management terms, a board is not a necessity and is not desirable. Even if a board's role is carefully defined and its membership carefully selected, history strongly suggests that it is almost impossible to keep such a board from interjecting itself into the management of the organization which it stewards. While such interjections are occasionally useful, the likelihood is that they would end up confusing and debilitating the authority of the agency head, creating conflict for the staff, and becoming another layer of management which adds little and detracts much. Furthermore, the composition of such boards becomes an issue in itself, and all too often breeds preoccupation with diversionary issues of balance, representativeness, or political fairness, rather than the ability of such boards to contribute to the success of the program.
3. Where boards attempt to manage programs directly without an authoritative manager (administrator, executive director) they have proved most often to be ineffective.

Source: National Academy of Public Administration, Management Reforms as a Part of Organizational Independence, report to the Congressional Panel on Social Security Administration, May 1984, pp. 1-2.

secretaries. Virtually none of these secretaries has the time or inclination to attend meetings of the PBGC board. Instead, the secretaries routinely send subordinates who lack the power to vote or otherwise act for the PBGC without obtaining guidance from their individual departments. This can greatly impair the ability of a board to serve as a forum for exchanging views to arrive at a consensus on an issue of importance to the organization that the board is supposed to guide.

As a general rule, the board structure in government functions much less effectively than a board of directors in the private sector, as will be discussed below. Members of the board of directors of a private corporation have a fiduciary responsibility to represent the interests of shareholders, and often hold a financial stake in the company. This creates a significant incentive to come to agreement about the desired direction for the organization. By contrast, members of a government board have no such incentive to act in a collaborative fashion. Indeed, the appointees to a government board are likely to have divergent views on some major issues. The lack of a working consensus can create delay and impede the ability of agency managers to act in the best interests of the organization and its mission.

Problems also can arise if appointments to a government board do not possess the requisite backgrounds, experience, or stature. This issue can be addressed by writing some minimal qualifications into the authorizing statute, but such language still does not assure high-quality appointments.

The board structure can impede accountability of a government organization. Without any one person who is fully responsible for decisions, board members and the agency's senior managers all can assign blame to each other for parts of a discredited decision or for inaction.

This said, there are some times when a board structure is appropriate or even necessary for a government agency. Multi-member boards are found in some regulatory agencies. For regulatory agencies, and in contrast to operating agencies, some consider the fact of divergent opinions among board members to be helpful in assuring the fairness of a decision.

Multi-member boards also are helpful in insulating some agencies from potential political interference in their operations. Here the Board of Governors of the U.S. Postal Service and the Federal Retirement Thrift Investment Board come to mind. In both cases, the board is charged with appointing the chief executive of the agency. The insertion of a multi-member board between the chief executive officer and the political process is considered valuable in helping to insulate the agency's operations from the kind of untoward political intervention that characterized the Post Office Department, for example, before its reorganization.

4. If a single administrator heads an agency, should there be a fixed term?

Generally, the preferred choice is to allow the president of the United States to appoint the agency head and to have the appointee serve at the pleasure of the president. The key issue in deciding on a fixed term is whether the position involves significant policy decisions or whether its functions tend to be more technical and nonpartisan in nature. If the position involves issues of policy, then there are costs to keeping someone in office who has no rapport with a new administration. Thus, the current head of one organization, who nominally serves for a fixed term of years, was asked to resign several times since the administration came into office. Although the position is a presidential appointment and therefore the president could dismiss the incumbent, the person has declined to depart amicably; this has contributed to a state of considerable friction between the organization and the leadership of the larger department.

On the other hand, if a position is largely technical and nonpartisan—for example, in a position relating to national security—then there may be some benefits to a fixed term. Most important, the government doesn't lose a skilled professional just because a new president takes office. There is time to arrange a more careful transition or to reappoint the incumbent.

5. If the organization is a government agency, should it be a government corporation?

One kind of government agency deserves special attention. The government corporation is an organizational form that can be quite helpful in supporting the operations of an agency that provides business-type services (similar to the U.S. Postal Service, mentioned earlier). President Harry Truman, in his 1948 budget message, stated the criteria for creating a government corporation:

> Experience indicates that the corporate form of organization is peculiarly adapted to the administration of government programs which are predominately of a commercial character—those which are revenue producing, are at least potentially self-sustaining and involve a large number of business-type transactions with the public. In their business operations such programs require greater flexibility than the customary type of appropriations budget ordinarily permits.

The essence of the government corporation is its ability to keep its accounts and manage its affairs on a businesslike basis. In other words, a government corporation that is financially self-sustaining does not need annual appropriations; it funds itself instead from revenues that it generates from its activities. The U.S. Postal Service sells mail delivery services, the Tennessee Valley Authority sells power, and the Government National Mortgage Association (Ginnie Mae) charges a fee for guaranteeing mortgage-backed securities. The General Accounting Office has issued a legal opinion indicating that wholly owned government corporations are exempt from the limitations imposed by many of the laws that apply to agencies funded by appropriations.

Some government corporations, such as the Federal Deposit Insurance Corporation (FDIC) and the Tennessee Valley Authority, benefit from considerable autonomy.[17] Other government corporations, such as Ginnie Mae, the Pension Benefit Guaranty Corporation, and the St. Lawrence Seaway Development Corporation, have less autonomy in their operations. Even these less autonomous corporations benefit from some management flexibilities that noncorporate government agencies would envy.

