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# Executive Branch Reorganization

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August 3, 2017

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R44909

## Summary

The federal bureaucracy of the present day is the product of more than two centuries of legislative and administrative actions by successive generations of elected and appointed officials. As such, the diverse organizations and processes of the federal government are a consequence of the influence and decisions of thousands of officials with differing viewpoints about the role of government and diverse policy preferences. The federal bureaucracy's organizational arrangements are also reflective of ongoing competition between Congress and the President to influence the behavior of agencies. With its size, complexity, and idiosyncratic history, the federal bureaucracy is sometimes perceived as immutable. Notwithstanding this perception, federal organizational structures and processes are under continual congressional and administrative study and alteration in response to changing contexts and priorities.

The term *reorganization* may be defined to encompass the intended alterations in the purpose, functions, procedures, assignments, and relationships within and among organizations. It involves more than just structural rearrangement of organizational units and personnel, and it can occur within agencies as well as among two or more agencies. Government reorganizations can also entail changes in interagency processes or the distribution of resources and functions among agencies. The government organizations that are the focus of this report are those that exercise significant federal legal authority.

Primary constitutional responsibility for the structural organization of the executive branch of the federal government, as well as the creation of the principal components of that branch, rests with Congress. Congress also has delimited the operations of the executive departments, agencies, and other governmental entities through specifications of both government-wide and agency-specific processes. Key tools that Congress uses to shape the contours of the federal government include authorizing legislation, appropriations legislation, and oversight.

The President has often played a leadership role in reorganization of the executive branch by transmitting proposals and advocating legislative action in public statements and private negotiations. Presidents and their appointed agency heads also have a variety of administrative tools at their disposal for making structural and procedural organizational changes that are not in conflict with statutes.

In addition to the tools just mentioned, each of the three major governing actors discussed in this report—Congress, the President, and agency heads—has tried to address the challenge of coordination across organizational boundaries by establishing interagency coordinative mechanisms of one kind or another. These are often used in an effort to establish cooperation among agencies with shared missions, similar functions, or overlapping jurisdiction. Some arrangements provide for collaboration among equals, while others designate a lead agency with authority to direct activities.

This report discusses some tools available to Congress, the President, and agency leaders, respectively, for initiation and implementation of executive branch reorganization. It also discusses the interagency coordinative mechanisms that are sometimes used by each of these actors to bridge inter-organizational gaps. The report concludes with general observations regarding federal reorganization efforts.

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## Introduction

The federal bureaucracy of the present day is the product of more than two centuries of legislative and administrative actions by successive generations of elected and appointed officials. As such, the diverse organizations and processes of the federal government are a consequence of the influence and decisions of thousands of officials with differing viewpoints about the role of government and diverse policy preferences. The federal bureaucracy's organizational arrangements are also reflective of ongoing competition between Congress and the President to influence the behavior of agencies.<sup>1</sup> With its size, complexity, and idiosyncratic history, the federal bureaucracy is sometimes perceived as immutable.

Notwithstanding this perception, federal organizational structures and processes are under continual congressional and administrative study and alteration in response to changing contexts and priorities. Most changes in organizational arrangements occur deep within departments and agencies, affecting a small number of subunits and not attracting wide notice. Occasionally, broader, more widely known changes, such as a structural reorganization establishing a new department or a redelegation of responsibilities among agencies, are undertaken. These activities are expected developments in a government that is evolving and adapting in response to changing needs, policy priorities, political contexts, and technology, among other factors.

Government reorganization is a process that may be undertaken in pursuit of administrative and political goals. Such activities have been associated with both potential benefits and potential drawbacks, some of which are discussed in a text box near the end of this report.

As used in this report, the term reorganization is used to encompass the “purposeful (intended) changes in purpose, functions, procedures, assignments, and relationships in organizations.”<sup>2</sup> It involves more than just structural rearrangement of organizational units and personnel, and it can occur within agencies as well as among two or more agencies. Government reorganizations can also entail changes in interagency processes or the distribution of resources and functions among agencies.<sup>3</sup> The government organizations that are the focus of this report are those that exercise significant federal legal authority.<sup>4</sup>

Primary constitutional responsibility for the structural organization of the executive branch of the federal government, as well as the creation of the principal components of that branch, rests with Congress.<sup>5</sup> Moreover, Congress has long sought to promote efficiency, transparency,

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<sup>1</sup> For a discussion of congressional efforts to limit the authority of the President over specific agencies, see CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*, by Henry B. Hogue, Marc Labonte, and Baird Webel.

<sup>2</sup> Frederick C. Mosher, “Introduction,” in *Government Reorganizations: Cases and Commentary*, ed. Frederick C. Mosher (New York: Bobbs-Merrill, 1967), p. xv. The author reported a definition arrived at by the Inter-University Case Program, Inc., a project that he led.

<sup>3</sup> Arguably, the complete abolition of an agency and its functions could also be considered a form of reorganization. Agency abolishment is a distinct topic in some respects, however, and it is outside of the scope of this report. The detailed mechanics of reorganization, such as those affecting the transfer of personnel and resources, are also outside the scope of this report.

<sup>4</sup> Consequently, the report does not discuss the formation or reorganization of advisory or investigative bodies such as those sometimes established by Congress or by the President. For a discussion of these entities, see CRS Report R40076, *Congressional Commissions: Overview, Structure, and Legislative Considerations*, by Matthew E. Glassman and Jacob R. Straus; and CRS Report R44253, *Federal Advisory Committees: An Introduction and Overview*, by Meghan M. Stuessy. White House organization is also outside the scope of this report.

<sup>5</sup> Congress, in exercising its powers to legislate under Article I, Section 8, and other provisions of the Constitution, is (continued...)

accountability, public participation, and economy in the operations of the executive departments, agencies, and other governmental entities through specifications of both government-wide and agency-specific processes.<sup>6</sup> Key tools that Congress uses to shape the contours of the federal government include authorizing legislation, appropriations legislation, and oversight.

The President has often played a leadership role in reorganization of the executive branch by transmitting proposals and advocating legislative action in public statements and private negotiations. Presidents and their appointed agency heads also have a variety of administrative tools at their disposal for making smaller-scale structural and procedural organizational changes.

Each of these governing actors has tried to bridge divides between entities with shared missions, similar functions, or overlapping jurisdiction by establishing interagency coordinative mechanisms of one kind or another. Such mechanisms may be considered tools of reorganization in that they often lead to changes in procedures, assignments, and relationships within and between organizations.

This report begins with discussions of some tools available to Congress, the President, and agency leaders for initiation and implementation of executive branch reorganization. It then discusses interagency coordinative mechanisms that are sometimes used by each of these actors to bridge inter-organizational gaps. The report concludes with general observations regarding federal reorganization efforts.

