

**[§ 1114. Repealed. Pub. L. 103-355, title II, § 2454(c)(2), Oct. 13, 1994, 108 Stat. 3326]**

Section, Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 916, related to budget information on consulting services.

**EFFECTIVE DATE OF REPEAL**

For effective date and applicability of repeal, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of Title 10, Armed Forces.

**§ 1115. Federal Government and agency performance plans**

(a) **FEDERAL GOVERNMENT PERFORMANCE PLANS.**—In carrying out the provisions of section 1105(a)(28), the Director of the Office of Management and Budget shall coordinate with agencies to develop the Federal Government performance plan. In addition to the submission of such plan with each budget of the United States Government, the Director of the Office of Management and Budget shall ensure that all information required by this subsection is concurrently made available on the website provided under section 1122 and updated periodically, but no less than annually. The Federal Government performance plan shall—

(1) establish Federal Government performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year for each of the Federal Government priority goals required under section 1120(a) of this title;

(2) identify the agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities contributing to each Federal Government performance goal during the current fiscal year;

(3) for each Federal Government performance goal, identify a lead Government official who shall be responsible for coordinating the efforts to achieve the goal;

(4) establish common Federal Government performance indicators with quarterly targets to be used in measuring or assessing—

(A) overall progress toward each Federal Government performance goal; and

(B) the individual contribution of each agency, organization, program activity, regulation, tax expenditure, policy, and other activity identified under paragraph (2);

(5) establish clearly defined quarterly milestones; and

(6) identify major management challenges that are Governmentwide or crosscutting in nature and describe plans to address such challenges, including relevant performance goals, performance indicators, and milestones.

(b) **AGENCY PERFORMANCE PLANS.**—Not later than the first Monday in February of each year, the head of each agency shall make available on a public website of the agency, and notify the President and the Congress of its availability, a performance plan covering each program activity set forth in the budget of such agency. Such plan shall—

(1) establish performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year;

(2) express such goals in an objective, quantifiable, and measurable form unless authorized to be in an alternative form under subsection (c);

(3) describe how the performance goals contribute to—

(A) the general goals and objectives established in the agency's strategic plan required by section 306(a)(2) of title 5; and

(B) any of the Federal Government performance goals established in the Federal Government performance plan required by subsection (a)(1);

(4) identify among the performance goals those which are designated as agency priority goals as required by section 1120(b) of this title, if applicable;

(5) provide a description of how the performance goals are to be achieved, including—

(A) the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals;

(B) clearly defined milestones;

(C) an identification of the organizations, program activities, regulations, policies, and other activities that contribute to each performance goal, both within and external to the agency;

(D) a description of how the agency is working with other agencies to achieve its performance goals as well as relevant Federal Government performance goals; and

(E) an identification of the agency officials responsible for the achievement of each performance goal, who shall be known as goal leaders;

(6) establish a balanced set of performance indicators to be used in measuring or assessing progress toward each performance goal, including, as appropriate, customer service, efficiency, output, and outcome indicators;

(7) provide a basis for comparing actual program results with the established performance goals;

(8) a description of how the agency will ensure the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—

(A) the means to be used to verify and validate measured values;

(B) the sources for the data;

(C) the level of accuracy required for the intended use of the data;

(D) any limitations to the data at the required level of accuracy; and

(E) how the agency will compensate for such limitations if needed to reach the required level of accuracy;

(9) describe major management challenges the agency faces and identify—

(A) planned actions to address such challenges;

(B) performance goals, performance indicators, and milestones to measure progress toward resolving such challenges; and

(C) the agency official responsible for resolving such challenges; and

(10) identify low-priority program activities based on an analysis of their contribution to

the mission and goals of the agency and include an evidence-based justification for designating a program activity as low priority.

(c) **ALTERNATIVE FORM.**—If an agency, in consultation with the Director of the Office of Management and Budget, determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Director of the Office of Management and Budget may authorize an alternative form. Such alternative form shall—

(1) include separate descriptive statements of—

- (A)(i) a minimally effective program; and
- (ii) a successful program; or

(B) such alternative as authorized by the Director of the Office of Management and Budget, with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of the description; or

(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

(d) **TREATMENT OF PROGRAM ACTIVITIES.**—For the purpose of complying with this section, an agency may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation for the agency.

(e) **APPENDIX.**—An agency may submit with an annual performance plan an appendix covering any portion of the plan that—

(1) is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(2) is properly classified pursuant to such Executive order.