When a government corporation is appropriate for the intended mission, the organization is able to develop an institutional culture that can be quite businesslike. For example, a survey in the early 1990s of federal agencies that provide loans and guarantees showed that government corporations had established a practice of obtaining clean audit opinions year after year. These corporations—Ginnie Mae, the Overseas Private Investment Corporation (OPIC), and the Export-Import Bank of the United States (ExImBank)—achieved an organizational tone and operational effectiveness that allowed them to use relatively small staffs to manage significant programs. By contrast, other federal credit agencies at the time were unable to generate auditable financial statements and often were unable to achieve the businesslike culture that characterized the government corporations.

On the other hand, when a government corporation is an inappropriate organizational form, the result can be confusion. Inappropriate designation as a government corporation complicated accounting, budgeting, and reporting for the Corporation for National and Community Service, which does not conduct commercial activities and is not financially self-sustaining. Rather, it is a government agency that funds itself entirely from annual appropriations. The designation of the agency as a government corporation was intended to give the organization a corporate aura, not because the design was appropriate. As a result of the designation, however, the agency was forced to keep its books both as a federal agency based upon appropriated funds and also as a government corporation.

6. If the agency is not a government corporation, should its funding be changed in any other way?

Especially for agencies that obtain revenues from their activities, changes in funding present an attractive way to obtain management flexibility. On the other hand, annual budget and appropriations rules provide accountability; policy makers must be careful that they do not free an agency from much of its accountability if they change the funding rules.

Agencies have obtained a variety of funding changes. The United States Mint obtained authority to retain its revenues and make its expenditures out of a special public enterprise fund. This fund, similar to the authority of government corporations to retain and utilize revenues without regard to fiscal year limitation, has provided the Mint with significant flexibility. The Mint may pay major expenses from the fund, including the cost of metals used in coin production, fabrication and transportation costs, costs related to research and development, purchases of equipment, and capital improvements. This is a form of flexibility not available to most agencies.

Some other federal agencies have managed to obtain more extensive exemptions from federal budget and appropriations rules. The federal bank regulators, for example, obtain their funding from fees that are imposed by law on the banks that they supervise. The bank regulatory agencies are authorized to deposit these fees in accounts outside of the Treasury and to retain and use them without regard to annual limitations. The U.S. Constitution states, in Article I, Section 9, " No money shall be drawn from the Treasury, but in consequence of appropriations made by law...." The ability to keep and use their funds outside of the Treasury thus helps to exempt the federal bank regulators from the annual appropriations process.

Budget considerations have driven a number of organizational transformations. In 1968, Fannie Mae was converted from a government corporation into a government sponsored enterprise, in large part as a way to remove the corporation from the "vagaries" of the budget situation.[18] Given the way that many federal agencies today find themselves squeezed for administrative expenses such as salaries, overhead, travel and training, one can imagine that off-budget funding is very attractive.

On the other hand, the appropriations process serves the critical function of allocating scarce budget resources across competing public purposes. As some federal agencies obtain relief from budget limitations, other agencies may find themselves squeezed even more. This means that, in many cases, proposals to remove agencies from either the budget or appropriations processes may be bad public policy and may run into substantial political resistance. Policy makers should not assume that changes in the funding structure for an agency would be easy to achieve.

7. Should the organization be part of government or private?

From the perspective of organizational design, the choice between creating a governmental or private entity raises issues beyond pure economics. First, some inherently governmental functions, and especially those that involve the exercise of discretion in applying government authority or making decisions for the government, are not suitable candidates for delegation to a private organization.[19]

Second, if the government turns an activity over to the private sector, the performance of that activity will change in response to the incentives created by private ownership. Investor-owned companies will seek to carry out only those activities that are profitable. Thus, when the United States converted the U.S. Enrichment Corporation into a private shareholder-owned company, that company behaved quite differently from a government agency in adopting economy measures that conflict with some of the public policy commitments that the organization made when it became private. As is discussed in the next section, policy considerations may suggest that some privatizations might better be turned over to nonprofit or cooperative organizations rather than to investor-owned companies; the performance of these organizations too will differ from government agencies.

Third, as attorney Daniel Guttman, an authority on public-private relationships and privatization, points out,[20] the choice between a governmental or private entity to carry out public purposes determines the rules that will apply to the organization. Most government agencies are subject to a range of procedural and due process requirements, for example, that do not bind private organizations.

Thus, the choice between using a governmental or private entity to carry out public purposes involves tradeoffs. On the one hand, capacity could be significantly greater for the private organization. Government departments and agencies are subject to a panoply of controls over organizational inputs. These controls include prescriptions about staffing and personnel processes, procurement and contracting, and—above all—budget and other resource limitations. Subjecting an agency to input controls, especially over resources, means that, with exceptions such as some government corporations, its capacity will be limited compared to many private companies.

On the other hand, accountability of a government organization to Congress and the executive branch is fairly direct; by contrast, the private organization can exert influence through the political process so that private instrumentalities, authorized by government to carry out public purposes, are likely to play a major role in determining the nature of their own authorized activities. Thus, Ginnie Mae, a government agency, is a subordinate part of the Department of Housing and Urban Development; by contrast, Fannie Mae, a privately owned company, is one of the more influential financial institutions in the United States.

Finding Organizational Solutions: The Creation or Use of Private Instrumentalities of Government

The instrumentality of government is an organizational category that includes a variety of non-governmental organizations that carry out public purposes as defined by law. The instrumentality is an important category for organizational design because efforts to privatize government functions can involve creation of an instrumentality, or use of an existing organization as an instrumentality, to carry out purposes that previously were carried out by a government agency.

