



# Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress

(name redacted)

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## Summary

On January 13, 2012, President Barack Obama announced that he would ask Congress to reinstate so-called presidential reorganization authority, and his Administration conveyed a legislative proposal that would renew this authority to Congress on February 16, 2012. Bills based on the proposed language were subsequently introduced in the Senate (S. 2129) and the House (H.R. 4409) during the 112<sup>th</sup> Congress.

Should this authority be granted, the President indicated that his first submitted plan would propose consolidation of six business and trade-related agencies into one: U.S. Department of Commerce's core business and trade functions, the Export Import Bank, the Overseas Private Investment Corporation, the Small Business Administration, the U.S. Trade and Development Agency, and the Office of the U.S. Trade Representative. It appears that this plan would also involve the relocation of some subunits and functions that are not directly linked with business and trade. The Administration has stated, for example, that the National Oceanic and Atmospheric Administration would be moved to the Department of the Interior.

Between 1932 and 1984, Congress periodically delegated authority to the President that allowed him to develop plans for reorganization of portions of the federal government and to present those plans to Congress for consideration under special parliamentary procedures. Under these procedures, the President's plan would go into effect unless one or both houses of Congress passed a resolution rejecting the plan, a process referred to as a "legislative veto." This process favored the President's plan because, absent congressional action, the default was for the plan to go into effect. In contrast to the regular legislative process, the burden of action under these versions of presidential reorganization authority rested with opponents rather than supporters of the plan. In 1984, the mechanism was amended to require Congress to act affirmatively in order for a plan to go into force. This arguably shifted the balance of power to Congress. The authority expired at the end of 1984 and therefore has not been available to the President since then.

Presidents used this presidential reorganization authority regularly, submitting more than 100 plans between 1932 and 1984. Presidents used the authority for a variety of purposes, from relatively minor reorganizations within individual agencies to the creation of large new organizations, including the Department of Health, Education, and Welfare; the Environmental Protection Agency; and the Federal Emergency Management Agency. The terms of the authority delegated to the President varied greatly over the century. During some periods, Congress delegated relatively broad authority to the President, while during others the authority was more circumscribed.

Congress might approach the question of whether, and how, to delegate this authority to the President in various ways. First, Congress could simply elect not to renew the authority, either by not acting on the President's proposal or by actively rejecting it. In the event that Congress elects to renew presidential reorganization authority, it might do so in a number of different ways. For example, it could renew the authority without modifications, with the requested changes to the scope of the authority, with a different set of changes to the scope of the authority, with changes to the nature of the expedited congressional procedures, or with some combination of these.

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## Introduction

On January 13, 2012, President Barack Obama announced that he would ask Congress to reinstate so-called presidential reorganization authority,<sup>1</sup> and a legislative proposal that would renew this authority was conveyed to Congress on February 16, 2012.<sup>2</sup> Bills based on the proposed language were subsequently introduced during the 112<sup>th</sup> Congress in the Senate (S. 2129) and the House (H.R. 4409). Similar authority was available to Presidents periodically between 1932 and 1984. It allowed the President to present plans to reorganize executive branch departments and agencies to Congress that would be considered under an expedited parliamentary process.<sup>3</sup>

Should this authority be reinstated, the President indicated that his first submitted plan would propose consolidation of six business and trade-related agencies into one: U.S. Department of Commerce's core business and trade functions, the Export Import Bank, the Overseas Private Investment Corporation, the Small Business Administration, the U.S. Trade and Development Agency, and the Office of the U.S. Trade Representative.<sup>4</sup>

This report summarizes the repeated renewal and evolution of presidential reorganization authority from 1932 to 1984, as well as subsequent unsuccessful efforts to renew it since then. The report then discusses President Obama's request in the context of this background. Finally, the report provides analysis of the possible options for congressional consideration relative to this legislation.

## Evolution of the President's Reorganization Authority

Between 1932 and 1981, Congress periodically delegated authority to the President that allowed him to develop plans for reorganization of portions of the federal government and to present those plans to Congress for consideration under special expedited parliamentary procedures.<sup>5</sup> Under these procedures, the President's plan would go into effect unless one or both houses of Congress passed a resolution rejecting the plan, a process referred to as a "legislative veto." This process

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<sup>1</sup> U.S. White House, Office of the Press Secretary, "President Obama Announces Proposal to Reform, Reorganize, and Consolidate Government," January 13, 2012, at <http://www.whitehouse.gov/the-press-office/2012/01/13/president-obama-announces-proposal-reform-reorganize-and-consolidate-gov>.

<sup>2</sup> The legislative proposal was presented in attachments to letters from Acting Director of the Office of Management and Budget Jeffrey D. Zients to Speaker of the House of Representatives John Boehner and President of the Senate Joseph R. Biden. A copy of the letter to Speaker Boehner as well as the accompanying legislative proposal are available at <http://www.whitehouse.gov/sites/default/files/omb/legislative/letters/reorg-authority-letter-and-legislation-to-speaker-of-the-house.pdf>.

<sup>3</sup> The most recent version of the authority, now expired, is codified at 5 U.S.C. §§901 et seq.

<sup>4</sup> For more detailed information on this proposed reorganization, see CRS Report R41841, *Executive Branch Reorganization Initiatives During the 112<sup>th</sup> Congress: A Brief Overview*, by (name redacted); and CRS Report R42555, *Trade Reorganization: Overview and Issues for Congress*, by Shayerah Ilias.

<sup>5</sup> Congress has established expedited parliamentary procedures in a number of instances for a variety of purposes. These include, for example, those provided for in the War Powers Act and the Trade Act of 1974. See CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted Into Law*, by (name redacted).

favored the President's plan because, absent congressional action, the default was for the plan to go into effect. In contrast to the regular legislative process, the burden of action under these versions of presidential reorganization authority rested with opponents rather than supporters of the plan. In 1984, the mechanism was amended to require Congress to act affirmatively in order for a plan to go into force.<sup>6</sup> This arguably shifted the balance of power to Congress. The authority expired at the end of 1984 and subsequently has not been available to the President.<sup>7</sup>

Presidents used this presidential reorganization authority regularly, submitting more than 100 plans between 1932 and 1984. Presidents used the authority for a variety of purposes, from relatively minor reorganizations within individual agencies to the creation of large new organizations, including the Department of Health, Education, and Welfare (HEW),<sup>8</sup> the Environmental Protection Agency,<sup>9</sup> and the Federal Emergency Management Agency (FEMA).<sup>10</sup> The terms of the authority delegated to the President varied greatly over the century. During some periods, Congress delegated relatively broad authority to the President, while during others the authority was more circumscribed.

As noted above, the reorganization authority was refined and reauthorized on a number of occasions between 1932 and 1984.<sup>11</sup> On some occasions, such as 1939, 1945, and 1949, Congress enacted a completely new statute. On other occasions, modifications were made by amendment of the preceding reorganization authority. As a result of these modifications, the statute currently laid out in the *U.S. Code* is structured very differently from the early statutes of 1932 and 1933. Nonetheless, all of the elements of the current statute are represented, though perhaps in embryonic form, in the authority's earliest incarnation.

Each of the elements of the reorganization authority is integral to its overall scope and effect, but several of these more strongly influence the relative authority of the President and Congress, and the resulting balance of power between the two branches. These elements are the *reorganization plan contents*, the *limitations on power*, and the *expedited parliamentary procedures*. The provisions that define the potential scope of reorganization plan content, when combined with the provisions that further limit or prohibit certain reorganization plan content, set the boundaries of a reorganization that the President can propose under this special authority. The provisions that specify the parliamentary procedures to be used define the role of Congress in facilitating or impeding the enactment of a submitted plan. These procedures also define the requirements of the

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<sup>6</sup> See *INS v. Chadha*, 462 U.S. 919 (1983), discussed at footnote 12.

<sup>7</sup> The provisions of the statute as last authorized are listed at 5 U.S.C. §§901-912. The time limit on the authority is set out in §905(b), which states, "A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress ... on or before December 31, 1984."

<sup>8</sup> 5 U.S.C. app., Reorganization Plan No. 1 of 1953. In large part, this reorganization elevated an existing independent agency, the Federal Security Agency, to department status. In 1979, the education functions of HEW provided the foundation for the newly created Department of Education, and HEW was renamed the Department of Health and Human Services (HHS). P.L. 96-88; 93 Stat. 668.

<sup>9</sup> 5 U.S.C. app., Reorganization Plan No. 3 of 1970.

<sup>10</sup> 5 U.S.C. app., Reorganization Plan No. 3 of 1978. In March 2003, under the provisions of the Homeland Security Act of 2002 (P.L. 107-296; 116 Stat. 2135), FEMA became part of the new Department of Homeland Security.

<sup>11</sup> These occasions included the Economy Act of 1932 (47 Stat. 413); the Economy Act of 1933 (47 Stat. 1517); the Reorganization Act of 1939 (53 Stat. 561); the Reorganization Act of 1945 (59 Stat. 613); the Reorganization Act of 1949 (63 Stat. 203), including as amended in 1953 (67 Stat. 4), 1955 (69 Stat. 14), 1957 (71 Stat. 611), 1961 (75 Stat. 41), 1964 (78 Stat. 240), 1965 (79 Stat. 135), 1969 (83 Stat. 6), and 1971 (85 Stat. 574); and the Reorganization Act of 1977 (91 Stat. 29), including as amended in 1980 (94 Stat. 329) and 1984 (98 Stat. 3192).

President during this process. Such requirements may be seen by the Administration as easing or making more difficult a plan's enactment and implementation.

## History of Reorganization Authority

The roots of presidential reorganization authority can be traced to the Herbert Hoover Administration (1929-1933), and the statutory framework for this authority evolved throughout the middle of the 20<sup>th</sup> century. Congress reshaped the contours of the authority in response to experience and political context. During successive renewals of the authority, Congress sometimes narrowed, and other times expanded, the scope of potential reorganization activities. In addition, the expedited procedures were altered in such a way that it became easier or harder to defeat one of the President's plans, though always easier than under the regular procedures. In general, the trend from the 1940s onward was to narrow the scope of potential activities and to make it easier for Congress to defeat a plan.

The presidential reorganization authority was not continuous from 1932 to 1984; it lapsed for periods of less than two years on a number of occasions, and for longer periods from 1935 to 1939, from 1941 through 1945, from 1973 to 1977, and from early 1981 to late 1984. As discussed below, the type of expedited parliamentary procedure employed under the reorganization authority—a “legislative veto”—was found to be unconstitutional in 1983.<sup>12</sup> The authority was modified to address this issue, and it was extended for approximately two months at the end of 1984. However, this version of reorganization authority was never used; the last plan was submitted in 1980, by President Jimmy Carter. The 1984 authority expired and therefore is not available to the President, but its provisions are listed at 5 U.S.C. Sections 901 et seq.<sup>13</sup> **Table 1** provides summary information, by President, regarding the various versions of this authority.

The following sections summarize the development of this statutory mechanism. The text includes brief historical context, a summary of Presidents' requests for the authority and Congress's response, highlights of the changes to the authority over time, and a summary of the plans that were submitted under the authority. Congressional consideration of grants of expedited reorganization authority to the President often included debates over the constitutionality of the legislative veto mechanism that was, until 1984, a key component. Inasmuch as this set of procedures was found to be unconstitutional and has no longer been under consideration in the legislative proposals of recent years, these previous constitutional concerns are not described here. CRS specialists conducted a thorough research of the evolution of these procedures in 1980, however, and the resulting studies were published in a committee print.<sup>14</sup>

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<sup>12</sup> As noted, expedited parliamentary procedures under earlier versions of reorganization authority permitted Congress to approve or disapprove a proposed reorganization plan in whole or in part by adopting a simple or concurrent resolution. In contrast, the 1984 version of reorganization authority established the legislative vehicle to be considered by Congress as a joint resolution of approval, a lawmaking form of legislation requiring the President's signature. This change was made in response to the 1983 Supreme Court decision in *Immigration and Naturalization Service v. Chadha* (462 U.S. 919 (1983)) (invalidating the legislative veto and holding that legislative power must be “exercised in accord with a single, finely wrought and exhaustively considered procedure”).

<sup>13</sup> The time limit on the authority is set out in 5 U.S.C. §905(b), which states, “A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress ... on or before December 31, 1984.”

<sup>14</sup> For a thorough discussion of these debates in the context of reorganization authority by former CRS Specialists in American National Government (name redacted) and (name redacted), see U.S. Congress, House Committee on Rules, Subcommittee on Rules of the House, *Studies on the Legislative Veto*, committee print, prepared by the Congressional Research Service, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 1980 (Washington: GPO, 1980), pp. 164-247.

**Table I. Summary Information Regarding Reorganization Authority, by President**

President	Statute	Congresses	Approximate Duration	Plans Submitted	Plans Effective	Plans Rejected
Hoover	Economy Act of 1932 (47 Stat. 413)	72 <sup>nd</sup> (1931-1932)	No expiration date; amended with expiration date after eight months	11 (executive orders)	0	11
Roosevelt	Economy Act amendments of 1933 (47 Stat. 1517; 48 Stat. 8)	73 <sup>rd</sup> (1933-1934)	Two years	Not subject to congressional review		
	Reorganization Act of 1939 (53 Stat. 561)	76 <sup>th</sup> (1939-1940)	Two years	5	5	0
Truman	Reorganization Act of 1945 (59 Stat. 613)	79 <sup>th</sup> (1945-1946) 80 <sup>th</sup> (1947-1948)	Two years	7	4	3
	Reorganization Act of 1949	81 <sup>st</sup> (1949-1950) 82 <sup>nd</sup> (1951-1952)	Four years	41	30	11
Eisenhower	Amendments of 1953 (67 Stat. 4)	83 <sup>rd</sup> (1953-1954)	Two years	12	12	0
	Amendments of 1955 (69 Stat. 14)	84 <sup>th</sup> (1955-1956)	Two years	2	0	2
	Amendments of 1957 (71 Stat. 611)	85 <sup>th</sup> (1957-1958) 86 <sup>th</sup> (1959-1960)	Two years	3	2	1
Kennedy	Amendments of 1961 (75 Stat. 41)	87 <sup>th</sup> (1961-1962) 88 <sup>th</sup> (1963-1964)	Two years	10	6	4
Johnson	Amendments of 1964 (78 Stat. 240)	88 <sup>th</sup> (1963-1964) 89 <sup>th</sup> (1965-1966)	One year	5	5	0
	Amendments of 1965 (79 Stat. 135)	89 <sup>th</sup> (1965-1966) 90 <sup>th</sup> (1967-1968)	Three and a half years	12	11	1
Nixon	Amendments of 1969 (83 Stat. 6)	91 <sup>st</sup> (1969-1970) 92 <sup>nd</sup> (1971-1972)	Two years	6	6	0
	Amendments of 1971 (85 Stat. 574)	92 <sup>nd</sup> (1971-1972) 93 <sup>rd</sup> (1973-1974)	One and a half years	2	2	0
Carter	Reorganization Act of 1977 (91 Stat. 29)	95 <sup>th</sup> (1977-1978) 96 <sup>th</sup> (1979-1980)	Three years	10	10	0
	Amendments of 1980 (94 Stat. 329)	96 <sup>th</sup> (1979-1980)	One year	0	0	0
Reagan	Amendments of 1984 (98 Stat. 614)	98 <sup>th</sup> (1983-1984)	Two months	0	0	0

**Source:** Table created by CRS using data from *Presidential Reorganization Authority*.

## **The Economy Act of 1932 (Hoover)**

The earliest antecedent of the reorganization authority that is currently in the *U.S. Code* dates to 1932.<sup>15</sup> While Secretary of Commerce, Herbert Hoover had been a proponent of the idea that Congress should delegate to the President authority to propose reorganizations of the executive branch for the purposes of improved economy and efficiency, subject to some form of congressional disapproval.<sup>16</sup> He continued to advance this view during his presidency. In 1932, Hoover requested this power, and, a few months prior to the 1932 presidential election, Congress provided the first version of the President's reorganization authority.<sup>17</sup>

The statute was enacted on June 30, 1932, during the first session of the 72<sup>nd</sup> Congress (1931-1932). Under the act, the President was authorized to direct, by executive order, specified government reorganization actions. Each such executive order was subject to congressional review, and could be nullified by a resolution of disapproval, within 60 days, by either chamber. In the event of an adjournment of Congress within the 60-day period, the order could not become effective until 60 days following reconvening.

The first session of the 72<sup>nd</sup> Congress adjourned on July 16, 1932, and it did not reconvene until December 5, 1932. The period between enactment and adjournment—16 days—seemingly would have been of insufficient duration to allow an executive order to go into effect under the congressional review and disapproval provision of the statute, even if it had been submitted upon enactment. Perhaps for this reason, President Hoover did not submit executive orders under the act to Congress until December 9, 1932.<sup>18</sup> By this time, the President had been defeated in his bid for reelection, and he was completing his term in office.

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<sup>15</sup> On at least one occasion prior to 1932, Congress had delegated limited reorganization authority to the President. An act of May 20, 1918, known as the "Overman Act" authorized the President "to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, office, or officer." (40 Stat. 556). Unlike the permanent organizational changes provided for under the other authorities discussed in this report, the changes under the Overman Act were temporary and automatically would be undone. The act remained in force until six months after the end of World War I. At that time, "all executive or administrative agencies, departments, commissions, bureaus, offices, or officers [were to] exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided." (40 Stat. 557). In other words, the status quo was to be restored at the war's end. Similar authority was provided to the President during World War II, as discussed below.

