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**COMMERCE
DISMANTLEMENT**

**Observations on Proposed
Implementation Mechanism**

Statement of L. Nye Stevens
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General Government Division



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COMMERCE DISMANTLEMENT:
OBSERVATIONS ON PROPOSED IMPLEMENTATION MECHANISM

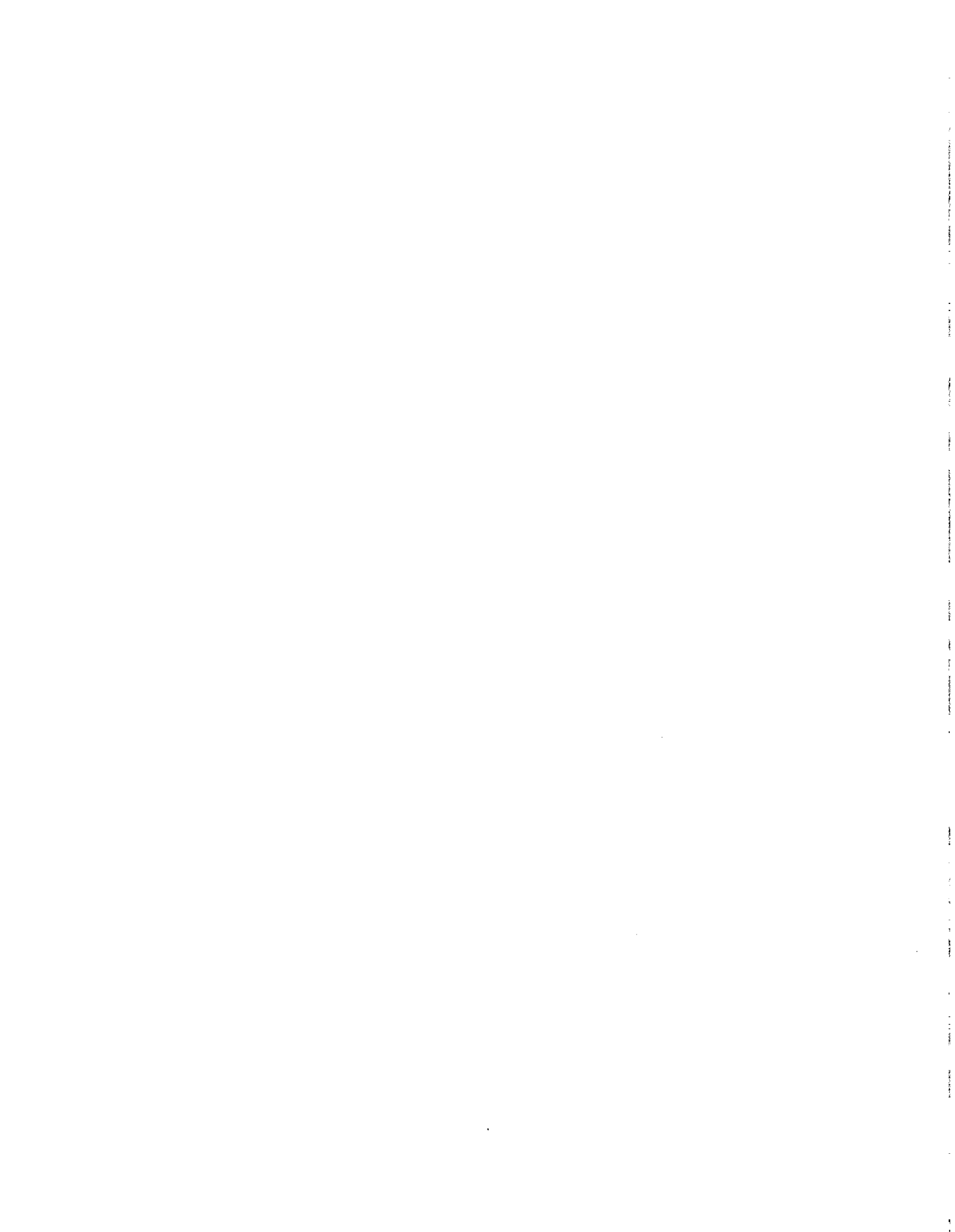
Summary of Statement by L. Nye Stevens
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The proposed Department of Commerce Dismantling Act, H.R. 1756, is one of several proposals that would abolish or significantly reorganize the Department of Commerce. Few, if any, precedents exist for dismantling a Cabinet-level federal agency. However, six agency reorganizations under the Reorganization Act of 1977 and the Resolution Trust Corporation's liquidation of savings and loan institutions appear to share some characteristics with the proposed act's Commerce Programs Resolution Agency (CPRA), which would wind up the affairs of Commerce.