## Congressional Tools

### Statutory Reorganization

Reorganizations that exceed the boundaries of one department or agency, or that are inconsistent with existing law, generally are accomplished through the legislative process. Consequently, Congress has a fundamental role in shaping and reshaping the federal agency landscape. It creates, structures, and locates or relocates offices; delegates to them specific or general missions, powers, duties, and functions; defines the parameters of personnel systems; confirms an agency's leadership; provides funding; and ultimately evaluates whether or not an agency shall continue in existence.<sup>7</sup> At times, Congress has also specified, in statute, organizational process requirements, such as those that shape decisionmaking and coordination.<sup>8</sup>

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empowered to provide for the execution of those laws by officers appointed pursuant to the Appointments Clause (Art. II, §2, cl. 2). In addition, under the Necessary and Proper Clause (Art. I, §8, cl. 18), Congress has the authority to create and locate offices, establish their powers, duties, and functions, determine the qualifications of officeholders, prescribe their appointments, and generally promulgate the standards for the conduct of the offices.

<sup>6</sup> See, generally, David H. Rosenbloom, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999* (Tuscaloosa: University of Alabama Press, 2000).

<sup>7</sup> Morton Rosenberg, *When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry* (Washington, DC: The Constitution Project, 2017), p. 6.

<sup>8</sup> These include general government-wide procedure laws, like the Administrative Procedure Act, as well as more particularistic provisions. For more on the government-wide laws, see CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al. One example of a more particularistic law is a statutory provision pertaining to the use of mineral resources in national forests in Minnesota that includes the proviso that “the development and utilization of such mineral deposits shall not be permitted by the Secretary of the Interior except with the consent of the Secretary of Agriculture” (16 U.S.C. §508b).

Reorganization legislation may be initiated by Members, congressional committees, or the President, with proposals by the latter transmitted to Congress and introduced as a courtesy. Once introduced in the House or Senate, such legislation is routinely referred to each chamber's government operations committee: the House Committee on Oversight and Government Reform, and the Senate Committee on Homeland Security and Governmental Affairs. In the House, reorganization legislation may also be referred concurrently or sequentially to other committees with jurisdiction over the affected agencies and programs. The President may attempt to influence the development of reorganization legislation, including by threatening its veto.

Efforts carried out through the statutory process can be narrowly targeted or far-reaching. Many reorganization proposals that have become law have been developed through hearings and antecedent legislative initiatives over the course of several Congresses. In addition, galvanizing events have sometimes created political climates favorable to structural reorganizations. For example, this was the case during the 2003 establishment of the Department of Homeland Security (DHS) in the aftermath of the terrorist attacks in 2001.<sup>9</sup>

### **Reorganization by Statute: An Under Secretary Is Added to USDA**

The evolution of an organizational change at the Department of Agriculture (USDA) provides an illustration of congressionally initiated reorganization. Congressional concerns about USDA's capacity to keep pace with and respond to growing international agricultural trade led to a provision in the 2014 farm bill that directed the Secretary of Agriculture, in consultation with relevant congressional committees, to "propose a reorganization of international trade functions for imports and exports of the Department of Agriculture," and the proposal was to include "the establishment of an Under Secretary of Agriculture for Trade and Foreign Agricultural Affairs." It further directed the Secretary to submit a related report to these committees and to implement the reorganization.<sup>10</sup> The conference report for the bill provides the committee's rationale for this provision:

The Managers recognize that international trade is critically important to the economic vitality of the U.S. agriculture and food industry and a major engine of U.S. economic growth....

The trade organizational structure at USDA has remained unchanged since it was last reorganized in 1978. Over this period, the value and nature of U.S. agriculture exports has changed dramatically. In 1978, U.S. agriculture exports totaled \$29 billion, whereas in 2012 they reached \$136 billion. Meanwhile, over the last 30 years the challenges that U.S. agriculture faces in global markets have increased and markedly changed from primarily tariff barriers to phytosanitary and other non-tariff trade barriers.

The Managers agree that an Under Secretary for Trade and Foreign Agricultural Affairs will provide a singular focus on trade and foster more effective coordination of transparent, rules-based trade policies in other USDA agencies. Such a position will bring unified, high level representation to key trade negotiations with senior, foreign officials and within the Executive Branch. Furthermore, the creation of this Under Secretary position will help streamline management, create greater efficiencies and enhance emphasis in the Office of the Under Secretary responsible for key domestic programs.<sup>11</sup>

On May 11, 2017, USDA issued a report to Congress concerning a proposed reorganization that was, in part, to be carried out under the 2014 provisions.<sup>12</sup> The report also announced other planned reorganization activities to be carried out under the Secretary's authority.

<sup>9</sup> See CRS Report RL31493, *Homeland Security: Department Organization And Management—Legislative Phase*, by Harold C. Relyea. (A copy of this report is available from Henry Hogue, at 7-0642.)

<sup>10</sup> P.L. 113-79, §3208; 128 Stat. 781.

<sup>11</sup> U.S. Congress, Committee on Conference, *Agricultural Act of 2014*, conference report to accompany H.R. 2642, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 27, 2014, H.Rept. 113-333 (Washington: GPO, 2014), pp. 430-431.

<sup>12</sup> U.S. Department of Agriculture, *Report to Congress: Report on the Proposed 2017 Reorganization of the Department of Agriculture to establish an Under Secretary for Trade and Foreign Agricultural Affairs*, May 11, 2017.

## Appropriations as a Tool of Reorganization

In some cases, Congress has changed organizational arrangements within a department or agency by shifting funding and functions between offices.<sup>13</sup> In 1987, for example, such an effort was undertaken in the House, with regard to the Agriculture Department appropriations act for FY1988. In this case, a Member sought to defund an assistant secretary office completely; in a compromise, funding for the assistant secretary position was maintained, but most of the funds and functions were shifted to the Office of the Secretary. According to the *1987 CQ Almanac*,

At the urging of Jamie L. Whitten, ... chairman of the House Appropriations Committee and its subcommittee on Agriculture, the House provided no administrative funds for the assistant secretary [for natural resources], who had authority over the Forest Service and the Soil Conservation Service.

Whitten had long complained that the administration was trying to do away with traditional agricultural conservation programs in favor of a new Conservation Reserve Program that paid farmers to take erodible land out of production. He expressed his wrath by “zeroing out” the pay and office expenses of Assistant Secretary George S. Dunlop, although Whitten insisted he had “nothing personal” against him. Dunlop was staff director of the Senate Agriculture Committee under its previous chairman, Jesse Helms....