<sup>16</sup> Speaking at a 1924 hearing, Secretary Hoover recommended that Congress give the President authority, under specified limits, to reorganize executive departments and agencies. He stated,

Congress should give authority to the President to make such changes within the limits of certain defined principles as may be recommended to him by an independent commission to be created by Congress and clothed with these authorities. The broad principle of grouping by major purpose could be laid down by legislation and the major purposes of the departments could be likewise defined. The groups according to major purpose could be enumerated by legislation and the groups assigned to departments. The details of the transfer of individual bureaus and functions to meet these principles could be left to the President, upon the recommendation of such a commission.

U.S. Congress, Joint Committee on the Reorganization of the Administrative Branch of the Government, *Reorganization of Executive Departments*, Hearings, 68<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1924), p. 353. On Hoover's government improvement views generally, see Joan Hoff Wilson, *Herbert Hoover: Forgotten Progressive* (Boston: Little, Brown, 1975).

<sup>17</sup> The Economy Act of 1932 (47 Stat. 413) was Part II of the Legislative Appropriations Act for FY1933.

<sup>18</sup> President Hoover disparaged this feature of the legislation at the time he signed it into law, stating, "[T]he bill is so framed as to render abolition or consolidation of the most consequential commissions and bureaus impossible of (continued...)



The act established definitions for federal government agencies that reflected the distinctions made among various entities at that time. It specified that, for purposes of the statute an “executive agency” was a “commission, board, bureau, division, service, or office in the executive branch,” with executive departments excluded. An “independent executive agency,” by contrast, was an “executive agency not under the jurisdiction or control of any executive department,” that is, any freestanding entity that was not a department.<sup>19</sup> Congress continued to distinguish between departments, subunits of departments, and other freestanding federal organizations in later versions of the statute.

Under the act, an executive order could

- transfer all or part of an independent agency and/or its functions to a department or agency;
- transfer all or part of an agency from one department to another;
- consolidate or redistribute functions within a department or in its component agencies; or
- specify the name and functions of a consolidated entity, as well as the title, powers, and duties of its head.<sup>20</sup>

The use of these powers was to be consistent with the purposes identified by the statute: that is, to group, coordinate, and consolidate agencies according to major purpose; to reduce the number of agencies by combining those with similar functions; to eliminate overlap and duplication of effort; and to “segregate regulatory agencies and functions from those of an administrative and executive character.”<sup>21</sup>

Within these broad parameters, limitations were placed on the range of actions the President could include in an executive order. The statute provided that “Whenever . . . the President concludes that any executive department or agency created by statute should be abolished and the functions thereof transferred to another executive department or agency or eliminated entirely the authority granted in this title shall not apply.”<sup>22</sup> In other words, an executive order under this authority could not abolish an entire federal organization or eliminate all of its functions.

During the remainder of his term, President Hoover issued 11 executive orders under the authority of the act.<sup>23</sup> The orders directed the consolidation, coordination, and grouping of

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(...continued)

consummation until some months after the next session of Congress.” U.S. President (Hoover), “Statement About Signing the ‘Economy Act’,” *Public Papers of the Presidents of the United States: Herbert Hoover, 1932-33* (Washington: GPO, 1977), p. 283.

<sup>19</sup> 47 Stat. 413.

<sup>20</sup> 47 Stat. 413.

<sup>21</sup> Ibid.

<sup>22</sup> 47 Stat. 414.

<sup>23</sup> These executive orders, together with related presidential messages, are printed in U.S. Congress, House Committee on Expenditures in the Executive Departments, *Message from the President of the United States Transmitting a Message to Group, Coordinate, and Consolidate Executive and Administrative Agencies of the Government, as Nearly as Maybe, According to Major Purposes, 72<sup>nd</sup> Cong., 2<sup>nd</sup> sess., December 9, 1932, H.Doc. 493* (Washington: GPO, 1932).

specified agencies and activities according to the major functions and purposes.<sup>24</sup> As previously noted, the act included a mechanism for disapproval by a resolution of a single house of Congress, also known as a “one-house legislative veto.” Following four days of hearings in late December 1932,<sup>25</sup> the House Committee on Expenditures in the Executive Departments recommended that the House disapprove all of the executive orders.<sup>26</sup> Among other reasons, the committee expressed reservations about binding the incoming President with the initiatives of the outgoing President. The committee’s report, published on January 9, 1933, noted that the testimony of the President’s Director of the Budget appeared to endorse this view:

At the conclusion of his testimony Colonel [J. Clawson] Roop, in reply to a question of the chairman of the committee, expressed his personal opinion that it would be unwise to make the proposed changes on the eve of the inauguration of a new President. This view, coming as it did from the Director of the Budget, the official who was designated by the President to prepare the information upon which the orders were based, naturally had great weight with members of the committee.<sup>27</sup>

The House disapproved all 11 of Hoover’s orders on January 19, 1933, thus preventing their implementation.<sup>28</sup>

### **The Amendments of 1933 (Roosevelt)**

On January 3, 1933, President Hoover spoke out against opposition to his reorganization orders, and he urged Congress to either allow them to take effect, or to provide an enhanced authority to the next President:

The same opposition has now arisen which has defeated every effort at reorganization for 25 years.... The proposal to transfer the job of reorganization to my successor is simply a device by which it is hoped that these proposals can be defeated.... Any real reorganization sensibly carried out will sooner or later embrace the very orders I have issued.... Either Congress must keep its hands off now, or they must give to my successor much larger powers of independent action than given to any President if there is ever to be reorganization. And that authority to be effective should be free of the limitations in the law passed last year which gives Congress the veto power, which prevents the abolition of functions, which prevents the rearrangement of major departments. Otherwise, it will, as is now being demonstrated in the present law, again be make-believe.<sup>29</sup>

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<sup>24</sup> For example, Executive Order 5962 directed the transfer of the following entities, among others, to the Department of the Interior: the Office of the Supervising Architect, from the Department of the Treasury; nonmilitary activities then being administered by the Chief of Engineers of the U.S. Army; the Bureau of Public Roads from the Department of Agriculture; the Office of Public Buildings and Public Parks, then an independent establishment; and the Government Fuel Yards from the Bureau of Mines in the Department of Commerce. *Ibid.*, pp. 9-21.

<sup>25</sup> U.S. Congress, House Committee on Expenditures in the Executive Departments, *President’s Message on Consolidation of Government Agencies*, Hearings, 72<sup>nd</sup> Cong., 2<sup>nd</sup> sess., December 9, 1932 (Washington: GPO, 1932).

<sup>26</sup> U.S. Congress, House Committee on Expenditures in the Executive Departments, *Executive Orders Grouping, Coordinating, and Consolidating Certain Executive and Administrative Agencies of the Government*, H. Rpt. 1833 to accompany H. Res. 334, 72<sup>nd</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1933).

<sup>27</sup> *Ibid.*, p. 2.

<sup>28</sup> “Grouping, Consolidation, and Coordinating Executive and Administrative Agencies of the Government,” proceedings in the House, *Congressional Record*, vol. 76, January 19, 1933, pp. 2103-2127.

<sup>29</sup> U.S. President (Hoover), “Statement About the Reorganization of the Executive Branch,” *Public Papers of the Presidents of the United States: Herbert Hoover, 1932-33* (Washington: GPO, 1977), pp. 921-923.

Consistent with the spirit of this statement, one day before leaving office, President Hoover signed the Treasury-Post Office Appropriations Act of March 3, 1933, which included an amendment to the 1932 statute that extended and strengthened reorganization authority for the benefit of his successor, President Franklin D. Roosevelt.<sup>30</sup> The 1932 provisions were further amended on March 20, 1933, after Roosevelt took office.<sup>31</sup>

As amended in 1933, the act expressed a greater sense of urgency, in the context of the national economic downturn, to reorganize the federal government. The introductory statement of the statute began:

The Congress hereby declares that a serious emergency exists by reason of the general economic depression; that it is imperative to reduce drastically governmental expenditures; and that such reduction may be accomplished in great measure by proceeding immediately under the provisions of this title.<sup>32</sup>

The changes in the amended act addressed some of the features that Hoover had perceived to be shortcomings in the original law:

- While the executive orders were to be submitted to Congress as before, the amended act provided no expedited method of congressional disapproval. Consequently, any executive order under the 1933 act would go into effect, absent enactment of a new law to the contrary.<sup>33</sup>
- Under the amended act, the list of possible reorganizational actions was expanded to include the abolishment of a statutorily established agency or function. An exception to this authority was that an order could not abolish or transfer a department or all of its functions.

Overall, the 1933 amendments expanded the range of actions the President could order under the authority, and it all but eliminated the ability of Congress to prevent such orders from taking effect. Unlike the original 1932 act, however, the amended statute had a sunset date: Executive orders under this authority had to be transmitted to Congress within two years from enactment.

Despite the availability of expansive reorganization powers, Roosevelt did not undertake a comprehensive rearrangement of the executive branch.<sup>34</sup> He did, however, issue a number of executive orders making various individual regroupings, consolidations, transfers, and abolitions

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<sup>30</sup> 47 Stat. 1517.

<sup>31</sup> The provisions were included as Title III of an act to “maintain the credit of the United States government.” 48 Stat. 8, at 16.

<sup>32</sup> 47 Stat. 1517.

<sup>33</sup> That is, the President’s actions could have been undone through the regular legislative process, but this would have required either the President’s cooperation in signing such a bill or a veto override by both houses.

<sup>34</sup> Historian Richard A. Polenberg has suggested several reasons for the lack of comprehensive reorganization. First, upon entering office, Roosevelt faced the press of economic issues, which took precedence. In addition, small agencies, though adding to the complexity of the federal bureaucracy, arguably could respond more swiftly to the nation’s problems. Furthermore, Roosevelt benefitted from the competing organizations and appointees in his administration. Finally, the President was aware of political impediments to closing offices and making other related changes. (Richard Polenberg, *Reorganizing Roosevelt’s Government* (Cambridge: Harvard University, 1966); hereafter cited as “Polenberg”)

of executive agencies and functions.<sup>35</sup> According to one observer, the most important of these changes were:

The creation of an Office of National Parks, Buildings, and Reservations in the Department of the Interior in order to consolidate all functions of administering public buildings and reservations, national parks, national monuments, and national cemeteries; the creation of divisions of Disbursement and Procurement in the Treasury Department to handle all of the government's disbursement and procurement activities; the abolition of the United States Shipping Board and the transfer of its functions and those of its subsidiary Fleet Corporation to the Department of Commerce; the consolidation of the separate Bureaus of Immigration and Naturalization into the Immigration and Naturalization Service in the Department of Labor; the transfer of the functions of the Federal Board for Vocational Education to the Interior Department, where they were assigned to the Office of Education; the consolidation of all the government's agricultural credit agencies in a newly created Farm Credit Administration; the transfer of the Office of the Alien Property Custodian and its functions to the Department of Justice; the abolition of the Board of Indian Commissioners and the transfer of its functions to the Department of the Interior; and the creation of a Division of Territories and Insular Possessions in the Department of the Interior to consolidate all the governments functions pertaining to territorial matters.<sup>36</sup>

In his message transmitting Executive Order 6166 to Congress, President Roosevelt stated that it would "effect a saving of more than \$25,000,000."<sup>37</sup> Whether such savings ultimately were achieved under the order is unknown. It does not appear, however, that the number of government agencies declined during this period. One later assessment observed that, "[i]n the eighteen months from the middle of 1933 to the end of 1934, 60 new administrative units were created, some by Congress and others by executive order in pursuance of general legislation. None of these took the departmental form, and many remain[ed] as permanent units."<sup>38</sup>

Roosevelt's public statements suggest that he did not believe, in general, that government reorganization would be a source of much savings. He expressed this clearly in his articulation of the administrative benefits of reorganization when he sought a renewal of the authority in 1937:

The experience of states and municipalities definitely proves that reorganization of government along the lines of modern business administrative practice can increase efficiency, minimize error, duplication and waste, and raise the morale of the public service. But that experience does not prove, and no person conversant with the management of large private corporations or of governments honestly suggests, that reorganization of government machinery in the interest of efficiency is a method of making major savings in the cost of government.

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<sup>35</sup> For a discussion of these changes in detail, see A.J. Wann, *The President as Chief Administrator: A Study of Franklin D. Roosevelt* (Washington, DC: Public Affairs Press, 1968), pp. 22-31 (hereafter cited as "Wann"); and Lewis Meriam and Laurence F. Schmeckebier, *Reorganization of the National Government: What Does It Involve?* (Washington, DC: Brookings, 1939), pp. 197-212 (hereafter cited as Meriam and Schmeckebier).

<sup>36</sup> Wann, p. 25.

<sup>37</sup> Franklin D. Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt: Volume Two, The Year of Crisis, 1933* (New York: Random House, 1938), p. 222. This sum could be comparable to approximately \$435 million in 2012 dollars. (See Bureau of Labor Statistics CPI Inflation Calculator, at <http://data.bls.gov/cgi-bin/cpicalc.pl>.)

<sup>38</sup> Marshall E. Dimock and Gladys O. Dimock, *American Government in Action*, revised edition (New York: Rinehart & Co., 1951), p. 570.

Large savings in the cost of government can be made only by cutting down or eliminating government functions. And to those who advocate such a course it is fair to put the question—which functions of government do you advocate cutting off?<sup>39</sup>

## **Reorganization Authority Proposal During the 75<sup>th</sup> Congress (1937-1938) (Roosevelt)**

By mid-1935, the reorganization authority that had been provided in 1933 had expired. Organizational changes under this authority, as well as statutes enacted by Congress during the first years of the Roosevelt Administration, had created a federal bureaucracy seemingly in need of administrative reorganization and improved management.<sup>40</sup> In early 1936, both Congress and the President initiated studies of potential reorganization of the executive branch.<sup>41</sup> The results of these studies were not publically released until after the 1936 election and the beginning of both the President's second term and the 75<sup>th</sup> Congress (1937-1938).

The research on behalf of Congress, which was carried out by the Brookings Institution, resulted in a series of 15 reports that were submitted to Congress periodically during this time. The reports were combined into a 1,200 page Senate report that was published in August 1937.<sup>42</sup> This report contained the results of “a study of the organization and administration of [then] existing functions and ... recommendations regarding the improvement of their administrative performance.”<sup>43</sup> As such, it did not speak to the question of presidential reorganization authority.

By early 1937, the study conducted on the President's behalf had been completed and reported to the President and Congress.<sup>44</sup> This work, which was carried out by the President's Committee on Administrative Management, also known as the Brownlow Committee,<sup>45</sup> resulted in a legislative proposal that was forwarded to Congress.<sup>46</sup> Included in the proposal was a new version of reorganization authority. The proposal differed from the 1933 amendments in a number of ways that arguably would have shifted more power from Congress to the President than had been the case in the previous law. For example, the President would not have been required to inform, or get approval from, Congress as part of the process. In addition, the authority, previously authorized for two years, would have been without expiration. Furthermore, the range of

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<sup>39</sup> Franklin D. Roosevelt, “The Message to the Extraordinary Session of the Congress Recommending Certain Legislation—November 15, 1937,” *The Public Papers and Addresses of Franklin D. Roosevelt: 1937 Volume, The Constitution Prevails* (New York: Macmillan, 1941), pp. 498-499.

<sup>40</sup> Wann, pp. 25-31.

<sup>41</sup> For more on the genesis and conduct of these two studies and the related interaction between the two branches, see Wann, chapter 6.

<sup>42</sup> U.S. Congress, Senate Select Committee to Investigate the Executive Agencies of the Government, *Investigation of Executive Agencies of the Government*, preliminary report, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., August 19, 1937, S.Rept. 1275 (Washington: GPO, 1937).

<sup>43</sup> *Ibid.*, p. v.

<sup>44</sup> The report was printed as U.S. Congress, Senate, *Reorganization of the Executive Departments*, “Message from the President of the United States Transmitting a Report on Reorganization of the Executive Departments of the Government,” 75<sup>th</sup> Cong., January 12, 1937, S.Doc. 8 (Washington: GPO, 1937).

<sup>45</sup> The committee was named after its chairman, Louis Brownlow, a practitioner and researcher in the field of public administration.

<sup>46</sup> The proposal, together with an analysis of some of its features, was later printed in the *Congressional Record*. Rep. Arthur P. Lamneck, “Extension of Remarks,” House debate, *Congressional Record*, vol. 83 (March 30, 1938), pp. 4376-4385.

reorganizational tools available to the President would have been greater. Among other possible actions, he would have been empowered to establish or abolish any government agency or federal corporation, including a department. The proposal to reactivate and expand the authority was embedded in draft legislation that also would have made statutory changes to the federal government, including establishment of a Department of Social Welfare and a Department of Public Works.