CPRA's mission is narrowly focused on dismantling Commerce over 2 1/2 years, but the current budget environment and other proposals to more extensively reorganize the executive branch may call for a continuing, general capacity to guide reorganizations and downsizing. If Congress expects that the government will need the capacity to guide reorganizations and federal agency downsizing in more than this one instance, it may wish to consider the feasibility and desirability of assigning the responsibility to an entity that will continue to exist.

GAO suggests that Congress may wish to consider several specific issues as it deliberates the proposed Commerce Dismantling Act implementation provisions:

- Failure to carefully plan needed implementation actions hampered previous reorganizations. The proposed act provides for a plan but does not specify the agencies involved or a strategy for disposing of assets.
- The breadth and unique nature of CPRA's mission call into question whether it can complete its work in 2 1/2 years as the act proposes.
- The former Commerce personnel who would staff CPRA may lack skills and knowledge for some of CPRA's tasks.
- Exemption from certain federal statutes would increase flexibility and specific guidance on the disposing of Commerce's assets may help CPRA meet its mission.
- The funding limitation specified in the act may disrupt CPRA's efforts to achieve its mission and also may hinder the remaining Commerce programs from achieving their current program objectives, such as census reform.
- CPRA may need an Inspector General's oversight.
- The proposed act does not clearly assign any official or organization responsibility for overseeing functions terminated before CPRA's creation.



Mr. Chairman and Members of the Committee:

I am pleased to be here today to assist the Committee in its consideration of the proposed Department of Commerce Dismantling Act, H.R. 1756, one of several proposals that would abolish or significantly reorganize the Department of Commerce. As you requested, my remarks focus primarily on the proposed Commerce Programs Resolution Agency (CPRA) that would be created under title I of the act. We have not reviewed and do not have a position on the proposed dismantlement of Commerce.

As you know, few, if any, precedents exist for dismantling a Cabinet-level federal agency. Nevertheless, the lessons that can be gleaned from certain previous government experience may help guide the Committee in considering the proposed act. We looked back through our past work for analogous situations. Although not perfectly parallel to Commerce's dismantlement, agency reorganizations under the Reorganization Act of 1977¹ and the Resolution Trust Corporation's (RTC) liquidation of savings and loan institutions² appear to share some characteristics with the Commerce situation, and thus lessons we learned in reviewing their implementation may be applicable.

On the basis of this work, we have identified a general issue. CPRA's mission is tightly focused on dismantling Commerce over 2 1/2 years, but the current budget environment and other proposals to more extensively reorganize the executive branch may call for a continuing, general capacity to guide reorganizations and downsizing. Aside from this general issue, we also have identified several specific issues that Congress may wish to consider as it continues to deliberate the provisions of the Commerce Dismantling Act. These are

- the need for implementation planning,
- the tight deadline CPRA would face,
- the suitability of CPRA staff for some of CPRA's responsibilities,

¹See Implementation: The Missing Link In Planning Reorganizations (GAO/GGD-81-57, Mar. 20, 1981). Among the agencies created or modified in the reorganizations that we analyzed in this report were the Federal Emergency Management Agency, Equal Employment Opportunity Commission, Federal Labor Relations Authority, International Development Cooperation Agency, Merit Systems Protection Board, and the Office of the Special Counsel.

