



# General Management Laws: Major Themes and Management Policy Options

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## Summary

This report is a companion to CRS Report RL30795, *General Management Laws: A Compendium* (hereafter “compendium”). In combination, these reports have three main objectives: (1) to identify and describe the major management laws under which the executive branch is required to operate, including their rationale, design, and scope; (2) to assist Members of Congress and their staff in oversight of executive branch management; and (3) to help Congress when considering potential changes to the management laws, as well as other legislation, including authorization statutes and appropriations.

This report focuses on major themes—and possible policy options for Congress—that emerge when the general management laws are viewed together, as a whole. The report also describes historical context of the roles that Congress and the President play in managing the executive branch, and compares management in the public and private sectors. The themes and policy options address five topics.

**Discretion for the Executive Branch:** Congress frequently faces the issue of how much discretion to give the executive branch. Congress has options to address delegation situations and balance agency flexibility with accountability.

**Standardization vs. Customization:** Should the management laws under which agencies operate be standardized, with uniform rules? Or should some agencies have customized, agency-specific laws? Should there be a mix of the two approaches? Congress has options when confronted with these decisions.

**Functional Silos vs. Integrated General Management:** A functional perspective (e.g., looking at agency operations from the perspective of a budget officer or human resources officer) can boost efficiency. However, if functional orientations become inward-looking, functions can operate in isolation, resulting in coordination problems or missed opportunities. Congress has options to use an integrated general management perspective to solve agency management problems.

**Making and Measuring Progress:** Many executive branch agencies suffer from persistent, major management problems. Often these problems relate to areas the general management laws were intended to address. Congress has options for measuring and motivating agency progress in improving management practices.

**Agency “Chief Officers” and Interagency Councils:** Statutorily created “chief officers” (e.g., chief financial officers and chief acquisition officers) have increased in number in federal agencies. Congress also established interagency councils of these officers. Congress has options when considering whether additional chief officers should be established and how the councils could be more accountable.

The report reflects the status of general management laws at the end of the first session of the 108<sup>th</sup> Congress, and will be updated along with the compendium to reflect actions taken through the close of the 108<sup>th</sup> Congress.

## **Contents**

Purposes.....	1
How the Compendium and Companion Report Are Organized .....	1
Who Manages the Executive Branch?.....	3
Congress and the President .....	3
Historical Context of Managing the Executive Branch.....	3
Comparing Management Practices in the Public and Private Sectors .....	6
Major Themes and Management Policy Options .....	8
Discretion for the Executive Branch .....	8
Advantages and Disadvantages.....	9
Management Policy Options .....	9
Standardization vs. Customization .....	11
Three General Approaches.....	11
Advantages and Disadvantages.....	12
Management Policy Options .....	12
Functional Silos vs. Integrated General Management.....	13
Two Perspectives on Management.....	13
Management Policy Options.....	14
Making and Measuring Progress.....	16
Challenges to Making Progress .....	16
Brief History of Measuring Progress .....	17
Management Policy Options.....	20
Agency “Chief Officers” and Interagency Councils .....	22
Chief Officers.....	22
Interagency Councils .....	25
Advantages and Disadvantages.....	28
Management Policy Options.....	29

## **Tables**

Table 1. Agency “Chief Officers”.....	24
Table 2. Interagency Councils .....	26

## **Contacts**

Author Contact Information .....	33
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## Purposes

This report, *General Management Laws: Major Themes and Management Policy Options*, is a companion to CRS Report RL30795, *General Management Laws: A Compendium* (hereafter “compendium”). In combination, these reports have three main objectives:

- to identify and describe the major general management laws under which the executive branch is required to operate, including their rationale, design, and scope;
- to assist Members of Congress and their staff in overseeing management of the executive branch; and
- to help Congress when considering potential changes to the management laws, as well as other legislation, including authorizing statutes and appropriations.<sup>1</sup>

The compendium contains profiles of selected “general management laws”—broad statutes designed to regulate the activities, procedures, and administration of all or most executive branch agencies.<sup>2</sup> The quality of the general management laws, as well as their implementation, are considered crucial to maintaining the accountability of the executive branch to Congress, the President, and the public. Moreover, these laws influence the effectiveness of federal agencies when they implement, evaluate, and help formulate public policies.

As a complement to the compendium, this report (“companion report”) focuses on major themes and possible management policy options for Congress that emerge when the general management laws are viewed together, as a whole. The companion report reflects the status of general management laws at the end of the first session of the 108<sup>th</sup> Congress, and will be updated along with the compendium to reflect actions taken through the close of the 108<sup>th</sup> Congress.<sup>3</sup>

## How the Compendium and Companion Report Are Organized

The compendium includes more than 90 separate entries that describe general management laws for the executive branch. The entries are organized into the following seven functional categories:<sup>4</sup>

- Information and Regulatory Management;

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<sup>1</sup> A related report, CRS Report RL30240, *Congressional Oversight Manual*, describes the major purposes, processes, techniques, and information sources for congressional oversight of the executive branch.

<sup>2</sup> Agencies are sometimes exempted from the coverage of some general management laws due to a category into which they fall (e.g., department, government corporation, etc.), specific provisions in an agency’s authorizing statute or appropriations, or provisions in the general management law itself. The report addresses this theme in a subsequent section.

<sup>3</sup> Previous versions of the compendium, coordinated by (name redacted), reflected the status of general management laws at the close of the 104<sup>th</sup>, 105<sup>th</sup>, and 106<sup>th</sup> Congresses, respectively. This report, which analyzes the general management laws together, is new.

<sup>4</sup> The listed functions are not necessarily the only way to categorize the report’s entries into sections, which could have been aggregated differently or further broken down.

- Strategic Planning, Performance Measurement, and Program Evaluation;
- Financial Management, Budget, and Accounting;
- Organization;
- Procurement and Real Property Management;
- Intergovernmental Relations Management; and
- Human Resources Management and Ethics.

Within the management field, *functions* typically refer to “business areas that require related bundles of skill” or “groups of people with similar skills and performing similar tasks.”<sup>5</sup> (In the private sector, by way of comparison, functions often include marketing, finance, production, and human resources.) This functional orientation is a major theme to which this report will return.

Most of the compendium’s entries profile a specific law, or in some cases, several related laws. The “Human Resources Management and Ethics” section, however, presents most civil service laws according to their codification in Title 5 of the *United States Code*—the way that practitioners and specialists typically discuss these laws. For each entry in the compendium, one or more CRS analysts present a brief history of the general management law, describe the law’s major provisions, close with a discussion of key developments and issues, and provide source readings for readers who might want more information.

As a companion to the compendium, this report provides historical background on the roles that Congress and the President play in managing the executive branch. Next, the report briefly discusses the extent to which management in the public and private sectors can or should be compared. Finally, the largest share of the report analyzes major themes that run through the general management laws and identifies potential management policy options.

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<sup>5</sup> For more discussion of functional structures and perspectives within a management context, see John R. Schermerhorn Jr., *Core Concepts of Management* (Hoboken, NJ: John Wiley & Sons, 2004), pp. 119-120, and Peter F. Drucker, *Management* (New York: Harper & Row, 1974), pp. 558-563. This usage of the term *function* differs from usages found in Title 5 of the *United States Code* and in budgetary accounting. In Title 5, the term *function* is used in several contexts, including agency strategic plans (5 U.S.C. § 306, requiring agencies to specify goals and objectives for major functions and operations of the agency), transfer of functions (5 U.S.C. § 3503), and reductions in force (5 U.S.C. § 3502). Title 5 does not define the term, but the implementing regulations for transfer of functions and reductions in force define *function* as “all or a clearly identifiable segment of an agency’s mission (including all integral parts of that mission), regardless of how it is performed” (5 C.F.R. § 351.203). With regard to budgetary accounting, the term *function* refers to categories of federal spending, organized according to the purpose or mission of government (e.g., income security, energy, and international affairs). The Congressional Budget and Impoundment Control Act of 1974 established the first statutory foundation for budget function classifications (see 2 U.S.C. § 632(a)(4) and 31 U.S.C. § 1104(c)). For background on budget function classifications, see CRS Report 98-280, *Functional Categories of the Federal Budget*, by (name redacted); and U.S. General Accounting Office, *Budget Function Classifications: Origins, Trends, and Implications for Current Uses*, GAO/AIMD-98-67, Feb. 1998.

# Who Manages the Executive Branch?

## Congress and the President

Who manages the executive branch? The President or Congress? Both branches together? Scholars have long debated their constitutional roles, whether one institution is more powerful than the other in this regard, and which should control the activities of federal agencies. The record of the last two centuries provides ample evidence that Congress and the President *both* manage the executive branch, as scholars have noted.<sup>6</sup> The U.S. Constitution created a system of separated powers, but it also established a system of checks and balances. Justice Robert Jackson captured this subtlety:

While the Constitution diffuses power to better secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.<sup>7</sup>

Thus, the question is about *how* Congress and the President share power—or should share power—in managing the executive branch. This report and the compendium examine part, but not all, of that conversation so far.<sup>8</sup>

## Historical Context of Managing the Executive Branch

The Constitution gives Congress the power to establish administrative agencies and determine how they operate. Article I, Section 1 of the Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” Section 8 provides further that Congress

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<sup>6</sup> See (name redacted), *The Politics of Shared Power: Congress and the Executive*, 4<sup>th</sup> ed. (College Station, TX: Texas A&M University Press, 1998); Charles O. Jones, *Separate but Equal Branches: Congress and the Presidency* (Chatham, NJ: Chatham House, 1995); Robert S. Gilmour and Alexis A. Halley, eds., *Who Makes Public Policy?: The Struggle for Control Between Congress and the Executive* (Chatham, NJ: Chatham House, 1994); and Peter Woll, *American Bureaucracy*, 2<sup>nd</sup> ed. (New York: W.W. Norton & Company, 1977). See also CRS Report RS20443, *American National Government: An Overview*, by (name redacted).

<sup>7</sup> *Youngstown Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (concurring opinion).

<sup>8</sup> Congress and the President share power to manage the executive branch in many venues that are not within the scope of this report. For example, Congress can include provisos in appropriations bills to prohibit the use of funds for certain activities, insert earmarks in appropriations bills, or modify agency authorizing statutes to require management-related actions. For more discussion, see James P. Pfiffner, ed., *The Managerial Presidency*, 2<sup>nd</sup> ed. (College Station, TX: Texas A&M University Press, 1999); Fisher, *The Politics of Shared Power*; Jones, *Separate But Equal Branches*; Gilmour and Halley, *Who Makes Public Policy?*; Woll, *American Bureaucracy*; Keith E. Whittington and Daniel P. Carpenter, “Executive Power in American Institutional Development,” *Perspectives on Politics*, vol. 1, no. 3 (Sept. 2003), pp. 495-513; and (name redacted), “Congress’s Prerogative over Agencies and Agency Decisionmakers: The Rise and Demise of the Reagan Administration’s Theory of the Unitary Executive,” *The George Washington Law Review*, vol. 57, no. 3 (Jan. 1989), pp. 627-703. The judicial branch also plays an important role in influencing agencies and public administration. For a review of that literature, see David H. Rosenbloom and Rosemary O’Leary, *Public Administration and Law*, 2<sup>nd</sup> ed. (New York: Marcel Dekker, 1997), pp. 301-319 (chapter 9). For discussion of federalism issues and the powers of the states in contrast with powers of the federal government, see CRS Report RL30315, *Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power*, by (name redacted).

... shall have Power ... [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

In turn, the Constitution gives the President considerable power to manage the executive branch. Article II, Section 1 vests the executive power in the President, and Section 3 provides that the President “shall take Care that the Laws be faithfully executed.” However, this power is limited. As one commentator states, the President’s duty is “to ensure that officials obey Congress’s instructions,” and Article II’s ‘take Care’ clause “... does not create a presidential power so great that it can be used to frustrate congressional intention.”<sup>9</sup> Article II makes only two explicit references to executive departments.<sup>10</sup> Section 2 states the President “may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices.” Section 2 also mentions “Heads of Departments” when outlining the President’s appointment powers.

In September 1789, Congress enacted two of the nation’s initial general management laws. The Treasury Act established the Treasury Department and the basic elements of the federal government’s financial management system (1 Stat. 65), including provisions for warrants, accounts, and audits. Several days later, Congress enacted a law to establish the annual salaries for the Secretaries of the Departments of the Treasury, State, and War, and to impose a salary cap for clerk positions in these departments (1 Stat. 67). By the end of the 18<sup>th</sup> century, only these three departments and the Navy Department had been created, along with the office of Attorney General and the Post Office.<sup>11</sup> Nonetheless, after the nation’s founding, elected officials gradually experienced greater difficulty in administering the federal government of a growing nation.<sup>12</sup>

The Federalists, including Alexander Hamilton, had by 1801 “created from almost nothing an administrative system,” including the establishment of an independent chief executive vested with administrative authority, effective delegation of authority by the President to heads of departments and subordinates, and the formation of a fiscal system for the government.<sup>13</sup> After ascending to power in 1801, the Democratic-Republicans, led by Thomas Jefferson, generally accepted the Federalist framework for government administration that they inherited.<sup>14</sup> Congress,

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<sup>9</sup> Rosenberg, “Congress’s Prerogative over Agencies and Agency Decisionmakers,” pp. 650-651.