Consideration of the Administration's request for executive branch reorganization authority appears to have been influenced by a proposal by the President, during the same session of Congress, to reorganize the federal judiciary. By this time, President Roosevelt had completed his first term and much of his New Deal economic and social legislative agenda had been enacted. The Supreme Court, in turn, had invalidated some of these laws. The President's proposal to reorganize the judiciary, which has frequently been referred to as his "court-packing plan," would have temporarily expanded the number of members of the Supreme Court and allowed the President to appoint additional Justices. These new Justices presumably would have ruled more favorably on challenges to New Deal legislation. The President's plan was seen by some to be an effort to aggrandize the power of the executive. It proved to be controversial, and, opposed even by some Members of Congress of his own party, it was never enacted.

In this context, the President's request for expanded executive branch reorganization authority was viewed by some as another effort to expand the President's power, in this case at the expense of the legislative branch. For example, during Senate debate on reorganization authority in early 1938, one Senator drew an explicit connection between the two efforts:

[A] year ago, when like a vagrant meteor the Court-packing scheme burst upon the horizon of our Legislature, the people, both legislators and onlookers, stood aghast, astonished, and bewildered. Little time had they to appreciate what that bill then was; and no time had they to appreciate that the complement of that bill, the so-called reorganization bill, followed and was a part of the scheme which was then presented to the American people.

A year ago we had two bills. The first was the Court-packing bill, which was designed to give the President control of the courts. The second was the reorganization bill, which was designed to give the President all the power Congress possessed. If either bill were successful, that which was desired would be brought about.

The Court bill was not successful. Its purpose has been and will be accomplished in a measure because time and nature have done their work. So the President has attained in part his object in that regard.

The reorganization bill has not yet been successful. Yet men stand upon this floor—just as good men as any of the rest of us, no doubt, with the same patriotic impulses the same desire to protect and preserve liberty in this land—and plead for the passage of the reorganization bill, which gives to the President plenary powers in the entire domain of Congress.<sup>47</sup>

Some scholars have also attributed congressional opposition to other factors. Included in these factors are perceptions of insufficient consultation with congressional leadership and inadequate

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<sup>47</sup> Sen. Hiram W. Johnson, "Reorganization of Executive Departments," Senate debate, *Congressional Record*, vol. 83 (March 28, 1938), p. 4196.

attention to spending reductions, as well as opposition to the establishment of one or more new departments.<sup>48</sup>

Early in 1938, the Senate passed a renewal of reorganization authority that was more limited than what the President had requested. Notably, it would have required that the President inform Congress of executive orders under the statute. In addition, the authority would have been of only two years duration. The range of reorganizational tools available to the President would have been similar to those that had been available in 1933. The Senate-passed measure was considered and amended in the House. The House amendments restored a version of the 1932 mechanism for congressional disapproval of the executive orders, among other changes. Ultimately the bill was recommitted in the House and never enacted.<sup>49</sup>

### **The Reorganization Act of 1939 (Roosevelt)**

Soon after the beginning of the 76<sup>th</sup> Congress (1939-1940), President Roosevelt once again requested reorganization authority. The terms of the legislation were more limited in scope than those that had been requested during the preceding two years, and the Reorganization Act of 1939 was enacted on April 3, 1939.<sup>50</sup> One observer noted:

The Reorganization bill introduced in 1939 stood in sharp contrast to the measure defeated by the House the previous year. It was extremely mild, omitting nearly every controversial feature of its predecessor.... It sparked no storm of controversy; public fear was absent and pressure groups were quiescent.<sup>51</sup>

The authority, delineated under the first title of the statute, differed from that of 1933 in several ways.<sup>52</sup> First, the legal vehicle by which a reorganization initiative would be proposed by the President was to be a reorganization plan, rather than an executive order. This provision addressed a long-standing concern that allowing Congress to void an executive order by resolution was a violation of the separation of powers.<sup>53</sup> Second, a reorganization plan could be nullified by concurrent resolution of Congress within 60 calendar days of its transmittal—a so-called two-house legislative veto. This mechanism for congressional involvement in the process represented somewhat of a middle ground between the 1932 statute, which allowed either house to nullify the President's proposal by simple resolution, and the 1933 statute, which had no provision for congressional nullification of an initiative.

The 1939 act provided the President with less authority and included more limits than the 1933 act. Although a reorganization plan under the 1939 act could abolish agencies and transfer functions, as could be done under the 1933 statute, it could no longer abolish functions. In addition, the range of actions that could not be included in a plan was expanded to include

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<sup>48</sup> See, for example, Polenberg, pp. 31-51.

<sup>49</sup> For more on congressional action on legislative proposals to renew reorganization authority during the 75<sup>th</sup> Congress, see *ibid.*, chapters 6 and 8; Wann, chapter 6; and Meriam and Schmeckebier, chapter 11.

<sup>50</sup> 53 Stat. 561.

<sup>51</sup> Polenberg, p. 184.

<sup>52</sup> Title II amended the Budget and Accounting Act of 1921 to clarify that independent regulatory boards and commissions were subject to its provisions, and Title III established six administrative assistants to the President.

<sup>53</sup> See John D. Millett and Lindsay Rogers, "The Legislative Veto and the Reorganization Act of 1939," *Public Administration Review*, vol. 1 (Winter 1941), pp. 176-189, at 180.

- the creation of a new department;
- a change in the name of a department or the title of its head, or the designation of any agency as “department” or its head as “Secretary”;
- the transfer, consolidation, or abolition of the whole or any part of 21 enumerated agencies;<sup>54</sup>
- the continuation of an agency or function beyond the time provided for by law; and
- the exercise of a function not provided for in law.<sup>55</sup>

As had been the case under the 1933 law, the authority under the 1939 act was of limited duration. All plans had to be transmitted to Congress before January 21, 1941, the beginning of the next presidential term.

President Roosevelt submitted five plans under the act, and each went into effect. Although not required by the act, Congress passed a joint resolution of approval in each case. These resolutions provided a way for Congress to “amend” the plans as to their application and effective dates.

One of the plans faced opposition, but ultimately was approved. The House passed a concurrent resolution disapproving Reorganization Plan No. IV of 1940, but the Senate did not adopt the measure. The joint resolution of approval under which Congress endorsed the plan was initiated in the House as a joint resolution of approval for Reorganization Plan No. V of 1940. The Senate amended this resolution with approval of plan no. IV, and the House then agreed to the amended resolution.<sup>56</sup>

For some Members of Congress, this outcome, in which a plan went into effect despite the opposition of one chamber of Congress, was evidence of the shortcomings of the method of congressional consideration in the 1939 act. For example, in 1945, Representative Walter H. Judd referred to this sequence of events in the context of advocating for a one-house veto over a two-house veto. He stated:

[I]t was under that 1939 act that a thing happened which many people here believe was unwise—the transfer of the CAA [Civil Aeronautics Authority] into the Department of Commerce. That reorganization plan was disapproved, as I recall, by a vote of 4 to 1 in this House, but it was approved in the other body by a narrow margin and became the law, despite our objection. It was under that law which the House had disapproved that the CAA was placed under the Department of Commerce, so that it ceased to be a wholly independent

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<sup>54</sup> Many, but not all, of these agencies were independent board and commissions with regulatory responsibilities. The 21 agencies included Civil Service Commission, Coast Guard, Engineer Corps of the U.S. Army, Mississippi River Commission, Federal Communications Commission, Federal Power Commission, Federal Trade Commission, General Accounting Office, Interstate Commerce Commission, National Labor Relations Board, Securities and Exchange Commission, Board of Tax Appeals, U.S. Employees’ Compensation Commission, U.S. Maritime Commission, U.S. Tariff Commission, Veterans’ Administration, National Mediation Board, National Railroad Adjustment Board, Railroad Retirement Board, Federal Deposit Insurance Corporation, and Board of Governors of the Federal Reserve System.

<sup>55</sup> Reorganization Act of 1939, §3; 53 Stat. 561-562.

<sup>56</sup> 54 Stat. 230-231.



quasijudicial agency and became subject to the control of the Secretary of Commerce, who is a political appointee.<sup>57</sup>

The President's five plans effected a number of changes, including some that had been recommended in the 1937 report of the Brownlow Committee. Included among these changes were reorganizations that shaped the newly created Executive Office of the President (EOP).<sup>58</sup> The Federal Security Agency, predecessor to the Department of Health and Human Services, was also established under this authority, from functions transferred from the Departments of Labor (DOL), the Interior (DOI), and the Treasury (Treasury), as well as the Works Progress Administration, the Social Security Board, and the Civilian Conservation Corps.<sup>59</sup>

### **The Reorganization Act of 1945 (Truman)**

On May 24, 1945, President Harry S. Truman requested reorganization authority. By this time, the 1939 authority had been expired for four years. But the President had not been altogether without authority in this area. After the United States entered World War II, Congress provided the President with temporary and limited war-time reorganization authority. The First War Powers Act was enacted December 18, 1941, 11 days after the attack against the United States naval base at Pearl Harbor, HI.<sup>60</sup> The statute provided the President with authority similar to that which had been conveyed through the Overman Act of 1918, during World War I.<sup>61</sup> Under the authority, the President could transfer and consolidate agencies by executive order without congressional consultation or approval, as long as his actions related to the conduct of the war. After the war, however, the organizational structure of the departments and agencies was to revert to its pre-war status unless arrangements had been statutorily changed in the interim.

The First War Powers Act seemingly diminished the need for a renewal of the 1939 authority at that time. Its reversion provision, however, planted the seeds for President Truman's 1945 request. As one observer later noted:

The authority granted under Title I of the 1941 Act was to cease six months after termination of the war; and, as in the case of the Overman Act [of 1918], all agencies were to resume the exercise of duties, powers, and functions 'as heretofore or hereafter by law provided.' American participation in hostilities of World War II lasted almost forty-five months whereas in World War I it had lasted but nineteen. One hundred and thirty-five executive orders had been issued by President Roosevelt in regard to war organizations as contrasted with some twenty-four issued by President [Woodrow] Wilson [under the Overman Act].

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<sup>57</sup> Representative Walter H. Judd, "Reorganizing Agencies of Government," House debate, *Congressional Record*, vol. 91, part 7 (October 4, 1945), p. 9445.

<sup>58</sup> Executive Order 8248 implemented these provisions, formally organizing the Executive Office of the President. The contours of EOP were initially defined by these organizational arrangements. See CRS Report 98-606, *The Executive Office of the President: An Historical Overview*, by (name redacted).

<sup>59</sup> President Dwight D. Eisenhower used reorganization authority to elevate the Federal Security Agency to department status shortly after he took office in 1953, thus establishing the Department of Health, Education, and Welfare. This department later became the Department of Health and Human Services when education functions were transferred, by statute, to a newly established Department of Education during the Carter Administration.

<sup>60</sup> 55 Stat. 838.

<sup>61</sup> See footnote 15 for a discussion of the Overman Act.

The complexity of unraveling such a vast war organization and mobilization of manpower and resources was enormous.<sup>62</sup>

Truman discussed this problem in his message requesting reorganization authority:

[E]very step taken under Title I [of the First War Powers Act] will automatically revert, upon the termination of the Title, to the pre-existing status.

Such automatic reversion is not workable. I think that the Congress has recognized that fact.... In some instances it will be necessary to delay reversion beyond the period now provided by law, or to stay it permanently. In other instances it will be necessary to modify action heretofore taken under Title I and to continue the resulting arrangement beyond the date of expiration of the Title. Automatic reversion will result in the re-establishment of some agencies that should not be re-established.<sup>63</sup>

Truman also envisioned reorganization activities not related to post-war reversion under the requested authority. His message stated: "Quite aside from the disposition of the war organization of the Government, other adjustments need to be made currently and continuously in the Government establishment."<sup>64</sup>

The legislation proposed by the Truman Administration would have been similar to that enacted in 1939. It provided that action by both chambers—a two-house veto—would be required for disapproval of submitted reorganization plans, for example. The Truman proposal differed from the 1939 act in several significant respects, however. Under the proposal, the authority would have been permanent, rather than limited in duration. In addition, no agencies would have been exempted from reorganization activities, and the range of permissible organizational adjustments would have been broader.

As before, Congress was not receptive to what was perceived as a broad grant of authority, and the bills that made their way through the House and the Senate were more limited in scope. The first related bill introduced in the House, for example, would have exempted 21 agencies, provided for a one-house veto, and prohibited the establishment of new departments.

The Administration actively advocated for its version of the authority, and it was successful in obtaining authority that was broader than that initially proposed in the House. Some have also credited Comptroller General Lindsay C. Warren, a former House Member who had been directly involved with the development of the 1939 act, with advancing the Administration's cause, particularly in the House.<sup>65</sup> In a hearing of the House Committee on Expenditures in the Executive Departments, Warren gave a vivid description of the problem as he saw it:

That is why I say the present set-up is a hodgepodge and crazy-quilt of duplications, overlappings, inefficiencies, and inconsistencies, with their attendant extravagance. It is

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<sup>62</sup> Herbert Emmerich, *Federal Organization and Administrative Management* (Tuscaloosa, AL: University of Alabama Press, 1971), p. 248.

<sup>63</sup> U.S. President (Truman), "Special Message to the Congress on the Organization of the Executive Branch," *Public Papers of the Presidents of the United States: Harry S. Truman, 1945* (Washington: GPO, 1961), p. 70.

<sup>64</sup> *Ibid.*, pp. 70-71.

<sup>65</sup> See William E. Pemberton, *Bureaucratic Politics: Executive Reorganization During the Truman Administration* (Columbia, MO: University of Missouri Press, 1979), pp. 34-36.

probably an ideal system for the tax eaters and those who wish to keep themselves perpetually attached to the public teat, but it is bad for those who have to pay the bill.<sup>66</sup>

In his view, this was a problem that the President, with the proposed reorganization authority, might solve, but that Congress could not:

Here is something that we all admit is bad. We admit this Government establishment just cannot survive at the pace it is going now. I mean the growth of it. Sooner or later it will tumble of its own weight unless something is done to coordinate and check some of this. Now, we have an Executive who says he will do this job fairly and efficiently and fearlessly. Now, when he sends down the plans, if you don't like them, if you put in the cloture provision, you have a right to vote against them. Gentlemen, Congress could sit in daily session here for the next hundred years and they wouldn't reorganize the Government of its own volition. And that is not any detraction of Congress, when I say that.<sup>67</sup>

Active congressional consideration of reorganization authority began in September of 1945, and a bill was enacted three months later on December 20.

The new statute was similar to that of 1939 in a number of ways. In a victory for the Administration, disapproval of reorganization plans still required action by both chambers. But the Administration did not get the permanent authority it sought; the duration of the new authority was to be roughly two and a quarter years. In addition, certain kinds of reorganization activities, such as the power to abolish or create a department, were still prohibited.

The new statute also differed from that of 1939 in several ways. The 1939 act opened by stating: "The Congress hereby declares that by reason of continued national deficits beginning in 1931 it is desirable to reduce substantially Government expenditures."<sup>68</sup> This declaration was dropped in 1945, although the act did include among its six purposes "to reduce expenditures and promote economy." Listed first among these purposes, however, was "to facilitate orderly transition from war to peace."<sup>69</sup> Another way in which the 1945 act differed from the 1939 act is that, whereas the earlier statute exempted 21 agencies from the authority, the later act partially or fully exempted only 11.<sup>70</sup>

In addition to these differences, the 1945 act included a new provision that constrained the use of the authority with regard to many independent regulatory agencies. The act provided that

No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of—... (6) imposing, in connection with the exercise of any quasi-judicial or quasi-legislative function possessed by an independent agency, any greater limitation upon the

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<sup>66</sup> U.S. Congress, House Committee on Expenditures in the Executive Departments, *To Provide for Reorganizing Agencies of the Government, and for Other Purposes*, hearing on H.R. 3325, 79<sup>th</sup> Cong., 1<sup>st</sup> sess., September 4-5, 1945 (Washington: GPO, 1945), p. 69.

<sup>67</sup> *Ibid.*, p. 79.

<sup>68</sup> 53 Stat. 561.

<sup>69</sup> 59 Stat. 613.

<sup>70</sup> Many, but not all, of these agencies were independent board and commissions with regulatory responsibilities. The 11 agencies partially or fully exempted included Interstate Commerce Commission, Federal Trade Commission, Securities and Exchange Commission, National Mediation Board, National Railroad Adjustment Board, Railroad Retirement Board, the Corps of Engineers of the U.S. Army, Federal Communications Commission, Federal Deposit Insurance Corporation, U.S. Tariff Commission, and Veterans' Administration.

exercise of independent judgment and discretion, to the full extent authorized by law, in the carrying out of such function, than existed with respect to the exercise of such function by the agency in which it was vested prior to the taking effect of such reorganization; except that this prohibition shall not prevent the abolition of any such function.<sup>71</sup>

The Senate Committee on the Judiciary, which added this provision to the legislation it reported, included its rationale in its accompanying report:

[The provision] represents an attempt by the committee to protect the independent exercise of quasi-judicial authority now vested, by an act of Congress, in agencies in the executive branch. The committee recognizes that the exemptions contained in the bill as reported may be changed or deleted before the bill is enacted in its final form; and the committee strongly urges that, whatever is done with respect to such exemptions, [this] provision ... be retained.<sup>72</sup>

This sentiment was reiterated by a committee member on the Senate floor shortly before passage of the Senate version:

The thought of the Senate committee ... was that any quasi-judicial agency in exercising quasi-judicial functions or rule-making functions should be absolutely independent of, say, a Cabinet officer. The purpose of the committee was that in the event a quasi-judicial agency which is now independent should be placed under a Cabinet officer, notwithstanding that fact the Cabinet officer should in no way interfere with the absolute independence of the quasi-judicial functions or the rule-making functions of such agency.<sup>73</sup>

President Truman submitted seven different reorganization plans to Congress under the 1945 act: three each in 1946 and 1947, and one in 1948. In response to six of the seven submissions, the House passed resolutions of disapproval. Of these six plans, only three were also disapproved by the Senate and thereby rejected. Such outcomes illustrate the extent to which reorganization authority requiring a two-house veto for disapproval of a plan was more favorable to Administration initiatives than authority with a one-house veto might have been. Had the 1945 act had a one-house veto procedure, it appears that six, rather than three, of Truman's seven plans might have been rejected.<sup>74</sup>

The disapproved plans included the following:

- **Reorganization Plan No. 1 of 1946.** Among other effects, this plan would have consolidated national housing functions and agencies, and centralized their administration. The plan was opposed by the housing industry. In addition, the plan proposed a national structure that differed from housing policy legislation that was then working its way through Congress. Truman's Reorganization Plan No. 3 of 1947, which the Senate allowed to go into effect the following year,

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<sup>71</sup> 59 Stat. 615.