Private instrumentalities of the federal government are privately owned and managed. As with government organizations, the features of private instrumentalities involve their capacity to carry out public purposes, their accountability for carrying out those purposes, and the life cycle of the organization. Like government, and unlike ordinary private firms, private government instrumentalities are permitted to engage only in those activities that are authorized by their enabling legislation. Figure 3 summarizes some of the distinctions among government agencies, government instrumentalities, and completely private companies. The distinctions are not always sharply drawn. As Ronald Moe points out, the law creates many hybrid organizations that resist easy categorization.[21]

For purposes of clarity, one should hasten to add that the typical private firm that contracts with government does not become an instrumentality merely because of the contractual relationship with a government agency. Rather, an instrumentality is a private company or cooperative or nonprofit that is authorized by federal law or whose activities federal law directs so that it serves public purposes. Federal instrumentalities tend to be prevalent in the financial sector. They include Federal Reserve Banks, the Securities Investor Protection Corporation, government sponsored enterprises, and commercial banks. Nonfinancial instrumentalities have included the Communications Satellite Corporation and some nonprofits such as the Corporation for Public Broadcasting, the Legal Services Corporation, the American National Red Cross, and the National Park Foundation. Again, the importance of instrumentalities is that they represent an important organizational alternative to carrying out public purposes through a government department or agency.

Another option should be noted. The federal government may enact legislation that authorizes state and local government organizations to carry out public purposes under federal law; these organizations also then may become federal instrumentalities whose activities and powers are shaped by federal law. The idea of devolution of federal activities can involve arrangements with state or local government organizations that, by virtue of their responsibilities under federal law, may become federal instrumentalities. The devolution alternative is not discussed further here.

As might be expected, given the quite different legal frameworks of government and private organizations, the questions for private instrumentalities are quite different from those for government departments or agencies. Government agencies frequently seek added managerial flexibility and orga-

Figure 3: Institutional Differences—Government Agencies, Private Instrumentalities, and Ordinary Private Sector Companies

Government Agency	Private Instrumentality of Government	Ordinary Private Sector Company
Political factors predominate; the market affects some government corporations.	External environment includes the market, but political factors tend to dominate.	External environment is more market based than political.
Subject to controls on resources that often include annual appropriations limits; a tendency exists to maintain agency functions despite inadequate resources or capacity.	Stream of revenues and federal subsidies generates needed resources to build capacity.	Stream of profits generates needed resources to build capacity.
Accountable to multiple parts of government and, in varying degrees, to influential constituencies.	Accountable to private owners (except for nonprofits); often regulated by government as well.	Accountable to private owners.
Some public disclosure; often less financial disclosure than is required for private firms.	Financial disclosure (less than for the ordinary private sector company) to private owners and possibly to government regulators.	Financial disclosure to private owners; if a publicly held firm, public disclosures also required.
Heavy controls on inputs (e.g., budget and staffing) and procedures; government corporations may have greater autonomy.	Market-based external controls may be offset by federal subsidies; some regulatory controls.	Market-based external controls based upon financial performance.
Diffuse political pressures lead to serving multiple purposes that often may not be articulated.	Mix of profit-oriented goals and regulated service; cooperatives serve their members.	Profit-oriented goals often force focus upon particular activities, market segments and strategies.
May stagnate over time, as public priorities change, without ceasing to exist.	Some have government backing at start-up; sometimes may gain monopoly or market power; may stagnate over time; government backing, if present, can forestall easy exit.	Life cycle: thrives or goes out of business; forced exit of failed firms.

nizational capacity to carry out their programs. By contrast, private organizations that carry out public purposes often possess capacity, and the questions tend to focus more on promoting accountability to carry out their public purposes. As Harold Seidman warns, "Intermingling of public and private purposes in a profit-making corporation almost inevitably means subordination of public responsibilities to corporate goals. We run the danger of creating a system in which we privatize profits and socialize losses."[22] Any instrumentality, whether for-profit, cooperative, or nonprofit, must be designed with careful attention to accountability if it is to succeed in serving its public purposes.

Figure 4 presents a series of questions that can help policy makers to decide on the appropriate design of private organizations that are responsible for carrying out public purposes.

Figure 4: Design Questions—Private Instrumentalities

1. Does the organization carry out public purposes or only private ones?
2. Is the organization likely to be financially self-sustaining?
3. Does the government plan to provide support (i.e., a subsidy) for the organization? If so, what form is appropriate for the public purposes to be served?
4. Should the organization have shareholders, or should it be a nonprofit?
5. What governance structure is appropriate?
6. What types of accountability are appropriate?
7. Which agency of government should be responsible for holding the organization accountable?
8. What should happen when the organization ceases to serve a high-priority public purpose?

1. Does the organization carry out public purposes or only private ones?

The threshold question is whether the activities carried out by a private organization are deemed to embody public purposes. Most companies and other private organizations do not conduct activities that are considered to involve public purposes. However, when the federal government charters or otherwise authorizes an organization to carry out specified purposes under law and provides that organization with special benefits under law, then that organization takes on the status of a federal instrumentality. Federal instrumentalities may be immune from certain statutes such as the antitrust laws, may benefit from preemption of some state laws and taxes, and may receive special government support under applicable law.

The courts have long acknowledged the federal government's authority to use private institutions to serve public purposes. In an early case, the chief justice of the United States, John Marshall, explained the role of the privately owned Bank of the United States, the nation's first central bank, as a federal instrumentality as follows:

> The bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes.… [T]he bank is an instrument which is "necessary and proper for carrying into effect the powers vested in the government of the United States."[23]

From the perspective of organizational design, the first question is whether the purposes carried out by a private organization are considered to embody public purposes. Thus, with respect to the National Consumer Cooperative Bank, the government decided that an organization that once was considered an instrumentality that carried out public purposes should be converted to a purely private company. The government allowed the bank to repay a low-interest federal loan, one of the forms of support that government may provide to an instrumentality, over many years. The organization changed its name to National Cooperative Bank, altered its focus to serve more profitable types of cooperative such as larger producer cooperatives, and no longer functions as a federal instrumentality.

