

APPENDIX 11

PRELIMINARY NOTE ON LEGISLATIVE ALTERNATIVES

There are four devices available to the President to implement the proposed reorganization.

1. General Reorganization Authority. This alternative permits the President to limit information on his specific reorganization plans and it establishes the right of this or any President to reorganize his own office to meet his needs. It will take time, however, perhaps as much as a year, until Congress enacts such authority. During this period it will be difficult for the President to withhold information on his plans for the EOP.
2. Reorganization Plan. Reorganization plans can be transmitted to Congress at any time not later than sixty continuous days prior to adjournment. If a reorganization plan is submitted subsequent to the President's budget submission in January requests for funds to support the Domestic Policy Council and Office of Executive Management can be included in the budget. If Congress does not act within the 60 day period permitted for disapproval, the President may subsequently set up the organizations anticipating favorable Congressional action on his appropriation request. This alternative requires less time from transmittal of the plan to its implementation than Alternative 1 and

can be viewed as an important part of the President's legislative program for the new year. However, it does not permit the President general discretion to reorganize his office and it delays action on the proposed reorganization until the end of March 1970 at the earliest. While a new position established by reorganization plan is subject to Senate confirmation, a reorganization plan can rename an existing position already exempt from Senate confirmation and thus preserve its exempt status.

3. Specific Legislation. The President may seek legislation specifically establishing the new organizations in the EOP. Organizations set up in this way derive their authority from Congress and can be modified only by submission of reorganization plans. This alternative is more time consuming than reorganization plan, more inflexible, and is subject to amendment by Congress. It does, however, permit the President to ask for specific exemption from Senate confirmation for new positions.
4. Executive Order. The Domestic Policy Council can be established by Executive Order. Using this device the President can merge the existing White House staff involved in program and policy development. Through details from agencies he could acquire whatever additional staff is needed. To nurture and make permanent the program and policy activity, however, a straight-forward appropriation for this purpose seems highly desirable, and this is difficult without statutory authorization.

RECOMMENDED APPROACH

The present PACEO memo to the President expresses a preference for executive orders and reorganization plan, since these are the only devices which promise rapid action by April 1970. They do not preclude the possibility of subsequent legislative action to create new slots that are exempt from Senate confirmation, or to give the President general reorganization authority in his office. We recommend the following approach or some variation on it.

The President in his Budget Message announces that he is:

1. by Executive Order creating the DPC and its Executive Secretary and providing staff from existing sources. He will immediately submit to Congress legislation to make this office statutory and parallel to the Executive Secretary of the NSC, whose Level II position is not subject to Senate confirmation. The NSC also has a separate appropriation, which will be sought for the DPC once it is authorized by statute.
2. introducing a reorganization plan to establish the OEM. The OEM will have a Level I Director and 19 other Executive Level positions. (The reorganization plan can, if desired, be so worded that the five statutory positions in the BoB currently exempt from Senate confirmation are preserved, but all other positions including that of the OEM Director must, in accordance with the provision of the Reorganization Act of 1949, have confirmed status.

3. introducing legislation to increase the pool of discretionary Presidential appointments that are not subject to Senate confirmation. The pool would be increased by at least the number of confirmed positions created by the OEM reorganization plan, so that if he wished the President could exempt OEM officials from Senate confirmation.

At a later date, the President should introduce legislation to give all future Presidents general reorganization authority in their office.

A Variation.

The above approach provides for a Level I Director of the OEM with Senate confirmation. It can be varied to provide for a Level II Director without Senate confirmation, by wording the reorganization plan so that, instead of setting up a new organization, it appears merely to rename the BoB and its Director and Deputy Director. This means presenting the OEM as a beefing up of the BoB, not as an innovation in its own right. This will transfer to the Director and Deputy of the OEM the present exempt status of the BoB counterparts. All new positions in the OEM will, of course, require Senate confirmation. This would create an anomaly in which the Director and Deputy and three subordinates are not confirmed while fifteen other subordinates are.

It is important to ask in all this how important Senate confirmation actually is. It has been traditionally argued, especially by the BoB, that if an official is confirmed by the Senate he cannot be fully the President's man. The fact of his visibility to Congress and the public during confirmation is thought to limit his usefulness to the President.

On the other side, it has been argued that Senate confirmation is relatively innocuous, since the Senate is unlikely to deny the President the right to appoint his own men in his own office. Presidential flexibility in this matter can in any case be sought by direct legislation to increase the President's pool of discretionary appointments.