Whitten ultimately agreed to a compromise creating a new office of assistant secretary for unspecified “special purposes,” funded at \$416,000—the level earmarked by the Senate for the natural resources position. But the new office was given no authority over the Soil Conservation Service or the Forest Service. The directors of those agencies were required to report directly to the agriculture secretary.<sup>14</sup>

The provision regarding the Office of the Secretary in the resulting statute reflects this change. It begins,

For necessary expenses of the Office of the Secretary of Agriculture, including the direct supervision of the Soil Conservation Service and the Forest Service.<sup>15</sup>

As noted below, under “Congressional Responses to Particular Agency Head Actions,” Congress has also used the appropriations process as a means of blocking or shaping administrative reorganizations initiated by the President or agency heads.

## Presidential Tools

As noted above, the President has often played a leadership role in reorganization of the executive branch by transmitting proposals and advocating legislative action in public statements and private negotiations. The President may also direct members of his Administration to conduct reorganizations using the authorities discussed below (“Agency Tools”). In some instances, Presidents have used executive orders to direct the establishment of offices.<sup>16</sup> In addition, the

<sup>13</sup> When funding is provided in two lump sums for separate purposes, funds from one category may not be used to pay for activities in the other category, except through relatively small transfers of funds authorized by law. See CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen.

<sup>14</sup> “Agriculture, Food Programs Given \$56 Billion,” *1987 CQ Almanac* (Washington: Congressional Quarterly, 1988), p. 461.

<sup>15</sup> P.L. 100-202, provision at 101 Stat. 1329-322.

<sup>16</sup> See, for example, Executive Order 13532, “Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities,” *75 Federal Register* 9749, March 3, 2010, which states “There is established the (continued...)”



President can redelegate functions that have been vested in him by Congress, as discussed below. Finally, Congress has sometimes delegated to the President circumscribed authority to conduct time- and agency-specific reorganization activities.

During the middle of the 20<sup>th</sup> century, Congress sometimes enacted so-called “presidential reorganization authority,” which provided for a fast-track legislative process, led by the President, for certain reorganization activities. This authority is no longer operative, but it is discussed below nonetheless because it was an important mechanism for reorganization during the period in which it was in effect, and many reorganization plans from that era underpin current organizational arrangements in the executive branch.

## Redelegation of Authorities Vested in the President

Where functions are statutorily vested in the President, they may be delegated and redelegated under authority provided in Section 301 of Title 3 of the *U.S. Code*. This provision states,

The President of the United States is authorized to designate and empower the head of any department or agency in the executive branch, or any official thereof who is required to be appointed by and with the advice and consent of the Senate, to perform without approval, ratification, or other action by the President (1) any function which is vested in the President by law, or (2) any function which such officer is required or authorized by law to perform only with or subject to the approval, ratification, or other action of the President: Provided, That nothing contained herein shall relieve the President of his responsibility in office for the acts of any such head or other official designated by him to perform such functions. Such designation and authorization shall be in writing, shall be published in the Federal Register, shall be subject to such terms, conditions, and limitations as the President may deem advisable, and shall be revocable at any time by the President in whole or in part.

By redelegating such functions, the President can effect a reorganization of authorities among executive branch agencies. The Administration cannot move the funds and other resources that might be necessary to carry out such functions among budget accounts, however, unless Congress provides transfer authority to do so.<sup>17</sup>

## Statutorily Circumscribed Authority

Through statute, Congress has sometimes provided the President with circumscribed authority to plan and implement a specified reorganization. Statutes providing such authority have specified, for example, the entity or entities within the executive branch that may be affected, the duration of the authority, and the means by which the President’s plan may be modified. Congress has used this tool at least twice to empower the President to make organizational refinements during a statutory reorganization involving several agencies.

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White House Initiative on Historically Black Colleges and Universities ... to be housed in the Department of Education.... There shall be an Executive Director of the Initiative. The Department shall provide the staff, resources, and assistance for the Initiative, and shall assist the Initiative in fulfilling its mission and responsibilities under this order.”

<sup>17</sup> For a discussion of transfer authority in the context of the budget process, see CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen.



Congress provided authority of this type in the Foreign Affairs Agencies Consolidation Act of 1998, for example.<sup>18</sup> The applicable provision directed the President to submit to the appropriate congressional committees, within 60 days of enactment, a plan and a report regarding reorganizations of specified foreign affairs-related agencies.<sup>19</sup> It also specified elements that were to be included in the plan and in the report. The provision permitted the President to modify the plan “on the basis of consultations with the appropriate congressional committees” until the plan’s effective date.<sup>20</sup>

Congress provided similar authority of this type to the President in the Homeland Security Act of 2002, which established the Department of Homeland Security.<sup>21</sup> Section 1502 of the act directed the President to submit to the appropriate congressional committees, within 60 days after enactment, a reorganization plan regarding the “transfer of agencies, personnel, assets, and obligations to the Department” pursuant to the act and “any consolidation, reorganization, or streamlining of agencies transferred to the Department” under the act.<sup>22</sup> As with the authority discussed above, the provision specified plan elements that were to be included and a process for modifying the plan after congressional consultations during the period between submission and the plan’s effective date.

## Presidential Reorganization Authority (Inoperative)

Between 1932 and 1984, Congress periodically delegated authority to the President that allowed him to develop plans for reorganization of portions of the federal government and to present those plans to Congress for consideration under special expedited procedures.<sup>23</sup> The statute is no longer in effect, however. Prior to 1983, under these procedures, the President’s plan would go into effect unless one or both houses of Congress passed a resolution rejecting the plan, a process referred to as a “legislative veto.” This process favored the President’s plan because, absent congressional action, the default was for the plan to go into effect. Unlike the dynamics under the regular legislative process, the burden of action under these versions of presidential reorganization authority rested with opponents rather than supporters of the plan.

Presidents used this presidential reorganization authority regularly, submitting more than 100 plans between 1932 and 1984. The plans proposed a variety of changes, from relatively minor reorganizations within individual agencies to the creation of large new organizations, including the Department of Health, Education, and Welfare (HEW) in 1953;<sup>24</sup> the Environmental Protection Agency (EPA) in 1970;<sup>25</sup> and an independent Federal Emergency Management Agency (FEMA) in 1979.<sup>26</sup> The terms of the delegation varied greatly over the century; in general,

<sup>18</sup> P.L. 105-277, Division G, Subdivision A; 112 Stat. 2681-762.

<sup>19</sup> *Ibid.*, §1601; 112 Stat. 2681-795. See also 22 U.S.C. §6601.

<sup>20</sup> *Ibid.*, §1601(e); 112 Stat. 2681-796.

<sup>21</sup> P.L. 107-296; 116 Stat. 2135.