<sup>10</sup> The Constitution does not establish any specific departments or agencies.

<sup>11</sup> Woll, *American Bureaucracy*, pp. 35-36, 60. The Continental Congress established the Postmaster General position in 1775, and the Post Office was codified into law in 1789 (1 Stat. 70). The Post Office was not specifically established as an executive department by Congress until 1872 (17 Stat. 283). For more information on the history of the United States Postal Service, see *The United States Postal Service: An American History 1775-2002* (Washington: U.S. Postal Service, 2003). Until the Civil War, Congress added only the Department of the Interior to the initial group of departments (9 Stat. 395), and the Department of Justice was not established until 1870 (16 Stat. 162).

<sup>12</sup> For historical context on federal government organization and administration before the 20<sup>th</sup> century, as well as discussion of major government reform commissions during the 20<sup>th</sup> century, see CRS Report RL31446, *Reorganizing the Executive Branch in the 20<sup>th</sup> Century: Landmark Commissions*, by (name redacted), and (name redacted), *Administrative Renewal: Reorganization Commissions in the 20<sup>th</sup> Century* (Lanham, MD: University Press of America, 2003). For more on the federal government’s administrative history before the 20<sup>th</sup> century, see four volumes by Leonard D. White: *The Federalists: A Study in Administrative History* (Westport, CT: Greenwood Press, 1978); *The Jeffersonians: A Study in Administrative History, 1801-1829* (New York: Macmillan, 1951); *The Jacksonians: A Study in Administrative History, 1829-1861* (New York: Macmillan, 1954); and *The Republican Era: 1869-1901: A Study in Administrative History* (New York: Macmillan, 1958).

<sup>13</sup> White, *The Federalists*, p. 512.

<sup>14</sup> White, *The Jeffersonians*, p. 553.

however, became more active in its dealings with the administrative system than it had been previously.<sup>15</sup> In addition, the country was growing in geographic size and population; and by the end of the 1820s, “[b]oth Presidents and department heads were badly overburdened with official work, but neither of the two obvious remedies—delegation or provision of administrative assistants—were grasped.”<sup>16</sup>

Over time, and in response to the increasing volume of work in government administration, federal employment rose from about 4,837 employees in 1816 to 36,672 in 1861.<sup>17</sup> In addition, the organization of executive departments became more complex:

The structure of the executive departments in 1860 was much more complex than in 1800.... The difference, may be stated, with some exaggeration, by asserting that in 1800 a department consisted of the Secretary, clerks, and a field establishment, while in 1860 a department consisted of the Secretary, a group of bureaus handling the mass of routine business usually without the intervention or even knowledge of the Secretary, and a field service that, in the larger establishments, exceeded in size the parent departments of an earlier day.<sup>18</sup>

Several developments after the Civil War—including industrialization, the Progressive Movement, efforts to combat the Great Depression, two world wars, and increasingly complex social policy problems—led to the rise and growth of the administrative state and significant challenges to effectively managing the executive branch.<sup>19</sup> To deal with the complexity, “[b]y 1946 ... Congress had become a delegator, vesting much of its legislative authority in administrative agencies, and a great deal of the initiative for policy making and budgeting had passed to the executive branch.”<sup>20</sup> Observers noted that Congress sometimes found it difficult to legislate in detail, and increasingly relied upon agencies’ discretion and technical expertise to flesh out, and even formulate, public policies. In other words, observers argued that agencies sometimes exercised legislative powers.

In response, and also to improve executive branch management practices, Congress over time expanded the number and types of general management laws to address myriad aspects of the modern-day executive branch, as the entries in the CRS compendium help show.<sup>21</sup> For example,

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<sup>15</sup> *Ibid.*, pp. 89-107. For example, Congress demanded better information from executive sources, pursued more intensive investigations, and established standing committees on expenditures for the State, Treasury, War, Navy, and Post Office Departments, plus one on public buildings.

<sup>16</sup> *Ibid.*, p. 557.

<sup>17</sup> U.S. Department of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970*, part 2, chapters N-Z (White Plains, NY: Kraus International Publications, 1989), p. 1103. Federal employment continued to increase, reaching 51,020 in 1871 and 157,442 by 1891.

<sup>18</sup> White, *The Jacksonians*, p. 533. See also pp. 85-103 for more on the workload facing department heads.

<sup>19</sup> For more on these developments, see Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (Cambridge, UK: Cambridge University Press, 1982), pp. 248-284; David H. Rosenbloom, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999* (Tuscaloosa, AL: University of Alabama Press, 2000); and Woll, *American Bureaucracy*, pp. 35-75.

<sup>20</sup> Rosenbloom, *Building a Legislative-Centered Public Administration*, p. 1. For example, the Budget and Accounting Act of 1921 required the President to propose a budget for Congress’s consideration, which “tended to frame congressional budgetary discussions,” leading to Congress’s “[loss of] a substantial degree of control over federal spending” (*ibid.*, p. 73).

<sup>21</sup> Congress was not alone in pursuing management improvements in the executive branch. Various Presidents also undertook management reform efforts—through executive orders and by establishing commissions—to focus on government management and organization. See CRS Report RL31446, *Reorganizing the Executive Branch in the 20<sup>th</sup>* (continued...)



Congress moved to increase transparency in its oversight of the executive branch by passing legislation such as the Administrative Procedure Act (1946), the Freedom of Information Act (1966), the Federal Advisory Committee Act (1972), and other laws described in the compendium.<sup>22</sup> To improve congressional oversight and increase executive branch accountability, Congress established inspectors general (1978), enacted the Congressional Review of Regulations Act (CRA), and required agency strategic planning with the Government Performance and Results Act (1993).

However, Congress did not merely seek to improve its oversight capacity. Congress also sought to reassert influence over the budget process with the Congressional Budget and Impoundment Control Act (1974). Because many agencies could not accurately account for their financial operations, Congress passed the Chief Financial Officers Act (1990)<sup>23</sup> and other laws to improve agencies' capacities to manage their finances. The list goes on, as the compendium's more than 90 entries illustrate.

In sum, then, should general management laws be thought of as legislative action and the results of congressional oversight, necessary to bring disciplined management to executive branch agencies? Or, less favorably, should they be thought of as statutory directives that stifle flexibility and initiative? Or does the answer lie somewhere in between—for example, the laws narrow agency discretion in management and perhaps help the President to motivate changes in agency behaviors? The conclusion likely depends on the viewpoint of the questioner and the situation at hand, but history can help shed light on the matter. In any case, numerous and potentially controversial issues—both perennial and new—remain which Congress may consider.

Before the report outlines some of these issues, however, the next section discusses how scholars have approached an important question: to what extent can, or should, management practices in the public and private sectors be compared?

## **Comparing Management Practices in the Public and Private Sectors**

Can government be run like a private-sector company? Scholars and practitioners often see points of similarity and overlap between management of the public and private sectors, and frequently seek to take management-related “lessons learned” from one sector to the other.<sup>24</sup> They also

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(...continued)

*Century: Landmark Commissions*, by (name redacted).

<sup>22</sup> Unless stated otherwise, the laws to which this report refers are included as entries in the compendium, where more detailed citations and background can be found. See CRS Report RL30795, *General Management Laws: A Compendium*, by (name redacted) et al.

<sup>23</sup> For example, see U.S. Congress, House Committee on Government Operations, *Chief Financial Officer Act of 1990*, report to accompany H.R. 5687, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., Oct. 6, 1990, H.Rept. 101-818 (Washington: GPO, 1990), p. 14.

<sup>24</sup> Much of the training given to students in professional schools of public policy and administration, and much of the public-sector management literature, approach policy and management problems from the perspective of political appointees and senior career officials. These unelected officials have considerable administrative discretion in a world where politics and administration are not always separable, and where the officials work under laws and policies established by elected officials. As a result, considerable literature exists regarding how senior agency officials can use this discretion (or seek additional discretion) to improve government management practices and government (continued...)

conclude that key differences should be recognized and respected. Thus, management and public administration scholars have recommended caution, in general, before applying private-sector management principles to government agencies.<sup>25</sup>

Public administration scholar Wallace Sayre is widely cited for his aphorism: “public and private management are fundamentally alike in all *unimportant* respects” [emphasis added].<sup>26</sup> One of the most significant differences is that public-sector agencies and private-sector companies operate under different sets of laws,<sup>27</sup> which were established to regulate public-sector and private-sector behaviors for very different purposes. For example, under the Constitution and public law, government has coercive power: government can regulate some private activity and collect taxes.<sup>28</sup> To prevent arbitrary exercise of coercive power, the framers of the Constitution established a system of checks and balances and separation of powers.<sup>29</sup> Federal government agencies may only act under authority provided in public law, as formulated, executed, and adjudicated by Congress, the President, and the courts, on behalf of the American public. These laws authorize an agency’s mission (i.e., its purpose for being) and establish how the agency is required to operate.<sup>30</sup> In contrast, a private company operates under laws enacted to create and regulate a functioning market economy (e.g., antitrust and financial reporting laws). Furthermore, these laws generally do not prescribe what the company is to do, or how the company should operate. Under this framework of law, a company is, in principle, accountable primarily to its particular owners or shareholders, who bear financial risk.<sup>31</sup>

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(...continued)

“performance,” or perhaps their definitions of performance. For more on this literature, see Laurence E. Lynn Jr., *Public Management as Art, Science, and Profession* (Chatham, NJ: Chatham House, 1996), Mark H. Moore, *Creating Public Value: Strategic Management in Government* (Cambridge, MA: Harvard University Press, 1995), and Robert D. Behn, *Leadership Counts: Lessons for Public Managers from the Massachusetts Welfare, Training, and Employment Program* (Cambridge, MA: Harvard University Press, 1991).

<sup>25</sup> A full treatment of the question—which has generated a large literature—is beyond the scope of this report. However, this section of the report cites some of the key issues that scholars and commentators have identified. For an overarching discussion of the subject by staff writers of *The Economist* magazine, see John Micklethwait and Adrian Wooldridge, “Managing Leviathan: The Public Sector,” in their *The Witch Doctors: Making Sense of the Management Gurus* (New York: Times Books, 1996), pp. 277-303.

<sup>26</sup> Quoted in Graham T. Allison Jr., “Public and Private Management: Are They Fundamentally Alike in All Unimportant Respects?,” in Frederick S. Lane, *Current Issues in Public Administration*, 2<sup>nd</sup> ed. (New York: St. Martin’s Press, 1982), p. 13.

<sup>27</sup> For a discussion of public law as a foundation for public-sector management, see (name redacted) and Robert S. Gilmour, “Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law,” *Public Administration Review*, vol. 55, no. 2 (Mar./Apr. 1995), pp. 135-146.

<sup>28</sup> Theodore J. Lowi and Benjamin Ginsberg, *American Government: Freedom and Power* (New York: W.W. Norton & Company, 1990), pp. 8-10.

<sup>29</sup> See, for example, *Federalist Paper 51*, in James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (New York: Penguin, 1987), pp. 318-322.

<sup>30</sup> For discussions of the status of government corporations and quasi-governmental organizations, see CRS Report RL30365, *Federal Government Corporations: An Overview*; CRS Report RL30533, *The Quasi Government: Hybrid Organizations with Both Government and Private Sector Legal Characteristics*; and CRS Report RL30340, *Congressionally Chartered Nonprofit Organizations (“Title 36 Corporations”): What They Are and How Congress Treats Them*; all by (name redacted).

<sup>31</sup> The private sector is not immune, however, from accountability and governance problems. See Lucian Arye Bebchuk and Jesse M. Fried, “Executive Compensation as an Agency Problem,” *Journal of Economic Perspectives*, vol. 17, no. 3 (summer 2003), pp. 71-92.

Scholars and commentators have cited many other differences between government agencies and private sector organizations. For example,

[t]o a much greater extent than is true of private bureaucracies, government agencies (1) cannot lawfully retain and devote to the private benefit of their members the earnings of the organization, (2) cannot allocate the factors of production in accordance with the preferences of the organization's administrators, and (3) must serve goals not of the organization's own choosing. Control over revenues, productive factors, and agency goals is all vested to an important degree in entities external to the organization—legislatures, courts, politicians, and interest groups. Given this, agency managers must attend to the demands of these external entities.<sup>32</sup>

In addition, government frequently encounters comparative difficulty measuring—and coming to consensus on how to measure—the performance of agencies.<sup>33</sup>

## Major Themes and Management Policy Options

Given the history of managing the executive branch and also the differences between management practices in the public and private sectors, the entries in the compendium of general management laws may raise public policy issues, both for the general management laws themselves and for specific agencies. Moreover, when considering the compendium as a whole—viewing the general management laws together—several major themes emerge. Each of these themes, in turn, may raise potential issues and “management policy” options for Congress.<sup>34</sup>

### Discretion for the Executive Branch

Congress frequently faces the question “How much discretion should we leave for the executive branch?”<sup>35</sup> For example, when examining or reexamining any of the general management laws, the question often becomes how much discretion the executive branch should be authorized to determine the contents, scope, or priorities of agency actions.