²We have issued approximately 65 reports and 20 testimonies on RTC since August 1990.

- the possibility of (1) exemptions from certain statutes and (2) additional guidance on asset sales,
- the challenges posed by funding limitations,
- the loss of the inspector general function,
- the clarity of termination responsibilities, and
- the mandate for GAO reports.

BACKGROUND

CPRA is an agency that would be created 6 months after the enactment of the Commerce Dismantling Act. The mission of CPRA would be to administer and ultimately wind up the affairs of those functions of the Department of Commerce that are not transferred to other federal agencies or terminated before CPRA is created. Winding up Commerce's affairs includes selling, if possible, the assets of certain former Department of Commerce functions and settling the obligations of the continuing Commerce functions that CPRA receives upon its formation. CPRA also would see to its own termination within 2 1/2 years of its creation. CPRA would be staffed by former Department of Commerce personnel who are not transferred to other government agencies in the reassignment of various Commerce functions. It would be headed by an Administrator appointed by the President with the advice and consent of the Senate.

Relevance of Reorganizations and RTC Experience

The governmental reorganizations undertaken in the late 1970s under terms of the Reorganization Act were similar to the act before the Committee today. The similarity exists in that agencies and their components were realigned to join entities with similar missions with the intent of improving the efficiency and effectiveness of government operations. The reorganizations were, however, smaller in scope than the Commerce dismantlement proposal, did not involve the termination of numerous functions, and included significant roles for the Office of Management and Budget (OMB) and the General Services Administration (GSA).

RTC's role also may be somewhat analogous to the role anticipated for CPRA. Like CPRA, RTC was established by law (1) to assume some responsibilities for functions that were being abolished, (2) to dispose of certain assets, and (3) to terminate its own operations within a designated period. Unlike CPRA, however, RTC's asset disposition workload increased over the first year of its existence before declining. CPRA likely will have its peak workload immediately upon formation. In addition, RTC was to dispose of assets that had emerged from an existing market, whereas the proposed CPRA would dispose of more unusual assets,

such as laboratories, for which a market is less readily apparent. Also, RTC was created as a mixed-ownership government corporation while CPRA is designated as a federal agency. As a government corporation, RTC was exempt from various laws and regulations, e.g., personnel laws, that would apply fully to CPRA as a government agency.

COMMENTS ON COMMERCE DISMANTLING ACT PROVISIONS

Drawing on our work with previous government reorganizations and RTC, as well as other studies, we analyzed CPRA as delineated in title I of the proposed act and identified some issues the Committee may wish to consider further as it deliberates possible modifications to the act.

Is a Continuing Capacity Needed to Guide Government Reorganization or Downsizing?

As a general issue, the terminations and transfers outlined in the proposed Commerce Dismantling Act require that some entity be responsible for the multitude of details that must be worked out as changes occur. Although we have several observations that might improve the likelihood of its success, the designation of an agency like CPRA to assume these responsibilities has some precedent, for instance, in RTC. However, CPRA would narrowly focus on the dismantlement of Commerce and would disappear entirely when its mission is completed. If Congress expects that the government will need the capacity to guide reorganizations and federal agency downsizing in more than this one instance, it may wish to consider the feasibility and desirability of assigning the responsibility to an entity that will continue to exist.

Implementation Planning Would Help Dismantling Effort

Dismantling the Commerce Department would present a challenging task. Under the proposed act, several major Commerce components are to be transferred into other federal agencies. This entails transferring physical property, such as office equipment, personnel, records, and financial obligations. In addition, office space likely will be needed to house the newly merged entities. The act proposes that numerous other Commerce components are to be terminated, either immediately upon enactment of the Dismantling Act or at various times up to the mandated termination of CPRA itself, 3 years after enactment.