(f) **INHERENTLY GOVERNMENTAL FUNCTIONS.**—The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of performance plans under this section shall be performed only by Federal employees.

(g) **CHIEF HUMAN CAPITAL OFFICERS.**—With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (b)(5)(A).

(h) **DEFINITIONS.**—For purposes of this section and sections 1116 through 1125, and sections 9703 and 9704, the term—

(1) “agency” has the same meaning as such term is defined under section 306(f) of title 5;

(2) “crosscutting” means across organizational (such as agency) boundaries;

(3) “customer service measure” means an assessment of service delivery to a customer, client, citizen, or other recipient, which can include an assessment of quality, timeliness, and satisfaction among other factors;

(4) “efficiency measure” means a ratio of a program activity's inputs (such as costs or

hours worked by employees) to its outputs (amount of products or services delivered) or outcomes (the desired results of a program);

(5) “major management challenge” means programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse, and mismanagement (such as issues identified by the Government Accountability Office as high risk or issues identified by an Inspector General) where a failure to perform well could seriously affect the ability of an agency or the Government to achieve its mission or goals;

(6) “milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables or a phase of work;

(7) “outcome measure” means an assessment of the results of a program activity compared to its intended purpose;

(8) “output measure” means the tabulation, calculation, or recording of activity or effort that can be expressed in a quantitative or qualitative manner;

(9) “performance goal” means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate;

(10) “performance indicator” means a particular value or characteristic used to measure output or outcome;

(11) “program activity” means a specific activity or project as listed in the program and financing schedules of the annual budget of the United States Government; and

(12) “program evaluation” means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve intended objectives.

(Added Pub. L. 111-352, §3, Jan. 4, 2011, 124 Stat. 3867.)

#### PRIOR PROVISIONS

A prior section 1115, added Pub. L. 103-62, §4(b), Aug. 3, 1993, 107 Stat. 287; amended Pub. L. 107-296, title XIII, §1311(a), Nov. 25, 2002, 116 Stat. 2289; Pub. L. 108-136, div. A, title XIV, §1421(b), Nov. 24, 2003, 117 Stat. 1667, related to performance plans, prior to repeal by Pub. L. 111-352, §3, Jan. 4, 2011, 124 Stat. 3867.

#### FORMAT OF PERFORMANCE PLANS AND REPORTS

Pub. L. 111-352, §10, Jan. 4, 2011, 124 Stat. 3880, provided that:

“(a) **SEARCHABLE, MACHINE-READABLE PLANS AND REPORTS.**—For fiscal year 2012 and each fiscal year thereafter, each agency required to produce strategic plans, performance plans, and performance updates in accordance with the amendments made by this Act [see Short Title of 2011 Amendment note set out under section 1101 of this title] shall—

“(1) not incur expenses for the printing of strategic plans, performance plans, and performance reports for release external to the agency, except when providing such documents to the Congress;

“(2) produce such plans and reports in searchable, machine-readable formats; and

“(3) make such plans and reports available on the website described under section 1122 of title 31, United States Code.

“(b) **WEB-BASED PERFORMANCE PLANNING AND REPORTING.**—

“(1) IN GENERAL.—Not later than June 1, 2012, the Director of the Office of Management and Budget shall issue guidance to agencies to provide concise and timely performance information for publication on the website described under section 1122 of title 31, United States Code, including, at a minimum, all requirements of sections 1115 and 1116 of title 31, United States Code, except for section 1115(e).

“(2) HIGH-PRIORITY GOALS.—For agencies required to develop agency priority goals under section 1120(b) of title 31, United States Code, the performance information required under this section shall be merged with the existing information required under section 1122 of title 31, United States Code.

“(3) CONSIDERATIONS.—In developing guidance under this subsection, the Director of the Office of Management and Budget shall take into consideration the experiences of agencies in making consolidated performance planning and reporting information available on the website as required under section 1122 of title 31, United States Code.”

#### IMPLEMENTATION OF Pub. L. 111-352

Pub. L. 111-352, §14, Jan. 4, 2011, 124 Stat. 3883, provided that:

“(a) INTERIM PLANNING AND REPORTING.—

“(1) IN GENERAL.—The Director of the Office of Management and Budget shall coordinate with agencies to develop interim Federal Government priority goals and submit interim Federal Government performance plans consistent with the requirements of this Act [see Short Title of 2011 Amendment note set out under section 1101 of this title] beginning with the submission of the fiscal year 2013 Budget of the United States Government.