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<sup>32</sup> James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989), p. 115.

<sup>33</sup> See, for example, Allison, “Public and Private Management,” p. 18 (citing a commentator's conclusions); Peter F. Drucker, *Management*, pp. 130-166; and Henry Mintzberg, “Managing Government, Governing Management,” *Harvard Business Review*, May-June 1996, pp. 79-80.

<sup>34</sup> Here, the term *management policy* is defined generally as “the principles or methods under which the executive branch, or an agency, is to be managed.” In the management and business literatures, the terms *management policy* and *business policy* have been used interchangeably, but without precise consensus on definitions. One textbook defined business policy as “the functions and responsibilities of senior management, the crucial problems that affect the success of the total enterprise, and the decisions that determine the direction of the organization, shape its future, and, when well implemented, secure its achievement” (Joseph L. Bower, et al., *Business Policy: Managing Strategic Processes*, 8<sup>th</sup> ed. (Chicago: Irwin, 1995), pp. 2-3). See also George A. Steiner, John B. Miner, and Edmund R. Gray, *Management Policy and Strategy: Text, Readings, and Cases*, 3<sup>rd</sup> ed. (New York: Macmillan, 1986), pp. 3-10.

<sup>35</sup> The literature surrounding this topic is extensive. In *Building a Legislative-Centered Public Administration*, Rosenbloom generally argues that many general management laws were enacted as an effort to provide the executive with discretion, while still retaining congressional control and oversight over agency actions.

## **Advantages and Disadvantages**

This question has been heavily debated for some time. On one hand, giving discretion to the executive branch can provide agencies flexibility to tailor the implementation of laws to specific circumstances as the President or agencies perceive them. In addition, some observers argue that this discretion allows agencies to be more responsive if circumstances later change. For example, an agency might take less time to issue and implement regulations, or to exercise initiative to pursue a management action, than the time necessary for a law to be passed. Further, many argue that when agency responsibilities involve scientific standard-setting or other technical judgments, the executive is often in a better position to do so.

On the other hand, discretion can allow the President or an agency to make decisions or engage in operations that might not have support from Congress, had the subject been considered explicitly during the legislative process. The President's or an agency's views regarding the "right thing to do" might be at variance with those of Congress and key stakeholders. Furthermore, some argue that if the President or an agency has different views and acts accordingly, Congress might not have resources or time to notice the agency actions or to intervene in a timely way.<sup>36</sup> Granting discretion to the executive branch can also put key decisions in the power of unelected agency officials, when some stakeholders might wish for more transparency and political accountability.

With regard to general management laws, Congress faced this tension between flexibility and accountability in 2002 and 2003, when considering whether to grant the Departments of Homeland Security (DHS) and Defense (DOD) discretion to determine some of the contents of their human resources management (HRM) systems through regulation.<sup>37</sup> A similar situation arose in 1993, when the Clinton Administration's National Performance Review (NPR) recommended a number of ways to "cut red tape" in procurement policy, culminating in passage of the Federal Acquisition Streamlining Act of 1994 (FASA; 108 Stat. 3243).<sup>38</sup> The tension is perhaps most common in the regulatory arena.

## **Management Policy Options**

In considering situations when Congress weighs whether to give discretion to an agency, and if so, to what extent, scholars have noted four general options that can be used alone or in combination by Congress to address delegation situations and help balance flexibility with accountability.<sup>39</sup>

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<sup>36</sup> Congress can seek to reverse or modify an agency's decision, either through oversight or legislative action. However, a President may decide to veto such a bill, forcing Congress to muster a two-third majority in each chamber for the override.

<sup>37</sup> Separate authorities for DHS and DOD to establish new HRM systems were enacted into law, as described in the Title 5, U.S.C., Chapter 97 and Chapter 99 entries in the compendium. However, in both cases, DHS and DOD were required to do so in regulations prescribed jointly with the Office of Personnel Management (OPM).

<sup>38</sup> For more information, see Office of the Vice President, *From Red Tape to Results: Creating a Government That Works Better & Costs Less, Report of the National Performance Review* (Washington: GPO, Sept. 7, 1993) and CRS Report RL30596, *The National Performance Review and Other Government Reform Initiatives: An Overview, 1993-2001*, by (name redacted), (name redacted), and (name redacted).

<sup>39</sup> The four general options come from D. Roderick Kiewiet and Mathew D. McCubbins, *The Logic of Delegation: Congressional Parties and the Appropriations Process* (Chicago: University of Chicago Press, 1991), pp. 27-38. The illustrative options come from sources including the Kiewiet-McCubbins book and this report's author. Kiewiet and McCubbins note that these four general options can sometimes impose financial and other costs on agencies.

- **Contract design:**<sup>40</sup> Congress can set the conditions for a delegation of authority to better ensure that its intentions will be carried out by the executive branch, as well as reduce risk of adverse consequences. For example, Congress could establish goals, sanctions, probation periods, or sunsets; require the use of pilot projects; or establish “profit-sharing relationships” (i.e., establish incentives for agencies to behave in ways that benefit both the agency and the government as a whole—for example, an agency might be allowed to retain 50% of unspent funds after the end of a fiscal year, thereby providing an incentive against end-of-the-year “use it or lose it” spending behaviors).
- **Screening and selection mechanisms:** To avoid delegating authority to an agency in a way that could risk poor “on-the-job” performance with a given task, program, or management initiative, Congress can try to look beforehand for signals or other information that indicate whether the executive branch agency and its officials will likely do the work effectively. For example, Congress could convene hearings to determine whether the agency rigorously analyzed a problem and its potential solutions or look for evidence that the agency has organizational capacity and management skill to do the job.<sup>41</sup>
- **Monitoring and reporting requirements:** To increase accountability and transparency for a given activity or program, Congress can require agencies to report their “actions taken,” milestones they have reached, and any information the agencies have obtained during their activities. The rationales might be to (a) monitor agency actions that are difficult to oversee and (b) make available information that is difficult for Congress and outside stakeholders to access. The advent of information technology and the Web may enable such reporting to be close to real-time and more frequently updated. However, some commentators argue that a proliferation of reporting requirements can be burdensome, and that reports to Congress are not always used.
- **Institutional checks:** When authority is delegated to an agency, Congress can ensure that one or more additional agencies or entities can veto or block the delegate agency’s actions. For example, Congress could involve another agency in the promulgation of regulations (such as the DHS personnel system, which requires that regulations be prescribed jointly by DHS and the Office of Personnel Management (OPM)); require notice and comment before an agency is allowed to proceed with certain actions; provide sequential funding within an appropriation that is contingent upon certain conditions at each of several milestones; require the agency or additional agencies to conduct an independent study examining an issue; or use “committee vetoes”<sup>42</sup> to prevent certain actions absent congressional committee approval.

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<sup>40</sup> Here, the term *contract* is figurative, and means “the terms and conditions under which authority or power is delegated from the legislative body to an agency.” In a delegation situation, theorists see one actor, the legislature, as a *principal*, and the other actor, an agency, as an *agent* for the principal. Because the agent can take action that is optimal in light of his or her own goals, instead of the principal’s intended goals, theorists call this situation an *agency problem*. In response, theorists often advocate establishing a contract that aligns the terms and conditions of the delegation (sometimes including incentives for the agent) with the principal’s goals, in order to accomplish the principal’s goals.

<sup>41</sup> For presidential appointments that require the advice and consent of the Senate, hearing questions often relate to a nominee’s skills and reputation.

<sup>42</sup> Committee vetoes continue to be used after the Supreme Court’s ruling in *INS v. Chadha* (1983), which struck down (continued...)

## Standardization vs. Customization

Should the management laws under which agencies operate be standardized, with rules that apply uniformly to many different agencies? Or should some (or all) agencies have agency-specific laws that are customized to each agency's internal and external environments? Or should there be a mix of these two approaches? This tension between standardization and customization arises frequently for Congress with respect to management of the executive branch—where varying degrees of standardization and customization can exist in general management laws, authorizing statutes, or appropriations.

### Three General Approaches

Many experts believe standardization can help improve executive branch transparency and accountability. For example, the Administrative Procedure Act, enacted in 1946, was intended to establish basic requirements across the executive branch for agency rulemaking. With regard to another functional area, financial management, Congress introduced standardization in stages. The Chief Financial Officers (CFO) Act of 1990 (104 Stat. 2838), as amended by the Government Management Reform Act of 1994 (GMRA; 108 Stat. 3410), required 24 major executive departments and agencies to prepare audited financial statements covering all their accounts. This requirement contributed to many agencies receiving unqualified (“clean”) opinions in FY2002.<sup>43</sup> In 2002, Congress further amended the CFO Act to extend similar requirements to most other executive agencies with passage of the Accountability of Tax Dollars Act (116 Stat. 2049).<sup>44</sup> Standardization can also promote accountability by putting the burden of proof on agencies to demonstrate when (or if) exceptions are necessary.

By contrast, customization can also be beneficial for effective management. Customization can help align an agency's management with both the agency's internal environment (e.g., culture, size, decision-making processes) and its external environment (e.g., economic conditions, events, stakeholder and client needs). Congress regularly uses authorizing statutes, appropriations, and accompanying reports to require or direct specific actions (or prohibitions) for agencies, but Congress also builds customization into general management laws. For example, until recently, small agencies were not generally required to prepare audited financial statements. Similarly, when the Department of Homeland Security (DHS) was established by the Homeland Security Act of 2002 (116 Stat. 2135, at 2145), the new agency's CFO position was not subject to CFO Act requirements.<sup>45</sup> Another example comes from the HRM area. In the last two years, DHS and the

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the legislative veto. For more on committee vetoes, see (name redacted), “Congress As Co-Manager of the Executive Branch,” in James P. Pfiffner, ed., *The Managerial Presidency*, pp. 306-308; and (name redacted), “The Legislative Veto: Invalidated, It Survives,” *Law and Contemporary Problems*, vol. 56, no. 4 (autumn 1993), pp. 273-292.

<sup>43</sup> An unqualified opinion indicates that an auditor found that an agency's financial statement presented a variety of measures of the agency's financial condition fairly, in all material respects, and in conformity with specified accounting principles.

<sup>44</sup> However, Congress left some discretion to the President by allowing the Office of Management and Budget to exempt very small agencies.

<sup>45</sup> The 108<sup>th</sup> Congress is considering legislation (H.R. 2886, S. 1567) that would, if enacted, include DHS among the CFO Act agencies.

DOD were granted authority to customize several significant (but not all) aspects of their HRM systems apart from the standardized laws of Title 5 of the *United States Code*.<sup>46</sup>

A third possibility is to mix the two approaches. The examples described above move toward standardization or customization, but also represent varying degrees of a mixed approach—*balancing* standardization with customization. Under a mixed approach, general management laws are applied to all or most agencies, but Congress can, nevertheless, make exceptions to a smaller or larger extent, or allow some flexibility within the laws' broader requirements.<sup>47</sup> An example of the mixed approach is the Government Performance and Results Act of 1993 (GPRA; 107 Stat. 285), which required most executive branch agencies, in consultation with Congress, to develop strategic plans. However, GPRA provided only a general framework within which agencies were required to comply, without prescribing detailed format or contents.

### **Advantages and Disadvantages**

Each of these approaches—standardization, customization, and mixed—can bring advantages and disadvantages. Alongside the advantages described above, standardization can sometimes be too rigid, stifling initiative or creativity. In turn, customization can sometimes reduce transparency or accountability if agencies do not report in real-time on the nature and status of their customized efforts, or if oversight and analytical resources are too scarce or distracted to support monitoring how well a customized law is working. Customization can also lead to different entities working at cross-purposes. For example, if agencies gain pay flexibility but then were to begin a bidding war for certain types of employees, the budgets of each agency would come under pressure. Mixed approaches can suffer from all these problems. Therefore, in addition to the three general approaches outlined above, Congress also has policy options for avoiding these problems.

### **Management Policy Options**

Generally, the decision to use one of these approaches is highly contextual, depending on the nature of “the problem” to be solved (as defined differently by numerous stakeholders), the problem's history, the actors who are involved, and a host of other factors. Nonetheless, one overall option is to examine regularly whether increased customization or standardization in a general management law is necessary for improved transparency, accountability, efficiency, or effectiveness. Analytical support in weighing the evidence can come from a variety of sources including agency management, agency program evaluations, inspectors general, the General Accounting Office (GAO), and outside scholars and evaluators.