Our review of six new or reorganized agencies formed under the Reorganization Act of 1977 found that agencies that gained new functions experienced delays in (1) obtaining key agency officials and adequate staffing and office space and (2) establishing such support functions as accounting and payroll

systems.³ These problems were attributable to inadequate emphasis on planning for the implementation of the reorganizations. Although considerable effort was expended in determining what agencies should be merged, planning for how to achieve the merger generally did not occur until the reorganizations had been approved. Among other things, we recommended that future reorganization plans establish a high-level task force or other mechanism to facilitate implementation of the reorganization. We explained that this task force or mechanism should include members of agencies losing or gaining resources or functions and such support agencies as OMB, GSA, and the Office of Personnel Management.

Under the proposed act, it is likely that CPRA's precise responsibilities and resources will need to be sorted out after its creation. Neither Commerce nor OMB is now planning for implementation of the act. The act's provisions assign responsibility to the CPRA Administrator and OMB for some sorting out of functions and the resources that would go with the functions. Under section 306, CPRA's Administrator is to make any determination of the functions to be transferred under the act. The Administrator also is to determine what personnel, assets, and other resources are to accompany the functions. OMB, on the other hand, is to determine when the transfer of personnel and resources is to occur.

We believe that additional implementation planning would help CPRA achieve the objectives of the Commerce Dismantling Act within the designated deadline. In the case of RTC, Congress required its Oversight Board to develop a strategic plan in its first 5 months of operation. This plan served an important role in communicating to Congress and the public how RTC was interpreting its mandates and how it planned to operate. Similar planning would facilitate the implementation of the overall Commerce dismantlement, including the transfers of functions to other executive agencies, program terminations, and CPRA's wind-up of those Commerce functions not otherwise terminated or transferred elsewhere. The Dismantling Act includes a requirement that the President submit to Congress no later than the same date as CPRA would be established a plan for winding up the affairs of CPRA. This planning requirement may be more beneficial if it were expanded to include planning not only for winding up the affairs of CPRA but also for dealing with the transfers of Commerce entities to other federal agencies and the termination of numerous other Commerce functions. The planning requirement may also be more beneficial if it required the affected agencies gaining Commerce components and key support agencies like OMB and GSA to participate in the planning process.

³GAO/GGD-81-57, March 20, 1981.

In addition, because a significant and unusual responsibility for CPRA is the disposal of sometimes unique federal assets, such as laboratories, Congress may wish to require that the implementation plan specifically address this responsibility. For example, Congress could require that the plan include a determination of the potential market for the assets and the marketing approach likely to be used to sell the assets.

Finally, CPRA may not entirely wind up its affairs by the statutorily mandated deadline, and the proposed Commerce Dismantling Act does not address this possibility. In similar circumstance, Congress required RTC to develop a termination plan for its operations. Congress also specified that any remaining RTC functions would transfer to an existing federal agency, the Federal Deposit Insurance Corporation (FDIC), that has similar functions. RTC and FDIC officials served on a task force to plan the transition. The proposed act specifies that the President is to submit a plan for winding up the affairs of CPRA. Congress may wish to further specify that the plan include a provision for a successor to CPRA to receive and terminate any residual CPRA activities.

CPRA Faces a Tight Deadline

The 2 1/2 year time period the act allows for CPRA to dismantle the residual components of the Department of Commerce and itself may be too optimistic. Experience with less complex federal reorganizations suggests that several months, and perhaps more than a year, will be required for CPRA and the agencies gaining Commerce functions to reach agreement on all of the initial transfers of staff and resources from the Commerce Department into CPRA and other gaining federal agencies. CPRA also faces the task of planning and executing a new mission while simultaneously running inherited programs and making sizeable staffing reductions. Finally, because CPRA is to dismantle itself within 2 1/2 years, CPRA staff will be forced to look for alternative work opportunities even as they perform their tasks.