<sup>72</sup> U.S. Congress, Senate Committee on the Judiciary, *Reorganization of Government Agencies*, report to accompany S. 1120, 79<sup>th</sup> Cong., 1<sup>st</sup> sess., October 18, 1945, Report No. 638 (Washington: GPO, 1945), p. 5.

<sup>73</sup> Sen. Abe Murdock, "Reorganization of Government Agencies," remarks in the Senate, *Congressional Record*, vol. 91 (November 19, 1945), p. 10801.

<sup>74</sup> Of course, it is not certain what the legislative outcomes would have been under an authority with a one-house veto. It is possible, for example, that under such a scenario, the Administration would have pressed its case harder in the House, or that some Representatives would have felt less at liberty to cast a vote against the plans.

reorganized housing agencies and functions in a way that was more acceptable to interested parties.

- **Reorganization Plan No. 2 of 1947 and Reorganization Plan No. 1 of 1948.** Both of these plans would have transferred the U.S. Employment Service to the Department of Labor. The service had been transferred from the Federal Security Agency to the Labor Department under the wartime authority; these plans would have kept it there. The proposed transfer would have strengthened the Department of Labor, which was perceived to favor the interests of organized labor. The plans were opposed by congressional Republicans, who were in the majority in both houses during the 80<sup>th</sup> Congress (1947-1948), as well as many conservative Democrats.<sup>75</sup>

The Reorganization Act of 1945 expired at the end of March 1948.<sup>76</sup>

### **The Reorganization Act of 1949 (Truman)**

The Reorganization Act of 1949 was enacted soon after the start of President Truman's second term. The passage of this law followed the release of the recommendations of the Commission on Organization of the Executive Branch, which was also known as the Hoover Commission, after its chairman, former President Herbert Hoover.<sup>77</sup> Among other things, the commission supported reactivation of presidential reorganization authority. This support reflected the sentiments of the chairman, who had sought the power during his own presidency (see above). President Truman generally endorsed the work of the commission,<sup>78</sup> and he used reorganization authority to implement some of its recommendations.

The Hoover Commission had been established by public law on July 7, 1947.<sup>79</sup> The 80<sup>th</sup> Congress (1947-1948), which enacted this statute, was led by Republicans, and many of its Members favored containing and shrinking the plethora of federal government agencies that had emerged during the New Deal and World War II. The Senate report on the legislation establishing the commission, for example, expressed this point of view:

During the past 16 years, national and international events have necessitated a constantly expanding emergency government. In the wake of the prolonged economic distress of the 1930's and the 4 years of direct participation in World War II, the number of principal components of the Federal Government have multiplied from 521, in 1932, to 2,369, in 1947. The annual pay roll of the executive branch of the Government today approximates 6¼ billion dollars which is 1½ billion dollars more than the Government spent for all purposes in 1933. The executive branch now employs more people than all the State, city, and county governments combined. In this sprawling organization called the United States Government,

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<sup>75</sup> Susan M. Hartmann, *Truman and the 80<sup>th</sup> Congress* (Columbia, MO: University of Missouri, 1971), pp. 141-143.

<sup>76</sup> The four plans that went into effect included Reorganization Plan No. 2 of 1946 (60 Stat. 1095), Reorganization Plan No. 3 of 1946 (60 Stat. 1097), Reorganization Plan No. 1 of 1947 (61 Stat. 951), and Reorganization Plan No. 3 of 1947 (61 Stat. 954).

<sup>77</sup> A second Hoover Commission was formed in 1953. Consequently, the two commissions are sometimes referred to as Hoover I and Hoover II, respectively.

<sup>78</sup> U.S. President (Truman), "Special Message to the Congress on Reorganization of the Executive Branch of the Government," *Public Papers of the Presidents of the United States: Harry S. Truman, 1949* (Washington: GPO, 1964), pp. 244-245.

<sup>79</sup> P.L. 80-162; 61 Stat. 246.

functions and services criss-cross and overlap to a degree which has astounded every student of governmental operation. For example, there are no less than 29 agencies lending Government funds, 34 engaged in the acquisition of land, 16 engaged in wildlife preservation, 10 in Government construction, 9 in credit and finance, 12 in home and community planning, 10 in materials and construction, 28 in welfare matters, 4 in bank examinations, 14 in forestry matters, and 65 in gathering statistics.... And all the evidence points towards still further expansion, aimlessly, pointlessly, pleasing no one and frustrating sincere efforts to serve the people.<sup>80</sup>

The first meeting of the Hoover Commission was held in late September 1947. The bipartisan commission, which included 12 members from both the government and the private sector, was charged with studying and investigating “the present organization and methods of operation” of all organizational units of the executive branch “to determine what changes therein are necessary ... to accomplish the purposes” of the act.<sup>81</sup> These purposes included promoting “economy, efficiency, and improved service in the transaction of the public business” in these organizations by:

- (1) limiting expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions;
- (2) eliminating duplication and overlapping of services, activities, and functions;
- (3) consolidating services, activities, and functions of a similar nature;
- (4) abolishing services, activities, and functions not necessary to the efficient conduct of government; and
- (5) defining and limiting executive functions, services, and activities.<sup>82</sup>

The commission carried out its research via 34 working groups, each charged with examining a particular organizational or policy area. Work began in the fall of 1947 and continued through 1948.

Some saw the commission as a mechanism for strengthening the ability of the President to manage the large federal bureaucracy by centralizing authorities within the departments and agencies and building the President’s management capacity—the mission embodied in the first three purposes enumerated above. Others viewed it as a mechanism for assessing the role of the federal government and recommending abolition of those functions that would better be carried out by the private sector—a mission derived from the latter two purposes above. Hoover appears to have favored both approaches to the commission’s work, and the groundwork of the commission during 1947 and 1948 was geared toward accomplishing both of these missions.

Studies of the commission’s work have suggested that Hoover and other Republican members hoped that the commission’s recommendations might provide the basis for significant government reform, in terms of both its management and its scope, under an anticipated

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<sup>80</sup> U.S. Congress, Senate Committee on Expenditures in the Executive Departments, *Commission on Organization of the Executive Branch of the Government*, report to accompany S. 164, 80<sup>th</sup> Cong., 1<sup>st</sup> sess., June 24, 1947, S.Rept. 80-344 (Washington: GPO, 1947), p. 4.

<sup>81</sup> P.L. 80-162, §10(a); 61 Stat. 248.

<sup>82</sup> P.L. 80-162, §1; 61 Stat. 246.

Republican President. Such reform might have, for example, abolished some of the government functions that were established under the New Deal. After President Truman's reelection, the work of the commission apparently was retailored to focus less on reassessing the purposes of government and more on recommending organizational and managerial improvements that would be more acceptable to the Truman Administration.<sup>83</sup> It has also been argued that the content and tone of the commission's recommendations were moderated by other factors, including the views of the Republican presidential nominee, Thomas E. Dewey; disagreements among commission members; the relationship between President Truman and former President Hoover; and Truman Administration influence.<sup>84</sup>

By January 1949, the reelection of President Truman, Democratic majorities in both houses, and the support of the Hoover Commission had laid the groundwork for renewing presidential reorganization authority, which had expired at the end of the previous March. Administration-drafted bills were introduced in both houses at the beginning of the Congress, and the legislation was actively considered over the following six months. The Administration sought to make the authority permanent, to eliminate exemptions of agencies, and to permit the creation of new departments. Although the recommendations of the Hoover Commission gained general public and congressional support, opposition to specific elements emerged. One recommended change that faced particularly strong opposition was a proposal to move the civil functions of the Army Corps of Engineers to the Department of the Interior.<sup>85</sup> Whereas in the previous reorganization authority statute, Congress had arranged to protect certain agencies by exempting them and by prohibiting limitations on the judgment or discretion of independent agencies in carrying out quasi-judicial or quasi-legislative functions, legislative deliberations in 1949 yielded a different outcome. Congress elected to provide for disapproval by a vote of either house—a so-called one-house legislative veto—easing rejection of a plan that would reorganize a specific agency.<sup>86</sup> With this procedural safeguard, the reorganization authority was enacted on June 20, 1949.<sup>87</sup>

The Reorganization Act of 1949 was similar in many respects to its 1945 predecessor; many of the provisions regarding plan contents and limitations remained the same, for example. It differed in several significant ways, however. Chief among these differences was the change in disapproval procedures and the lack of the exempted agencies provisions just discussed. In addition, the list of the six purposes of the authority no longer included a reference to a post-war transition. Instead, a new purpose that perhaps reflected the spirit embodied in the work of the Hoover Commission headed the list: “to promote the better execution of the laws, the more effective management of the executive branch of the Government and of its agencies and functions, and the expeditious administration of the public business.”<sup>88</sup> Yet another new provision

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<sup>83</sup> Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905-1996*, 2<sup>nd</sup> edition, revised. (Lawrence, KS: University of Kansas, 1998), pp. 142-143; and William E. Pemberton, *Bureaucratic Politics: Executive Reorganization During the Truman Administration* (Columbia, MO: University of Missouri, 1979), pp. 87-91 (hereafter cited as “Pemberton”).

<sup>84</sup> Pemberton, pp. 90-91. For a further discussion of the relationship between President Truman and former President Hoover and its impact on reorganization developments of this time, see Nancy Gibbs and Michael Duffy, *The Presidents Club: Inside the World's Most Exclusive Fraternity* (New York: Simon & Schuster, 2012), pp. 43-51.

<sup>85</sup> Pemberton, chapter 8.

<sup>86</sup> For a detailed description and discussion of this change, see U.S. Congress, House Committee on Rules, Subcommittee on Rules of the House, *Studies on the Legislative Veto*, committee print, prepared by the Congressional Research Service, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 1980 (Washington: GPO, 1980), pp. 205-215.

<sup>87</sup> P.L. 81-109; 63 Stat. 203.

<sup>88</sup> 63 Stat. 203.

incorporated a change that had been requested by the Administration: a reorganization plan could include the creation of a new department (although not through consolidation of two or more existing departments and their functions). Another goal of the Administration—permanent authority—was not achieved. Instead, the reorganization power was authorized for nearly four years, which was longer than previous periods.

During this four-year period, President Truman submitted 41 reorganization plans to Congress. Unlike the bulk of the plans and executive orders submitted under previous reorganization statutes, most of these plans each dealt with a limited number of actions regarding one or two agencies. Many of these plans were designed either to implement recommendations of the Hoover Commission or to apply the principles set forth in the commission's reports. For example, a number of the reorganization plans pertained to the centralization of administrative authority over collegial boards and commissions in their chairs.<sup>89</sup>

Eleven of the 41 plans were disapproved by Congress. Two of these—one submitted in 1949 and the other in 1950—would have elevated the Federal Security Agency to department status. Other rejected plans included those that would have:

- vested in the Secretaries of the Treasury and Agriculture functions and powers that had instead been vested by law in subordinate officials in their respective departments;
- centralized administrative authority in the chairs of the Interstate Commerce Commission, the Federal Communications Commission, and the National Labor Relations Board;
- transferred the Reconstruction Finance Corporation to the Department of Commerce;
- vested appointment authority for local postmasters in the Postmaster General, under the civil service, rather than in the President, with the advice and consent of the Senate;
- abolished certain Bureau of Customs offices that had been filled through appointment by the President with the advice and consent of the Senate, and transferred their functions to Treasury department officials appointed by the Secretary of the Treasury under the civil service; and
- vested the appointment authority for U.S. marshals in the Attorney General, under the civil service, rather than in the President, with the advice and consent of the Senate.

The last three of these disapproved changes would have converted politically appointed positions, over which Senators were thought to have some influence, into career positions.

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<sup>89</sup> Detailed information on reorganization plans that were submitted to Congress during this period may be found in an April 5, 2012, CRS Congressional Distribution Memorandum, "Plans Submitted to Congress Under Presidential Reorganization Authority, 1939-1984," by (name redacted). Copies of this memorandum are available to the congressional community from its author.



## **Subsequent Reauthorizations of the 1949 Act (Eisenhower, Kennedy, Johnson, and Nixon)**

The Reorganization Act of 1949 was renewed eight times, in 1953, 1955, 1957, 1961, 1964, 1965, 1969, and 1971.<sup>90</sup> In 1953, 1955, 1961, 1965, and 1969, Congress merely amended the bill to extend or reactivate the authority. In the three other cases, substantive changes were made in the act.

### ***Eisenhower Reauthorization Requests***

During the 1953, 1955, and 1957 reauthorization debates, some Members pushed to ease the process by which Congress could disapprove a plan. They proposed amending the congressional veto provisions of the statute so that passage of a disapproval resolution would require a simple majority of the Members of either house who were present and voting, rather than a majority of the authorized membership of the chamber. These efforts were not successful in the first two instances, but the amendment was added in 1957.<sup>91</sup>

In 1959, the Administration of President Dwight D. Eisenhower sought another extension of the act through mid-1961. After some debate, the House passed a bill providing for such an extension. The Senate Committee on Government Operations also supported the extension. Senator Russell B. Long opposed it, however, and it was not taken up for debate in the Senate. Senator Long appeared to oppose automatic extensions of the delegation of authority, rather than the authority itself. He stated:

Does the distinguished Senator . . . not believe it would be a good idea that, at least once in a while, the powers surrendered by Congress should come back to it and temporarily reside in Congress, at least long enough for us to know that we have not surrendered our power forever?...

It seems to me that if no strong case is made for a reorganization plan, Congress should perhaps retain the powers in its own hands rather than surrender them.

In this instance, if the President has no plan, Congress will be surrendering its powers unnecessarily. I am willing to give the President the power to reorganize the Government when that is necessary.<sup>92</sup>

Without the extension, the authority expired on June 1, 1959.

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<sup>90</sup> 67 Stat. 4; 69 Stat. 14; 71 Stat. 611; 75 Stat. 41; 78 Stat. 240; 79 Stat. 135; 83 Stat. 6; and 85 Stat. 574.

<sup>91</sup> For a detailed description and discussion of these legislative developments, see U.S. Congress, House Committee on Rules, Subcommittee on Rules of the House, *Studies on the Legislative Veto*, committee print, prepared by the Congressional Research Service, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 1980 (Washington: GPO, 1980), pp. 217-223.

<sup>92</sup> Sen. Russell B. Long, "Extension of Provisions of the Reorganization Act of 1949," remarks in the Senate, *Congressional Record*, vol. 105 (May 20, 1959), p. 8581.

### ***Kennedy and Johnson Reauthorization Requests***

Upon entering office in 1961, President John F. Kennedy requested a renewal of the 1949 authority. The bill was debated in each house without any strong opposition emerging. The statute was reauthorized through mid-1963.

A further two-year extension was requested by the Kennedy Administration in early 1963. On June 4, 1963, the House passed the requested extension. The bill included an amendment, supported on the floor by Republicans and Southern Democrats, that prohibited the use of the authority to establish a new department. This amendment appears to have been a reaction to a controversial (and unsuccessful) 1962 effort by President Kennedy to establish a Department of Urban Affairs and Housing—first through legislation, and then by reorganization plan.<sup>93</sup> The Senate did not act on the reorganization extension request until after Kennedy's November 22, 1963, assassination. Upon taking office, President Lyndon B. Johnson requested Senate consideration of the matter. The bill, which extended the authority to June 1, 1965, and included the House-passed prohibitions, was adopted by the Senate on June 19, 1964.

As the June 1965 expiration approached, the Johnson Administration requested that the reorganization authority be made permanent. The Senate considered several different durations short of the Administration's request, and settled on an expiration date of December 31, 1968, just prior to the conclusion of the President's term. The House agreed to this approach, and the extension was signed into law on June 18, 1965, just weeks after the previous authorization had expired.

Altogether, President Johnson submitted 17 plans to Congress. Among these were plans to transfer certain locomotive inspection functions to the Interstate Commerce Commission, to transfer the Community Relations Service from the Department of Commerce to the Department of Justice, and to transfer the responsibility for the preparations of plans and specifications for the construction of buildings and bridges at the National Zoo from the Board of Commissioners of the District of Columbia to the Smithsonian Institution. One of the 17 plans, to centralize certain executive and administrative functions of the U.S. Tariff Commission in its chair, was disapproved by Congress.