“(2) REQUIREMENTS.—Each agency shall—

“(A) not later than February 6, 2012, make adjustments to its strategic plan to make the plan consistent with the requirements of this Act;

“(B) prepare and submit performance plans consistent with the requirements of this Act, including the identification of agency priority goals, beginning with the performance plan for fiscal year 2013; and

“(C) make performance reporting updates consistent with the requirements of this Act beginning in fiscal year 2012.

“(3) QUARTERLY REVIEWS.—The quarterly priority progress reviews required under this Act shall begin—

“(A) with the first full quarter beginning on or after the date of enactment of this Act [Jan. 4, 2011] for agencies based on the agency priority goals contained in the Analytical Perspectives volume of the Fiscal Year 2011 Budget of the United States Government; and

“(B) with the quarter ending June 30, 2012 for the interim Federal Government priority goals.

“(b) GUIDANCE.—The Director of the Office of Management and Budget shall prepare guidance for agencies in carrying out the interim planning and reporting activities required under subsection (a), in addition to other guidance as required for implementation of this Act.”

#### CONGRESSIONAL OVERSIGHT AND LEGISLATION

Pub. L. 111-352, §15, Jan. 4, 2011, 124 Stat. 3883, provided that:

“(a) IN GENERAL.—Nothing in this Act [see Short Title of 2011 Amendment note set out under section 1101 of this title] shall be construed as limiting the ability of Congress to establish, amend, suspend, or annul a goal of the Federal Government or an agency.

“(b) GAO REVIEWS.—

“(1) INTERIM PLANNING AND REPORTING EVALUATION.—Not later than June 30, 2013, the Comptroller General shall submit a report to Congress that includes—

“(A) an evaluation of the implementation of the interim planning and reporting activities conducted under section 14 of this Act [set out as a note above]; and

“(B) any recommendations for improving implementation of this Act as determined appropriate.

“(2) IMPLEMENTATION EVALUATIONS.—

“(A) IN GENERAL.—The Comptroller General shall evaluate the implementation of this Act subsequent to the interim planning and reporting activities evaluated in the report submitted to Congress under paragraph (1).

“(B) AGENCY IMPLEMENTATION.—

“(i) EVALUATIONS.—The Comptroller General shall evaluate how implementation of this Act is affecting performance management at the agencies described in section 901(b) of title 31, United States Code, including whether performance management is being used by those agencies to improve the efficiency and effectiveness of agency programs.

“(ii) REPORTS.—The Comptroller General shall submit to Congress—

“(I) an initial report on the evaluation under clause (i), not later than September 30, 2015; and

“(II) a subsequent report on the evaluation under clause (i), not later than September 30, 2017.

“(C) FEDERAL GOVERNMENT PLANNING AND REPORTING IMPLEMENTATION.—

“(i) EVALUATIONS.—The Comptroller General shall evaluate the implementation of the Federal Government priority goals, Federal Government performance plans and related reporting required by this Act.

“(ii) REPORTS.—The Comptroller General shall submit to Congress—

“(I) an initial report on the evaluation under clause (i), not later than September 30, 2015; and

“(II) subsequent reports on the evaluation under clause (i), not later than September 30, 2017 and every 4 years thereafter.

“(D) RECOMMENDATIONS.—The Comptroller General shall include in the reports required by subparagraphs (B) and (C) any recommendations for improving implementation of this Act and for streamlining the planning and reporting requirements of the Government Performance and Results Act of 1993 [Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 285; see Short Title of 1993 Amendment note set out under section 1101 of this title].”

#### STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT TRAINING

Pub. L. 103-62, §9, Aug. 3, 1993, 107 Stat. 295, provided that: “The Office of Personnel Management shall, in consultation with the Director of the Office of Management and Budget and the Comptroller General of the United States, develop a strategic planning and performance measurement training component for its management training program and otherwise provide managers with an orientation on the development and use of strategic planning and program performance measurement.”

#### EX. ORD. NO. 13450. IMPROVING GOVERNMENT PROGRAM PERFORMANCE

Ex. Ord. No. 13450, Nov. 13, 2007, 72 F.R. 64519, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 305 and 306 of title 5, sections 1115, 1116, and 9703 of title 31, and chapter 28 of title 39, United States Code, and to improve the effectiveness and efficiency of the Federal Government and promote greater accountability of that Government to the American people, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to spend taxpayer dollars effectively, and more effectively each year. Agencies shall apply taxpayer resources efficiently in a manner that maximizes the effectiveness of Government programs in serving the American people.