Suitability of Staff for New Responsibilities

CPRA is to be staffed with those Commerce employees not transferred to other federal agencies or whose employment is not terminated before CPRA is established. In general, these employees are experienced in running an ongoing federal entity or performing specific program or research responsibilities.

However, CPRA would be responsible for winding up the affairs of the Department of Commerce and then terminating its own operations. This would involve a multitude of responsibilities, such as settling accounts, dismissing employees in an orderly fashion, disposing of equipment and other physical assets, and terminating various contracts. However, CPRA also would be

responsible for selling diverse assets, including laboratories, research facilities, and information repositories. To sell these assets, CPRA officials will need to

- inventory the assets;
- maintain the assets so they do not lose value;
- determine the market for the assets and their market value;
- develop a marketing strategy that will dispose of the assets within the mandated time frame, maximize the return to the government, and meet criteria specified in the proposed Dismantling Act;
- sell the assets; and
- properly account for receipts and transfer them to the general fund of the treasury.

Therefore, CPRA's responsibilities would differ somewhat from those currently carried out by Commerce employees. Although CPRA employees would be expected to have program knowledge and many of the requisite skills, CPRA officials likely will need to augment these skills. The needed skills may exist elsewhere within the federal government. OMB, for example, may have some of the required skills or may be able to assist CPRA in obtaining assistance from other federal agencies. Both GSA and the Defense Logistics Agency have considerable experience in disposing of assets. As of September 1990, GSA and the Defense Logistics Agency had targeted \$6.3 billion and \$4 billion in assets for disposition, respectively.⁴

Another option available to augment CPRA skills would be to contract for staff or to contract for the disposal of some or all of the assets CPRA inherits. RTC, faced with a situation somewhat analogous to that of CPRA, turned to outside contractors to acquire needed skills. RTC was initially staffed with FDIC officials who had relevant experience in taking over failed financial institutions and disposing of their assets. However, the sheer volume of failed institutions exceeded that which could be reasonably handled by RTC staff. Contracting enabled RTC to acquire the specific skills it needed. Contracting also allowed RTC to phase staffing in and out as the volume of assets to be liquidated varied over the life of RTC. If contracting is used to augment CPRA's capacity, CPRA management attention would be needed to ensure that the necessary administrative and oversight structures are developed.

⁴Asset Management: Governmentwide Asset Disposition Activities (GAO/GGD-91-139FS, Sept. 27, 1991).

Exemption From Certain Statutes
and Additional Asset Sale Guidance
May Be Desirable

Unlike RTC, under the proposed act, CPRA would be subject to all laws applicable to federal agencies. RTC, as a mixed-ownership government corporation was exempt from numerous federal requirements, such as personnel laws, which provided RTC greater flexibility than CPRA would have to carry out a similar mission. Accordingly, Congress may wish to consider whether any exemptions from executive agency statutes and regulations would be appropriate.

Congress also may wish to consider whether it should provide guidance to CPRA on resolving certain asset disposition issues. For instance, CPRA would be required to sell various federal assets to private entities "intending to perform substantially the same functions as were performed" by the federal agencies. CPRA may need guidance on what organizations qualify as private entities. For example, CPRA may need to know whether such entities have to be profitmaking or whether nonprofit entities qualify. CPRA may also need to know whether state or local government entities, such as universities, qualify as purchasers. In addition, CPRA may need clarification of the term "intending to perform substantially the same functions." Assuming CPRA does sell assets to private entities that intend to perform these functions, it may need to know whether the government has a continuing interest in ensuring that the functions are carried out. If the government does, is CPRA responsible for ensuring that purchasing entities actually do carry out the functions? And, if CPRA is responsible, how can it accomplish this when CPRA is to terminate 2 1/2 years after its creation?