Another overall option in situations where customization is widespread (e.g., human resources related laws) is to reduce the analytical burden for Congress and other stakeholders in their efforts to monitor the situation, by requiring the executive branch to maintain comprehensive, real-time

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<sup>46</sup> See the Title 5, U.S.C., Chapter 97 and Chapter 99 entries in the compendium for more on this subject. The 108<sup>th</sup> Congress is considering legislation (S. 610; H.R. 1085) that would provide flexibilities for the National Aeronautics and Space Administration (NASA). Other titles of the *United States Code* also contain personnel laws, as the beginning of the compendium's section VII.A., “Title 5: The Federal Civil Service,” describes.

<sup>47</sup> This approach is somewhat akin to what management writers Thomas Peters and Robert Waterman described as “simultaneous loose-tight properties.” See Thomas J. Peters and Robert H. Waterman Jr., *In Search of Excellence: Lessons from America's Best-Run Companies* (New York: Warner Books, 1982), pp. 318-325. For an overall assessment of Peters' thinking, see Micklethwait and Wooldridge, *The Witch Doctors*, pp. 79-92.

descriptions of the current state of affairs and maintain updated comparisons showing any differences across agencies. As illustrated by the compendium's introductory profile of Title 5 human resources laws (section VII.A., "Title 5: The Federal Civil Service"), increasing fragmentation of civil service laws may increase the difficulty of monitoring, comparing, and analyzing government-wide developments in general areas like pay, performance management, and adverse actions and appeals, for different agency and bureau workforces.<sup>48</sup> Establishment of reporting requirements in areas of widespread customization may help reduce the analytical burden for Congress and the public in examining the extent of customization and standardization, or exploring possible changes if customization does not produce the desired outcomes. Such reporting might be possible on a real-time basis on the Web. Central management agencies like the Office of Management and Budget (OMB), OPM, the General Services Administration (GSA), the Financial Management Service (FMS) of the Treasury Department, or others could be candidates to report how certain management policies are customized and, thereby, facilitate government-wide analysis and comparisons. However, such requirements would likely entail costs for the reporting agencies.

## **Functional Silos vs. Integrated General Management**

It is no coincidence that the general management laws can be grouped into "functions," such as financial management, human resources, and procurement. Most organizations in the private and public sectors manage themselves, to a greater or lesser extent, with a functional orientation or functional structures.<sup>49</sup> For example, even when an organization is structured according to "customers"—or, as in the case of the Internal Revenue Service, "taxpayer groups"—functional perspectives still reside within business or administrative units, shared services, and headquarters.<sup>50</sup>

## **Two Perspectives on Management**

A functional perspective is considered important, because it can boost efficiency through specialization and ensure centralized control over strategic decisions. However, if the functional orientation becomes too inward-looking, organization-wide coordination and decision-making can become problematic, and an organization's internal development of general managers can be inhibited.<sup>51</sup> Thus, borrowing a term from the management literature, various functions can tend to

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<sup>48</sup> The fragmentation exists among several different titles of the *United States Code*, and within Title 5, exists across multiple agencies, including DHS, DOD, and the Internal Revenue Service (IRS).

<sup>49</sup> As discussed previously, in the management literature, *functions* refer to "business areas that require related bundles of skill" or "groups of people with similar skills and performing similar tasks," such as human resources, financial management, and information technology. This usage of the term *function* is different from two others, in Title 5 of the *United States Code* and in budgetary accounting.

<sup>50</sup> The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (112 Stat. 685, at 689; P.L. 105-206) required the IRS to organize itself by taxpayer groups, but IRS's new organizational structure created specialist functional organizations throughout the agency. The organization design literature has reached consensus that no one type of organizational orientation or structure (by function, geography, client, customer, product, matrix, etc.) is necessarily best. Instead, a recurrent theme is that an organization's structure should flow from its strategy for accomplishing its goals. Even then, however, different organizational structures have different sets of advantages and disadvantages. For discussion, see Jay R. Galbraith, *Designing Organizations*, rev. (San Francisco: Jossey-Bass, 2002), pp. 17-37, and David A. Nadler and Michael L. Tushman, *Competing by Design* (New York: Oxford University Press, 1997), pp. 21-41.

<sup>51</sup> See Samuel C. Certo and J. Paul Peter, *Strategic Management: A Focus on Process*, 2<sup>nd</sup> ed. (Homewood, IL: Irwin, (continued...))



operate as *functional silos*, in isolation from each other. This can create problems for the organization as a whole, or cause opportunities to be missed.<sup>52</sup>

Management literature acknowledges the continuing importance of functional perspectives, but only within the broader context of an integrated, *general management* perspective.<sup>53</sup> An excerpt from one business school's website explains this perspective:

All of us come to a problem, opportunity, or decision with a set of assumptions that are based on our backgrounds and experiences. For example, someone who has spent years in a finance function concentrating on, say, managing cash flow, raising capital, and budgeting will have a particular point of view that is different from someone whose experience has been in marketing focusing on product development, segmenting customers, product positioning, etc. Two implications arise from this: (1) Each person will have only a "limited" view of the whole story, and may be driven to define a problem as a "finance" or "marketing" problem because this is what their experience tells them, and (2) Each person may be correct, but only partially.... The solution is to develop a general management perspective. The general management perspective seeks to integrate multiple functional perspectives to arrive at a complete understanding of a problem or opportunity.<sup>54</sup>

A recent example of this general management perspective could include efforts to use information technology to help improve human resources management and financial management.<sup>55</sup>

## Management Policy Options

An integrated general management perspective—especially when combined with the perspective of focusing on individual functions—provides a potential toolbox of options for addressing executive branch management problems. Many of the general management laws focus on improving the executive branch's management fundamentals in individual functional areas (e.g., cleaning up agency finances, improving the process for purchasing technology, or addressing human capital problems). But the general management laws need not be viewed in isolation from one another. Instead, from an integrated general management perspective, these laws may be utilized to provide mutual support to each other, as illustrated below. Integration could occur through a variety of means, including changes to the general management laws, agency

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1993), pp. 136-141.

<sup>52</sup> The silo metaphor comes from an image of vertical silos on an organization chart that do not communicate with each other horizontally. To illustrate the same point, some commentators use the synonymous term *stovepiped organization*. See Schermerhorn, *Core Concepts of Management*, p. 120.

<sup>53</sup> Here, the term *general management* has a different meaning from the definition offered previously. In the current case, *general management* corresponds to the integration of *multiple functional perspectives* into one holistic, or general, perspective. Previously, *general management* referred to laws that apply across *multiple agencies*. Both of these senses of the term *general management* can be helpful when grappling with management issues.

<sup>54</sup> See: [http://oracle-www.dartmouth.edu/dart/groucho/tuck\\_mba\\_program.syllabus?p\\_id=AGM](http://oracle-www.dartmouth.edu/dart/groucho/tuck_mba_program.syllabus?p_id=AGM), visited Jan. 15, 2004. A hard copy is available from the author's files.

<sup>55</sup> See Ted Leventhal, "White House Expands E-government Initiative," *GovExec.com*, Feb. 4, 2004, available at <http://www.govexec.com/dailyfed/0204/020404tdpm2.htm>, visited Feb. 4, 2004. A hard copy is available from the author's files.

authorizing statutes, and agency appropriations, and through other legislative and oversight tools. For example,<sup>56</sup> to integrate functional perspectives, Congress might consider:

- leveraging the E-Government Act of 2002 (information technology perspective) to achieve more timely and frequent financial and performance reporting (financial management and program evaluation perspectives), by requiring agencies and the OMB to utilize the Federal Enterprise Architecture<sup>57</sup> for reporting results closer to real-time, in order to better support congressional oversight, reauthorization, and appropriations (budgeting perspective) activities;
- directing appropriations (budget perspective) to ensure specific funding is used to hire, train, and retain contract oversight specialists (human resources perspective) in order to help certain agencies better manage and monitor their contracts (acquisition perspective);<sup>58</sup>
- restructuring the budget accounts of some agencies (budget perspective) to better align resources with individual programs (organizational perspective) and program evaluations of these programs (performance measurement and program evaluation perspective) to align resources with results; or
- leveraging the Chief Human Capital Officers Act of 2002 by requiring OPM to develop metrics for assessing whether agencies dedicate sufficient staff resources (human resources perspective) for contract management and oversight (acquisition and program evaluation perspectives).<sup>59</sup>

Other options for leveraging functional perspectives into an integrated general management perspective could include various combinations of the general management laws in the compendium. These options could be constructed to apply generally to many agencies or only to specific agencies, and could include any of the following functional perspectives: information

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<sup>56</sup> These examples are illustrative only. Each would entail advantages and disadvantages.

<sup>57</sup> The Federal Enterprise Architecture (FEA), along with its “reference models,” is the blueprint released by OMB for managing information technology (IT) investments across multiple agencies (e.g., payroll services or rulemaking). The FEA’s Performance Reference Model (PRM) is OMB’s framework for “characteriz[ing] performance in a common manner where necessary.” OMB’s directions for the President’s FY2005 budget proposal require agencies to use the PRM for their IT business cases. For more on the FEA, see <http://www.feapmo.gov>, visited Jan. 28, 2004. OMB’s FY2005 budget guidance to agencies regarding the FEA and PRM is included in U.S. Office of Management and Budget, *Circular No. A-11*, “Preparation, Submission, and Execution of the Budget,” revised, July 2003, Section 300, available at <http://www.whitehouse.gov/omb/circulars/index.html>, visited Jan. 28, 2004.

<sup>58</sup> Numerous sources cite contract management and oversight as a serious and continuing problem. The FY2002 report from agency inspectors general (IGs) to the President stated “[t]he IG community ... has noted that generally, the Federal government has been lax in its contractor oversight.” (See President’s Council on Integrity and Efficiency and Executive Council on Integrity and Efficiency, *A Progress Report to the President, Fiscal Year 2002* (Washington: 2002), p. 17, available at <http://www.ignet.gov>, visited Jan. 28, 2004.) In turn, the General Accounting Office included contract management on its January 2003 “High-Risk List” for the National Aeronautics and Space Administration (NASA) and the Departments of Defense (DOD) and Energy (DOE). See U.S. General Accounting Office, *High-Risk Series: An Update*, GAO-03-119, Jan. 2003.

<sup>59</sup> See the discussion of Title 5 of the *United States Code*, Chapter 14 in the compendium for more on OPM’s human capital metrics provisions. For discussion of agency procurement staffing, see David Phinney, “More Big Contracts, Fewer Managers: Agencies Strain to Provide Oversight,” *Federal Times*, July 7, 2003, p. 1. In the report accompanying the bill that became the Government Performance and Results Act of 1993, the Senate Governmental Affairs Committee called this type of phenomenon “hollow government”: “where an agency has inadequate resources to meet its public missions.” See U.S. Congress, Senate Committee on Governmental Affairs, *Government Performance and Results Act of 1993*, report to accompany S. 20, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., S.Rept. 103-58 (Washington: GPO, 1993), p. 16.

policy, regulation, strategic planning, performance measurement, program evaluation, auditing, investigation, financial management, budgeting, accounting, organization, acquisition management, real property management, intergovernmental relations, human resources management, and ethics.

## **Making and Measuring Progress**

The history of federal government management reform is replete with efforts, in both the legislative and executive branches, to improve agencies' performance, organization, and management practices.<sup>60</sup> Many of these efforts focused on improving agency management practices and closely involved the general management laws. However, in spite of these efforts, many observers have concluded that progress has been difficult to achieve.

## **Challenges to Making Progress**

Congress has faced major challenges in its oversight of executive branch management, especially regarding:

- how to ensure executive branch agencies improve their management practices by complying with general management laws, and
- how (or whether) to measure agencies' progress in improving their management practices.

Management literature generally holds that measurement can be a strong motivator to action, and frequently quotes industrial psychologist Mason Haire: "What gets measured gets done. If you are looking for quick ways to change how an organization behaves, change the measurement system."<sup>61</sup> While measurement systems can motivate action and commitment, they can also create perverse incentives in some situations. To use an analogy from the private sector, if a company's employees are rewarded only on the basis of short-term profits and not long-term research and development that would keep the company profitable in the future, employees may show less interest in longer-term performance.<sup>62</sup> An illustration more applicable to the federal government may be the achievement of unqualified financial audits, where "[c]lean audits of an agency's financial systems ... look like a sign of good fiscal management, but not if they are achieved only by applying brute force at audit time in manually working around deficient systems."<sup>63</sup>

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<sup>60</sup> For a treatment of this history from a legislative perspective, see Rosenbloom, *Building a Legislative-Centered Public Administration*. For a treatment from an executive branch perspective, with an emphasis on reorganization, see Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning 1905-1996*, 2<sup>nd</sup> ed. (Lawrence, KS: University Press of Kansas, 1998). For a treatment that is critical of past management reform efforts, see Paul C. Light, *The Tides of Reform: Making Government Work, 1945-1995* (New Haven, CT: Yale University Press, 1997).

<sup>61</sup> Quoted in Richard L. Lynch and Kelvin F. Cross, *Measure Up! Yardsticks for Continuous Improvement* (Cambridge, MA: Blackwell, 1991), p. 144.