<sup>22</sup> *Ibid.*, §1502; 116 Stat. 2308. See also 6 U.S.C. §542.

<sup>23</sup> The President’s reorganization authority is codified at 5 U.S.C. §§901-912. The statute expired on December 31, 1984 (Sec. 905(b)). For more on the history and usage of this authority, see CRS Report R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress*, by Henry B. Hogue.

<sup>24</sup> Reorganization Plan No. 1 of 1953. In 1979, the education functions of HEW provided the foundation for the newly created Department of Education, and HEW was renamed the Department of Health and Human Services (HHS). P.L. 96-88, 93 Stat. 668.

<sup>25</sup> Reorganization Plan No. 3 of 1970.

<sup>26</sup> Reorganization Plan No. 3 of 1978. In March 2003, under the provisions of the Homeland Security Act of 2002 (P.L. 107-296, 116 Stat. 2135), FEMA became part of the new Department of Homeland Security.

Congress tended to provide more restrictive versions of presidential reorganization authority over time.<sup>27</sup>

In 1983, the Supreme Court ruled in *INS v. Chadha* that the legislative veto process was unconstitutional.<sup>28</sup> Subsequently, Congress approved the Reorganization Act Amendments of 1984, which extended the presidential reorganization authority from November 1984 to December 31, 1984.<sup>29</sup> Under this authority, once the President submitted a reorganization plan, Congress was to consider, under an expedited procedure, a joint resolution approving the plan. The expedited procedure included limitations on the duration of committee consideration, the duration of floor debate, and amendments (although the President could amend or modify his plan during the first 60 days after submission). As a joint resolution, this vehicle had to be approved by the President to have the force of law. Unlike the legislative veto, the burden of action was placed on the proponents of the plan, rather than its opponents. As is the case under the regular legislative process, the default would be the status quo. The process of reorganizing the government was thus made somewhat more difficult than it would have been under earlier versions of presidential reorganization authority. This last statutory provision of presidential reorganization authority was never used, and it lapsed at the end of 1984.

In the decades since this authority last expired, some presidential administrations have advocated for its restoration, and some have not. Neither the Reagan Administration, which did not use the authority in 1984, nor the George H. W. Bush Administration sought its extension. Initial reports issued by the Clinton Administration's National Performance Review included the recommendation that the reorganization authority be reauthorized,<sup>30</sup> but President Clinton did not directly request this action from Congress. The George W. Bush Administration called for a renewal of presidential reorganization authority, and legislation introduced during the 108<sup>th</sup> Congress included provisions that would have renewed the authority in modified form.<sup>31</sup> This legislation was not enacted. President Barack Obama also called for a renewal of the authority,<sup>32</sup> and legislation introduced during the 112<sup>th</sup> Congress would have provided for a modified version.<sup>33</sup> As was the case in the earlier legislative effort, the legislation was not enacted.

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<sup>27</sup> For a more detailed discussion and analysis of presidential reorganization authority, see CRS Report RL30876, *The President's Reorganization Authority: Review and Analysis*, by Ronald C. Moe. (The author of this report is no longer at CRS. Please direct questions about this report to Henry Hogue, at 7-0642.)

<sup>28</sup> 462 U.S. 919 (1983). The Court's ruling in *INS v. Chadha* raised concerns that the validity of existing reorganization plans, all of which had gone into effect under reorganization authority with legislative veto provisions, might be called into question. Consequently Congress passed legislation ratifying all of the reorganization plans that had gone into effect under the now-unconstitutional procedure (P.L. 98-532; 98 Stat. 2705).

<sup>29</sup> P.L. 98-614; 98 Stat. 3192.

<sup>30</sup> Office of the Vice President, *Creating a Government That Works Better & Costs Less: Transforming Organizational Structures*, Accompanying Report of the National Performance Review (Washington: September 1993), p. 161.

<sup>31</sup> As part of legislative activity that led to the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 during the 108<sup>th</sup> Congress, the House passed such provisions. See 108<sup>th</sup> Congress, H.R. 10, §5021, as reported in the House.

<sup>32</sup> President Obama first sought the authority in January of 2012. See U.S. White House, Office of the Press Secretary, "President Obama Announces Proposal to Reform, Reorganize, and Consolidate Government," January 13, 2012, available at <https://obamawhitehouse.archives.gov/the-press-office/2012/01/13/president-obama-announces-proposal-reform-reorganize-and-consolidate-gov>.

<sup>33</sup> H.R. 4409 (112<sup>th</sup> Cong.) and S. 2129 (112<sup>th</sup> Cong.).

## Agency Tools

In general, department heads have discretion, consistent with existing statutory mandates, to organize and manage the day-to-day operations of the organizations for which they are responsible.<sup>34</sup> In addition, since the 1950s, the powers, duties, and functions of the component offices of most agencies have been vested in the agency head, who is, in turn, empowered to delegate these powers, duties, and authorities.<sup>35</sup> Furthermore, Section 301 of Title 5 of the *U.S. Code* provides that the “head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business.” These authorities do not, however, supersede or conflict with specific statutory directives, limitations, or organizational arrangements.

### Reorganization by Directive: Minerals Management Service

One example of the use of secretarial reorganization authority involves the leasing and regulatory functions related to offshore oil and gas recovery vested in the Department of the Interior (DOI). The Minerals Management Service (MMS) was established within DOI by secretarial authority in 1982 to carry out these functions. In a reorganization that began in 2010, following the Deepwater Horizon Oil Spill, the functions that had been delegated to MMS were divided among three newly established subunits. Both the 1982 and 2010 reorganizations were carried out under authority that had been vested in the Secretary of the Interior in 1950. Reorganization Plan No. 3 of 1950 provided that, with two specified exceptions, functions that had previously been vested in the heads of the Interior Department’s component entities were transferred to the Secretary of the Interior, thus centralizing authority over the department.<sup>36</sup> The Secretary was also authorized, by the reorganization plan, to redelegate these functions to any agency, employee, or officer of the department, unless otherwise prevented by law from doing so.

## Delineated Secretarial Authority

Congress has sometimes delineated secretarial reorganization authority for individual departments. In such cases, the scope and limitations of the Secretary’s authority are more specific. For example, the Homeland Security Act of 2002, which established the Department of Homeland Security, granted the Secretary relatively broad reorganization authority:

The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units with the Department, but only ... after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.... [This authority] does not extend to the abolition of any

<sup>34</sup> See Jacob A. Stein and Glenn A. Mitchell, *Administrative Law* (Copyright 2017, Matthew Bender and Company, Inc., a member of the LexisNexis Group), §4.02. Material accessed through LexisNexis on June 21, 2017.

