Bipartisan, bicameral cooperation provides a path forward on IT acquisition reform

Lessons Learned

1. Lawmakers can build on the work of previous Congresses to continually improve stewardship of the executive branch.

2. Extensive conversations and analysis prior to drafting legislation, including through a robust committee process, can provide the rigor necessary to determine whether new laws are needed.

3. Continuing oversight by Congress demonstrates legislative interest and drives greater agency attention to implementation.

The federal government has struggled for decades to efficiently manage its information technology. But thanks to the bipartisan cooperation of two House lawmakers and close collaboration with their Senate counterparts, Congress advanced the most comprehensive reform to government IT in years, the Federal Information Technology Acquisition Reform Act. And just as important, Congress has kept tabs on agency implementation of the law, providing an instructive example of the importance of long-term congressional interest and engagement to whether laws are implemented effectively.

The 2014 law is a recent development in a long congressional history of work to address information technology challenges that date back to the 1960s, when the Brooks Act centralized the purchase of mainframe computers in the General Services Administration. In 1994, the Senate Governmental Affairs Committee published the "Computer Chaos" report, which described in detail the slow and dysfunctional IT acquisition process. The report led to passage of the Information Technology Management Reform Act in 1996, better known as Clinger-Cohen for the law's congressional sponsors. This law attempted to streamline the rule-bound purchasing process for new technology by granting agencies more flexibility in buying IT and creating the agency chief information officers to manage federal technology.

Despite the efforts at reform, IT problems continued to plague the government. Perhaps most notably, the Office of Personnel Management canceled its Retirement Systems Modernization Program in 2011 after spending $231 million.[1]

Soon afterwards, the Government Accountability Office reported that many agencies had potentially duplicative technology investments, including $1.2 billion at the Defense Department alone.[2] Overall, the GAO reported that roughly 80 percent of the federal government's total IT budget supports maintenance of legacy systems rather than acquiring new technology, limiting the ability of employees to benefit from advances in technology and threatening the long-term effectiveness of agency computer systems and services.[3]

In short, the government continued to face major IT challenges: duplicative systems, data breaches, poorly-run projects and legacy technology that ate up a significant portion of agency budgets. By 2011, the endless series of problems, magnified by the headline-grabbing failure of the Healthcare.gov website, prompted Rep. Darrell Issa (R-Calif.), then-chairman of the House

1   United States of America. Government Accountability Office. *OMB Needs to Report On and Improve Its Oversight of the Highest Priority Programs (GAO-18-51)*. Washington, DC: GAO, 2017. 1-29.

2   United States of America. Government Accountability Office. *OMB and Agencies Need to Focus Continued Attention on Eliminating Duplicative Investments (GAO-13-685T)*. Washington, DC: GAO, 2013. 1-22.

3   United States of America. Office of Management and Budget. *Fiscal Year 2019 Federal Budget Analytical Perspectives - Information Technology*. Washington, DC: OMB, 2018. 221-26.

Committee on Oversight and Government Reform, and Rep. Gerry Connolly (D-Va.), to once again examine IT operations.

"Chairman Issa asked me to take a look at why the government was so inept and so incapable of rolling out working and cost-effective information systems," said Rich Beutel, who oversaw IT reform efforts for the committee. "He gave me the green light. What we wanted to do was em-

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Ben Rhodeside, who worked on the legislation for Connolly, noted that as a former congressional staffer, Connolly brought a very process-oriented perspective to the development of the bill. And because he represented a district with many federal employees and contractors, these types of issues were of higher than usual interest for the congressman. Rhodeside said it was "a good example of where understanding the biographies of members could play a big role."

With a mandate to develop new legislation, Beutel and Rhodeside met with the administration, external stakeholders and key Senate staff to begin the process of understanding the problems and to draft a bill. The process included consultations with agency CIOs who were willing to offer insights into the agency perspective, though for political reasons the meetings were not always in an official capacity. The interagency

federal CIO council also weighed in on important aspects of the bill, such as consolidating agency data centers. Consultations with a broad range of industry and other stakeholders was also key to rallying support for the bill as it was being developed.

These consultations helped to inform a series of public hearings—six between 2011 and 2013—as well as a 2012 draft bill that was based on information gathered over two Congresses. The result was the Federal Information Technology Acquisition Reform Act introduced by Issa and Connolly on March 18, 2013, though it would be nearly another full year before it was reported out of the committee and passed by the House.

By that time it was the Senate's turn to consider the bill—though there had already been conversations going on between House staff and Senate staff, including Senate Armed Services Committee staff who would play a critical role in advancing FITARA, before the legislation ever passed the House. There were extensive discussions between the staff of the House panel and the Senate Committee on Homeland Security and Governmental Affairs, particularly on the role CIOs should play in the IT budgeting process and whether it was possible to legislate better management at the agencies. Sens. Tom Carper (D-Del.) and Tom Coburn (R-Okla.), the chairman and ranking member of the committee, led the effort and built on past oversight of IT challenges, including failures relating to the 2010 decennial census.