<sup>62</sup> For more on perverse incentives, see Steve Kerr, "On the Folly of Rewarding A, While Hoping for B," *Academy of Management Journal*, vol. 18, no. 4, 1975, pp. 769-783. In response, some management authors have proposed "balanced scorecards," which guard against perverse incentives by including several perspectives in an agency's performance measures. See Robert S. Kaplan and David P. Norton, "The Balanced Scorecard—Measures That Drive Performance," *Harvard Business Review*, Jan./Feb. 1992, pp. 71-79.

<sup>63</sup> Gregory F. Treverton, "The State of Federal Management," *Government Executive*, Jan. 2004, p. 24.

## **Brief History of Measuring Progress**

Some history helps put the current situation into context. In the last 25 years, agency inspectors general (IGs) and the GAO have reported persistent, major management problems in executive branch agencies in such areas as financial management, acquisition, information technology investment, human resources, and the strategic planning and implementation of major programs<sup>64</sup>—areas the general management laws were intended to address. Beginning in 1992 and most recently in 2003, GAO released six continually updated series of reports detailing “high risk” areas and major management challenges that affect specific agencies or cut across many agencies government-wide.<sup>65</sup> GAO stated in these reports that progress was made by the executive branch and Congress to address these issues, but GAO also reported that much work remained to be done. Both before and during this period, several management reform initiatives were pursued by presidential administrations, including, for example, President Ronald Reagan’s Reform ‘88 initiative; President George H. W. Bush’s efforts to address financial management, information resources management, and high risk areas; and President William Clinton’s NPR.<sup>66</sup>

Members of Congress and their committee staff frequently expressed concern during this period about the state of government management. For example, in 1992, the majority staff of the House Committee on Government Operations took a retrospective look and recommended actions to improve central management, procurement, information resources management, financial management, and human resources management.<sup>67</sup> Nearly a decade later, in June 2001, Senator Fred Thompson, Chairman of the Senate Governmental Affairs Committee, released a report concluding that “urgent federal government management problems” faced the administration of President George W. Bush, including problems regarding the federal workforce, financial management, information technology, and overlap and duplication.<sup>68</sup>

More recently, in August 2001, President George W. Bush’s Office of Management and Budget released the President’s Management Agenda (PMA), which includes five government-wide initiatives: (1) Strategic Management of Human Capital, (2) Competitive Sourcing, (3) Improved

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<sup>64</sup> Establishment of agency IGs in the middle to late 1970s had been driven in part by high-profile management scandals. In turn, GAO began its “high risk” program in 1990 in the aftermath of more recent management scandals. For more on creation of agency IGs, see Paul C. Light, *Monitoring Government: Inspectors General and the Search for Accountability* (Washington: Brookings Institution, 1993).

<sup>65</sup> The most recent set of reports are summarized and listed in GAO’s overview document: U.S. General Accounting Office, *High-Risk Series: An Update*. In the report summary, GAO defines “high risk” programs or operations as vulnerable to fraud, waste, abuse, and mismanagement, and states that “[i]ncreasingly, we also are identifying high-risk areas to focus on major economy, efficiency, or effectiveness challenges.” The President’s Office of Management and Budget (OMB) began identifying high-risk programs in 1989 and included reports in the President’s annual budget proposals from FY1992 (released Feb. 1991) through FY1995 (Feb. 1994), but ceased with FY1996.

<sup>66</sup> For sympathetic descriptions of these reform initiatives, see U.S. Executive Office of the President, Office of Management and Budget, *Management of the United States Government, Fiscal Year 1989* (Washington: GPO, 1988) [President Reagan]; U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 1993*, part 1 (Washington: GPO, 1992), pp. 305-411 [President George H. W. Bush]; and U.S. Office of the Vice President, *From Red Tape to Results* [President Clinton].

<sup>67</sup> U.S. Congress, House Committee on Government Operations, *Managing the Federal Government: A Decade of Decline*, committee print, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess., Dec. 1992 (Washington: GPO, 1993).

<sup>68</sup> Sen. Fred Thompson, Committee on Governmental Affairs, *Government at the Brink*, 2 vol. (Washington: June 2001), available at [http://www.senate.gov/~gov\\_affairs/](http://www.senate.gov/~gov_affairs/), visited Jan. 22, 2004, from the “Committee Documents” menu, under “Reports.”

Financial Performance, (4) Expanded Electronic Government, and (5) Budget and Performance Integration.<sup>69</sup>

Under the PMA, OMB leads quarterly evaluations of agencies to gauge “status” and “progress” for each of the initiatives with red, yellow, or green “stoplight scores,” based on published “standards for success.”<sup>70</sup> These standards cite what the Bush Administration believes should be done to solve the most difficult management problems facing the federal government. According to the PMA website, an agency is *green* on status for an initiative if the agency meets all the standards for success, *yellow* if it has achieved some, but not all, of the criteria, and *red* if it has any one of a number of serious flaws.<sup>71</sup> For progress, OMB assesses each agency “on a case by case basis against the deliverables and time lines established for the five initiatives,” as agreed to by the agency and OMB. A green on progress means that “[i]mplementation is proceeding according to plans agreed upon with the agencies.” In turn, yellow indicates “[s]ome slippage or other issues requiring adjustment by the agency in order to achieve the initiative objectives on a timely basis.” Finally, red shows the “[i]nitiative [is] in serious jeopardy” and is “[u]nlikely to realize objectives absent significant management intervention.”

The five government-wide PMA initiatives fall, to some extent, into functional categories. However, OMB stated that the five initiatives would be mutually reinforcing, where efforts in one initiative would be consistent with and benefit from efforts in the other initiatives.<sup>72</sup> Notably, the five initiatives also use a number of the general management laws to achieve the PMA’s goals. For example,

- the Competitive Sourcing initiative utilizes (“leverages”) the Federal Activities Inventory Reform (FAIR) Act of 1998;
- the Improved Financial Performance initiative leverages the Antideficiency Act, Federal Managers’ Financial Integrity Act of 1982, Chief Financial Officers Act of 1990, Government Management Reform Act of 1994, and Federal Financial Management Improvement Act (FFMIA) of 1996;

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<sup>69</sup> See U.S. Office of Management and Budget, *The President’s Management Agenda* (Washington: GPO, 2001) and the President’s PMA website, <http://www.results.gov/agenda/>, visited Jan. 22, 2004. For an overview of the PMA, see CRS Report RS21416, *The President’s Management Agenda: A Brief Introduction*, by (name redacted). For an overview of OMB, see CRS Report RS21665, *Office of Management and Budget (OMB): A Brief Overview*, by (name redacted).

<sup>70</sup> For the PMA, OMB adopted terminology that is widely used in the field of project management (e.g., *deliverables*, *timelines*, *status*, *progress*, *stoplight*, etc.), where stoplight colors are often used to provide performance measures that are visually simple, which can help time-constrained project managers and overseers assimilate large amounts of information quickly. For more on project management performance reporting, see Project Management Institute, *A Guide to the Project Management Body of Knowledge (PMBOK Guide)*, 2000 ed. (Newtown Square, PA: PMI, 2000), pp. 122-124.

<sup>71</sup> The standards for determining agency status scores have changed twice since original publication. The first version was published in the President’s FY2003 budget proposal: U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2003, Analytical Perspectives* (Washington: GPO, 2002), pp. 411-415. The second version was published in the President’s FY2004 budget proposal: U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2004, Performance and Management Assessments* (Washington: GPO, 2003), pp. 4-7. A third version was created later in 2003, and is available at <http://www.results.gov/agenda/standards.pdf>, visited Jan. 22, 2004, and from the author’s files.

<sup>72</sup> U.S. Office of Management and Budget, *The President’s Management Agenda*, p. 4.

- the Expanded Electronic Government initiative leverages the Clinger-Cohen Act of 1996, E-Government Act of 2002, and Federal Information Security Management Act (FISMA) of 2002; and
- the Strategic Management of Human Capital and Budget and Performance Integration initiatives leverage the Government Performance and Results Act of 1993.

In the news media, some agencies have stated that the PMA is being taken seriously, and that significant progress is being made.<sup>73</sup> However, several additional observations about PMA measurement practices can be made that relate to congressional oversight of the general management laws. First, PMA evaluation practices have not been fully transparent outside of the executive branch. While the standards for success are publicly available, detailed rationales and worksheets behind these grades are not. By contrast, OMB assessments of agency programs using the Program Assessment Rating Tool (PART)—a component of the Budget and Performance Integration initiative—were considerably more transparent. OMB published overall PART assessments in the President’s FY2004 budget proposal, but, to increase transparency, OMB also released detailed worksheets showing the evidence OMB used to complete assessments of agency programs.<sup>74</sup>

The spotlight scoring criteria may make subjectivity difficult to avoid for some of the initiatives. For example, the current standards for success state that to achieve green on status for the Expanded Electronic Government initiative, an agency must have “acceptable” information technology business cases.<sup>75</sup> Similarly, for the Strategic Management of Human Capital initiative, an agency must have succession strategies that “result in a leadership talent pool.” Furthermore, independent evaluation organizations (e.g., GAO or agency IGs) have not conducted verification and validation assessments of the overall agency spotlight scores.<sup>76</sup>

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<sup>73</sup> See, for example, Adam Stone, “Reforms Help HHS Agency Ace Management Scorecard,” *Federal Times*, Sept. 29, 2003, p. 22; Mollie Ziegler, “To Boost Performance, GSA’s Marshall Readies Rollout of Merit Pay,” *Federal Times*, Sept. 29, 2003, p. 30; and Bara Vaida, “Administration Has Hits, Misses in Implementing Management Agenda,” *GovExec.com*, May 9, 2004, available at <http://www.govexec.com/dailyfed/0503/050903td1.htm>, visited Jan. 22, 2004.

<sup>74</sup> OMB made the detailed worksheets available to the public at <http://www.whitehouse.gov/omb/budget/fy2004/pma.html>, visited Jan. 22, 2004. The overall program assessments were published in the President’s budget proposal (U.S. Executive Office of the President, *Budget of the United States Government, Fiscal Year 2004, Performance and Management Assessments*, pp. 9-298). A year later, GAO issued a report on the PART, U.S. General Accounting Office, *Performance Budgeting: Observations on the Use of OMB’s Program Assessment Rating Tool for the Fiscal Year 2004 Budget*, GAO-04-174, Jan. 2004. PART worksheets for the President’s FY2005 budget proposal can be found at <http://www.whitehouse.gov/omb/budget/fy2005/part.html>, visited Feb. 4, 2004.

<sup>75</sup> The OMB evaluation criteria for capital assets may leave some room for subjectivity. See U.S. Office of Management and Budget, *Circular No. A-11, Part 7, “Planning, Budgeting, Acquisition, and Management of Capital Assets,”* July 2003, Section 300.10.

<sup>76</sup> GAO, however, has evaluated some aspects of PMA implementation. For example, GAO took note of incomplete business case information for OMB’s 24 e-government initiatives, concluding that there would be insufficient information to monitor the status of the initiatives (see U.S. General Accounting Office, *Electronic Government: Selection and Implementation of the Office of Management and Budget’s 24 Initiatives*, GAO-03-229, Nov. 2002). OMB may or may not have considered this situation when assigning agency spotlight scores under the PMA. GAO also testified to Congress on the overall PMA (see U.S. General Accounting Office, *Management Reform: Continuing Progress in Implementing Initiatives in the President’s Management Agenda*, GAO-03-556T, Mar. 26, 2003). Furthermore, agency IGs have been involved in doing independent audit and investigations work that OMB considers in discrete aspects of the overall PMA quarterly assessments. For example, IGs have a formal role in assessing agency information security remediation, evaluating agency financial management practices, and sometimes conducting program evaluations upon which OMB relies for input in PART assessments.

Finally, the scope of the PMA does not necessarily cover all aspects of general management laws that outside observers might consider important.<sup>77</sup> For example, the PMA's acquisition-related initiative, Competitive Sourcing, does not include either contract oversight or small business contracting concerns among its criteria, when GAO and outside observers have expressed long-standing concerns over these management issues.<sup>78</sup> Real property management issues are also not explicitly addressed by the PMA.<sup>79</sup>

The PMA is not the first time that the executive branch, nongovernmental organizations,<sup>80</sup> or Congress have endeavored to influence agencies to improve their management practices by measuring compliance with general management laws. For decades, agency IGs and GAO have focused in detail on specific problems within agencies. As described earlier, OMB and GAO also created "high risk" programs to focus on particularly troublesome management areas. Moreover, some (especially in Congress) have undertaken measurement efforts to make assessments about specific general management laws and functional areas that are comparable across agencies. For example, for several years, Representative Stephen Horn issued letter grades to evaluate agency financial management and information security performance. Representative Adam Putnam has continued that practice for information security in evaluating agency compliance with the Federal Information Security Management Act of 2002.<sup>81</sup> Senator Fred Thompson similarly issued grades for agency annual performance reports required by the Government Performance and Results Act.<sup>82</sup>

## **Management Policy Options**

In light of this overview, one could again ask the questions that began this section. What options are available to Congress to ensure that executive branch agencies improve their management practices by complying with the general management laws? Furthermore, if it is possible to measure agency progress (through cross-agency comparisons that are easily understood and that motivate action by political appointees and senior career officials), how could Congress measure

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<sup>77</sup> When the original PMA was released in August 2001, President Bush stated that the initiatives were chosen "to address the most apparent deficiencies where the opportunity to improve is the greatest." See OMB, *The President's Management Agenda*, p. 1.