<sup>35</sup> In the context of this report, an agency head is the official at the top of a department or other agency hierarchy who reports directly to the President, rather than another principal officer. See, for example, Reorganization Plan No. 5 of 1950. Section 1 of the plan provides “there are hereby transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department” with specified exceptions, and Section 2 provides the “Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Commerce of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.” 15 U.S.C. §1501 note.

<sup>36</sup> 43 U.S.C. §1451 note. The specified exceptions are the functions vested by the Administrative Procedure Act in hearing examiners and the functions of the Virgin Islands Corporation or of its board of directors or officers. Notably, Reorganization Plan No. 3 of 1950 was, itself, enacted under the President’s reorganization authority, as it had been delegated by Congress at that time. Such delegations to the President are discussed earlier in this report, under “Presidential Reorganization Authority (Inoperative)”

agency, entity, organizational unit, program, or function established or required to be maintained by statute.<sup>37</sup>

The first part of this provision arguably widens the scope of potential reorganizational actions beyond the range that would otherwise be available to the Secretary. In addition, it requires that Congress be informed in advance of an action under this authority, but includes no mechanism for congressional “veto” of that action. The final part of the cited provision explicitly prevents the Secretary from overriding statutes for the purpose of abolishing entities, programs, or functions.<sup>38</sup>

## Congressional Responses to Particular Agency Head Actions

When an agency head has reorganized a portion of his or her agency under such delegated authority, Congress has, on occasion, endorsed the action without giving it statutory underpinnings. For example, Congress has sometimes validated an agency reorganization through the appropriations process, by adjusting the agency’s appropriation to match the new configuration or by addressing the action in the conference report.<sup>39</sup> In one such instance, the conference report for DHS appropriations included the following text:

On July 13, 2005, the Department announced a major reorganization that reflects the findings of [an internal departmental review]. A budget amendment was submitted on July 21, 2005, requesting the appropriations structure be modified for fiscal year 2006 to reflect this reorganization proposal. For the most part, the conferees have complied with these requests. The conferees concur with the Department’s decision to abolish the Office of the Under Secretary for Border and Transportation Security (BTS); BTS functions have been merged into other offices and component agencies throughout the Department. The conferees have agreed to split the Directorate of Information Analysis and Infrastructure Protection into two new components—Analysis and Operations and the Preparedness Directorate—and move all State and local grants and associated activities to the new Preparedness Directorate. The conferees concur with the Secretary’s recommendation to transfer the Federal Air Marshals to the Transportation Security Administration. Finally, the conferees have included and expanded the roles and responsibilities of the Office of Policy. A more detailed discussion of this reorganization is contained under statement of managers language for each impacted office.<sup>40</sup>

<sup>37</sup> 6 U.S.C. §452. The Secretary of Homeland Security used this authority on at least nine occasions between the establishment of the department in 2003 and mid-2007. Beginning in May 2007, Congress limited the use of appropriated funds for carrying out Section 872 reorganizations. Section 3501 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, enacted on May 25, 2007, instituted such limitations for the balance of FY2007. Succeeding DHS appropriations acts included similar provisions. Such a restriction was not included in the DHS appropriations for FY2017.

<sup>38</sup> For a discussion of one application of this authority to alter some of the organizational arrangements provided for in the Homeland Security Act of 2002 (P.L. 107-296; 116 Stat. 2135), see CRS Report RL33042, *Department of Homeland Security Reorganization: The 2SR Initiative*, by Harold C. Relyea and Henry B. Hogue. (The first author of this archived report is no longer at CRS. Please direct questions about this report to Henry Hogue, at 7-0642.) See also CRS Report RS21450, *Homeland Security: Scope of the Secretary’s Reorganization Authority*, by Stephen R. Vina. (The author of this archived report is no longer at CRS. Please direct questions about this report to Henry Hogue, at 7-0642.)

<sup>39</sup> U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition Volume I*, GAO-04-261SP (Washington: January 2004), pp. 2-61 through 2-65. This report summarizes the principles to be applied in this situation by quoting a Comptroller General’s opinion as follows: “‘To conclude that Congress through the appropriations process has ratified agency action, three factors generally must be present. First, the agency takes the action pursuant to at least arguable authority; second, the Congress has specific knowledge of the facts; and third, the appropriation of funds clearly bestows the claimed authority’” (p. 2-65).

<sup>40</sup> U.S. Congress, Committee of conference, Making Appropriations for the Department of Homeland Security for the (continued...)

Similarly, Congress has recognized some newly created entities by delegating to them specific authorities, or otherwise making reference to them in statute.<sup>41</sup> On the other hand, Congress can also register its disapproval of a reorganization by appropriating little or no funding for a new entity, by placing a limitation on related expenditures in appropriations bill language, by condemning the action in conference report language, or by redelegating authority to competing organizations.<sup>42</sup>

## General Limits on Reorganizations in Specific Agencies

As a general matter, agency heads are limited in their reorganization actions by the provisions of the authorizing statute for the agencies they head. In some cases, Congress also has selectively limited secretarial reorganization authority by statute. For example, the Secretary of Energy is “authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate.”<sup>43</sup> This authority does not, however, extend to the National Nuclear Security Administration (NNSA), which is located within the Department of Energy.<sup>44</sup> Instead, Congress elected to delegate the authority to reorganize NNSA to the administrator of that organization.<sup>45</sup>

Likewise, although the Secretary of Homeland Security has the statutory authority, under Section 872 of the Homeland Security Act, to reorganize most parts of DHS,<sup>46</sup> the Post-Katrina Emergency Management Reform Act of 2006 exempts FEMA from that authority.<sup>47</sup> In a related example, the Homeland Security Act transferred the U.S. Coast Guard to the Department of Homeland Security as a “distinct entity.” In doing so, it explicitly provided that “the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer” and that

[n]o mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard’s capability to perform its missions.<sup>48</sup>

An appropriations limitation with regard to the reorganization authority of the Secretary of Homeland Security illustrates another tool Congress has used to generally proscribe such activity.

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(...continued)

Fiscal Year Ending September 30, 2006, and for Other Purposes, report to accompany H.R. 2360, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 109-241 (Washington: GPO, 2005), p. 30.

<sup>41</sup> For example, as discussed in a text box above, the Minerals Management Service was established through a directive of the Secretary of the Interior in 1982. The new entity was recognized soon after its establishment with an appropriation for FY1983 (P.L. 97-394; 96 Stat. 1973). It was named in legislation other than appropriations as well. For example, in 1996, Section 282 of P.L. 104-201 established the National Ocean Research Leadership Council and included the director of MMS among its members (110 Stat. 2470).

<sup>42</sup> Appropriation or redelegation actions would be accomplished through the legislative process and therefore require the President’s signature or a veto proof majority in both congressional chambers.