"We wanted to make sure that we weren't legislating for the sake of legislating just to say that we'd done something to respond to some of the IT problems," said Troy Cribb, at the time the chief counsel for Carper on government management issues.

To this end, the committee engaged in extensive behind-the-scenes work on a bipartisan basis, bringing in each department-level CIO as well as component-level CIOs for conversations about the bill, and talking to experts in GAO, offices of inspectors general and the private sector. The committee also held several hearings, including one in May 2014 examining the critical success factors in successful IT acquisitions.[4]

Kathryn Mullins, who led efforts on the bill for Coburn, said the goal of the conversations and hearings was to determine what actions the committee could take that would make the most impact based on the set of laws and policies already in place. "One of the most important issues that we landed on was the idea that CIOs needed to be more involved in the acquisition process," said Mullins.

The ongoing oversight on both sides of Capitol Hill and the collaboration between House and Senate staff laid the groundwork to get the bill across the finish line. There were almost daily conversations between

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House and Senate staff to determine which ideas could gain support. Oversight from two Senate appropriators, Sens Tom Udall (D-N.M.) and

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4   *Identifying Critical Success Factors for Success in Information Technology Acquisitions: Hearing before the Committee on Homeland Security and Governmental Affairs, United States Senate.*, 113th Cong. 2 (2014). Retrieved from https://www.hsgac.senate.gov/hearings/identifying-critical-factors-for-success-in-information-technology-acquisitions

Jerry Moran (R-Kan.), also helped generate momentum for the bill. These conversations were helped by the fact that staff on both sides of the aisle had worked together previously and trusted each other, despite being on opposite sides of the aisle.

Finally, FITARA was included as part of the National Defense Authorization Act of 2015 (P.L. 113-291), which was signed into law on Dec. 9, 2014. The bill strengthened the role of agency CIOs, required a strategy for data center consolidation and created oversight frameworks for agency IT portfolios and troubled IT projects.

But those involved acknowledged that passing a bill was only a first step. What has set FITARA apart from previous attempts at IT acquisition reform has been the rigor with which Congress has continued to oversee implementation.

Since 2015, the House Committee on Oversight and Government Reform has issued six FITARA implementation scorecards. Suzanne Kent, who became federal CIO in 2018, noted that the continuous focus by the committee on the FITARA scorecard made implementation a greater priority for the administration.[5] The House panel also formed a new subcommittee on information technology, and the leaders of that panel, Reps. Will Hurd (R-Tex.) and Robin Kelly (D-Ill.), have recognized the importance of the bill.

Through the combination of hearings, public scorecards and GAO reports, members of Congress, including FITARA's original sponsors, have continued to hold agencies to account, even as some agencies have yet to fully implement the bill. The committee's continuing oversight also has served as a catalyst for action across administrations. In May 2018, President Trump signed Executive Order 13833, Enhancing the Effectiveness of Agency Chief Information Officers, to put the administration's weight behind the law and reinforce its requirements.

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Just a few days later, Connolly said at a hearing on the sixth iteration of the FITARA scorecard that he, Hurd, Kelly and Rep. Mark Meadows (R-N.C.) have "formed a bipartisan team and we're going to see this implementation of FITARA through on a bipartisan basis. And I think it's a great model of the United States Congress."[6] ◆

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5   *Hearing on GAO High Risk Focus: Cybersecurity, Committee on Oversight and Government Reform, United States House of Representatives*, 115th Cong. 2 (2018). Retrieved from https://oversight.house.gov/hearing/gao-high-risk-focus-cybersecurity/

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6   *The Federal Information Technology Acquisition Reform Act (FITARA) Scorecard 6.0, Committee on Oversight and Government Reform, United States House of Representatives*, 115th Cong. 2 (2018). Retrieved from https://oversight.house.gov/hearing/the-federal-information-technology-acquisition-reform-act-fitara-scorecard-6-0/

Resources

Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015: https://www.congress.gov/113/plaws/publ291/PLAW-113publ291.pdf

Detailed Oversight and Government Reform Committee FITARA Scorecard (Sixth Edition): https://oversight.house.gov/wp-content/uploads/2018/05/OGR-Scorecard-6.0-details-v2-.pdf

Executive Order 13833: Enhancing the Effectiveness of Agency Chief Information Officers: https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-effectiveness-agency-chief-information-officers/

Transcript of May 2014 Homeland Security and Governmental Affairs Committee Hearing, "Identifying Critical Factors for Success in Information Technology Acquisitions": https://www.gpo.gov/fdsys/pkg/CHRG-113shrg89681/pdf/CHRG-113shrg89681.pdf

FCW: "Is it time to revisit Clinger-Cohen?" by Camille Tuutti: https://fcw.com/articles/2012/12/03/issa-connolly-clinger-cohen.aspx