<sup>78</sup> GAO included contract management on its January 2003 "High-Risk List" for the National Aeronautics and Space Administration (NASA) and the Departments of Defense and Energy. See U.S. General Accounting Office, *High-Risk Series: An Update*. For more on small business contracting, see Jason Peckenpaugh, "OMB, Under Fire, Says Changes in Contract Bundling on the Way," *GovExec.com*, Oct. 17, 2002, available at <http://www.govexec.com/dailyfed/1002/101702p1.htm>, visited Jan. 22, 2004. A hard copy is available from the author's files.

<sup>79</sup> For background, see CRS Report RL32368, *The General Services Administration and Federal Real Property Management: Overview and Current Legislation*, by (name redacted), and U.S. General Accounting Office, *High-Risk Series: Federal Real Property*, GAO-03-122, Jan. 2003.

<sup>80</sup> For evaluations from the Federal Performance Project, see Gregory F. Treverton, "The State of Federal Management," pp. 23-34. The Mercatus Center at George Mason University has issued evaluations and rankings for agency annual performance reports since FY1999; see <http://www.mercatus.org>, visited Jan. 22, 2004.

<sup>81</sup> See <http://reform.house.gov/TIPRC/Hearings/EventSingle.aspx?EventID=652>, visited Jan. 23, 2004, for more information on the most recent information security report card.

<sup>82</sup> See [http://www.senate.gov/~gov\\_affairs/103100\\_press.htm](http://www.senate.gov/~gov_affairs/103100_press.htm), visited Jan. 23, 2004. Some assert that cross-agency comparisons are strong motivators for action. Management writers Tom Peters and Robert Waterman cited Mason Haire's quotation that "what gets measured gets done" and provided examples of how comparative performance information can sometimes galvanize attention and efforts for improvement. See Thomas J. Peters and Robert H. Waterman Jr., *In Search of Excellence*, p. 268.

or monitor the extent to which agencies improve their management practices? Some options include:

- **Maintain current efforts:** Congress could continue to use existing oversight tools and institutions, including GAO and agency IGs, to monitor progress selectively in the executive branch's efforts to improve agency management practices, while preserving executive branch discretion in the scope and intensity of these efforts. This option would arguably involve little additional cost and would not constrain the activities of the executive branch more than currently. Critics argue, however, that Congress does not use these tools effectively or frequently enough.
- **Independent verification and validation:** Congress could ask (or direct) GAO and agency IGs to more systematically verify and validate PMA stoplight scores and the corresponding agency actions-taken, either government-wide or in selected agencies. This option could increase congressional confidence in executive branch measurements and determinations, but would likely involve costs, and could be perceived negatively by the executive branch as micromanagement or redundant with current activities.
- **Transparency:** Congress could secure from OMB or the agencies access to final PMA stoplight worksheets, similar to what OMB currently provides for the PART. This option could further open executive branch management problems to public discussion, but the executive branch might argue that such a requirement would increase costs and managerial workloads.
- **Independent measurement:** Congress could direct GAO or IGs to develop measures, and systematically measure agency progress in improving management practices in a way that could be compared easily across agencies—along functional lines or for specific general management laws.<sup>83</sup> This option could make management improvement measurement more systematic so that it would survive the transition from one presidential Administration to another, but could increase workload and costs for GAO, IGs, and agencies.
- **Measurement through GPRA:** Congress could amend GPRA to require agencies formally and explicitly to address major management problems and high-risk areas in their strategic plans, annual performance plans, and annual performance reports. This might be done, for example, by requiring the establishment of milestones and timelines for improvement, both in addressing the problems and in building agency management capacity (e.g., identifying whether, where, and to what extent management capacity needs to be improved for an agency to make adequate progress).<sup>84</sup> Congress could also require the

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<sup>83</sup> An observer recently called into question GAO's current method for assessing agency and GAO performance, with regard to these types of outcomes. He called GAO "best of the best" in government, but questioned whether GAO's current performance measurement system is adequate for gauging whether management practices in the federal government are getting better or worse: "[M]oney recovery is 'a significant achievement but what does it tell us? ... Is the problem of bad behavior by government organizations getting worse? GAO's reporting falls short of giving us a picture of improvement or deterioration in management practices in government organizations.'" Quoted in Michael Posner, "GAO Chief Worried About Growing Investigations Workload," *GovExec.com*, Sept. 16, 2003, available at <http://www.govexec.com/dailyfed/0903/091603cd2.htm>, visited Jan. 22, 2004. A hard copy is available from the author's files.

<sup>84</sup> In the 105<sup>th</sup> Congress, the House passed legislation (H.R. 2883) that would have, among other things, required an (continued...)



President to address these issues in the government-wide performance plan required by 31 U.S.C. § 1105(a)(28). Depending on congressional preference, this option could make management improvement measurement statutory or more systematic, or both, but could increase workload for agency and OMB personnel.

## Agency “Chief Officers” and Interagency Councils

A fifth and final major theme that runs through the compendium of general management laws is the expanding set of (a) agency “chief officer” positions (and their equivalents) and (b) interagency councils of these officers.

### Chief Officers

Chief officers, who are sometimes also called “CXOs,” include a variety of statutory, senior positions in executive branch agencies that usually head a function (human resources, financial management, procurement, etc.) within each agency. These chief officers now include, in chronological order of establishment by statute:<sup>85</sup>

- inspectors general (established 1978);
- chief financial officers (established 1990);
- chief information officers (CIOs; established 1996);
- chief human capital officers (CHCOs; established 2002); and
- chief acquisition officers (CAOs; established 2003).

On the next page, **Table 1** summarizes key categories of information about each of these officers, including (1) the function(s) with which the officer position is typically associated, (2) the law that established the officer position,<sup>86</sup> (3) a *United States Code* citation for key statutory provisions, (4) a summary of the statutory rules governing appointments for the position, and (5) the person to whom the chief officer reports.

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(...continued)

agency to describe major management problems affecting the agency and the “specific goals, strategies, and performance measures to resolve those problems.” However, no further action occurred on the bill, beyond referral to the Senate Committee on Governmental Affairs. GPRA allows, but does not necessarily require, agencies to establish management-related “general goals” and “performance goals.” By contrast, OMB’s FY2005 guidance for complying with GPRA (OMB *Circular No. A-11*, available at <http://www.whitehouse.gov/omb/circulars/index.html>, visited Jan. 22, 2004) states that agencies may establish management-related general goals, but could also be interpreted as saying that agencies should treat management-related goals and indicators as “means and strategies” rather than performance goals or indicators. Per the circular (Section 51-6 through 51-7), “means” should be described “briefly” and “strategies” should be “highlighted,” which could result in meager attention by agencies in these documents.

<sup>85</sup> Inspector general positions were established at the Department of Health, Education, and Welfare (now Health and Human Services) by P.L. 94-505 (1976), and at the Department of Energy by P.L. 95-91 (1977), before passage of the Inspector General Act of 1978. A chief financial officer position was established at the Department of Veterans Affairs by P.L. 100-527 (1988) before passage of the Chief Financial Officers Act of 1990.

<sup>86</sup> An entry in the compendium discusses each of the listed laws. However, for discussion of the Chief Human Capital Officers Act of 2002, see the compendium’s entry for Title 5, *United States Code*, Chapter 14, in the compendium’s “Human Resources Management and Ethics” section.

As the table shows, some of these officers are presidentially appointed with Senate confirmation (PAS); some are presidentially appointed, and others may be appointed or designated by an agency head. Many positions can be filled with political or career employees, but CAOs and certain CFOs are required to be political (non-career). With regard to reporting relationships, three chief officers are required to report directly to the agency head (IGs, CFOs, and CIOs), but reporting relationships for the other two officers (CHCOs and CAOs) are left to an agency head's discretion.

**Table I. Agency “Chief Officers”**

<b>Position</b>	<b>Function(s)</b>	<b>Enacting Law(s)</b>	<b>U.S. Code Location(s)</b>	<b>Appointment</b>	<b>Reporting Relationship</b>
Inspector General (IG) <sup>a</sup>	Audits; investigations	Inspector General Act of 1978 (92 Stat. 1101; P.L. 95-452); Inspector General Act Amendments of 1988 (102 Stat. 2515; P.L. 100-504)	5 U.S.C. App. 3	President shall appoint in “establishments” with Senate confirmation (PAS) without regard to political affiliation; head of “designated federal entity” shall appoint in accordance with IG Act	Direct report to agency head (or next in rank), who transmits IG report, unaltered but with comments, to Congress
Chief Financial Officer (CFO) <sup>b</sup>	Financial management; accounting; budgeting	Chief Financial Officers Act of 1990 (104 Stat. 2838, at 2842; P.L. 101-576)	31 U.S.C. §§ 901-902	President shall appoint with Senate confirmation (PAS); or President shall designate in consultation with agency head; or head of agency shall appoint (career competitive service or senior executive service employee)	Direct report to agency head; career deputy CFO reports to CFO
Chief Information Officer (CIO) <sup>c</sup>	Information resources management; technology	Clinger-Cohen Act of 1996 (110 Stat. 679, at 684; Division E of National Defense Authorization Act for FY1996, P.L. 104-106)	44 U.S.C. § 3506; 40 U.S.C. § 11315	Head of agency shall designate (career or non-career employee)	Direct report to agency head
Chief Human Capital Officer (CHCO)	Human resources and personnel management	Chief Human Capital Officers Act of 2002 (116 Stat. 2287; Title XIII of Homeland Security Act of 2002, P.L. 107-296)	5 U.S.C. §§ 1401-1402	Head of agency shall appoint or designate (career or non-career employee)	At discretion of agency head
Chief Acquisition Officer (CAO)	Acquisition management	Services Acquisition Reform Act of 2003 (117 Stat. 1663, at 1666; Title XIV of the National Defense Auth. Act for FY2004, P.L. 108-136)	41 U.S.C. § 414	Head of agency shall appoint or designate (non-career employee); 41 U.S.C. § 414(c) also requires a “senior procurement executive” to be designated	At discretion of agency head

a. See also CRS Report RL30795, *General Management Laws: A Compendium*, by nae reacte et al.

b. See also CRS Report RL31965, *Financial Management in the Federal Government: Efforts to Improve Performance*, by nae reacte. The CFO Act also calls for the appointment of deputy CFOs, which are to be career reserved senior executive service (SES) positions.

c. See also CRS Report RL30661, *Government Information Technology Management: Past and Future Issues (The Clinger-Cohen Act)*, by e rete.

A detailed history behind the creation of each of these chief officer positions is not within the scope of this report.<sup>87</sup> However, a common theme behind the creation of the positions was many observers' belief that senior managers within executive branch agencies paid insufficient attention to functional perspectives (e.g., financial management) in managing their agencies. Therefore, many observers believed that each functional perspective needed to be "elevated" to a higher, more salient position within agencies' management ranks, as a means to ensure that long-standing problems would be addressed.<sup>88</sup>

## Interagency Councils

In turn, each group of chief officers was placed into an interagency council by statute or executive order. **Table 2**, on the next page, summarizes key information about each of these councils, including (1) the statutory membership of the council, (2) the chair of the council, (3) a *United States Code* or *Code of Federal Regulations* citation for key statutory provisions or the executive order, (4) the law or executive order that established the council, and (5) notes and the council's website location, if available.<sup>89</sup> As the table shows, four of the councils were established by law, but two (the IG councils) exist through executive order. Memberships of the councils vary considerably, but the Office of Management and Budget's deputy director for management is the chair or vice chair for each, thus enabling the Executive Office of the President to direct, or at least influence, each council's activities.

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<sup>87</sup> For the history behind each of these positions, see the compendium's entries for each position's enacting law and the CRS reports listed at the bottom of the table.

<sup>88</sup> For example, see the General Accounting Office's 1988 analysis recommending the establishment of agency chief financial management officers: U.S. General Accounting Office, *Transition Series: Financial Management Issues*, GAO/OCG-89-7TR, Nov. 1988, pp. 22-23. With regard to establishment of chief acquisition officers, see Jason Peckenpaugh, "Chief Acquisition Officer Proposal Wins Endorsement," *GovExec.com*, June 17, 2003, available at <http://www.govexec.com/dailyfed/0603/061703p1.htm>, visited Feb. 3, 2004 (a hard copy is available from the author's files). Moreover, a similar proliferation of "chief officer" titles had been occurring in the private sector for some time. See, for example, testimony supporting the establishment of CHCO positions that cited the existence of these positions in many large corporations: U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation and Federal Services, *The Federal Workforce: Legislative Proposals for Change*, hearings, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Mar. 18-19, 2002 (Washington: GPO, 2003), p. 52.