<sup>43</sup> 42 U.S.C. §7253(a).

<sup>44</sup> 42 U.S.C. §7253(c).

<sup>45</sup> 50 U.S.C. §2402(f). However, 50 U.S.C. §2481 provides that the “Secretary of Energy may transfer to the [NNSA]Administrator any other facility, mission, or function that the Secretary, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration.”

<sup>46</sup> P.L. 107-296; 6 U.S.C. §452.

<sup>47</sup> P.L. 109-295, §611(13); 6 U.S.C. §316.

<sup>48</sup> P.L. 107-296, §888; 6 U.S.C. §468



Beginning in May 2007, Congress limited the use of appropriated funds for carrying out the Section 872 reorganizations described above. Section 3501 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, enacted on May 25, 2007, instituted such limitations for the balance of FY2007, stating,

None of the funds provided in this Act, or P.L. 109-295 [Department of Homeland Security Appropriations Act, 2007], shall be available to carry out section 872 of P.L. 107-296 [Homeland Security Act of 2002].<sup>49</sup>

Succeeding DHS appropriations acts included similar provisions.<sup>50</sup> However, such an appropriation limitation was not included in the DHS appropriations for FY2017.<sup>51</sup>

For some agencies, appropriations legislation has included language limiting the use of funds for reorganization activities, for the agencies covered by the act, without consulting, or gaining the approval of, the two Committees on Appropriations.<sup>52</sup> One such act provides as follows:

Except as otherwise provided in this Act, none of the funds provided in this Act, provided by previous appropriations Acts to the agencies or entities funded in this Act that remain available for obligation or expenditure in fiscal year 2017, or provided from any accounts in the Treasury derived by the collection of fees and available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by the Committee on Appropriations of either the House of Representatives or the Senate for a different purpose; (5) augments existing programs, projects, or activities in excess of \$5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is less; or (7) creates or reorganizes offices, programs, or activities unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate: Provided, That prior to any significant reorganization or restructuring of offices, programs, or activities, each agency or entity funded in this Act shall consult with the Committees on Appropriations of the House of Representatives and the Senate....<sup>53</sup>

### **Reorganization: A Congressional and Executive Process**

An agency head can sometimes modify an organizational arrangement set by statute to the degree that such modifications are not contrary to existing law. One such instance occurred during a reorganization at the Department

<sup>49</sup> P.L. 110-28; provision at 121 Stat. 143.

<sup>50</sup> See, for example, a provision of the Consolidated Appropriations Act, 2008: "None of the funds provided in this Act shall be available to carry out section 872 of Public Law 107-296" (P.L. 110-161, §546; 121 Stat. 2080). Similar provisions were included in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329, §529; 122 Stat. 3686); the Department of Homeland Security Appropriations Act, 2010 (P.L. 111-83, §525; 123 Stat. 2173); and the Consolidated Appropriations Act, 2012 (P.L. 112-74, Division D, §523; pagination not available).

<sup>51</sup> P.L. 115-31. Other provisions of this act appear to place certain restrictions on reprogramming and transfer of funds that may be associated with a reorganization.

<sup>52</sup> For more on such provisions, see CRS Report RL33151, *Committee Controls of Agency Decisions*, by Louis Fisher. (The author is no longer at CRS. Please direct questions about this report to Henry Hogue, at 7-0642.)

<sup>53</sup> P.L. 115-31, Division E, Title VI, §608.

of the Interior. In 1994, Congress passed the American Indian Trust Fund Management Reform Act (Trust Fund Reform Act)<sup>54</sup> to address what were perceived as persistent problems at the department with the management of Indian lands and funds. Among other things, the act established a Special Trustee for American Indians. This office was charged with the development of a comprehensive strategic plan for all phases of the management business cycle for American Indian trust funds and assets. The Special Trustee was also directed to oversee trust-related reform efforts generally, with more specific oversight responsibilities in the Bureau of Indian Affairs, the Bureau of Land Management, and the Minerals Management Service. In addition, the Special Trustee was tasked with coordinating the development of policies, procedures, systems, and practices among Interior Department components, particularly those just mentioned.<sup>55</sup>

The Trust Fund Reform Act established a new organization, a statutory position subject to Senate approval, and certain functions for the entity. The act did not, however, limit the Secretary from using administrative authority to make further organizational changes within that statutory structure, and Interior Secretaries in the William J. Clinton and George W. Bush Administrations subsequently made such changes by secretarial order. In 1996, for example, the Secretary of the Interior expanded the functions of the Special Trustee by transferring to it the Office of Trust Funds Management and other financial trust service functions from the Bureau of Indian Affairs.<sup>56</sup> Whereas the statutory authority establishing the Special Trustee gave the office planning, oversight, and coordination functions, the Special Trustee acquired operational functions under this Secretary's order, and it could be argued that this step changed the character of the office. The Secretary took what was perhaps a more contentious step in 1999 when he inserted, between the Special Trustee and most of the Office of the Special Trustee (OST), an administratively created office of Principal Deputy Special Trustee, who is appointed by the Secretary.<sup>57</sup> As specified by the order, "[a]ll office and organizations in OST [with one exception] report through the Principal Deputy Special Trustee to the Special Trustee." The incumbent Special Trustee, Paul M. Homan, resigned several days later, reportedly because "the order effectively 'designated two other officials to become the special trustee,' thereby taking away the independence guaranteed by the 1994 law that created his office."<sup>58</sup>

## Reorganization Through Interagency Coordination

Federal government observers have identified potential duplication, overlap, and fragmentation of programs as areas of concern in executive branch organization.<sup>59</sup> These concerns received renewed focus in the GPRA Modernization Act of 2010.<sup>60</sup> Among other things, this statute established new processes related to setting goals and measuring performance in crosscutting policy areas, reflecting congressional interest in better coordination and cooperation among federal agencies in addressing issues that transcend any one agency's boundaries.<sup>61</sup>

<sup>54</sup> P.L. 103-412; 108 Stat. 4239.

<sup>55</sup> 25 U.S.C. §4043.

<sup>56</sup> U.S. Department of the Interior, Secretary Bruce Babbitt, "Establishment of the Office of Special Trustee for American Indians and Transfer of Trust Funds Management Functions from the Bureau of Indian Affairs," Secretary's Order No. 3197, February 9, 1996, available at <https://elips.doi.gov/elips/0/doc/237/Page1.aspx>.

<sup>57</sup> U.S. Department of the Interior, Secretary Bruce Babbitt, "Reorganization of the Office of the Special Trustee for American Indians," Secretary's Order No. 3208A2, January 5, 1999, available at <https://elips.doi.gov/elips/0/doc/262/Page1.aspx>.