Finally, if CPRA is unable to sell assets within 18 months of its creation, it is required to report to Congress on the appropriate disposition of the assets for which "no offer" was received. This language suggests that any offer would have to be accepted by CPRA. Congress may want to specify that a "reasonable" offer must be accepted and provide guidance about what would constitute a reasonable offer.

Funding Limitation Poses Challenges

Section 310 of the proposed Commerce Dismantling Act limits funding to 75 percent of the funds expended for the Commerce functions during fiscal year 1994 for all continuing functions. This limitation would apply for each fiscal year after enactment.

A 25-percent funding reduction for continuing Commerce functions likely would require immediate reductions in their workforces. If personnel costs represent a high portion of the functions' expenditures, the personnel reductions may have to exceed 25

percent in order to pay for the severance compensation to dismissed employees. Such immediate and extensive reductions in the workforce would disrupt productivity and divert managers' attention. For CPRA, this disruption would occur even as it was organizing and determining how to carry out its challenging mission within the statutorily mandated 2 1/2 year deadline.

Congress may want to assess the effects of the funding limitation on the ability of former Department of Commerce functions that are transferred elsewhere to achieve their program objectives. Three such functions are the Census Bureau, the National Weather Service, and the Patent and Trademark Office.

Census Bureau

Holding the Census Bureau's budget to 75 percent of fiscal year 1994 expenditures, at a time when the budget would normally increase rapidly in preparation for the decennial census, may jeopardize savings that could be realized through improvements in census design. Needed improvements include the increased use of sampling and other statistical techniques, a simplified census questionnaire, greater use of the Postal Service's address list, and streamlined field programs. We have long urged the Census Bureau to consider, evaluate, and test these improvements.⁵

On the basis of our work,⁶ the congressional fiscal year 1996 budget resolution assumes that almost \$1 billion can be saved on the cost of the 2000 Decennial Census if basic changes in census design are made. Even without the significant budget limitation imposed in the Commerce Dismantling Act, we have been concerned that the opportunity for a well-planned census reform will be lost if Congress and departmental management--wherever the Census Bureau is placed--do not work aggressively to ensure that needed changes are made in time for the 2000 Census.

National Weather Service

The National Weather Service is modernizing its weather information systems and has estimated a total cost of over \$4.5 billion. Our work has shown that the modernization program was being designed and developed without adequate attention to how the systems should work together and that development and

⁵Decennial Census: 1995 Test Census Presents Opportunities to Evaluate New Census-Taking Methods (GAO/T-GGD-94-136, Sept. 27, 1994).

⁶Decennial Census: 1990 Results Show Need for Fundamental Reform (GAO/GGD-92-94, June 9, 1992).

performance problems remained within individual systems.⁷ Despite these problems, the National Weather Service has installed and is using modernized weather equipment that produces more accurate and timely weather information. However, National Weather Service officials have reported that budget cuts of the magnitude proposed in the Commerce Dismantling Act would require that a significant portion of these new weather systems be closed. Congress may wish to further explore these reported consequences.

Patent and Trademark Office

The proposed act's section 310 limitation on funding suggests that the Patent and Trademark Office, which funds its operations out of fees charged to those seeking patents or trademarks, would also be subject to the limitation. The limitation would apply to the Patent and Trademark Office because section 310 would apply to the "amount expended" for activities before the effective date of the Commerce Dismantling Act regardless of the source of the expended funds. A 25-percent reduction in Patent and Trademark Office expenditures would not affect the budget deficit but likely would slow the processing of applications.

Inspector General Function Would Be Abolished

Disposition organizations tend to have a high vulnerability to fraud, waste, and abuse. For example, as early as 1990, several organizations responsible for disposing of federal property or assets were included on our list of areas especially vulnerable to fraud, waste, and abuse. RTC was one such organization on our high-risk list. Congress specifically recognized the risks likely to be associated with RTC and created an Inspector General within RTC to help improve its operations. In addition to performing numerous audits, RTC's Inspector General has done criminal investigations that resulted in 134 convictions involving RTC employees, contractors, vendors, and others.