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<sup>93</sup> Reorganization Plan No. 1 of 1962. U.S. Congress, House, *Message from the President of the United States Transmitting Reorganization Plan No. 1 of 1962, which would Create a Department of Urban Affairs and Housing, and the Appointment by the President of a Secretary of Urban Affairs*, H. Doc. 320, 87<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1962). A contemporary news account noted:

In addition to extending the Act, as requested Jan. 21 by President Johnson, HR 3496 prohibited the President from creating a new executive department by reorganization plan. This provision was added when the House passed the bill in 1963 and was apparently a reaction to President Kennedy's 1962 attempt to use the Act to create a cabinet-level Department of Urban Affairs and Housing. Mr. Kennedy submitted the plan after an Administration bill to create the Department had been blocked by the House Rules Committee because of a civil rights factor. The House, by a 264-150 vote Feb. 21, 1962, disapproved his reorganization plan to create the Housing Department.

"Reorganization Act," in *Congressional Quarterly Almanac: 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1964*, vol. 20 (Washington, DC: Congressional Quarterly Service, 1965), p. 425.

### *Nixon and Ford Reauthorization Requests*

Shortly after taking office, President Richard M. Nixon requested that Congress renew the authority for a two year period. Perhaps reflecting the relatively uncontroversial nature of the new President's request, a bill renewing the authority through April 1, 1971, was adopted by the Senate, without debate, and by the House, under suspension of the rules. The bill was enacted into law on March 27, 1969.<sup>94</sup>

As the 1971 expiration date approached, President Nixon requested an additional two year extension. Congress provided this extension, and also amended the statute to make several changes to the authority. First, the changes provided that not more than one plan could be transmitted to Congress within 30 consecutive days. In addition, no reorganization plan could deal with more than one logically consistent subject matter. The amended statute also made changes to the congressional veto procedures, extending the potential length of the period for committee consideration of a resolution of disapproval.

In early 1973, the Nixon Administration transmitted to Congress draft legislation that would have extended the Reorganization Act of 1949 for an additional four years, until April 1, 1977. On June 14, 1973, Senator Charles H. Percy introduced legislation to the same end.<sup>95</sup> In addition, this legislation would have established a process whereby Congress would have had an opportunity to review and comment on a proposed reorganization plan before its formal submission. Noting that a plan was not amendable once submitted, Senator Percy suggested that this process would allow potential problems with a plan to become known to the Administration and Congress while alterations might still be made. The bill also would have struck the restriction, added in 1971, that prevented more than one plan from being transmitted within a 30-day period. The provision requiring an itemization of expected savings from a reorganization would also have been deleted. Arguably, these latter two provisions would have made the process easier for the Administration. The bill was referred to the Senate Committee on Government Operations and saw no further action.

Senator Robert C. Byrd also introduced legislation in 1973 that would have extended the authority.<sup>96</sup> Unlike the Percy proposal, this bill would have extended the authority for only two years. Also, in contrast to the Percy proposal, Byrd's bill arguably would have made the process more difficult for the Administration. Perhaps most significantly, Byrd's legislation would have strengthened the role of Congress in the process by providing that a proposed reorganization plan would become effective through the adoption of a concurrent resolution of approval, rather than through the lack of a resolution of disapproval. The bill also would have required that the President, in his annual budget message, inform Congress of reorganization plans then under study or consideration. In addition, the President would have been required to give Congress at

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<sup>94</sup> P.L. 92-179; 85 Stat. 574. In 1970, a council established by President Nixon recommended, among other organizational changes, that federal domestic programs then housed in seven departments and a number of independent agencies be brought under the umbrella of four super-departments pertaining to human resources, community development, natural resources, and economic affairs. Nixon sought to enact this plan, but he did not try to do so using presidential reorganization authority. For more, see Mordecai Lee, *Nixon's Super-Secretaries: The Last Grand Presidential Reorganization Effort* (College Station: Texas A&M University Press, 2010).

<sup>95</sup> Sen. Charles H. Percy, "S. 2003," Statements on Introduced Bills and Joint Resolutions, *Congressional Record*, vol. 119 (June 14, 1973), p. 19574.

<sup>96</sup> Sen. Robert C. Byrd, "S. 936," Statements on Introduced Bills and Joint Resolutions, *Congressional Record*, vol. 119 (February 21, 1973), p. 4791.

least 30 days advance notice of his intention to submit a plan. Like the Percy bill, this legislation was referred to the Senate Committee on Government Operations and saw no further action.

In 1975, President Gerald R. Ford requested that Congress renew and extend the 1949 statute for another four-year period.<sup>97</sup> No legislation to this effect appears to have been introduced.

The reason or reasons that Members of Congress did not grant President Nixon and President Ford extensions in 1973 and 1975 do not appear to have been documented in the *Congressional Record*. However, Senator Byrd's remarks upon the introduction of his extension bill in 1973 may reflect the priorities of at least some Members during the Watergate and early Post-Watergate period. After delineating a series of bills he had introduced that were "aimed at regaining congressional power over the administrative arm of the Federal Government" and describing his extension legislation, Senator Byrd stated:

I believe that my bill is a major step toward recovering some of the initiative the legislative branch has lost to the executive. It will aid in restoring to Congress its responsibility for discharging the duty of overseeing the conduct of the executive departments. It will strengthen the authority of the Congress over the administrative bureaucracy in the face of the increasing executive encroachment on Congress's constitutional authority. And it will ... safeguard against ill-considered and hasty action by the executive and default approval by a busy or an apathetic Congress.

Congressional control and oversight of the executive departments and agencies constitute one of our most important functions. It is the means by which the Congress is assured that its policies are being faithfully carried out, by which it may hold executive officers to an accounting for their stewardship, and by which it learns the effects of legislative policies and is thus able to make necessary statutory revisions.<sup>98</sup>

### **Reorganization Plans Submitted Under the Reauthorized 1949 Act: 1953-1973**

Between the first reauthorization of the 1949 act, at the beginning of the Dwight D. Eisenhower Administration in 1953, and its final expiration in 1973, during the second term of President Richard M. Nixon, 52 reorganization plans were submitted to Congress. Among the notable reorganizations implemented under the authority were the establishment of the following organizations:

- the Department of Health, Education and Welfare;<sup>99</sup>
- the Office of Science and Technology Policy in the EOP;<sup>100</sup>
- the Environmental Protection Agency;<sup>101</sup>

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<sup>97</sup> U.S. President (Ford), "Extension of the Reorganization Act of 1949," *Weekly Compilation of Presidential Documents*, vol. 11 (April 9, 1975), p. 354.

<sup>98</sup> Sen. Robert C. Byrd, "S. 936," Statements on Introduced Bills and Joint Resolutions, *Congressional Record*, vol. 119 (February 21, 1973), p. 4791.

<sup>99</sup> Reorganization Plan No. 1 of 1953 (67 Stat. 631); P.L. 83-13 (67 Stat. 18) provided that the plan would take effect earlier than it would have otherwise.

<sup>100</sup> Reorganization Plan No. 2 of 1962 (76 Stat. 1253).

<sup>101</sup> Reorganization Plan No. 3 of 1970 (84 Stat. 2086).

- the National Oceanic and Atmospheric Administration in the Department of Commerce,<sup>102</sup> and
- the Drug Enforcement Administration in the Department of Justice.<sup>103</sup>

Eight of the 52 submitted plans were disapproved by Congress. The disapproved plans included those that would have

- reorganized the research and development programs of the Department of Defense,<sup>104</sup>
- provided the Federal Savings and Loan Insurance Corporation with its own management, independent of the Federal Home Loan Bank Board;<sup>105</sup>
- transferred certain functions related to exchanges, sales, and other transactions concerning natural resources under the jurisdiction of the Secretary of Agriculture from the Secretary of the Interior to the Secretary of Agriculture;<sup>106</sup>
- authorized the Securities and Exchange Commission to delegate its functions to a division of the commission, an individual commissioner, a hearing examiner, or an employee or employee board;<sup>107</sup>
- authorized the Federal Communications Commission to delegate its functions to a division of the commission, an individual commissioner, a hearing examiner, or an employee or employee board;<sup>108</sup>
- authorized the National Labor Relations Board to delegate its functions to a division of the board, an individual board member, a hearing examiner, or an employee or employee board;<sup>109</sup>
- established a Department of Urban Affairs and Housing that would have included the functions of the Housing and Home Finance Agency, the Urban Renewal Administration, the Community Facilities Administration, and the Public Housing Administration, and would have included, as intact entities, the Federal Housing Administration and the Federal National Mortgage Association,<sup>110</sup> and
- transferred certain executive and administrative functions from the U.S. Tariff Commission to its chair.<sup>111</sup>

Just as President Truman had drawn on the recommendations of the first Hoover Commission when developing his reorganization plans, subsequent Presidents also drew on the work of

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<sup>102</sup> Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

<sup>103</sup> Reorganization Plan No. 2 of 1973 (87 Stat. 1091).

<sup>104</sup> Reorganization Plan No. 1 of 1956; disapproved by the House on July 5, 1956 (H. Res. 534; 84<sup>th</sup> Cong., 2<sup>nd</sup> sess.).

<sup>105</sup> Reorganization Plan No. 2 of 1956; disapproved by the House on July 5, 1956 (H. Res. 541; 84<sup>th</sup> Cong., 2<sup>nd</sup> sess.).

<sup>106</sup> Reorganization Plan No. 1 of 1959; disapproved by the House on July 7, 1959 (H. Res. 295; 86<sup>th</sup> Cong., 1<sup>st</sup> sess.).

<sup>107</sup> Reorganization Plan No. 1 of 1961; disapproved by the Senate on June 21, 1961 (S. Res. 148; 87<sup>th</sup> Cong., 1<sup>st</sup> sess.).

<sup>108</sup> Reorganization Plan No. 2 of 1961; disapproved by the House on June 15, 1961 (H. Res. 303; 87<sup>th</sup> Cong., 1<sup>st</sup> sess.).

<sup>109</sup> Reorganization Plan No. 5 of 1961; disapproved by the House on July 20, 1961 (H. Res. 328; 87<sup>th</sup> Cong., 1<sup>st</sup> sess.).

<sup>110</sup> Reorganization Plan No. 1 of 1962; disapproved by the House on February 21, 1962 (H. Res. 530; 87<sup>th</sup> Cong., 2<sup>nd</sup> sess.).

<sup>111</sup> Reorganization Plan No. 2 of 1967; disapproved by the Senate on May 15, 1967 (S. Res. 114; 90<sup>th</sup> Cong., 1<sup>st</sup> sess.).

various later government reform committees and councils when developing their plans. Unlike the Hoover Commission, which was established by public law, these groups were established under executive authority, and they reported to the President. These advisory entities included the President's Advisory Committee on Government Organization (Eisenhower),<sup>112</sup> the President's Task Force on Government Reorganization (Kennedy and Johnson), and the President's Advisory Council on Executive Organization (Nixon).<sup>113</sup>

## **The Reorganization Act of 1977 (Carter)**

During his 1976 run for President, Jimmy Carter's campaign described the federal government as "a horrible bureaucratic mess." It suggested that a Carter Administration would "give top priority to a drastic and thorough revision of the federal bureaucracy."<sup>114</sup> The candidate himself indicated that, if elected, he would ask for "complete authorization to reorganize the Executive Branch of government, giving [him] as much authority as possible." This authority would be used toward "the elimination of unnecessary agencies and departments, regulations and paperwork."<sup>115</sup> If elected, he pledged to "have a complete reorganization of the Executive Branch of government [and] make it efficient, economical, purposeful, simple, and manageable for a change."<sup>116</sup>

Soon after taking office, President Carter requested a four-year renewal of the Reorganization Act of 1949, with specified modifications. On February 4, 1977, he sent a message to Congress transmitting proposed legislation to this end, and briefly delivered remarks on the topic at the White House.<sup>117</sup>

Congress was largely amenable to the President's request, enacting a modified version within two months. The Senate Committee on Governmental Affairs held hearings in early February, and the House Committee on Government Operations held hearings in early March. After considerable debate in both chambers, a significantly modified version of the President's proposal was passed by late March.<sup>118</sup> The President signed it into law on April 6, 1977.<sup>119</sup>

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<sup>112</sup> A second Hoover Commission was established by Congress during the 1950s. It appears that President Eisenhower did not embrace this initiative, however, and assessments of the relationship between his Administration and the commission have suggested that it was marked by competition and conflict. Many of the changes that were advocated by the second Hoover Commission were adopted, but at least some of these changes would have been adopted in any event. For more, see Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905-1996*, 2<sup>nd</sup> edition, revised. (Lawrence, KS: University of Kansas, 1998), pp. 160-227; and Herbert Emmerich, *Federal Organization and Administrative Management* (University, AL: University of Alabama Press, 1971), pp. 101-127.

<sup>113</sup> For more on these advisory bodies, see CRS Report RL31446, *Reorganizing the Executive Branch in the 20th Century: Landmark Commissions*, by (name redacted). The author of that report has retired from CRS. Questions about the report may be directed to the author of this report, Henry Hogue.

<sup>114</sup> U.S. Congress, House Committee on House Administration, *Campaign 1976. Vol. 1, Part 1, Jimmy Carter*, committee print, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1978), p. 581.

<sup>115</sup> U.S. Congress, House Committee on House Administration, *Campaign 1976. Vol. 1, Part 2, Jimmy Carter*, committee print, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1978), pp. 738-739.

<sup>116</sup> *Ibid.*, p. 822.

<sup>117</sup> U.S. President (Carter), "Reorganization Plan Extension Legislation," *Weekly Compilation of Presidential Documents*, vol. 13 (February 4, 1977), pp. 147-149.

<sup>118</sup> Notably, the Senate passed its initial version of the act by a vote of 94-0, and adopted the subsequent House-amended version by voice vote. The House passed the bill by a vote of 395-22.

<sup>119</sup> P.L. 95-17; 91 Stat. 29.

Perhaps the greatest conflict over the legislation concerned the procedures by which Congress would pass judgment on a plan. The chairman of the House Committee on Government Operations, Representative Jack Brooks, questioned the constitutionality of the legislative veto procedure, as had some Members of Congress over the course of its use.<sup>120</sup> He favored legislation under which a President's plan would go into effect only upon affirmation by both houses of Congress. Ultimately, the authority enacted in 1977 continued to use a legislative veto. But the procedures were modified to require the mandatory introduction, in each chamber, of a resolution of disapproval upon the submission of a plan, as well as to facilitate the consideration of such resolutions.<sup>121</sup>

During the course of the legislative process, the bill was reconfigured from an amendment to the 1949 act to an entirely new statute, the "Reorganization Act of 1977." The new law used the same structure as the 1949 statute. In addition to the procedural changes just discussed, the 1977 statute differed from the final version of the 1949 act (as last amended in 1971) in a number of other ways, including the following:

- The President could amend a plan within 30 days, or withdraw a plan within 60 days, of its submission to Congress.
- The limitation to one plan submission during a 30-day period was changed to a limit of no more than three plans pending before Congress at one time.
- Congress conveyed its intent that the President provide an avenue for "broad citizen advice and participation in restructuring and reorganizing the executive branch."
- A prohibition on the abolition of any enforcement or statutory program was added.
- The prohibition against establishing, abolishing, transferring, or consolidating departments was expanded to prohibit also the abolition or consolidation of independent agencies.
- The President's transmittal message for a plan was to also include information concerning any estimated increase in expenditures as well as any expected management improvements.

President Carter submitted 10 plans under the new statute, all of which went into effect. Among these were a plan to reorganize the federal personnel management system, including the creation of an Office of Personnel Management, a Merit Systems Protection Board, and a Federal Labor Relations Authority;<sup>122</sup> the establishment of a Federal Emergency Management Agency,<sup>123</sup> to which were transferred functions and entities from various parts of the government; and to

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<sup>120</sup> For a thorough discussion of these debates in the context of reorganization authority by former CRS Specialists in American National Government (name redacted) and (name redacted), see U.S. Congress, House Committee on Rules, Subcommittee on Rules of the House, *Studies on the Legislative Veto*, pp. 164-247.

<sup>121</sup> For more on these developments, see U.S. Congress, Senate Committee on Governmental Affairs, *Executive Branch Reorganization: An Overview*, committee print, prepared by Congressional Research Service, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 1978 (Washington: GPO, 1978), pp. 52-58.

<sup>122</sup> Reorganization Plan No. 2 of 1978 (92 Stat. 3783). This reorganization was undertaken in concert with the Civil Service Reform Act of 1978 (P.L. 95-454; 92 Stat. 1111), among other measures.