SEC. 2. *Definitions.* As used in this order:

(a) "agency" means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission;

(b) "agency Performance Improvement Officer" means an employee of an agency who is a member of the Senior Executive Service or equivalent service, and who is designated by the head of the agency to carry out the duties set forth in section 5 of this order.

SEC. 3. *Duties of Heads of Agencies.* To assist in implementing the policy set forth in section 1 of this order, the head of each agency shall, with respect to each program administered in whole or in part by the agency:

(a) approve for implementation:

(i) clear annual and long-term goals defined by objectively measurable outcomes; and

(ii) specific plans for achieving the goals, including:

(A) assignments to specified agency personnel of:

(1) the duties necessary to achieve the goals; and

(2) the authority and resources necessary to fulfill such duties;

(B) means to measure:

(1) progress toward achievement of the goals; and

(2) efficiency in use of resources in making that progress; and

(C) mechanisms for ensuring continuous accountability of the specified agency personnel to the head of the agency for achievement of the goals and efficiency in use of resources in achievement of the goals;

(b) assist the President, through the Director of the Office of Management and Budget (Director), in making recommendations to the Congress, including budget and appropriations recommendations, that are justified based on objective performance information and accurate estimates of the full costs of achieving the annual and long-term goals approved under subsection (a)(i) of this section; and

(c) ensure that agency Internet websites available to the public include regularly updated and accurate information on the performance of the agency and its programs, in a readily useable and searchable form, that sets forth the successes, shortfalls, and challenges of each program and describes the agency's efforts to improve the performance of the program.

SEC. 4. *Additional Duties of the Director of the Office of Management and Budget.* (a) To assist in implementing the policy set forth in section 1 of this order, the Director shall issue instructions to the heads of agencies concerning:

(i) the contents, and schedule for approval, of the goals and plans required by section 3 of this order; and

(ii) the availability to the public in readily accessible and comprehensible form on the agency's Internet website (or in the Federal Register for any agency that does not have such a website), of the information approved by the head of each agency under section 3 of this order and other information relating to agency performance.

(b) Instructions issued under subsection (a) of this section shall facilitate compliance with applicable law, presidential guidance, and Office of Management and Budget circulars and shall be designed to minimize duplication of effort and to assist in maximizing the efficiency and effectiveness of agencies and their programs.

SEC. 5. *Duties of Agency Performance Improvement Officers.* Subject to the direction of the head of the agency, each agency Performance Improvement Officer shall:

(a) supervise the performance management activities of the agency, including:

(i) development of the goals, specific plans, and estimates for which section 3 of this order provides; and

(ii) development of the agency's strategic plans, annual performance plans, and annual performance reports as required by law;

(b) advise the head of the agency, with respect to a program administered in whole or in part by the agency, whether:

(i) goals proposed for the approval of the head of the agency under section 3(a)(i) of this order are:

(A) sufficiently aggressive toward full achievement of the purposes of the program; and

(B) realistic in light of authority and resources assigned to the specified agency personnel referred to in section 3(a)(ii)(A) of this order with respect to that program; and

(ii) means for measurement of progress toward achievement of the goals are sufficiently rigorous and accurate;

(c) convene the specified agency personnel referred to in section 3(a)(ii)(A) of this order, or appropriate subgroups thereof, regularly throughout each year to:

(i) assess performance of each program administered in whole or in part by the agency; and

(ii) consider means to improve the performance and efficiency of such program;

(d) assist the head of the agency in the development and use within the agency of performance measures in personnel performance appraisals, and, as appropriate, other agency personnel and planning processes; and

(e) report to the head of the agency on the implementation within the agency of the policy set forth in section 1 of this order.

SEC. 6. *Establishment and Operation of Performance Improvement Council.* (a) The Director shall establish, within the Office of Management and Budget for administrative purposes only, a Performance Improvement Council (Council), consistent with this order.

(b) The Council shall consist exclusively of:

(i) the Deputy Director for Management of the Office of Management and Budget, who shall serve as Chair;

(ii) such agency Performance Improvement Officers, as determined by the Chair; and

(iii) such other full-time or permanent part-time employees of an agency, as determined by the Chair with the concurrence of the head of the agency concerned.