The question of whether an organization should be an instrumentality or not will face the Rural Telephone Bank (RTB) as it contemplates its transition from being a government agency. The FY 2002 federal budget called for privatization of the RTB. The question then becomes what type of financial services charter would best allow the RTB to carry out its activities while satisfying the concerns of stakeholders and the government. There a range of alternatives might be explored, including taking a commercial bank charter and becoming a federal instrumentality or becoming a completely private company such as a general financial services company, or possibly even a specially chartered private company similar to the National Cooperative Bank.

2. Is the organization likely to be financially self-sustaining?

Assuming that a decision is made to create a private government instrumentality to carry out public purposes, the next question is whether that organization can earn enough revenues to cover its costs. Only then can it be financially viable. If an organization is expected to be profitable—i.e., to cover its expenses, be able to pay taxes, and provide returns to investors—then it can be structured as a for-profit company or (as will be discussed below) a cooperative. If an organization is expected to earn a surplus, but not necessarily enough to pay taxes and provide returns to shareholders, then it might be structured as a nonprofit. If the organization is not expected to earn a surplus, then it will not be viable unless the government provides a subsidy.

3. Does the government plan to provide support (i.e., a subsidy) for the organization? If so, what form is appropriate for the public purposes to be served?

The nature of government subsidy, if any, for private organizations deserves careful consideration. This involves considerations of both the amount of the subsidy and the form of the subsidy. If the government provides too little subsidy, then some organizations may not be willing or able to carry out public purposes. On the other hand, if the subsidy is too large, then the subsidized organization can grow at the expense of private organizations that are not favored with government support.

If the government does provide a subsidy, it should not provide so much that the favored organization displaces its competitors. This is not an easy balance to strike.

The other issue that deserves careful thought is the form that the subsidy should take. For many institutions, the form of government support helps to define the organizational form. Insured depository institutions—banks, thrift institutions, and credit unions—are defined by their access to federal deposit insurance. Each of these institutions is considered to serve an important public purpose by providing people with access to place their money safely in federally insured deposits.

GSEs are defined by their access to a unique bundle of attributes that creates a perception of implicit government backing. They are expected to use their benefits to serve the public purposes defined in their charters. For Fannie Mae and Freddie Mac, the two largest GSEs, the institutions can use their preferential borrowing costs to lower mortgage rates for home buyers.

Nonprofits, and categories of nonprofits such as charities and foundations, are defined by their tax exemptions. To the extent that a nonprofit such as the American National Red Cross or a nonprofit hospital or health insurance company is considered to have a public purpose, it is supposed to use its special benefits to lower costs and permit access to services that otherwise might not be available on affordable terms. Some nonprofit instrumentalities, such as the Corporation for Public Broadcasting and the Legal Services Corporation, receive federal appropriations to carry out their work.

When policy makers contemplate an organizational transformation—for example, when a 1968 law authorized Fannie Mae to convert from a government corporation into a GSE or if the Rural

Telephone Bank today contemplates converting from a federal agency to a private instrumentality—the choice of whether to have a subsidy and, if so, what type is very important in determining how the organization will develop and how it will serve public purposes in addition to its private interests.

4. Should the organization have shareholders, or should it be a nonprofit?

Private instrumentalities fall into three basic organizational types: (1) the investor-owned for-profit company, (2) the cooperative, and (3) the nonprofit organization. Examples for each category would be commercial banks, the Farm Credit System, and the American National Red Cross, respectively.

Each organizational type has strengths and limitations. Profit-seeking investor-owned companies are subject to the discipline and incentives of a financial bottom line by which to measure success. The advantages of using an investor-owned firm to carry out public purposes relate to their ability to use resources efficiently in search of profits. When necessary to achieve profitability, private firms can invest in high-quality personnel and systems that may be far more productive than those found in government. A disadvantage of using profit-seeking companies is the principal-agent problem and the need to deal with the divergent interests of private owners vis-à-vis the government's interests in promoting service for public purposes.

The distinguishing design feature of the cooperative is that it is owned and controlled by the people or institutions that use its services. That means that the benefits of a cooperative organization flow to its members in the form of services and, generally to a lesser extent, as dividends. To coin a phrase, investor-owners of a private company want to create a racehorse—to perform well and return dividends to the shareholders. By contrast, the owners of a cooperative want to create a milk cow—to pass through benefits to the owners, even at the cost of its own performance in the marketplace. In particular, cooperatives are unlikely to compete with their user-owners.

These unusual characteristics make the cooperative a distinctive instrument for carrying out public purposes. To the extent that government provides a subsidy through a cooperative, those subsidy benefits will flow through to the member-owners. On the one hand, this makes it possible to use the cooperative to target selected constituencies, e.g., farmers, rural communities, or certain kinds of financial institutions. On the other hand, targeting of benefits to the most needy constituents can be difficult; some cooperative organizations may end up serving primarily their strongest members, i.e., those that are the most affluent and influential, with their government-supported benefits.

Nonprofit organizations are a distinct organizational type. Nonprofit instrumentalities vary considerably in size and purpose. The common elements of all nonprofit organizations are tax-exempt status under the Internal Revenue Code and the absence of shareholders or other owners of the organization.[24] Not all nonprofits are government instrumentalities; the distinction again rests on whether the organization is carrying out activities that are deemed to involve a public purpose.