⁷Weather Forecasting: Radar Availability Requirement Not Being Met (GAO/AIMD-95-132, May 31, 1995); Weather Forecasting: Unmet Needs and Unknown Costs Warrant Reassessment (GAO/AIMD-95-81, Apr. 21, 1995); Weather Service Modernization: Despite Progress, Significant Problems and Risks Remain (GAO/T-AIMD-95-87, Feb. 21, 1995); Weather Forecasting: Improvements Needed in Laboratory Software Development Processes (GAO/AIMD-95-24, Dec. 14, 1994); Weather Forecasting: Systems Architecture Needed for National Weather Service Modernization (GAO/AIMD-94-28, Mar. 11, 1994); Weather Forecasting: Important Issues on Automated Weather Processing System Need Resolution (GAO/IMTEC-93-12BR, Jan. 6, 1993).

However, under the proposed act CPRA would not have an Inspector General. The proposed Commerce Dismantling Act would abolish the Inspector General's office concurrent with the creation of CPRA. Given RTC's experience, Congress may wish to consider the desirability of providing an Inspector General's oversight of the efforts to terminate Commerce Department programs to help ensure that wind-up operations are conducted honestly, efficiently, and effectively.

Since only a portion of the former Department of Commerce would become part of CPRA, all of Commerce's Inspector General staff would not need to be assigned to an Inspector General within CPRA. In considering the reassignment, if any, of current Inspector General staffing, some consideration may need to be given to whether the agencies that are to gain major Commerce components will themselves have adequate Inspector General staffing to oversee these new components. For instance, the current Commerce Department Inspector General devotes approximately 60 staff to auditing the operations of the National Oceanic and Atmospheric Administration (NOAA). Some but not all of NOAA's functions and staff would be assigned to the Department of the Interior. We did not determine whether the Inspector General for Interior would have the capacity to audit these newly acquired components while maintaining adequate presence elsewhere within the Interior Department.

Unclear Termination Responsibilities

Effective with the enactment of the proposed Commerce Dismantling Act, various programs, administrations, or offices would be terminated. Six months after enactment and concurrent with establishing CPRA, a larger group of entities or functions would be terminated. Although the intent of creating CPRA is to lodge responsibility for an orderly wind-up of the Commerce Department, none of these terminated functions, offices, or other entities seems to fall under the purview of CPRA. The proposed Dismantling Act would not assign any official or organization clear responsibility for overseeing these terminations. Congress may need to consider assigning the responsibility for the termination of these functions or delegating the determination to another party, such as the President.