<sup>123</sup> Reorganization Plan No. 3 of 1978 (92 Stat. 3788).

reorganize international trade functions, centering policy coordination and negotiation in this area in a United States Trade Representative in the Executive Office of the President.<sup>124</sup>

As discussed above, under the new authority, the President was permitted, for the first time, to amend a plan within 30 days of its submission. President Carter did so for 6 of his 10 plans.<sup>125</sup>

In early 1979, the Carter Administration conveyed the President's intention to create a new Department of Natural Resources.<sup>126</sup> The proposal reportedly faced congressional opposition, and no related reorganization plan was submitted.<sup>127</sup> A 1981 Senate report on a bill to further extend reorganization authority recounted the episode this way:

In February of 1979, then President Carter had announced his intention to submit a reorganization plan to establish a Department of Natural Resources that would absorb the Department of the Interior and would transfer the Forest Service from the Agriculture Department and the National Aeronautics and Space Administration from the Department of Commerce. The use of the reorganization plan process to establish the new Department was clearly a violation of the intent behind Section 905(a) of the Reorganization Act of 1977 which states that no reorganization plan may provide for or 'have the effect of creating a new executive department'. The Administration was candid in its belief that the proposal for a new Department of Natural Resources could not be passed if the normal legislative process was followed. By asserting that the President was merely changing the name and focus of the Department and not creating a new one, the Administration hoped to escape the prohibition in the Reorganization Act against such action.<sup>128</sup>

The authority provided under the Reorganization Act of 1977 expired on April 6, 1980. Congress passed a one-year extension of the authority with little discussion in committee or on the floor. President Carter's final reorganization plan was submitted on March 31, 1980, prior to the original deadline.<sup>129</sup>

## **Reorganization Authority in the 1980s (Reagan)**

The extension of the Reorganization Act of 1977 under President Jimmy Carter expired on April 7, 1981. During the early years of the presidency of Ronald W. Reagan, efforts were made to extend and modify the authority once again. In 1981, reorganization authority legislation supported by the Reagan Administration<sup>130</sup> was passed in the Senate, but not acted upon in the

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<sup>124</sup> Reorganization Plan No. 3 of 1979 (93 Stat. 1381).

<sup>125</sup> These plans were: Plan No. 1 of 1977, Plan No. 2 of 1977, Plan No. 2 of 1978, Plan No. 4 of 1978, Plan No. 2 of 1979, and Plan No. 1 of 1980.

<sup>126</sup> U.S. President (Carter), "Science and Technology: Message to Congress," *Public Papers of the Presidents of the United States: Jimmy Carter, 1979* (Washington: GPO, 1980), p. 534. See also pp. 378 and 444.

<sup>127</sup> "Reorganization Plans," in *CQ Almanac 1979*, 35<sup>th</sup> ed. (Washington, DC: Congressional Quarterly, 1980), pp. 549-550.

<sup>128</sup> U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Act of 1981*, report to accompany S. 893, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., June 8, 1981, S. Rept. 97-132 (Washington: GPO, 1981), p. 8.

<sup>129</sup> The President also submitted amendments to this plan on May 12, 1980, after the original deadline. It appears, however, that the April 6 deadline would have applied only to the initial plan, and not to subsequent amendments. In any event, with the extension of the authority, this question does not appear to have arisen.

<sup>130</sup> The Senate bill was introduced by Senator William V. Roth, Jr., "by request." This designation is often used to identify legislative text that has originated in the Administration. The support of the Reagan Administration for the measure was also reflected in testimony in House and Senate hearings by the Deputy Director of OMB.



House.<sup>131</sup> Although this legislation was not enacted, some modifications of the 1977 language included in the bill later became part of the statute as it stands today. The 1981 bill also included provisions to

- prohibit the President from renaming an existing department, in response to President Carter's proposal to create a Department of Natural Resources from the Department of the Interior, discussed above;
- prohibit the creation of new agencies that were not part of an existing department or independent agency;
- require inclusion, in a plan, of specified, detailed implementation information; and
- extend the period during which the President could amend or withdraw a plan and the period of congressional consideration.

The 1981 bill also would have created a different method for congressional consideration of proposed plans that did not become part of the current statute. As described in the committee report:

[R]eorganization plans would become effective if any one of three conditions were satisfied during the 90 day period for Congressional review: (1) each House of Congress adopts a resolution approving the plan; (2) one House of Congress adopts an approving resolution while the other House fails to vote; or (3) neither House votes on an approving resolution.<sup>132</sup>

Although shifting the congressional mechanism used from a resolution of disapproval to a resolution of approval, it appears the process would have functioned much as the earlier one would have: with no congressional action, a plan would have taken effect; with negative action in either chamber, the plan would not have taken effect.

In 1984, Congress enacted legislation amending the Chapter 9 of Title 5 of the *U.S. Code*, which embodied the 1977 Reorganization Act. In addition to adopting the 1981 modifications discussed above, the amendments altered the method by which a plan could take effect. This change responded to a 1983 ruling by the Supreme Court, in *INS v. Chadha*, that the legislative veto process (i.e., that a plan could be rejected by a resolution of one or both houses) was unconstitutional.<sup>133</sup> Under the new authority, once the President submitted a reorganization plan, Congress was to consider, under an expedited procedure, a joint resolution approving the plan. The expedited procedure included limitations on the duration of committee consideration, the duration of floor debate, and amendments (although the President could amend or modify his plan during the first 60 days after submission). As a joint resolution, this vehicle would need to be

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<sup>131</sup> This legislation was S. 893 (97<sup>th</sup> Congress). Separate legislation, H.R. 3270 (97<sup>th</sup> Congress), was also introduced in the House. Subcommittee hearings were held on the bill, but no further action was taken. See U.S. Congress, House Committee on Government Operations, Subcommittee on Legislation and National Security, *Reorganization Act of 1981; Amend Economy Act to Provide that All Departments and Agencies Obtain Materials or Services from other Agencies by Contract; and Amend the Federal Grant and Cooperative Agreement Act*, hearing on H.R. 3270, H.R. 2528, and H.R. 3943, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., October 28, 1981 (Washington: GPO, 1982).

<sup>132</sup> U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Act of 1981*, report to accompany S. 893, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., June 8, 1981, S. Rept. 97-132 (Washington: GPO, 1981), p. 10.

<sup>133</sup> 462 U.S. 919 (1983) (invalidating the legislative veto and holding that legislative power must be "exercised in accord with a single, finely wrought and exhaustively considered procedure").

approved by the President to have the force of law. Unlike the legislative veto, the burden of action was placed on the proponents of the plan, rather than its opponents. As is the case under the regular legislative process, the default would be the status quo. The process of reorganizing the government was thus made somewhat more difficult than it would have been under earlier versions of presidential reorganization authority.

The amendments enacted by Congress extended the reorganization plan authority from November 1984 to December 31, 1984. However, the Senate adjourned sine die for the year the day following passage of the bill, and it did not reassemble until January 3, 1985, after the December 31, 1984, deadline for submission of plans had passed. Given the requirement that plans be submitted while Congress was in session, the Reagan Administration had virtually no opportunity to use the authority he had been given. Although the statutory deadline for submission of plans has passed, the dormant statute remains in the *U.S. Code*.

The Court's ruling in *INS v. Chadha* raised concerns that the validity of existing reorganization plans, all of which had gone into effect under reorganization authority with legislative veto provisions, might be called into question. Consequently Congress passed legislation ratifying all of the reorganization plans that had gone into effect under the now-unconstitutional procedure.<sup>134</sup>

As part of the FY1986 budget request, submitted in early 1985, the Reagan Administration proposed a renewal of the 1984 authority. The document noted the long history of the statute, and that the President had not had the opportunity to use the authority that had been granted in the previous year. The request stated: "The President will propose renewal of that reorganization authority to December 31, 1988, to permit continued structural flexibility."<sup>135</sup> The President's proposal was reiterated in the budget the following year.<sup>136</sup> Legislation to extend reorganization authority was introduced early in that Congress (the 99<sup>th</sup>, 1985-1986).<sup>137</sup> The Senate Committee on Governmental Affairs held a hearing on the bill together with other legislative initiatives of the President related to governmental management.<sup>138</sup> No further legislative action was taken. The budget documents for FY1988, released at the beginning of the 100<sup>th</sup> Congress (1987-1988), restated the President's interest in a renewal of the authority. It appears that no legislation was introduced during this Congress, and the initiative did not appear in the budget submission for the following year.

## **Requests for Reorganization Authority from 1989 through 2010**

In the decades since this authority last expired, some presidential administrations have advocated its restoration, and some have not. It does not appear that President George H. W. Bush sought its extension, nor that such legislation was introduced during his Administration. Initial reports issued by the Clinton Administration's National Performance Review included the

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<sup>134</sup> P.L. 98-532; 98 Stat. 2705.

<sup>135</sup> U.S. Executive Office of the President, Office of Management and Budget, *Management of the United States Government: Fiscal Year 1986*, Washington, DC, 1985, p. 69.

<sup>136</sup> U.S. Executive Office of the President, Office of Management and Budget, *Management of the United States Government: Fiscal Year 1987*, Washington, DC, 1986, p. 83.

<sup>137</sup> H.R. 537 and S. 1657 (99<sup>th</sup> Congress).

<sup>138</sup> U.S. Congress, Senate Committee on Governmental Affairs, *President's Management Legislative Initiatives*, hearing on S.J.Res. 190, S. 1206, S. 1657, S. 2004-S. 2010, H.R. 2401, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 25, 1986, S.Hrg. 99-618 (Washington: GPO, 1986).

recommendation that the reorganization authority be reauthorized,<sup>139</sup> but President Clinton did not directly request action by Congress. As discussed below, the George W. Bush Administration called for a renewal of presidential reorganization authority, and legislation introduced during the 108<sup>th</sup> Congress (2003-2004) included provisions that would have renewed the authority in modified form. This legislation was not enacted.

## **2002 Effort to Renew Presidential Reorganization Authority**

In his FY2003 budget proposal, President George W. Bush stated, “The Administration will seek to re-institute permanent reorganization authority for the President to permit expedited legislative approval of plans to reorganize the Executive Branch.”<sup>140</sup> In January 2003, the second National Commission on the Public Service released a report with a number of recommendations regarding federal government organization and management, including the re-establishment of reorganization authority.<sup>141</sup> Early in the 108<sup>th</sup> Congress, Representative Tom Davis, chairman of the House Committee on Government Reform, indicated that he planned to introduce legislation to re-establish reorganization authority.<sup>142</sup> On April 3, 2003, the committee held a hearing on that topic, with testimony in support of that action by, among others, House Majority Leader Tom DeLay.<sup>143</sup> On September 17, 2003, the House Committee on Government Reform, Subcommittee on Civil Service and Agency Organization held a hearing concerning the connection between federal personnel issues and government reorganization.<sup>144</sup>

As part of legislative activity that led to the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 during the 108<sup>th</sup> Congress,<sup>145</sup> the House passed provisions that would have renewed the President’s reorganization authority in a modified form. It would have amended Chapter 9 of Title 5—that is, the most recent form of presidential reorganization authority—to make the following changes:

- the grant of reorganization authority would have been permanent, rather than subject to periodic congressional reauthorization;<sup>146</sup>

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<sup>139</sup> Office of the Vice President, *Creating a Government That Works Better & Costs Less: Transforming Organizational Structures*, Accompanying Report of the National Performance Review (Washington: September 1993).

<sup>140</sup> *Budget of the United States Government—Fiscal Year 2003* (Washington: GPO, 2002), p. 52.

<sup>141</sup> The National Commission on the Public Service, *Urgent Business for America: Revitalizing the Federal Government for the 21<sup>st</sup> Century*, Washington, DC, January 2003. The second National Commission on the Public Service, a bipartisan panel also known as the second Volcker Commission, was organized by the Brookings Institution in early 2002 and funded with grants from the Dillon Fund and the Packard Foundation.

<sup>142</sup> Kerry Kantin, “Davis Wants to Give Bush Broad Power to Reorganize,” *Federal Paper*, January 27, 2003, p. 11; Stephen Barr, “Davis Outlines Plans for Revamping Pay System, Structure of Government,” *Washington Post*, March 11, 2003, p. B2; and Maureen Sirhal, “Davis Seeks to Put Reorganization on Fast Track,” GovExec.com, March 10, 2003, available at <http://www.govexec.com/management/2003/03/davis-seeks-to-put-reorganization-on-fast-track/13590/>.

<sup>143</sup> U.S. Congress, House Committee on Government Reform, *Toward a Logical Governing Structure: Restoring Executive Reorganization Authority*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., April 3, 2003, Serial No. 108-33 (Washington: GPO, 2003).

<sup>144</sup> U.S. Congress, House Committee on Government Reform, Subcommittee on Civil Service and Agency Organization, *Human Capital Planning: Exploring the National Commission on the Public Service’s Recommendations for Reorganizing the Federal Government*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., September 17, 2003, Serial No. 108-109 (Washington: GPO, 2004).

<sup>145</sup> P.L. 108-458; 118 Stat. 3638.

<sup>146</sup> S. 2845 (Engrossed Amendment House) (108<sup>th</sup> Cong.), §§5021(b) 5021(d), and 5021(e)(2)(A).

- the President would have been permitted to submit reorganization plans under this authority only for intelligence-related units identified in the provision or “other elements of any other department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community”;<sup>147</sup>
- seven limitations on the President’s authority under this chapter would have been eliminated, including the prohibition on the use of reorganization plans to create or rename executive departments, or to abolish or transfer an existing department or independent regulatory agency;<sup>148</sup>
- the inclusion in submitted plans of provisions for the creation of new agencies would have been explicitly permitted;<sup>149</sup> and
- a submitted plan could have included “the abolition of all or a part of the functions of an agency” without the formerly included limitation that “no enforcement function or statutory program shall be abolished by the plan.”<sup>150</sup>

These provisions were removed in conference with the Senate, and they were not included in the bill as enacted.<sup>151</sup>

## Experience Under Presidential Reorganization Authority

Between 1939 and 1984, more than 100 plans were submitted to Congress under various forms of presidential reorganization authority, and a majority of these went into effect. Many of the plans that went into effect reorganized the government in relatively minor ways. In some cases, however, the authority was used to make larger changes. For example, presidential reorganization authority was used

- in 1939, to transfer offices to the newly created Executive Office of the President and to consolidate human service offices and create the Federal Security Agency;
- in the mid-1940s, to help facilitate the organizational transition from wartime to peacetime;

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<sup>147</sup> S. 2845 (Engrossed Amendment House) (108<sup>th</sup> Cong.), §5021(b).

<sup>148</sup> S. 2845 (Engrossed Amendment House) (108<sup>th</sup> Cong.), §5021(b).

<sup>149</sup> S. 2845 (Engrossed Amendment House) (108<sup>th</sup> Cong.), §5021(c).

<sup>150</sup> S. 2845 (Engrossed Amendment House) (108<sup>th</sup> Cong.), §5021(a).

<sup>151</sup> Other approaches to executive branch reorganization were considered later during the Bush presidency. For example, the Administration’s FY2006 budget submission called for creation of “results commissions,” which would have considered and revised “Administration proposals to improve the performance of programs or agencies by restructuring or consolidating them.” (U.S. Office of Management and Budget, *Fiscal Year 2006 Analytical Perspectives* (Washington: GPO, 2005), p. 242.) Under the proposal, Congress would have established a results commission to address a particular program or policy area where duplicative or overlapping functions were found. If the President had then approved a commission reform proposal, the measure then would have been considered by Congress under expedited procedures. For more on legislative developments related to this, and similar, proposals, see CRS Report RL34551, *A Federal Sunset Commission: Review of Proposals and Actions*, by (name redacted).

- in the late 1940s and early 1950s to implement some of the administrative changes recommended by the Hoover Commissions, such as the consolidation of authority in the heads of departments and agencies;
- in 1953, to elevate the Federal Security Agency to department status with the establishment of the Department of Health, Education, and Welfare in 1953;
- in 1970, to establish the Environmental Protection Agency; and
- in 1978, to consolidate federal emergency management functions and create the Federal Emergency Management Agency.

As the President's reorganization authority evolved from the 1930s onward, Congress continued to delegate authority to the President while establishing provisions that sought to protect congressional prerogatives. Although the specific terms varied under different versions of the authority, the statutory framework evolved to include four elements that defined the potential scope of the President's plans and the congressional role in passing judgment on such proposals. These were specification of the range of actions that could be undertaken under the authority, a series of limitations constraining the breadth of those actions, an authorization of limited duration, and some opportunity for Congress to consider, and potentially block, a plan before its effective date.

## **Obama Administration Proposal**

As previously noted, a legislative proposal that would renew the President's reorganization authority was conveyed to Congress on February 16, 2012. The proposal would amend the expired provisions of the Reorganization Act of 1977, as amended in 1984, which are listed at 5 U.S.C. 901 et seq. (hereinafter "1984 statute"). It would

- reactivate the authority for two years from the date of enactment by amending Section 905(b) and Section 908(1), the two places in the law that specify deadlines that limit the period during which the authority can be used;
- define "efficiency-enhancing plan" as one that the Director of the Office of Management and Budget (OMB) determines is likely to result in a decrease in the number of agencies or cost savings in performing the functions that are the subject of the plan;
- require that all plans are efficiency-enhancing plans;
- allow the abolition or renaming of an existing department, or the creation of a new department (not permitted under the 1984 statute);
- allow the consolidation of two or more departments (not permitted under the 1984 statute); and
- allow the creation of a new agency that is not part of an existing agency (not permitted under the 1984 statute).