Unlike investor-owned companies or cooperatives, nonprofits do not have shareholders. This plays a role in the behavior of nonprofits. On the one hand, the absence of investors means that nonprofits can save money that otherwise would be paid as returns to shareholders. On the other hand, the absence of shareholder returns may make it difficult for nonprofits to raise capital needed to assure the financing of the organization's objectives. Indeed, many nonprofits have established for-profit affiliates to provide a source of income beyond donations and the remuneration from services provided. Like government agencies, nonprofit organizations can be torn between trying to do good and trying to do well enough to survive and grow.

In terms of capacity and flexibility, nonprofit organizations sometimes may lag their investor-owned counterparts. Thus, many nonprofit hospitals or health insurance plans justify their conversion to for-profit status on the grounds that they need the greater access to the capital markets that is available to private firms, and also that they need to be able to pay greater compensation to highly skilled professionals than is possible in a nonprofit organization.

5. What governance structure is appropriate?

All three types of instrumentality use a board of directors to govern the organization. Directors and officers of each have a fiduciary responsibility of care and loyalty to the organization and—except for nonprofits—to shareholders. However, the different ownership structure does have implications for the performance of the organization.

The officers and directors of shareholder-controlled instrumentalities are expected to owe their primary allegiance to shareholders rather than to the federal government that charters them. In other words, as in a private company, the interests of the private owners come first in the minds of company directors and officers. Unlike the ordinary private company, service to public purposes arises from the laws and regulations that government uses to assure that the institution serves public interests as well as private ones. This creates a significant tension between private profits and the public purposes that the instrumentalities are supposed to serve, discussed further below.

Sometimes, the enabling legislation for an instrumentality will prescribe that there be a minority of publicly appointed directors on the board. This was true for Comsat, the Communications Satellite Corporation, and for the boards of most of the GSEs. Often the president of the United States appoints the minority of public directors. Such appointments are unlikely to greatly change the behavior of a private instrumentality. Like the shareholder-elected directors, the publicly appointed directors owe a fiduciary responsibility to the organization and its owners. Often an investor-owned instrumentality may reinforce the identification of interests between the directors and owners by awarding generous stock options that benefit the directors to the extent that the organization is a financial success.

For the cooperative, governance by a board of directors means attention to the needs of the owners that use the cooperative's services. Thus, a cooperative such as the Farm Credit System has shown a tendency to underprice its services to members, compared to the pricing that would be expected if the instrumentality had been structured to be investor owned. Another distinctive feature is that some cooperative boards of directors may be very large as a way to promote shareholder involvement. This can lead to overhead expenses that are large compared to the investor-owned company; also, the cooperative board may find it difficult to have the focus and flexibility that may be found in a comparable investor-owned company.

Nonprofits are different from the other two organizational types. While directors and officers of a nonprofit do have a fiduciary responsibility of care and loyalty to the organization, there are no shareholders to enforce property rights that might be infringed by any violation of that responsibility. The absence of shareholders can mean that board oversight of the managers of a nonprofit can be weak or unfocused, and that board members may lack adequate independence from management. Without the need to serve shareholders, the officers and directors of a nonprofit are free to guide the organization to serve their conceptions of the public interest.

6. What types of accountability are appropriate?

The government tends to have two interests in the instrumentalities that it uses to carry out public purposes: (1) to assure that high-priority public purposes are carried out, and (2) to assure that the organization operates in a prudent financial manner. The latter issue is especially important for depository institutions and GSEs because of the government backing of insured deposits and the perception of government backing for GSE obligations.

Figure 5 shows some of the approaches that government has used to try to promote accountability of instrumentalities. Under applicable legislation, government has a number of ways to try to assure that instrumentalities serve public purposes. These include provisions that limit the scope of authorized powers that an instrumentality may carry out, governance or organizational requirements, and government oversight of the activities that instrumentalities carry out under their enabling legislation. Some of these approaches, such as the supervision of safety and soundness of banks, seem to work fairly well; others, such as the government's power to appoint directors of some private instrumentalities,

Figure 5: Approaches to Promote Accountability of Private Instrumentalities That Serve Public Purposes

- Limitations in the Enabling Legislation on Authorized Powers
  - — Permitted functions
  - — Limited market segments
  - — Restricted members or borrowers
  - — Requirement to serve designated market segments
- Governance/Organization Requirements
  - — Inclusion of directors appointed by government
  - — Inclusion of directors to represent particular constituencies
  - — Specification of investor or cooperative or nonprofit structure
- Supervision by a Government Agency
  - — Oversight and regulation of activities
  - — Required approval of new activities
  - — Supervision of safety and soundness

add little if anything to the accountability of the organization to serving its public purposes.

When a cooperative is an instrument for providing public services, the issue of accountability to government is quite similar to the issues raised by investor-owned companies. If the government lacks the capacity to protect its own interests, then the cooperative will go its own way. At the time the Farm Credit System failed in the mid-1980s, for example, in a period of ruinous agricultural conditions, the government had largely lost control over the safety and soundness of the system and its member financial institutions. In the aftermath of taxpayer assistance, the government restructured the cooperative's federal regulator to have powers comparable to those of a federal bank regulator.

The issue of accountability of nonprofits is complex. On the one hand, nonprofits may have a service ethos that allows them to serve less profitable people and public purposes than would be expected from a for-profit firm. On the other hand, some nonprofits (and Medicare contractors come to mind here) may require careful supervision to try to assure good performance and financial integrity, much as if they were investor-owned firms.

Some government agencies, especially the Department of Defense, have improved the accountability of nonprofits by developing long-term relationships. Thus, federally funded research and development centers (FFRDCs) such as the units of RAND and Mitre Corporations operate under special long-term contracts that allow for an especially close relationship between the agency and its nonprofit partner.[25] Because of the long-term relationship, an agency traditionally was able to insist that the FFRDC dedicate itself primarily to the interests of the government. To the extent that an FFRDC has relationships, such as interlocking directors, with a private for-profit firm with a range of other clients and interests, its accountability to the government in this respect may diminish.