<sup>58</sup> William Claiborne, "Indians' Special Trustee Quits, Criticizing Babbitt; Problems with Trust Fund Accounts Noted," *Washington Post*, January 8, 1999, p. A19.

<sup>59</sup> U.S. Government Accountability Office, 2017 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap and Duplication and Achieve Other Financial Benefits, GAO-17-491SP, April 2017, available at <http://www.gao.gov/assets/690/684304.pdf>.

<sup>60</sup> P.L. 111-352; 124 Stat. 3866. The acronym GPRA in the title of the act refers to the Government Performance and Results Act of 1993, which it amends.

<sup>61</sup> CRS Report R42379, *Changes to the Government Performance and Results Act (GPRA): Overview of the New Framework of Products and Processes*, by Clinton T. Brass.



Each of the three major governing actors discussed in this report—Congress, the President, and agency heads—has tried to bridge the interagency (and, sometimes, intra-agency) divide by establishing interagency coordinative mechanisms of one kind or another. Arguably, a mechanism set by statute could be more durable across Administrations, while one established by executive order reflects the incumbent President’s interest and authority. An agency head’s directive might be used to establish a working group to communicate across within-agency silos that are unique to that agency. Interagency coordinative mechanisms are often used in an effort to establish cooperation among agencies with shared missions, similar functions, or overlapping jurisdiction.<sup>62</sup> Some arrangements provide for collaboration among equals, while others designate a lead agency with authority to direct activities.

In many cases, interagency coordinative mechanisms lead to changes in procedures, assignments, and relationships within and between organizations. In this way, they are tools of reorganization. They are particularly noteworthy for their widespread use and generally low profile.

Such mechanisms include, for example, interagency working groups, task forces, joint decisionmaking processes, memoranda of understanding (MOUs), and White House coordinators.<sup>63</sup> These arrangements sometimes exist informally, but numerous arrangements have also been established formally by public law, executive order, administrative directive, or MOU. Among other effects, such formal agreements and directives may be helpful in clarifying relationships among different agencies that have overlapping jurisdiction or shared responsibilities, because such arrangements fall outside the control of any single agency head.

#### **Interagency Working Groups: Trade Promotion Coordinating Committee**

One example of an interagency coordinative mechanism is the Trade Promotion Coordinating Committee. This interagency committee was established by the Export Enhancement Act of 1992 “to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government; and ... to develop a governmentwide strategic plan for carrying out Federal export promotion and export financing programs.”<sup>64</sup> The committee, which is chaired by the Secretary of Commerce, originally comprised representatives of 12 federal agencies, but the membership has since grown to more than 20 agencies. Among its principal activities has been the periodic publication of the *National Export Strategy*, which has generally tracked progress in implementing the Administration’s commercial export promotion strategy.<sup>65</sup> Assessments of the committee’s work by the Government Accountability Office (GAO) suggest that it has experienced both some of the strengths and some of the weaknesses of interagency mechanisms.<sup>66</sup>

<sup>62</sup> See U.S. Government Accountability Office, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, GAO-12-1022, September 27, 2012, available at <http://www.gao.gov/products/GAO-12-1022>.

<sup>63</sup> For more on interagency collaborative arrangements and coordinative mechanisms, including examples of these, see CRS Report R41803, *Interagency Collaborative Arrangements and Activities: Types, Rationales, Considerations*, by Frederick M. Kaiser; and CRS Report RL31357, *Federal Interagency Coordinative Mechanisms: Varied Types and Numerous Devices*, by Frederick M. Kaiser.

<sup>64</sup> P.L. 102-429, §201; 106 Stat. 2199.

<sup>65</sup> For more on the Trade Promotion Coordinating Committee and other export promotion-related organizations, see CRS Report R41495, *U.S. Government Agencies Involved in Export Promotion: Overview and Issues for Congress*, coordinated by Shayerah Ilias Akhtar.

<sup>66</sup> See, for example, testimony provided by GAO in 2009. U.S. Government Accountability Office, *International Trade: Effective Export Programs Can Help In Achieving U.S. Economic Goals*, GAO-09-480T, March 17, 2009, p. 3, available at <http://www.gao.gov/new.items/d09480t.pdf>; and U.S. Government Accountability Office, *Export Promotion: Better Information Needed about Federal Resources*, GAO-13-644, July 2012, available at <https://www.gao.gov/assets/660/655947.pdf>.

Interagency coordinative groups, as well as other mechanisms, can address organizational problems while avoiding some of the potential pitfalls of a structural reorganization. Where effective, for example, such a group might reduce unnecessary policy fragmentation, improve policy formulation and implementation, provide a forum for mitigating misunderstanding and conflict among agencies, reduce unnecessary redundancy, increase efficiency, and facilitate oversight and accountability. It might also help program implementers to work around vague or imprecise legislative language, or statutory limitations on individual agencies that might hamstring effective or efficient administration of a shared program. In some circumstances, such arrangements might be used temporarily to facilitate effective implementation of a law with known imperfections until such time as Congress develops legislative remedies.

Interagency coordinative groups are not always perceived as beneficial, however. In some cases, a coordinative entity could be perceived as too powerful, if it has substantial authority over others. Such arrangements might undercut existing programs or offices in one or more participating agencies. The effectiveness of a particular arrangement might be limited by a lack of control over budgetary or other resources. Such limitations might be especially troubling to agencies and congressional committees that lose jurisdiction. Some mechanisms might also be perceived as additional layers of bureaucracy, imposing greater costs and using scarce resources without demonstrating added value. In some cases, coordinative entities may become self-perpetuating and endure beyond the period during which they are needed or useful.

As noted above, a memorandum of understanding might be used to establish an arrangement among agencies, or it might be a coordinative mechanism in and of itself. The interagency coordination it establishes could result in a reorganization of procedures, assignments, and relationships between agencies. Such agreements are common among agencies. Where two or more agencies have overlapping or closely related responsibilities, such an agreement might be used to specify the division of responsibility, establish processes or structured protocols for sharing information, and make mutual, lasting commitments for cooperating in a shared policy area. As noted by an observer of these agreements, they might serve one or more different purposes:

(1) delineating jurisdictional lines, (2) establishing procedures for information sharing or information production, (3) agreeing to collaborate in a common mission, (4) coordinating reviews or approvals where more than one agency has authority to act in a particular substantive area, and (5) in rarer cases (and potentially subject to additional procedures under the Administrative Procedure Act) ... agreeing on substantive policy.<sup>67</sup>

Alternatively, agencies might enter into more formal interagency agreements or contracts.<sup>68</sup> In some instances where interagency MOUs or contracts shift significant responsibilities for carrying out statutory functions from one agency to another, congressional action might be necessary to authorize or appropriate accompanying shifts in resources.