Should this authority be granted, the President indicated that his first submitted plan would propose consolidation of six business and trade-related agencies into one: U.S. Department of Commerce's core business and trade functions, the Export Import Bank, the Overseas Private Investment Corporation, the Small Business Administration, the U.S. Trade and Development

Agency, and the Office of the U.S. Trade Representative. It appears that this plan would also involve the relocation of some subunits and functions that are not directly linked with business and trade. The Administration has stated, for example, that the National Oceanic and Atmospheric Administration would be moved to the Department of the Interior.<sup>152</sup>

## Potential Approaches for Congressional Consideration

President Obama has requested a renewal of presidential reorganization authority, and a bill has been introduced in the Senate that would grant him this power in a modified form. Congress might approach the question of whether, and how, to delegate this authority to the President in various ways. First, Congress could simply elect not to renew the authority, either by not acting on the President's proposal, or by actively rejecting it. In the event that Congress elects to renew presidential reorganization authority, it might do so in a number of different ways. For example, it could renew the authority (1) without modifications, (2) with the requested amendments to the scope of the authority, (3) with a different set of amendments to the scope of the authority, (4) with changes to the nature of the expedited congressional procedures, or (5) with some combination of these. Each of these approaches is discussed in greater detail below.

Presidential reorganization authority raises administrative, political, and institutional questions, including the following:

- Is government reorganization desirable?
- If reorganization is desirable, is the President better suited than Congress to undertake government reorganization?
- If the President is better suited to undertake reorganization, is the granted authority under a given proposal flexible and extensive enough to allow the President to make meaningful changes to government organizational arrangements?
- Are the limitations on plan contents sufficient to preclude organizational changes that might be deemed by Congress to be problematic from a policy or institutional point of view?
- Should organizations that exercise predominantly quasi-legislative or quasi-judicial (regulatory) functions be treated differently from those that exercise predominantly executive functions?
- What kind of input into the crafting of reorganization plans should be afforded to Congress?
- Do congressional procedures allow for a sufficient congressional check on the President's use of this authority?

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<sup>152</sup> For more detailed information on this proposed reorganization, see CRS Report R41841, *Executive Branch Reorganization Initiatives During the 112<sup>th</sup> Congress: A Brief Overview*, by (name redacted); and CRS Report R42555, *Trade Reorganization: Overview and Issues for Congress*, by Shayerah Ilias.

- Should the President have the ability to reorganize any quarter of the executive branch as he sees fit, or should he be required to lay out his intentions for reorganization prior to obtaining the authority?
- To what degree should Congress prescribe the parameters of potential reorganizations? What limitations should be included in statute? What significance should be given to recommendations from congressional commissions, congressional committees, GAO, and other stakeholders?

Answers to these questions, drawn from the history of reorganization authority, could provide a basis for evaluating the potential approaches discussed below.

## **Option I. No Renewal of Reorganization Authority**

Congress might elect not to act on the President's request. In this case, present legal authorities would continue to define the range of potential changes to organizational arrangements. Reorganization activities could be accomplished through the enactment of legislation. For example, the President could transmit his proposal to consolidate six business- and trade-related agencies, and this proposal could be considered by Congress. Alternatively, agency heads could direct reorganization activities within their agencies, where the power to establish organizational arrangements is understood to be inherent or is specified in law. In addition, under Section 301 of Title 3 of the *United States Code*, the President could alter organizational arrangements by redelegating functions that Congress has vested in him.<sup>153</sup>

Advocates of this approach might argue that existing delegations of reorganization authority provide the Administration with sufficient flexibility to make minor adaptations to changing circumstances. They could argue that a renewal of presidential reorganization authority, which could facilitate larger scale government-wide changes, would be an unnecessary delegation of Congress's role in establishing and shaping the federal bureaucracy. Such an argument might point to the ability of Congress to carry out this role, as evident over the past decade in, for example, the establishment of the Department of Homeland Security, the reorganization of the intelligence community, the increase of autonomy for the Federal Emergency Management Agency within the Department of Homeland Security, the abolishment of the Office of Thrift Supervision, and the establishment of the Consumer Financial Protection Bureau.<sup>154</sup> It could further be argued that Congress, through its committee system, is better suited to represent the broad array of interests that might be affected by alterations to the federal bureaucracy, and that reorganizations that take these interests into account are more likely to endure and not be impeded during the implementation phase.

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<sup>153</sup> For more on existing authorities, see CRS Report R41841, *Executive Branch Reorganization Initiatives During the 112<sup>th</sup> Congress: A Brief Overview*, by (name redacted)

<sup>154</sup> During a March 2012 hearing on the proposed renewal of presidential reorganization authority, one Senator stated, "Recent history shows that the executive branch has been more hesitant to embrace significant reorganization ... because there were people arguing within the executive branch against changing the status quo in which they had become comfortable." U.S. Senate Committee on Homeland Security and Governmental Affairs, *Retooling Government for the 21<sup>st</sup> Century: The President's Reorganization Plan and Reducing Duplication*, hearing, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 21 2012, video available at <http://www.hsgac.senate.gov/hearings/retooling-government-for-the-21st-century-the-presidents-reorganization-plan-and-reducing-duplication>, with statement at approximately 90 minute mark.

On the other hand, proponents of renewing the authority have argued that Congress has been ineffective in enacting legislation that improves federal organizational arrangements. For example, when introducing his initiative, President Obama stated:

In 1984 . . . Congress stopped granting [presidential reorganization] authority. And when this process was left to follow the usual congressional pace and procedures, not surprisingly, it bogged down. So congressional committees fought to protect their turf and lobbyists fought to keep things the way they were because they were the only ones who could navigate the confusion. And because it's always easier to add than subtract in Washington, inertia prevented any real reform from happening. Layers kept getting added on and added on and added on.<sup>155</sup>

At a March 2012 hearing on renewal of the authority, Daniel I. Werfel, the Controller at OMB, acknowledged, however, that Congress was able to legislate a large scale reorganization in the aftermath of 9/11, while differentiating this accomplishment from potential reorganizations based on non-emergency needs:

I think the important distinguishing factor about Department of Homeland Security reorganization is that that was in response to a crisis and a clear emerging need that was on the national consciousness to realign or clearly protect the homeland.... The fact that the DHS reorganization came together in response to a crisis, from our standpoint, is not sufficient evidence that the executive branch and Congress are ready to be transformative in government reorganization.<sup>156</sup>

Congressional committees might elect to conduct oversight of the federal bureaucracy's organizational arrangements, either government wide, or in select policy spheres, regardless of whether or not Congress renews presidential reorganization authority. In the past, when additional investigation and analysis of federal organization were indicated, Congress has sometimes established blue ribbon commissions. In the case of the first Hoover Commission, for example, the panel conducted its work in the run-up to the presidential election, and its recommendations were then available to the new Congress and the re-elected President (Truman).

## **Option II. Renew the Authority without Modification**

If Congress were to renew the authority without further amendment, it would renew the authority as it existed in 1984. Notably, the 1984 statute was never used. Although, as discussed above, the authority is similar to the version used by President Jimmy Carter from 1977 through 1980, it also differs from it in significant ways. Perhaps chief among these, the expedited congressional procedures are tailored to facilitate consideration of a joint resolution to approve submitted plans, rather than to disapprove submitted plans.<sup>157</sup> In addition, the scope of the 1984 statute is more limited than that of the Carter-era authority: renaming of existing departments is not permitted

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<sup>155</sup> U.S. President (Obama), "Remarks on Government Reform," *Daily Compilation of Presidential Documents*, January 13, 2012, p. 1.

<sup>156</sup> U.S. Senate Committee on Homeland Security and Governmental Affairs, *Retooling Government for the 21<sup>st</sup> Century: The President's Reorganization Plan and Reducing Duplication*, hearing, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 21 2012, video available at <http://www.hsgac.senate.gov/hearings/retooling-government-for-the-21st-century-the-presidents-reorganization-plan-and-reducing-duplication>, with statement at approximately 91 minute mark.

<sup>157</sup> As previously discussed, this change responded to the Supreme Court's decision in *INS v. Chadha* (462 U.S. 919 (1983)), which held that the one- and two-house vetoes of the kind that had been used in earlier iterations of reorganization authority were unconstitutional. See "1984 Amendments" above.



and a plan could not create a new, freestanding agency. In addition, the current statute differs from the earlier version by requiring that the President's message include additional detailed information regarding implementation of a plan.

It appears that under this potential approach to the reorganization authority question, President Obama would not be able to submit the plan he has described. This is because the plan, as described, would involve reconstituting and renaming a department and, arguably, establishing a new, freestanding organizational unit, both of which would be prohibited. Nonetheless, the Administration might be able to adapt the plan to fit the scope of authority provided in the current statute, were it renewed without the Administration's requested amendments.

Because this course of action would be a continuation of the statute as it was last authorized by Congress, it might be seen as representing continuity. Many of the Members of the Congress who last considered and renewed this authority were also Members at the time the reorganization authority was last in use, during the Carter Administration (1977-1981).<sup>158</sup> Presumably this experience would have informed the 1984 reauthorization. The reauthorization process appears to have been uncontroversial. It passed in the House, on April 10, 1984, by voice vote under suspension of the rules. It passed the Senate by voice vote on October 11, 1984, as the 98<sup>th</sup> Congress was drawing to a close. The bill was signed into law on November 8, 1984.<sup>159</sup>

It could be argued, however, that because the 1984 law was never tried, its effectiveness in carrying out congressional purposes is unknown. Furthermore, the lack of controversy associated with its passage, particularly in the Senate, could be associated with the short duration of the authority.<sup>160</sup> In fact, the Senate adjourned sine die for the year the day following passage of the bill, and it did not reassemble until January 3, 1985, which was after the deadline for submission of plans had passed. By the time the law was signed, the Senate was adjourned. Given the requirement that plans be submitted while Congress was in session, the Reagan Administration had virtually no opportunity to use the statute once it was enacted. Finally, although the passage of the 1984 reauthorization legislation might be seen as a ratification by the 98<sup>th</sup> Congress of the terms of the reorganization authority it conferred, it does not necessarily follow that the current Congress would have the same views or priorities concerning the statute.

### **Option III. Enact the Authority as Requested**

A third possible approach to the question of presidential reorganization authority would be for Congress to enact the President's proposal. As previously described, this proposal, embodied in S. 2129, as introduced during the 112<sup>th</sup> Congress, would renew and amend the expired 1984 reorganization authority set forth in 5 U.S.C. Sections 901 et seq. The bill would alter the 1984 statute by:

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<sup>158</sup> The chairman and ranking Member of the House Committee on Government Operations were the same during the two periods. In contrast, the leadership of the Senate Committee on Governmental Affairs changed between 1977 and 1984. The chairman and ranking Member of this committee in 1984 had been members of the committee in 1977, however. Notably, party control of the Senate and White House changed between 1977 and 1984.

<sup>159</sup> P.L. 98-614; 98 Stat. 3192.

<sup>160</sup> The lack of controversy associated the passage of the bill in the Senate also might have been associated with other factors, such as the match between the Senate and the White House in terms of political party control.

- changing the deadline for submission of reorganization plans from December 31, 1984, to two years from enactment;
- requiring that each submitted plan be “efficiency-enhancing”—likely to result in a decreased number of agencies or cost saving related to targeted functions—as verified by the OMB director;
- allowing for the creation of a new executive department; the renaming of a department; the abolishment or transfer of a department, or all its functions; or the consolidation of two or more departments, or all their functions; and
- allowing for the creation of a new freestanding agency.

These elements are discussed in more detail below.

### **Two-year Extension**

The proposed two-year extension is consistent with many of the past extensions of this authority.<sup>161</sup> On other occasions, Congress delegated this authority to the President for longer periods of time. The 1949 act, for example, provided the authority for three years and nine months, until about two months after the end of the Truman Administration. The 1965 reauthorization extended the authority for approximately three and a half years, to nearly the end of the Johnson Administration. The 1977 act provided the authority for a period of three years from enactment. On the other hand, Congress has also sometimes authorized periods of significantly less than two years in duration, such as in 1964 (approximately 11 months), 1971 (approximately 15 months), and 1980 (one additional year). The last authorization appears to have been the shortest. The legislation, which was signed into law on November 8, 1984, specified that “a provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress ... on or before December 31, 1984,”<sup>162</sup> only 53 days later.<sup>163</sup>

### **“Efficiency-Enhancing” Requirement**

S. 2129 would also amend the expired 1984 authority to require that each submitted plan be “efficiency-enhancing.” The bill defines an efficiency-enhancing plan as one “that the Director of the Office of Management and Budget determines will result in, or is likely to result in—(A) a decrease in the number of agencies; or (B) cost savings in performing the functions that are the subject of that plan.”<sup>164</sup> These purposes would not be completely new, but would prioritize two current purposes and require verification that a submitted plan has addressed them in specified ways.

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<sup>161</sup> Congress granted authority of approximately this duration in 1939 (approximately 21 months); 1945 (approximately 27 months); 1953 and 1955 (approximately 26 months each); 1957 (approximately 21 months); 1961 (approximately 26 months); and 1969 (approximately 24 months).

<sup>162</sup> 5 U.S.C. §905(b).

<sup>163</sup> As previously noted, the statute also required that plans be submitted to each house of Congress when it was in session (5 U.S.C. §903(b)), and there was no such time during that 53-day period; it appears that President Reagan never had an opportunity to use the authority.

<sup>164</sup> S. 2129 (112<sup>th</sup> Congress), §2(a)(4).

The expired 1984 statute provides, among other purposes, that “it is the policy of the United States ... to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government [and] ... to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government.”<sup>165</sup> In furtherance of these purposes, under the 1984 statute, each reorganization plan is to be accompanied by a “declaration that, with respect to each reorganization included in the plan, [the President] has found that the reorganization is necessary to carry out” these purposes or any of the other four purposes identified in the statute.<sup>166</sup> In addition, the plan is to be accompanied by a message that, among other things, “estimates any reduction or increase in expenditures (itemized so far as practicable) ... which it is expected will be realized as a result of the reorganizations included in the plan.”<sup>167</sup>

The proposed efficiency-enhancing standard in S. 2129<sup>168</sup> would prioritize these two purposes—a decrease in the number of agencies and cost savings in performing functions in the plan—over the other purposes in the 1984 statute, because one or the other would have to be addressed in any plan put forward. The amendment also would go beyond requiring the President to declare that a reorganization is necessary to carry out the purposes. Notably, such a declaration would indicate that such an action is *necessary*, but not that it is *sufficient*, to actually achieve the specified result. Seemingly, by requiring that the OMB Director make an official determination that one of the purposes associated with the efficiency-enhancing standard will be, or is likely to be achieved, it could be expected that the reorganization would be sufficient to deliver the promised results.

It could be argued, on this basis, that this amendment to the 1984 statute would make the Administration more accountable for achieving reorganization outcomes that address at least one or two of the long-specified purposes in the current statute. It is also possible, however, that, because the statute has a general definition of “agency” that includes “an Executive agency or part thereof; and ... an office or officer in the executive branch,”<sup>169</sup> a plan could reduce their number while not achieving a consolidation or reduction in the size of the federal government. For example, a plan could provide for the abolition of a department and its 17 subagencies (18 agencies total), while establishing 16 new independent agencies that would carry out the same functions. This would result in a decrease of two agencies while arguably increasing the spread of the government. Furthermore, assuming that the heads of these new organizations have administrative flexibility to structure their agencies,<sup>170</sup> they would be able to create additional subunits—be they termed offices, bureaus, agencies, services, or some other entity—at a later

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<sup>165</sup> 5 U.S.C. §901(a).

<sup>166</sup> 5 U.S.C. §903(a).

<sup>167</sup> 5 U.S.C. §903(b).

<sup>168</sup> As introduced during the 112<sup>th</sup> Congress.

<sup>169</sup> 5 U.S.C. §902(1).

<sup>170</sup> In general, agency heads have discretion, consistent with existing statutory mandates, to organize and manage the day-to-day operations of the agencies for which they are responsible. (See Basil J. Mezines, Jacob A. Stein, and Jules Gruff, *Administrative Law*, vol. 1 (New York: Matthew Bender, 2006), pp. 4-18 to 4-27.) In addition, since the 1950s, the powers, duties, and functions of the component offices of most agencies have been vested in the agency head, who is, in turn, empowered to delegate these powers, duties, and authorities. Furthermore, 5 U.S.C. §301 provides that the “head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business.” The agency head’s authority does not, however, supersede congressional authority to provide for specific organizational arrangements or to vest powers, duties, or authorities in particular offices established in this way.

time. Arguably, this would provide an incentive for reorganization plans to provide for only the broad structure of an agency, so as to reduce the “number of agencies,” and to create additional structural features administratively at a later date.

Similarly, because the term “cost savings” is not defined, disagreements might arise about the OMB Director’s determination with regard to those associated with a particular plan. In addition, projections are not always met by actual achievements. During previous delegations of presidential reorganization authority, there were few instances in which reorganization plans resulted in documented cost savings.

## **Decreased Limitations on Alterations to Departments**

The amendments to the current reorganization authority that are part of S. 2129<sup>171</sup> would also allow for the creation of a new executive department; the renaming of a department; the abolition or transfer of a department, or all its functions; or the consolidation of two or more departments, or all their functions. Some of these powers have been available in at least one previous version of the reorganization authority, but none were available in the most recent version. The history of each of these is discussed below.