Our Reporting Requirements

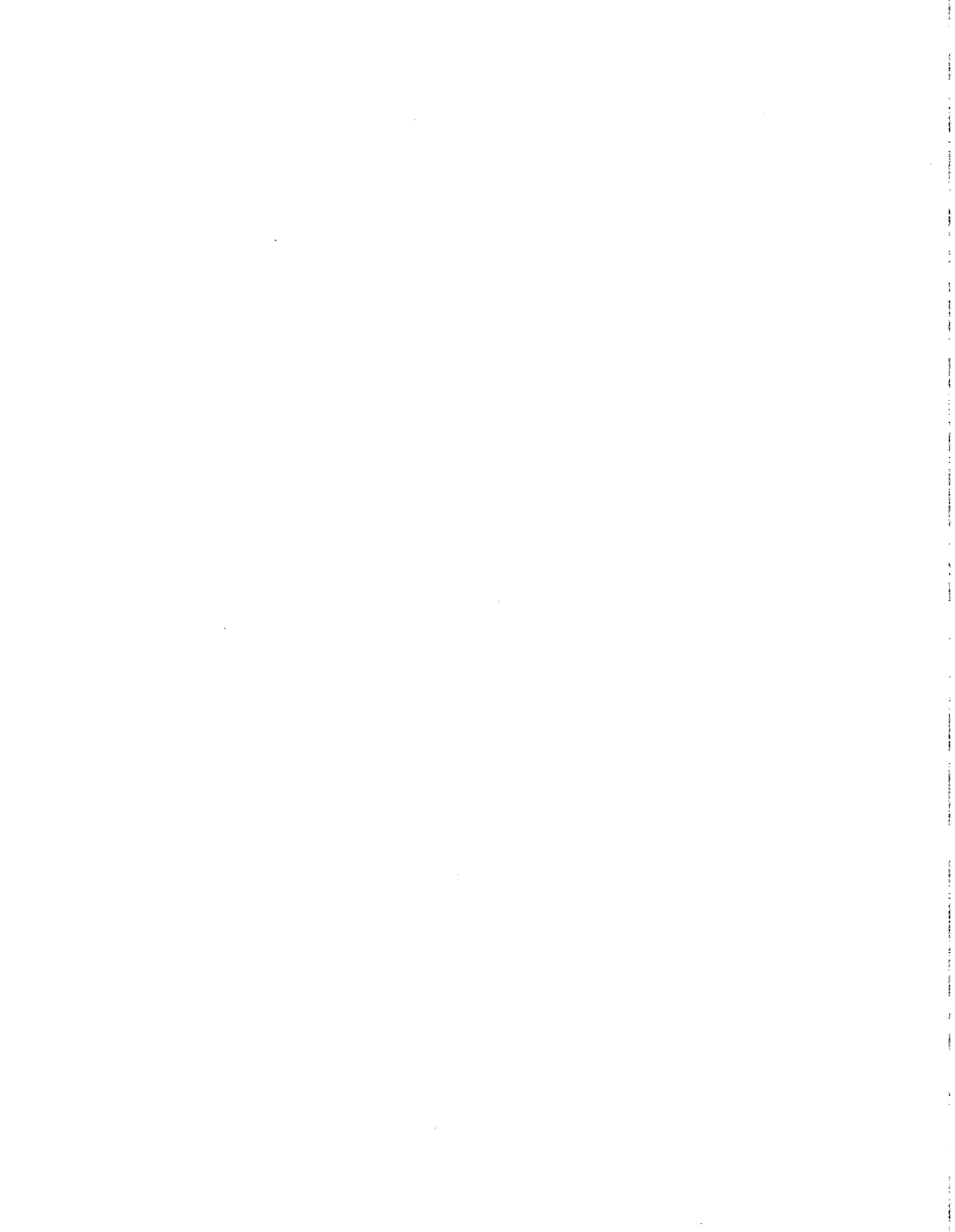
Sections 107 and 201(c) of the proposed Commerce Dismantling Act require reports from us. Past experience has shown that we generally can respond more effectively to congressional information needs through specific requests than by responding to statutory mandates. When we receive a request from a Committee Chairman, Ranking Minority Member, or other congressional Member, we contact the requester's office to gain a better understanding of the specific information needed, the type of product that will

best convey the information, and the required delivery schedule. Working with the requester's office, we are able to make appropriate alterations in the work to maximize the benefit of the work done. Statutory mandates generally do not allow us as much latitude in our efforts to serve Congress as effectively. Accordingly, we suggest that the Committee consider eliminating the statutory GAO reporting requirements and, as an alternative, requesting our work as it is needed or anticipated.

In the specific case of the section 107 reporting requirement, we are directed to report within 180 days of the act's enactment on the most efficient means of completing the abolishment of the Department of Commerce and the termination, transfer, or continuation of Commerce functions. This charge is similar to the section 106(c) requirement that the President report at the same time on how to wind up the affairs of CPRA. If a reporting requirement is retained, some clarification of the intent and relationship of these two reports would be appropriate.

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This concludes my prepared statement. Mr. Chairman, I would be pleased to respond to any questions.



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