Once instrumentalities have become established, both the executive branch and the Congress can find it difficult to influence their activities, either with respect to serving new and evolving public priorities or with respect to reducing financial exposure from their activities. Because private instrumentalities can live or die according to the terms of their enabling legislation, they have an incentive to use resources to influence the Congress, their designated regulators, and others in government who might threaten their legal franchise or otherwise impose policies at variance with the interests of the private owners or, in the case of nonprofits, the managers.[26]

7. Which agency of government should be responsible for holding the organization accountable?

The congressional committee structure is likely to determine which federal agency is responsible for overseeing the public purposes served by a federal instrumentality. Thus, during the congressional deliberations that led to creation of the Office of Federal Housing Enterprise Oversight (OFHEO)—a regulator of Fannie Mae and Freddie Mac—the House Ways and Means Committee preferred that

The Government Sponsored Enterprise

One type of federal instrumentality deserves special mention. This is the government sponsored enterprise, or GSE. The government sponsored enterprise, as distinct from the wholly owned government corporation, is a government chartered, privately owned, and privately controlled institution that, while lacking an express government guarantee, benefits from the perception that the government stands behind its financial obligations. In return for statutory privileges, including tax benefits and regulatory exemptions, as well as reduced borrowing costs, the GSE is confined by its charter to serving specified market segments through a limited range of services.

GSEs are some of the largest financial institutions in the United States. Fannie Mae and Freddie Mac each fund over 1 *trillion* dollars of home mortgages. The Federal Home Loan Bank System, a half-trillion dollar group of 12 cooperative institutions, provides inexpensive funds to the banks and thrift institutions that own the individual banks. The smaller GSEs are multibillion-dollar financial institutions. The Farm Credit System and a small GSE known as Farmer Mac provide loans to agricultural borrowers, and Sallie Mae funds student loans.

Most of the GSEs—Fannie Mae, Freddie Mac, Sallie Mae, and Farmer Mac—are investor owned. The other two—the Farm Credit System and the Federal Home Loan Bank System—are structured as systems of cooperative organizations.

Thanks to their federal support, GSEs can grow rapidly. Taken together, GSEs have more than doubled in size every five years since Freddie Mac was chartered in 1970. Two GSEs became troubled in the 1980s and one of them, the Farm Credit System, required direct government assistance. One GSE, Sallie Mae, is making the transition to becoming a completely private company without the status or public purposes associated with a federal instrumentality.

the Treasury Department, with which the committee had a close working relationship, should undertake this role. By contrast, the congressional housing subcommittees insisted that OFHEO be part of HUD, the department whose activities they authorize.

Sometimes, as in the case of OFHEO or the federal bank regulators, supervisory authority may be split among two or more agencies. In the case of OFHEO, HUD was left with responsibility for overseeing the two GSEs' service to affordable housing goals and other public purposes, while OFHEO is responsible for overseeing financial soundness. The history of federal bank regulation has led to a convoluted regulatory structure involving the federal or state agency that charters commercial banks, the Federal Deposit Insurance Corporation, and the Federal Reserve.

Once a regulatory agency has been selected, an important organizational issue relates to the capacity of the agency to carry out its responsibilities. This raises the question of funding for the regulator. On the one hand, many financial regulators are funded from fees assessed on the regulated institutions. This has the advantage of freeing the regulator from the vagaries of the appropriations process and the possibility that unexpected budget cuts could hamper the agency's effectiveness. On the other hand, an agency needs some way to fund itself in case the regulated companies get into financial trouble, which could reduce available fees just at a time when the regulator needs to be most active.

8. What should happen when the organization ceases to serve a high-priority public purpose?

Sallie Mae is a government sponsored enterprise that has decided to give up its government sponsorship in favor of obtaining a broader array of authorized activities. A Sallie Mae report discusses the life cycle of GSEs; the report could just as well refer to other instrumentalities of government in its suggestion that when an organization has served its public purposes, or when those purposes no longer have a high public priority, then a transition is called for:

> In creating the various GSEs, Congress did not contemplate the need at some point to unwind or terminate their federal charters. However, Congress did not assume the perpetual existence (and continual expansion) of individual GSEs in the context of changing social and economic priorities. The missing element in the GSE concept is the notion of a life cycle for government sponsorship. GSEs are *created* to increase the flow of funds to socially desirable activities. If successful, they grow and *mature* as the market develops. At some point, the private sector may be able to meet the funding needs of the particular market segment. If so, a *sunset* may be appropriate.[27]

A few organizations have outlived the perceived need for their services as a federal instrumentality. In 1981, the government arranged for a transition of the National Consumer Cooperative Bank from an instrumentality of government to an ordinary private company that does not carry out public purposes. In 1996, legislation was passed which removed instrumentality status from the College Construction Loan Insurance Association (Connie Lee).

Nonprofits raise special issues with respect to the transition to private status. Some seek to convert to or merge with for-profit companies that may not be instrumentalities. Managers of a nonprofit organization may have very personal incentives to convert into a for-profit company. Yet, attractive as conversion may be for some stakeholders, conversions in fields such as health care often can leave a gap in public purposes that had been served by a nonprofit. The track record of such nonprofit conversions shows that the potential of this life cycle event deserves more consideration from organizational designers than it has received so far.