(c) The Chair or the Chair's designee, in implementing subsection (d) of this section, shall convene and preside at the meetings of the Council, determine its agenda, direct its work, and establish and direct subgroups of the Council, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Council.

(d) To assist in implementing the policy set forth in section 1 of this order, the Council shall:

(i) develop and submit to the Director, or when appropriate to the President through the Director, at times and in such formats as the Chair may specify, recommendations concerning:

(A) performance management policies and requirements; and

(B) criteria for evaluation of program performance;

(ii) facilitate the exchange among agencies of information on performance management, including strategic and annual planning and reporting, to accelerate improvements in program performance;

(iii) coordinate and monitor a continuous review by heads of agencies of the performance and management of all Federal programs that assesses the clarity of purpose, quality of strategic and performance planning and goals, management excellence, and results achieved for each agency's programs, with the results of these assessments and the evidence on which they are based made available to the public on or through the Internet website referred to in subsection (d)(iv);

(iv) to facilitate keeping the public informed, and with such assistance of heads of agencies as the Director may require, develop an Internet website that provides the public with information on how well each agency performs and that serves as a comprehensive source of information on:

(A) current program performance; and

(B) the status of program performance plans and agency Performance and Accountability Reports; and

(C) consistent with the direction of the head of the agency concerned after consultation with the Director, any publicly available reports by the agency's Inspector General concerning agency program performance;

(v) monitor implementation by agencies of the policy set forth in section 1 of this order and report thereon from time to time as appropriate to the Director, or when appropriate to the President through the Director, at such times and in such formats as the Chair may specify, together with any recommendations of the Council for more effective implementation of such policy;

(vi) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency to implement the policy set forth in section 1 of this order; and

(vii) obtain information and advice, as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, from:

- (A) State, local, territorial, and tribal officials; and
- (B) representatives of entities or other individuals.

(e)(i) To the extent permitted by law, the Office of Management and Budget shall provide the funding and administrative support the Council needs, as determined by the Director, to implement this section; and

(ii) the heads of agencies shall provide, as appropriate and to the extent permitted by law, such information and assistance as the Chair may request to implement this section.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law (including laws and executive orders relating to the protection of information from disclosure) and subject to the availability of appropriations.

(c) In implementing this order, the Director of National Intelligence shall perform the functions assigned to the Director of National Intelligence by the National Security Act of 1947, as amended ([former] 50 U.S.C. 401 *et seq.*) [now 50 U.S.C. 3001 *et seq.*], consistent with section 1018 of the Intelligence Reform and Terrorism Prevention Act (Public Law 108-458), and other applicable laws.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

### § 1116. Agency performance reporting

(a) The head of each agency shall make available on a public website of the agency and to the Office of Management and Budget an update on agency performance.

(b)(1) Each update shall compare actual performance achieved with the performance goals established in the agency performance plan under section 1115(b) and shall occur no less than 150 days after the end of each fiscal year, with more frequent updates of actual performance on indicators that provide data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden.

(2) If performance goals are specified in an alternative form under section 1115(c), the results shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.

(c) Each update shall—

(1) review the success of achieving the performance goals and include actual results for the 5 preceding fiscal years;

(2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals during the period covered by the update;

(3) explain and describe where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 1115(c)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used)—

(A) why the goal was not met;

(B) those plans and schedules for achieving the established performance goal; and

(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

(4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 of this title;

(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management;

(6) describe how the agency ensures the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—

(A) the means used to verify and validate measured values;

(B) the sources for the data;

(C) the level of accuracy required for the intended use of the data;

(D) any limitations to the data at the required level of accuracy; and

(E) how the agency has compensated for such limitations if needed to reach the required level of accuracy; and

(7) include the summary findings of those program evaluations completed during the period covered by the update.

(d) If an agency performance update includes any program activity or information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is properly classified pursuant to such Executive Order, the head of the agency shall make such information available in the classified appendix provided under section 1115(e).

(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of agency performance updates under this section shall be performed only by Federal employees.

(f) Each fiscal year, the Office of Management and Budget shall determine whether the agency programs or activities meet performance goals and objectives outlined in the agency performance plans and submit a report on unmet goals to—

(1) the head of the agency;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committee on Oversight and Governmental Reform of the House of Representatives; and

(4) the Government Accountability Office.

(g) If an agency's programs or activities have not met performance goals as determined by the