<sup>89</sup> For a broader survey on federal interagency councils and coordination efforts, see CRS Report RL31357, *Federal Interagency Coordinative Mechanisms: Varied Types and Numerous Devices*, by (name redacted). Another management-oriented council, the President's Management Council (PMC), is described in CRS Report RS21001, *President's Management Council: Memorandum of Establishment*, by (name redacted).

**Table 2. Interagency Councils**

<b>Council Name(s)</b>	<b>Membership</b>	<b>Chair</b>	<b>U.S. Code or C.F.R.</b>	<b>Statutory or Other Authority</b>	<b>Notes/Website</b>
President's Council on Integrity and Efficiency (PCIE); Executive Council on Integrity and Efficiency (ECIE) <sup>a</sup>	Inspectors general (IGs)—presidentially appointed IGs (PCIE) and other IGs (ECIE); others including Director of Office of Government Ethics, Special Counsel, etc.	OMB deputy director for management (DDM), chairperson of PCIE and ECIE	3 C.F.R., 1992 Comp., pp. 299-302	Executive Order 12805 (President George H.W. Bush), May 11, 1992	The PCIE was initially established by E.O. 12301 (Reagan), March 26, 1981 <a href="http://www.ignet.gov">http://www.ignet.gov</a>
Chief Financial Officers Council (CFO Council) <sup>b</sup>	Agency statutory CFOs appointed under 31 U.S.C. § 901; Fiscal Assistant Secretary of the Treasury; controller of OMB Office of Federal Financial Management (OFFM)	OMB DDM, chairperson	31 U.S.C. § 901 note	Chief Financial Officers Act of 1990 (104 Stat. 2838, at 2848; P.L. 101-576)	Deputy CFOs are included as council members by the CFO Council charter <a href="http://www.cfoc.gov">http://www.cfoc.gov</a>
Chief Information Officer Council (CIO Council) <sup>c</sup>	CIOs from agencies at 31 U.S.C. § 901(b); administrator of OMB's Office of Electronic Government; administrator of OMB's Office of Information and Regulatory Affairs (OIRA); CIOs from military services, others	OMB DDM, chairperson (per statute, administrator of OMB's Office of E-Government leads on DDM's behalf)	44 U.S.C. § 3603	E-Government Act of 2002 (116 Stat. 2899, at 2905; P.L. 107-347)	The CIO Council was initially established by E.O. 13011 (Clinton), July 16, 1996 <a href="http://www.cio.gov">http://www.cio.gov</a>
Chief Human Capital Officer (CHCO)	CHCOs of "Executive departments" and others designated by Director of Office of Personnel Management (OPM)	Director of OPM; OMB DDM is vice chairperson	5 U.S.C. § 1401 note	Chief Human Capital Officers Act of 2002 (116 Stat. 2287, at 2288; P.L. 107-296)	No website; see <a href="http://www.opm.gov/hrmc">http://www.opm.gov/hrmc</a> for OPM memoranda to agency CHCOs
Chief Acquisition Officers Council (CAO)	Administrator for Federal Procurement Policy; agency CAOs; other officials	OMB DDM, chairman	41 U.S.C. § 414b	Services Acquisition Reform Act of 2003 (117 Stat. 1663, at 1668; P.L. 108-136)	No website; see <a href="http://www.fac.gov">http://www.fac.gov</a> for Federal Acquisition Council website

- a. See also CRS Report 98-379, *Statutory Offices of Inspector General: Past and Present*, by nae redacted.
- b. See also CRS Report RL31965, *Financial Management in the Federal Government: Efforts to Improve Performance*, by nae redacted.
- c. See also CRS Report RL30661, *Government Information Technology Management: Past and Future Issues (The Clinger-Cohen Act)*, by e rete.

President Ronald Reagan established the first of these councils, the President's Council on Integrity and Efficiency (PCIE), with a membership of agency IGs through executive order in 1981.<sup>90</sup> The executive order required the PCIE to develop "plans for coordinated government-wide activities which attack fraud and waste in government programs and operations." According to one observer, "the PCIE would quickly become a continuing source of leverage as the IGs fought for resources within their agencies" and sought to become more independent. Furthermore, the PCIE "was roundly endorsed as a tool for both enhancing the lobbying power of the IGs and building the informal networks that support organizational learning."<sup>91</sup> The PCIE established standing committees in areas where IGs found benefits from sharing ideas or cooperating on projects. According to an IG who was asked what he thought about the PCIE in a hearing before the House Committee on Government Operations in 1988:

I think [the PCIE has] been an extraordinarily positive innovation.... [I]t has permitted us to work together, and to come together. We develop our own work plan.... It has provided a mechanism I think is unique in Government.... We're all very close colleagues and friends because of the fact that we can work together; we have a mechanism to go across the Government on fraud, waste, and abuse issues. I can't overstate the value of that particular vehicle of the Council.<sup>92</sup>

However, the PCIE was also criticized in the late 1980s as "a trade union ... for the IGs, ... an opportunity to get together and figure out ways to grow."<sup>93</sup> In 1992, President George H. W. Bush issued a new executive order establishing two IG councils, the PCIE for presidentially appointed IGs and an Executive Council on Integrity and Efficiency (ECIE) for IGs typically appointed by agency heads.<sup>94</sup>

The Chief Financial Officers (CFO) Council, the second council to be created, was established by the Chief Financial Officers Act of 1990. The CFO Act also established the deputy director for management (DDM) position in the President's Office of Management and Budget. The CFO Act gave the DDM chairperson status over the CFO Council, and, moreover, charged the DDM with overall responsibility for establishing "general management policies" in the executive branch for the "functions" listed at 31 U.S.C. § 503(a) and (b), which include financial management, procurement policy, information and statistical policy, property management, human resources management, and program evaluation, among other functions.<sup>95</sup>

According to one commentator, the CFO Council was initially "passive." However, in 1994, council members recommended several actions to energize the council: broaden membership to include career deputy CFO positions that were also established by the CFO Act, elect several council officers, and set the agenda themselves rather than receive it from OMB.<sup>96</sup> OMB

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<sup>90</sup> Executive Order 12301, "Integrity and Efficiency in Federal Programs," Mar. 26, 1981 (3 C.F.R., 1981 Comp., pp. 144-146). This executive order was later replaced with E.O. 12625 of the same name, issued Jan. 27, 1988 (3 C.F.R., 1988 Comp., pp. 550-552).

<sup>91</sup> Paul C. Light, *Monitoring Government*, pp. 104, 187.

<sup>92</sup> Testimony of Richard P. Kusserow, in U.S. Congress, House Committee on Government Operations, *The Inspectors General: A 10-Year Review*, hearing, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess., Aug. 4, 1988, p. 181.

<sup>93</sup> Quoted in Light, *Monitoring Government*, p. 188.

<sup>94</sup> Executive Order 12805, "Integrity and Efficiency in Federal Programs," 3 C.F.R., 1992 Comp., pp. 299-302.

<sup>95</sup> The OMB DDM was made chairperson over the PCIE and ECIE by E.O. 12805 in 1992.

<sup>96</sup> Michael D. Serlin, "Born-Again Financial Management," *Government Executive*, May 1996, pp. 63-64. A dated history and guide to the council's activities are available at <http://www.cfoc.gov>, visited Jan. 22, 2004.

supported the recommendations. Similar to the PCIE, the CFO Council also formed a variety of committees for areas of special emphasis.<sup>97</sup> Finally, the commentator concluded:

[OMB's deputy director for management] has only modest resources at his disposal, but he has tremendous leveraging opportunities through the many interagency councils he chairs. That approach is clearly working with the CFO Council, which can serve as a model for other interagency efforts.<sup>98</sup>

After the CFO Council was established and running, Congress established three additional chief officer councils: the CIO Council in 2002, the CHCO Council in 2002, and the CAO Council in 2003.<sup>99</sup>

## **Advantages and Disadvantages**

The establishment of IGs, CFOs, and CIOs has met with little criticism. On the contrary, long-time observers generally concur that these three chief officer positions (the ones with longest track records) are important and have been successful to greater or lesser extents in bringing focus to their functional perspectives.<sup>100</sup> Nonetheless, as the entries in the compendium mention, observers have identified some difficult challenges that face these officers in their efforts to improve agency management practices, including high turnover among CIOs, potential difficulties with change management as agency financial reporting requirements continue to accelerate, and performance measurement. More broadly, some commentators have argued that, even after these positions were created, agencies continued to suffer from persistent management difficulties when budget pressures and lack of attention from political appointees, who typically serve for short times, diminished agencies' management and analytical capabilities.<sup>101</sup> Further, many management scholars remain wary of functional silos that sometimes see the world from a narrow, functional perspective at the expense of a more integrated general management perspective.

With regard to interagency councils of chief officers, observers have noted periods of more and less effectiveness, as discussed above. However, observers generally agree that interagency councils have been beneficial. Public management scholars, in recent years, have paid increasing attention to the potential benefits of interagency collaboration.<sup>102</sup> As noted in the compendium's

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<sup>97</sup> OMB also established a Budget Officers Advisory Council (BOAC) to foster communication between OMB and agency budget offices. See the Council's Web page on the CFO Council's website at <http://cfoc.gov/groups/boac/bagendas.cfm>, visited Jan. 22, 2004, for agendas and minutes of some of the council's meetings.

<sup>98</sup> Serlin, "Born-Again Financial Management," p. 64.

<sup>99</sup> The CIO Council was originally established by President William Clinton via Executive Order 13011, "Federal Information Technology," 3 C.F.R., 1996 Comp., pp. 202-209. The CAO Council may replace the Federal Acquisition Council, an interagency council of procurement officials established under 41 U.S.C. 405(e)(3).

<sup>100</sup> CHCOs and CAOs are still new to the federal government.

<sup>101</sup> For more information on political appointee turnover, see U.S. General Accounting Office, *Political Appointees: Turnover Rates in Executive Schedule Positions Requiring Senate Confirmation*, GAO/GGD-94-115FS, Apr. 1994. For more on potential effects of budget pressures on agency management and analytical capacities, see U.S. General Accounting Office, *Major Performance and Accountability Challenges: Department of Defense*, GAO-03-098, Jan. 2003, p. 28; U.S. General Accounting Office, *Transition Series: Program Evaluation Issues*, GAO/OCG-93-6TR, Dec. 1992; and Walter Williams, *Mismanaging America: The Rise of the Anti-Analytic Presidency* (Lawrence, KS: University Press of Kansas, 1990).

<sup>102</sup> See, for example, Eugene Bardach, *Getting Agencies to Work Together: The Practice and Theory of Managerial Craftsmanship* (Washington: Brookings Institution, 1998).

entry for Chapter 14 of Title 5, *United States Code*, Congress received testimony from a former OMB official that councils can play an important role in improving federal management:

I think the [Chief Human Capital Officers] Council is important because more and more academic research on how organizations work well suggests that setting up networks of people to share knowledge, share best practices, share information, share approaches, is a very important thing in getting organizations to perform well. So I think having a situation where the different human capital officers in the different parts of the Federal Government meet regularly, get to know each other, talk to each other, can be very valuable.<sup>103</sup>

Within the management literature and in many companies and government agencies, considerable attention has been devoted to this “knowledge management” perspective.<sup>104</sup> However, management theorists are ever-wary of the possible allure of seeing agencies’ problems primarily from the perspective of only one function, which they argue should be avoided if that functional perspective becomes too narrow and runs the risk of doing violence to other functions or the agency overall. In addition, some scholars and practitioners have emphasized instead that the problem of improving federal executive branch management requires a re-thinking of the structure and role of OMB, within the Executive Office of the President.<sup>105</sup>

## Management Policy Options

Congress might consider further questions with regard to chief officers and interagency councils. For example, should executive branch agencies have additional chief officers, or their equivalents?<sup>106</sup> Are there too many chief officers already? Should anything be done to preserve institutional memory and continuity for chief officer positions occupied by political appointees, whose tenures are short? Should all the councils be statutory? How should the councils be

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<sup>103</sup> Testimony of Steven J. Kelman, in U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation and Federal Services, *The Federal Workforce: Legislative Proposals for Change*, p. 57.

<sup>104</sup> For a brief overview of knowledge management from the private sector perspective, see David A. Garvin, *General Management: Processes and Action* (New York: McGraw-Hill, 2002), pp. 420-438.