Enhancing the Government's Capacity to Design Effective Organizations and Public-Private Relationships

The events of September 11 have brought into sharp focus the limitations on the federal government's ability to design effective organizations and working relationships with other partners, whether in the private sector or among state and local governments. Many years ago, the Executive Office of the President (EOP) included an Office of Management and Organization (earlier a part of the Administrative Management Division), housed first in the Bureau of the Budget and then in the new OMB, with responsibility for enhancing the management and organization of government organizations and programs.

That office had responsibility for enhancing the institutional capacity of the presidency and, by extension, the rest of the executive branch. On issues of interagency coordination, for example, the office had the capacity to develop a cognitive map of a problem, overlay a map of the available jurisdictions of constituent organizations, and then help those organizations to plug the gaps. In cases such as housing and community development, the scope of analysis also included the relationship of federal agencies and programs with state and local governments. Today, the capacity of such an office could help to address homeland security issues.

The danger of many urgent proposals in the aftermath of September 11 is that they seek to apply this salutary analytic approach to homeland security, but generally leave the rest of the government's programs in the same sorry state of neglect that was the case for many security functions before September 11. The federal government needs to restore its strategic organization and management capability to provide help for agencies and programs across the government, from provision of Medicare services to an improved organizational structure for energy programs to federal housing programs to any of a number of other major government commitments that are being implemented by troubled agencies or departments.

A new office might have the following general responsibilities:

- **Government Organization:** Review government-wide organizational structure on a continuing basis, periodically reporting to the president and Congress on the state of government organization and proposals to improve the performance and efficiency of federal programs.
- **Cooperation and Coordination:** Facilitate interagency and intergovernmental cooperation and assist in developing effective coordinating mechanisms throughout the government.
- **Systems Improvement:** Provide leadership for improvement of agencies' administrative and program delivery systems, including those that can help to make the Government Performance and Results Act a success. Administrative systems include personnel, procurement, and information resources, for example.
- **Early Warning:** Analyze agency capacity and operations—for example, with respect to national homeland security, public health, or financial vulnerabilities—to detect potentially damaging gaps and shortcomings.

- **Special Organizations:** Oversee the overall operations and management of government corporations, government sponsored enterprises, quasi-governmental entities, and other institutions with a governmental interest.
- **Reorganization and Management Legislation:** Develop criteria and standards to be met prior to the submission of legislation to establish new or reorganize existing government corporations, enterprises, and other entities with a government interest; provide advice on the workability of proposed programs and legislation as they are being developed.
- **Management Analysis Capacity:** Help departments and agencies to develop internal management analysis capabilities.

It can be seen that, if such an office existed today, it would greatly add to the president's capacity to address the critical issues of organization, management, and coordination that are a national priority with respect to assuring homeland security.

To some extent, the effectiveness of the new office will depend on actions on Capitol Hill. In recent years, the governmental affairs and government reform committees of both houses have lost much of their traditional capacity to deal with issues of government organization and management. In the aftermath of September 11, this could change. Especially if the Congress restores provisions for presidentially initiated reorganizations under a general executive branch reorganization act, the governmental affairs committees will gain clear jurisdiction over many of these matters.

Expanded authority and capability among the committees, in turn, is likely to prompt the U.S. General Accounting Office to enhance its ability to deal with these issues. As the congressional committees and GAO begin to generate hearings, inquiries, and reports that highlight shortcomings and solutions with respect to executive organization and management, the role of the new office will increase as well. It is likely that demand for solid analysis of executive organization and management issues will continue to be strong for quite some time. We have far to go in dealing with the major issues before us.

Appendix: Selected Readings on Organizations and Organizational Design

Organizational Design

Seidman, Harold. *Politics, Position and Power*, fifth edition. New York: Oxford University Press-USA, 1998.

Standing Panel on Executive Organization and Management of the National Academy of Public Administration. Washington, D.C: Webpage, www.napawash.org/eom

Szanton, Peter, ed. *Federal Reorganization: What Have We Learned?* Chatham, N.J.: Chatham House Publishers, 1981.

U.S. General Accounting Office, *Government Reorganization: Issues and Principles*, GAO/ T-GGD/AIMD-95-166.

Particular Organizational Types

Boris, Elizabeth T., and C. Eugene Steuerle, eds. *Nonprofits & Government: Collaboration and Conflict*. Washington, D.C.: Urban Institute Press, 1999.

Dean, Alan. *Organization and Management of Executive Departments*. Washington, D.C.: National Academy of Public Administration, March 2001.

Stanton, Thomas H. *Government Sponsored Enterprises: Mercantilist Companies in the Modern World*. Washington, D.C.: AEI Press, 2002.

Stanton, Thomas H., and Ronald C. Moe, "Government Corporations and Government Sponsored Enterprises." Chapter 3 in *Tools of Government: A Guide to the New Governance*, Lester M. Salamon, ed. New York: Oxford University Press-USA, 2002.

The Politics of Government Organization

Moe, Terry M. "The Politics of Bureaucratic Structure." In John E. Chubb and Paul E. Peterson, eds., *Can the Government Govern?* Washington, D.C.: Brookings Institution Press, 1989.

Zegart, Amy B. *Flawed by Design: The Evolution of the CIA, JCS, and NSC*. Stanford, Calif.: Stanford University Press, 1999.

Endnotes

1. The author would like to acknowledge the considerable assistance he received in preparing this guide to organizational design. Mark Abramson and John Kamensky of The PricewaterhouseCoopers Endowment for The Business of Government helped to shape the conception and provided valuable comments on an earlier draft. Members of the Standing Panel on Executive Organization and Management contributed extensively to the author's understanding of these issues. Special gratitude is owed to reviewers of earlier drafts of this report, including Jonathan Breul, Murray Comarow, Alan Dean, Herbert Jasper, Dwight Ink, Bernard Martin, and Harold Seidman. Others who contributed insights include Daniel Guttman, Ronald Moe, and Charles Kause. While the author benefited immeasurably from these contributions, he remains solely responsible for the contents of this report.