Another kind of interagency mechanism might be used to increase adherence to the President's policy direction. Modern Presidents have sometimes tried to coordinate policy development and implementation among departments and agencies from the White House. To the extent that such efforts shift the locus of authority and decisionmaking from one agency to another, they might be

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<sup>67</sup> Jody Freeman and Jim Rossi, "Agency Coordination in Shared Regulatory Space," *Harvard Law Review*, vol. 125, no. 5 (March 2012), p. 1161.

<sup>68</sup> In some cases, agencies cite specific statutory authority to enter into interagency agreements and contracts. For example, the Department of Education has identified several such authorities in a departmental directive. See U.S. Department of Education, *Departmental Directive: Interagency Agreements*, OPEPD: 1-101, Washington, DC, October 14, 2008, pp. 2-3, available at <https://www2.ed.gov/policy/gen/leg/foia/acsopepd1101.pdf>.

considered reorganization actions. Presidents have, for example, sometimes appointed high-level presidential advisors and given them such a role. Such advisors have been referred to, by the Administration in some cases, and by the media, as “czars.” The precise role and authority of such individuals in the policy development and implementation processes is often difficult for Congress and the public to discern. In some cases, this lack of clarity of role and authority and the perceived lack of accountability to Congress have been the source of controversy.<sup>69</sup>

## Reorganization: An Administrative and Political Process

Government reorganization is often cast in terms of potential administrative benefits. For example, whenever Congress has delegated general reorganization authority to the President (see “Presidential Reorganization Authority,” above), it has clearly stated in the statutory provisions that the objective of reorganization is administrative improvement, and it has often required that reorganization plans submitted by the President articulate the plan’s means of achieving such improvements.<sup>70</sup> Administrative goals of reorganization include, for example, improved program effectiveness, greater efficiency, reduced cost, and improved policy integration across related programs.

In addition to these administrative goals, reorganization efforts often have spoken or unspoken political goals and outcomes.<sup>71</sup> The political nature of reorganization arises from the fact that it redistributes power and resources. Although it may have beneficial outcomes over time, it is axiomatic that a government reorganization is disruptive, at least in the short term, to the functioning of the organizations involved. Implementation of a reorganization plan can affect existing power dynamics, rearrange relationships, create uncertainty, and generally interrupt the flow of work. Government workers in the reorganized agencies will often be the most directly affected, but congressional committees of jurisdiction and outside interest groups are affected as well. These parties, including policy advocates, usually work toward obtaining the organizational outcome most beneficial to their own particular interests. Such efforts may continue through the implementation phase of the reorganization, where the distribution of power and resources may be decided in finer detail.

Government reorganizations have potential benefits and drawbacks, some of which are identified in the text box below. The vantage point of the observer might influence the degree to which a particular reorganization is viewed as beneficial. For example, increased independence for a regulatory entity might be seen as beneficial by those who think that regulatory activities are best carried out with insulation from day-to-day political considerations and from the policy preferences of any one Administration. Others might view such independence as an unwarranted abridgement of the President’s role in controlling and directing the executive branch bureaucracy.

In addition, observers with different perspectives might weight potential benefits and drawbacks differently. For example, one observer might view potential efficiencies that might be gained from a reorganization to be insufficient to outweigh the disruption of functioning that the

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<sup>69</sup> For more on such positions, see CRS Report R40856, *The Debate Over Selected Presidential Assistants and Advisors: Appointment, Accountability, and Congressional Oversight*, by Barbara L. Schwemle et al.

<sup>70</sup> See 5 U.S.C. §§901 and 903(b).

<sup>71</sup> Harold Seidman and Robert Gilmour, *Politics, Position, and Power*, 4<sup>th</sup> ed. (New York: Oxford University Press, 1986). Although partisan conflict may develop in relation to a particular reorganization, the term political as used here refers to the process that determines, as Harold Laswell put it, who gets what, when, and how.

associated activities are expected to entail, while another observer might regard anticipated short-term disruption to be a small price to pay for the benefits of what is perceived to be long-overdue updating of an agency's mission and operations.

### Potential Benefits of Government Reorganization

- Could promote administrative improvements, such as increased efficiency, effectiveness, and cost savings.
- Could reduce unnecessary overlap, duplication, and fragmentation.
- Could allow for more rationalized statutory authority, improved integration across related programs, and unity of organizational mission.
- Could provide visible or symbolic evidence of congressional and presidential responsiveness to a national event or crisis.
- Could be perceived as a “shake up” of an entrenched bureaucracy.
- Could allow Congress to respond to changing local, state, regional, and national contexts, needs, and priorities.
- Could promote the President's policy priorities by increasing available resources for, or control over, affected offices and programs.
- Could reduce resources for, or otherwise “demote,” offices and programs that either are not presidential priorities or are opposed by an Administration.

### Potential Drawbacks of Government Reorganization

- Could lead to complicated or expensive administrative problems and reduce efficiency and effectiveness, in the short run and potentially in the long run.
- For entities with multiple missions, increased integration on one mission could lead to decreased cohesion and increased fragmentation in another mission.
- Likely to be disruptive to functioning of involved organizations by rearranging relationships, creating uncertainty, and interrupting the flow of work.
- Could affect power relationships among Congress, the President, agency officials, and nongovernmental actors.
- Disruptions could continue through implementation period, particularly if reorganization is opposed by government workers or interest groups.
- Could make it more difficult for affected agencies to respond to a national event or crisis in the short run.
- Could have adverse effects on committees of jurisdiction.
- Could have adverse effects from the perspective of constituents and interest groups.
- Could increase or reduce presidential control over an office or program.

Research suggests that successful governmental reorganizations—statutory or otherwise—are characterized by political consensus on the goals and approaches. Where goals are unarticulated or consensus has not been achieved prior to a reorganization, affected interests may intentionally or unintentionally undermine the success of the new arrangement. The result of such a situation may be instability leading to further reorganization within a relatively short time.<sup>72</sup> Political consensus concerning new organizational arrangements may be achieved, in part, through negotiation and accommodation among affected interests.

In an effort to achieve such consensus, a reorganization directive or statute might articulate its goals. Identifying these goals could also aid in determining, after implementation, whether or not they have been achieved. Reorganization directives or statutes might also include agreed-upon methods for assessing progress toward those goals. Absent such explicit goals and agreed-upon

<sup>72</sup> Carl Grafton, “The Reorganization of Federal Agencies,” *Administration and Society*, vol. 10, February 1979, pp. 437-464.

methods, Congress may find it difficult to evaluate the success or failure of a particular reorganization project.

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