<sup>105</sup> For example, see (name redacted), “The Need for an Office of Federal Management: Now More Than Ever,” paper presented at the National Academy of Public Administration and Johns Hopkins University “Executive Organization and Management After September 11” Conference, Washington, DC, Oct. 2003 [available from the author’s files]; U.S. Congress, House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, *The Office of Management and Budget: Is OMB Fulfilling its Mission?*, hearing, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., Apr. 7, 2000 (Washington: GPO, 2001); *ibid.*, *To Establish an Office of Management in the Executive Office of the President*, hearing, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., Feb. 4, 1999 (Washington: GPO, 2000); and Paul C. Light, *The Tides of Reform*, pp. 224-228. For an overview of OMB, see CRS Report RS21665, *Office of Management and Budget (OMB): A Brief Overview*, by (name redacted).

<sup>106</sup> In addition to the options outlined in this report, other senior officer positions and interagency councils have been established and proposed. On Feb. 6, 2004, President George W. Bush issued Executive Order 13327, which requires CFO Act agencies and the Department of Homeland Security to establish “senior real property officers”—similar to the positions proposed for establishment by legislation in the 108<sup>th</sup> Congress (H.R. 2548)—and establishes an interagency Federal Real Property Council within OMB (E.O. 13327, “Federal Real Property Asset Management,” 69 *Federal Register* 5897, Feb. 6, 2004). Furthermore, recently, GAO convened a roundtable to discuss the merits of agency “chief operating officers” (COOs): see U.S. General Accounting Office, Comptroller General’s Forum: High-Performing Organizations: Metrics, Means, and Mechanisms for Achieving High Performance in the 21<sup>st</sup> Century Public Management Environment, GAO-04-343SP, Feb. 13, 2004; and U.S. General Accounting Office, *Highlights of a GAO Roundtable: The Chief Operating Officer Concept: A Potential Strategy to Address Federal Governance Challenges*, GAO-03-192SP, Oct. 4, 2002.



funded? Should the councils be made more accountable to Congress through direct appropriations and periodic reporting? These options are briefly outlined below.

- **“Chief security officers”:** GAO has found that agencies may not have adequate plans for ensuring that government services are available in emergencies.<sup>107</sup> In the wake of the war against terrorism and increasing consciousness of physical and information security risks for federal agencies, should Congress establish agency “chief security officers” (CSOs)? According to a 2002 news report, over half of 72 surveyed corporate chief executive officers had designated CSOs.<sup>108</sup> According to the website for *CSO Magazine*, many CSOs deal solely with information technology and report to the company CIO. However, *CSO Magazine’s* website also asserts that, “[i]n a growing number of large enterprises, the CSO handles not only IT but all security responsibilities, such as access to buildings and grounds.”<sup>109</sup> While establishing statutory CSO positions could encourage battles for turf between CIOs and CSOs with regard to information security, creating these positions might bring a more integrated approach to security and risk management at federal agencies. Many federal agencies, however, may already have established systems and processes to address these issues. In addition, in view of the increasing number of chief officers, some observers might argue that requiring an additional type of chief officer for agencies would be excessive.
- **“Chief program evaluation officers”:** Many observers have asserted that agencies frequently do not adequately evaluate the performance or results of their programs—or integrate evaluation efforts across agency boundaries—possibly due to lack of capacity, management attention and commitment, or resources.<sup>110</sup> Congress could establish “chief program evaluation officer” (CPEO) positions in major agencies to bring more attention to this function if it deemed these to be serious problems. Because programs can differ considerably and the field of program evaluation is highly interdisciplinary, evaluation methods differ from program to program.<sup>111</sup> Proponents might argue that establishing these chief officer positions could create a “seat at the table” for program evaluation in

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<sup>107</sup> GAO cites terrorist attacks, severe weather, and building-level emergencies as examples of such emergencies. See U.S. General Accounting Office, *Continuity of Operations: Improved Planning Needed to Ensure Delivery of Essential Government Services*, GAO-04-160, Feb. 2004. For more information on executive branch continuity of operations and security management, see CRS Report RL31857, *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress*, by (name redacted), and CRS Report RL31739, *Federal Agency Emergency Preparedness and Dismissal of Employees*, by (name redacted).

<sup>108</sup> See Cynthia Flash, “Rise of the Chief Security Officer,” *InternetNews.com*, available at [http://www.internetnews.com/ent-news/article.php/7\\_997111](http://www.internetnews.com/ent-news/article.php/7_997111), visited Jan. 22, 2004. A hard copy is available from the author’s files.

<sup>109</sup> See [http://www.csoonline.com/research/executive/cso\\_role.html](http://www.csoonline.com/research/executive/cso_role.html), visited Jan. 22, 2004, at CSOonline.com’s website. A hard copy is available from the author’s files.

<sup>110</sup> For example, see the General Accounting Office testimony in U.S. Congress, House Committee on Government Reform, Subcommittee on Government Efficiency and Financial Management, *Performance, Results, and Budget Decisions*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., Apr. 1, 2003, pp. 30-31. For historical context, see U.S. General Accounting Office, *Transition Series: Program Evaluation Issues*, and Walter Williams, *Mismanaging America*.

<sup>111</sup> The Government Performance and Results Act defines *program evaluation* as “an assessment, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve intended results” (107 Stat. 288). More information about the program evaluation field can be found at the website of the American Evaluation Association, available at <http://www.eval.org>, visited Jan. 22, 2004.

agency senior management teams, helping agency efforts to improve performance or coordinate programs with overlapping missions. However, critics might argue that establishing another type of chief officer would be excessive.

- **Chief officer appointments:** If Congress decided to alter existing chief officer positions or establish new ones, it would have a number of options regarding appointments. **Table 1** shows how the existing chief officers are allowed (or required) to be appointed positions under current law. Some positions are required to be political; others are required to be career, and some are left to an agency head's discretion. In recent years, there has been discussion of these differences. In congressional testimony regarding the proposed CHCO positions, witnesses came down on both sides of the question.<sup>112</sup> Political appointees can get a "seat at the table" with the agency's leadership to ensure that a given functional perspective is considered. However, career officials can provide continuity and institutional memory from one presidential administration to another, while by contrast, political appointees turn over frequently. Similar arguments were voiced with regard to CAOs.<sup>113</sup> In enacting the CFO Act, Congress reflected both of these perspectives; the CFOs were political, while the deputies were career.
- **Chief officer reporting relationships:** As illustrated by **Table 1**, CFO and CIOs, by law, must report directly to the agency head, while IGs must report to the agency head or to the official "next in rank." However, the reporting relationships of CHCOs and CAOs are left to each agency head's discretion. Are these reporting relationships still appropriate, in view of agency management needs and progress (or lack thereof) in addressing major management problems? One argument made for a direct reporting relationship to the agency head is to ensure that the chief officer (who brings his or her functional perspective) gets personal access to the agency's senior leadership. However, agency heads frequently have a large number of people reporting directly to them (i.e., "direct reports"). An additional direct report could cause too large a span of control for the heads of some executive branch agencies.
- **The IG councils:** With regard to interagency councils, a potentially important option for Congress to consider is whether to make the IG councils statutory by codifying the mandates of the PCIE and ECIE into law, versus the status quo of allowing the two councils to continue as organizations established by executive order. As summarized in testimony before the Committee on Government Reform's Subcommittee on Government Efficiency and Financial Management, the vice chair of the PCIE stated his belief that codification would require "modest appropriations," but would facilitate better training, strengthen the relationship between IGs and Congress, and improve coordination between IG offices in the federal government.<sup>114</sup> Others might argue, however, that this

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<sup>112</sup> U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation and Federal Services, *The Federal Workforce: Legislative Proposals for Change*, pp. 55-58.

<sup>113</sup> See Jason Peckenpaugh, "Chief Acquisition Officer Proposal Wins Endorsement."

<sup>114</sup> Testimony of Gaston L. Gianni Jr., U.S. Congress, House Committee on Government Reform, Subcommittee on Government Efficiency and Financial Management, *25<sup>th</sup> Anniversary of the Inspector General Act—Where Do We Go From Here?*, hearing, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess. Oct. 8, 2003. For witnesses' prepared testimony, see <http://reform.house.gov/GEFM/Hearings/EventSingle.aspx?EventID=457>, visited Jan. 22, 2004.

change would reduce flexibility or control by the President. More on this subject is discussed in the compendium's profile of the Inspector General Act of 1978.

- **Funding for interagency councils:** Congress has several alternatives for providing funding for the different interagency councils. The IG councils (the PCIE and ECIE) self-finance their common activities via memorandum of understanding (MOU) instead of by appropriations or interagency transfers.<sup>115</sup> For example, the IG offices sign an MOU under which one IG office (e.g., the office for the Department of Health and Human Services) pays for the councils' website from that office's regular appropriation, while another two IG offices pay for the publication of the councils' annual report to the President. By contrast, operations for the CHCO Council are funded out of the budget of the Office of Personnel Management. The other three councils (CFO, CIO, and Procurement Executives Council, which may become the newly codified CAO) have been funded in recent years through interagency transfer or reimbursement under Title VI general provisions in the Transportation-Treasury appropriations bill (e.g., \$17 million for FY2004; see P.L. 108-199, Division F, Title VI, Section 627; 118 Stat. 356). These transfers are under the control of OMB, but are administered after transfer by the General Services Administration. Congress could maintain the status quo for these councils. It also might consider making a separate appropriation for each council singly, or all combined. This option could take away some discretion from the President. On the other hand, it could also give Congress additional control and leverage over the activities of these councils, and potentially improve institutional memory and continuity from one presidential administration to the next.<sup>116</sup>
- **Council reporting and strategic planning:** Congress could consider altering the reporting and strategic planning requirements for the interagency councils. Currently, some councils have no reporting or strategic planning requirements. Others require only a report to the President or to Congress, but no articulation of strategic plans. For example, the executive order governing the IG councils requires that the PCIE and ECIE report on their activities only to the President.<sup>117</sup> The CFO, CIO, and CAO Councils currently do not have statutory requirements in their authorizing legislation to report to Congress or to prepare strategic plans.<sup>118</sup> They could be required to submit plans or reports to the President or to

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<sup>115</sup> OMB is also required "as may be necessary" to provide administrative support for the PCIE and ECIE. See Executive Order 12805, Section 5(a).

<sup>116</sup> For press coverage of a discussion about additional advantages and disadvantages of Congress's directly funding the interagency councils, see Kellie Lunney, "Feds Call on Bush to Support Interagency Councils," *GovExec.com*, Jan. 29, 2001, available at <http://www.govexec.com/dailyfed/0101/012901m1.htm>, visited Feb. 2, 2004. A hard copy is available from the author's files.

<sup>117</sup> Executive Order 12805, Section 4(c). For the IG councils' most recent report to the President, see <http://www.ignet.gov/randp/rpts1.html>, visited Jan. 22, 2004. The PCIE and ECIE also developed a "strategic framework" in May 2001 to guide their activities for the next three years. See President's Council on Integrity and Efficiency and Executive Council on Integrity and Efficiency, *A Strategic Framework*, May 29, 2001, available at <http://www.ignet.gov/randp/sf0501.pdf>, visited Jan. 22, 2004.

<sup>118</sup> The CHCO Council is the only council with a congressional reporting requirement (a retrospective "annual report") in its authorizing statute. Under OMB's direction, the CIO Council reportedly participates in producing a plan. The Paperwork Reduction Act requires OMB, in consultation with several other agencies, to develop and maintain a government-wide strategic information resources management (IRM) plan (44 U.S.C. § 3503(a)(3)). In 2002, GAO reported that, since 1998, OMB's Office of Information and Regulatory Affairs (OIRA) responded to the requirement (continued...)

Congress.<sup>119</sup> Congress could also consider requiring OMB to submit an overall plan for how it will lead the interagency chief officer councils, as part of the government-wide performance plan required by GPRA. Given the extent to which OMB and the President sometimes use the interagency councils, planning and reporting requirements might help increase transparency and make the interagency councils more accountable to Congress.<sup>120</sup> Planning and reporting requirements might take discretion away from the President, however, and could increase costs for the councils or OMB.

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with a plan jointly published with the CIO Council. However, GAO found that the joint OIRA/CIO Council plan “falls short” and “is not an effective and comprehensive governmentwide plan.” See U.S. General Accounting Office, *Information Resources Management: Comprehensive Strategic Plan Needed to Address Mounting Challenges*, GAO-02-292, Feb. 2002, p. 9.

<sup>119</sup> For example, Congress could consider requiring the councils to submit strategic plans, annual performance plans, and annual program performance reports under the Government Performance and Results Act, or enact provisions tailored for specific councils.

<sup>120</sup> For example, OMB is using the CIO Council to help accomplish the President’s Expanded Electronic Government initiative of the PMA, as described in OMB’s April 2003 *E-Government Strategy*, available at [http://www.cio.gov/documents/2003egov\\_strat.pdf](http://www.cio.gov/documents/2003egov_strat.pdf), listed on the CIO Council website <http://www.cio.gov> under “Documents,” “OMB Documents and Guidance,” and “OMB E-Government” menus. All websites visited Feb. 4, 2004. Reporting requirements for the CIO Council might provide additional insight and an institutional check on executive branch discretion.

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