2. For two particularly good analyses, see Amy B. Zegart, *Flawed by Design: The Evolution of the CIA, JCS, and NSC*, Stanford, Calif.: Stanford University Press, 1999; and Terry M. Moe, "The Politics of Bureaucratic Structure," in John E. Chubb and Paul E. Peterson, eds., *Can the Government Govern?* Washington, D.C.: Brookings Institution Press, 1989.

3. Harold Seidman, *Politics, Position and Power: The Dynamics of Federal Organization*, fifth edition, New York, Oxford University Press-USA, 1998, p. 219.

4. Summarized in Herbert N. Jasper, "Making Reorganization of the Executive Branch Work," National Academy of Public Administration, Standing Panel on Executive Organization and Management, working paper, January 1997.

5. Alan Dean, "The Organization and Management of Executive Departments," National Academy of Public Administration, 2001, p. 5.

6. Emmette S. Redford and Marlan Blisset, "The Department of Transportation: Integration of Old Functions," chapter 3 in *Organizing the Executive Branch: The Johnson Presidency*, Chicago: University of Chicago Press, 1981, pp. 46-76; and Alan Dean, A History of the Department of Transportation, National Academy of Public Administration [date].

7. Alan Dean, "The Organization and Management of Executive Departments," National Academy of Public Administration, 2001, pp. 9-10.

8. Standing Panel on Executive Organization and Management, National Academy of Public Administration, "Principles of Federal Organization," January 1997.

9. Amy B. Zegart, *Flawed by Design: The Evolution of the CIA, JCS, and NSC*, Stanford, Calif.: Stanford University Press, 1999, pp. 140-151.

10. See, e.g., Statement of Stephen E. Flynn, Ph.D., Council on Foreign Relations, before the Committee on Governmental Affairs, United States Senate, October 12, 2001.

11. United States Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change*, February 15, 2001, p. 47.

12. Ibid., p. 16.

13. "Crisis Facing HCFA & Millions of Americans, an open letter to Congress and the Executive, *Health Affairs*, Vol. 18, No. 1, pp. 8-10.

14. United States Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change*, February 15, 2001, p. xiv.

15. The author is indebted to Alan Dean, one of the nation's leading authorities on government organization, for this insight.

16. Adapted from Herbert N. Jasper, "Making Reorganization of the Executive Branch Work," National Academy of Public Administration, Standing Panel on Executive Organization and Management, working paper, January 1997.

17. Under the Government Corporation Control Act, the FDIC is a so-called "mixed ownership" government corporation, an organizational form with even greater statutory autonomy than is provided for wholly owned government corporations. See 31 U.S.C. chapter 91.

18. HUD Secretary Robert Weaver, quoted in Richard Bartke, "Fannie Mae and the Secondary Mortgage Market," *Northwestern University Law Review*, Vol. 66, March/April 1971, pp. 833-864, at p. 32, fn. 123.

19. See, U.S. General Accounting Office, Opinion of the Comptroller General, B-237356, December 29, 1989.

20. Daniel Guttman, "Public Purpose and Private Service: The Twentieth Century Culture of Contracting Out and the Evolving Law of Diffused Sovereignty," *Administrative Law Review*, Vol. 52, pp. 859-926 (Summer 2000).

21. Ronald C. Moe, "The Emerging Federal Quasi Government: Issues of Management and Accountability," *Public Administration Review*, Vol. 61, No. 3, May/June 2001, pp. 290-312.

22. Harold Seidman, *Politics, Position and Power: The Dynamics of Federal Organization*, fifth edition, New York, Oxford University Press-USA, 1998, p. 213.

23. *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.), 738, at 860 (1824).

24. Good overviews of nonprofit organizations include Elizabeth T. Boris and C. Eugene Steuerle, 1999, *Nonprofits & Government*, Washington, D.C.: Urban Institute Press; and Harold Orlans, ed., 1980, *Nonprofit Organizations: A Government Management Tool*, New York: Praeger Publishers.

25. For a recent discussion of FFRDCs, see Ronald C. Moe, "The Emerging Federal Quasi Government: Issues of Management and Accountability," *Public Administration Review*, Vol. 61, No. 3, May/June 2001, pp. 290-312, at pp. 295-6; and U.S. General Accounting Office, *Federally Funded R&D Centers: Issues Relating to the Management of DOD-Sponsored Centers,* GAO/NSIAD-96-112 (August 1996).

26. States can have similar problems trying to keep accountable the instrumentalities that they create, such as public authorities. See, e.g., Donald Alelrod, *Shadow Government*, New York: John Wiley & Sons, 1992.

27. Sallie Mae, *The Restructuring of Sallie Mae: Rationale and Feasibility*, March 1994, pp. 13-14 (emphasis in original).

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Thomas H. Stanton is a Washington, D.C. attorney. He is a Fellow of the Center for the Study of American Government at the Johns Hopkins University, where he teaches graduate seminars on the law of public institutions, government and the American economy, and government and the credit markets.

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Mr. Stanton's writings on government and organizations include a new book, *Government Sponsored Enterprises: Mercantilist Companies in the Modern World* (AEI Press, 2002). The concerns expressed in his earlier book on government sponsored enterprises, *A State of Risk* (HarperCollins, 1991), helped lead to enactment of several pieces of legislation and the creation of a new federal financial regulator in 1992. He has been an invited witness before many congressional committees and subcommittees, and has testified on legislative proposals to create an Office of Homeland Security.

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