### *Creating a new department:*

The 1932 and 1933 presidential reorganization statutes did not explicitly allow for or prohibit the creation of a department, but it appears that it was understood to be beyond the scope of authorized actions, and no such reorganization was attempted. In fact, none of President Hoover’s executive orders under the 1932 act would have established any new organization. This was also true of most of President Roosevelt’s reorganizations under the 1933 authority; in most cases they transferred, consolidated, or abolished functions and subunits within and among existing departments and agencies.<sup>172</sup>

The 1939 and 1945 statutes, however, explicitly prohibited the establishment of new departments.<sup>173</sup> As discussed above (“Reorganization Authority Proposal During the 75th Congress (1937-1938) (Roosevelt)”), the enactment of the 1939 authority followed an unsuccessful presidential request for broader reorganization authority during 1937 and 1938. Among the points of disagreement during those years was whether there should be created a new Department of Social Welfare and a new Department of Public Works. The language included in the 1939 and 1945 statutes suggests that those who favored the reorganization as a means of maintaining or decreasing the size of government prevailed in shaping the provisions.

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<sup>171</sup> As introduced during the 112<sup>th</sup> Congress.

<sup>172</sup> There appears to have been at least one exception to this pattern, when the President used the 1933 authority to establish the Farm Credit Administration as an independent regulatory agency. E.O. 6084, issued on March 27, 1933, changed the name of the Federal Farm Board, a federal agency that had been established by the Agricultural Marketing Act in 1929, to the Farm Credit Administration. It altered the agency’s leadership structure from an eight-member board to a single administrator, and transferred to it additional functions and resources from the Department of the Treasury, the Department of Agriculture, and other agencies.

<sup>173</sup> The 1939 statute provided that “No reorganization plan ... shall provide ... [f]or the abolition or transfer of an executive department or all the functions thereof or for the establishment of any new executive department” (53 Stat. 561). Similarly, the 1945 act provided that “No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of ... abolishing or transferring an executive department or all the functions thereof or establishing any new executive department” (59 Stat. 615).

The Reorganization Act of 1949 did not continue the prohibition on the establishment of new departments. The prohibition was removed because Members observed that plans under previous acts had created large agencies that were, for all intents and purposes, like departments. Thus, the President was not prevented from creating large organizations, just from calling them departments. The frequently cited example of this was the Federal Security Agency. As the Senate report regarding reauthorization of the authority put it:

The bill deletes the prohibitions ... against creation of new executive departments by reorganization plan. At least one agency—the Federal Security Agency—has been established by plan which obviously is of departmental magnitude and importance and should have been designated as an executive department. No good purpose has been served by the old prohibition.<sup>174</sup>

The only successful use of this authority to establish a department resulted from President Eisenhower's first reorganization plan. Shortly after taking office in 1953, he submitted a plan that established the Department of Health, Education, and Welfare.<sup>175</sup> Essentially, this action elevated the existing Federal Security Agency to department status. Notably, Congress endorsed this action by enacting a statute that moved up the effective date of the department's establishment.<sup>176</sup>

The 1964 extension of the Reorganization Act of 1949 reinstated the prohibition on the establishment of new departments. As noted above, this amendment appears to have been a reaction to a controversial (and unsuccessful) effort by President Kennedy, in 1962, to establish a Department of Urban Affairs and Housing—first through legislation, and then by reorganization plan. The legislative effort to create the department was defeated when the House Rules Committee did not adopt a rule for floor consideration of the measure, reportedly because of civil rights-related issues.<sup>177</sup> The President subsequently submitted Reorganization Plan No. 2 of 1962, which also would have established a Department of Urban Affairs and Housing to carry out the functions of several existing agencies.<sup>178</sup> Though the House adopted a resolution disapproving the plan, the President's efforts were seen by some as an abuse of the authority. This led to the reinstatement of the restriction, which continued to be part of subsequent reorganization authority statutes.

### ***Renaming a Department:***

As discussed above, enactment of the 1939 authority followed a period of disagreement about whether to establish two additional departments in the federal government. Just as the new authority did not permit a plan to establish a new department, it prevented the renaming of a department. This limitation was continued in the 1945 act, but was dropped in 1949. Subsequent

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<sup>174</sup> U.S. Congress, Senate Committee on Expenditures in the Executive Departments, *Reorganization Act of 1949*, report to accompany S. 526, 81<sup>st</sup> Cong., 1<sup>st</sup> sess., April 7, 1949, S.Rept. 232 (Washington: GPO, 1949), pp. 7-8.

<sup>175</sup> Reorganization Plan No. 1 of 1953 (67 Stat. 631).

<sup>176</sup> P.L. 83-13; 67 Stat. 18.

<sup>177</sup> "Congress Blocks Urban Affairs Plan," in *Congressional Quarterly Almanac: 87<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1962*, vol. 18 (Washington: Congressional Quarterly Service, 1963), pp. 381-384.

<sup>178</sup> Reorganization Plan No. 1 of 1962. U.S. Congress, House, *Message from the President of the United States Transmitting Reorganization Plan No. 1 of 1962, which would Create a Department of Urban Affairs and Housing, and the Appointment by the President of a Secretary of Urban Affairs*, 87<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 320 (Washington: GPO, 1962).

versions of the statute remained free of this provision until the final amendments, in 1984. At this time the restriction was reinstated in response to an unsuccessful Carter initiative that would have constituted a controversial use of the statute. As discussed earlier in this report (“The Reorganization Act of 1977”), the Administration announced plans to submit a reorganization plan that would have had the effect of establishing a new Department of Natural Resources by renaming the Department of the Interior and transferring to it the Forest Service and the National Oceanic and Atmospheric Administration, among other entities. According to a Senate report:

The Administration was candid in its belief that the proposal for a new Department of Natural Resources could not be passed if the normal legislative process was followed. By asserting that the President was merely changing the name and focus of the Department and not creating a new one, the Administration hoped to escape the prohibition in the Reorganization Act against such an action.<sup>179</sup>

The Obama Administration has been clear about its intention to establish a new department with a new name if granted reorganization authority. Nonetheless, questions might arise about other, similar actions that could be taken under this authority subsequent to the initial reorganization effort.

***Abolishing or transferring a department or all its functions:***

This limitation has been part of all reorganization statutes thus far. The Obama Administration request to remove this limitation could allow the Administration to abolish the Department of Commerce, as such, as part of a possible reorganization of trade-related agencies. Because the reorganization authority has never been enacted without this limitation, however, it is unclear what administrative, political, or institutional impacts this change might have. Similar reorganization activities in the past, such as the division of the Department of Commerce and Labor into the Department of Commerce and the Department of Labor, and the division of the Department of Health, Education, and Welfare into the Department of Health and Human Services and the Department of Education, were accomplished by congressional action.<sup>180</sup>

***Consolidating two or more departments, or all their functions:***

The consolidation of two or more departments was not explicitly prohibited until the 1949 act.<sup>181</sup> It could be argued, however, that such a reorganization would have been impermissible even under the pre-1949 authorities, because it could have been seen as an abolition of at least one, if not two departments—an action explicitly prohibited. As discussed above, the 1949 act removed the prohibition on the establishment of new departments. It appears that the new language in 1949 concerning consolidation of departments was intended to continue, and make clear, the

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<sup>179</sup> U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Act of 1981*, report to accompany S. 893, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., June 8, 1981, S.Rept. 97-132 (Washington: GPO, 1981), p. 8.

<sup>180</sup> P.L. 62-426, 37 Stat. 736; P.L. 96-88, 93 Stat. 695.

<sup>181</sup> The 1945 statute included the following limitation: “No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of ... abolishing or transferring an executive department or all the functions thereof **or establishing any new executive department ...**” (Reorganization Act of 1945, §5(a)(1); 59 Stat. 615. (Emphasis added.)) The 1949 act changed this provision to read: “No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of ... abolishing or transferring an executive department or all the functions thereof **or consolidating any two or more executive department or all the functions thereof ...**” (Reorganization Act of 1949, §5(a)(1); 63 Stat. 205. (Emphasis added.))

prohibition on the creation of a new department in one particular way: by consolidating two existing departments. There does not appear to have been much discussion of this part of the change in the provision. One committee report stated simply that, “The new language . . . prohibiting consolidation of two or more executive departments by reorganization plan conforms to the belief of the President that the elimination of an executive department should only be effected by statute.”<sup>182</sup> It should be noted that, when the prohibition on creating a new department was added back into the statute in the 1964 amendments, as discussed above, the prohibition on consolidation remained. Both provisions were then part of all succeeding versions of the law.

### **Permitting New Freestanding Agencies**

The latest expired version of reorganization authority stipulated that a “reorganization plan may not provide for, and a reorganization . . . may not have the effect of . . . creating a new agency which is not a component or part of an existing executive department or independent agency.”<sup>183</sup> It appears that this provision was first considered during deliberations of the Senate Committee on Governmental Affairs concerning legislation to extend reorganization authority in 1981. The legislation, including this provision, was adopted by the Senate, but not the House, later in 1981. The following Congress, the provision was enacted as part of the 1984 amendments. Because reorganization authority was not used after 1980, this provision’s impact on the authority and its use cannot yet be assessed. If the limitation were to be deleted, as the Obama Administration has requested, the authority would be, in this respect, similar to that in use under the Carter Administration.

The Senate and House committees of jurisdiction expressed different intentions with regard to this provision. The perspective of the Senate Committee on Governmental Affairs was captured in the 1981 report of extension legislation:

Many experts believe there is a need to slow the growth of new independent agencies in the executive branch of government that are not part of an existing executive branch agency. New independent agencies tend to diffuse accountability for programs and policies. The larger the number of such agencies, the more difficult it is for the President to establish, coordinate and implement policies. Since new independent agencies will often report directly to the President and not through a cabinet secretary, their access and participation in the Administration’s policy making process is more limited.<sup>184</sup>

From the perspective of the House Committee on Government Operations, as expressed in its 1983 report on extension legislation, the inclusion of this provision was intended to clarify pre-existing limitations with regard to the creation of new departments and agencies. Taken together with other limitations, the “requirements reflect the [House] Committee’s desire that the creation of new entities in the Executive Branch be subject to the legislation process.”<sup>185</sup>

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<sup>182</sup> U.S. Congress, Senate Committee on Expenditures in the Executive Departments, *Reorganization Act of 1949*, report to accompany S. 526, 81<sup>st</sup> Cong., 1<sup>st</sup> sess., April 7, 1949, S.Rept. 232 (Washington: GPO, 1949), p. 8.

<sup>183</sup> 5 U.S.C. §905(a)(5).

<sup>184</sup> U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Act of 1981*, report to accompany S. 893, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., June 8, 1981, S.Rept. 97-132 (Washington: GPO, 1981), p. 8. The committee did not issue an additional report with regard to the legislation enacted during the 98<sup>th</sup> Congress.

<sup>185</sup> U.S. Congress, House Committee on Government Operations, *Reorganization Act Amendments of 1983*, report to accompany H.R. 1314, 98<sup>th</sup> Cong., 1<sup>st</sup> sess., May 16, 1983, H.Rept. 98-128 (Washington: GPO, 1983), p. 7.

## **Proposal as a Whole**

If Congress were to renew the presidential reorganization authority as requested by the Obama Administration, without congressional amendment, it would make a delegation of authority that has precedent in the mid-20<sup>th</sup> century in a form that has never been tried before. It appears that the statute would provide the President with a greater level of flexibility to establish and abolish departments than has ever been provided before. It could be argued that this power might be circumscribed, in part, by the prohibition on the establishment, by reorganization plan, of any free-standing agencies. To a lesser extent, the use of the power might be shaped by a requirement that the Administration self-certify that a plan is likely to result in a decreased number of agencies or cost saving related to targeted functions. As discussed above, however, such a determination of net changes in the number of agencies and the level of cost-savings could be complicated by definitional issues. The congressional procedures for consideration of a submitted plan would perhaps pose a greater constraint on the President's power under the Obama proposal. Although these specialized parliamentary procedures would be similar to those enacted in 1984, they were never before used in the context of this authority. Arguably, the President could face a greater legislative burden in gaining approval for his plans than did previous Presidents who had similar reorganization authority.

## **Option IV. Enact the Authority with Other Amendments**

As discussed above, should Congress elect to renew presidential reorganization authority, it might reauthorize it in its current form or it might reauthorize it with the amendments requested by the Obama Administration. Naturally, the options for renewing the statute that are available to Congress are not restricted to these two choices. Congress could opt to include any of a variety of other changes. Such changes might amend any of the statute's 12 sections, or add new sections altogether.

As noted earlier in this report, each of the elements of reorganization authority is integral to its overall scope and effect; several of these bear particular mention because they establish the roles and authority of the President and Congress, respectively, in this context. These elements are the *reorganization plan contents*, the *limitations on power*, and the *expedited parliamentary procedures*. When combined, the provisions that define the potential scope of reorganization plan content and the provisions that further limit or prohibit certain reorganization plan content set the parameters of a reorganization that the President can propose. For example, the 1977 act allowed that a reorganization plan may provide for consolidating all or part of an agency with all or part of another agency. In the same act, the limitations section provides that a reorganization under this authority may not have the effect of consolidating two or more departments or two or more independent regulatory agencies. In this way, the general authority is modified under specific circumstances. The expedited parliamentary procedures merit close attention in the context of this authority because they define the role of Congress in facilitating or impeding the enactment of the plan developed by the President. The procedures also define steps the President must take during this process, and so prescribe the ease or difficulty, from his perspective, with which a plan might be enacted and implemented.



## **Potential Changes to Permissible Reorganization Plan Contents**

Congress could elect to alter the scope of potential reorganizations by amending 5 U.S.C. 903, which establishes the range of actions that could be included in a reorganization plan. It states that a plan may provide for

- (1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;
- (2) the abolition of all or part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;
- (3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;
- (4) the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency or the functions thereof;
- (5) the authorization of an officer to delegate any of his functions; or
- (6) the abolition of the whole or a part of an agency with agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

Congress could reduce the range of permissible actions that could be included in a plan by, for example, striking portions of these provisions. By eliminating paragraph 2, for example, a proposed plan could no longer provide for the abolition of functions.

Alternatively, Congress could expand the range of permissible plan provisions. For example, paragraph 2 could be amended by striking the second clause so that “the abolition of all or a part of the functions of an agency” would be without qualification. This change was included in legislation proposed by the George W. Bush Administration.<sup>186</sup> The Bush proposal also would have explicitly permitted the submitted plans to include provisions for the creation of new agencies by adding a seventh paragraph to that effect.<sup>187</sup>

Given that the Obama Administration has described, in general terms, the first reorganization that would be undertaken under renewed authority, Congress might elect to amend the statute to specify that only one plan could be submitted at a time. Such amendments might modify this section and/or the section on limitations to specify the range of agencies or functions that could be included in the plan. This approach might be seen by lawmakers as a middle ground between delegating broad authority to the President and not delegating to him any reorganization authority at all.

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<sup>186</sup> S. 2845 (Engrossed House Amendment) (108<sup>th</sup> Cong.), Sec. 5021(a).

<sup>187</sup> S. 2845 (Engrossed House Amendment) (108<sup>th</sup> Cong.), Sec. 5021(c).

## **Potential Changes to Limitations**

Congress has employed a range of limitations in the various versions of reorganization authority. The present statute includes seven limitations on what may be included in a reorganization plan. A plan could not provide for

- (1) creating a new executive department or renaming an existing executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;
- (2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;
- (3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;
- (4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;
- (5) creating a new agency which is not a component or part of an existing executive department or independent agency;
- (6) increasing the term of an office beyond that provided by law for that office; or
- (7) dealing with more than one logically consistent subject matter.<sup>188</sup>

The Obama proposal, discussed above, would amend paragraph 1 to eliminate references to executive departments, and would strike paragraph 5, both of which would give the President additional flexibility to submit the plan he has outlined. Limitations could be reduced further than requested by the President to provide even more flexibility. For example, by striking paragraph 7, and eliminating prohibition on “dealing with more than one logically consistent subject matter” in plans, the President could submit more comprehensive plans to Congress. This might allow him to construct plans that would combine changes appealing to different constituencies in a way that would increase the likelihood that the plan would be ratified by Congress.

Alternatively, Congress might elect to add limitations, thus putting further constraints on the President’s exercise of reorganization authority. Some potential limitations were included in past versions of reorganization authority, but are no longer included. For example, the limitations section of the 1939 act enumerated 21 agencies that could not be the subject of most of the reorganization activities a plan might specify. It provided that no plan would provide “for the transfer, consolidation, or abolition of the whole or any part of such agency or of its head, or of all or any of the functions of such agency or of its head.”<sup>189</sup> Another provision, used in the 1945 act, limited reorganizations with regard to certain agency functions, rather than entire specified agencies. Under the act, no plan was to provide for “imposing . . . any greater limitation upon the exercise of independent judgment or discretion . . . in connection with carrying out [quasi-judicial or quasi-legislative] functions,” than existed prior to the reorganization.<sup>190</sup> A third provision, also

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<sup>188</sup> 5 U.S.C. §905.

<sup>189</sup> P.L. 76-19, §3(b); 53 Stat. 561.

<sup>190</sup> P.L. 79-263, §5(a)(6); 59 Stat. 615.

adopted in 1945, exempted from alteration any organizational arrangements that had been enacted by Congress since the beginning of that year.<sup>191</sup>

President George W. Bush's proposal took a different approach to limitations. It would have repealed all seven existing limitations, and instead circumscribed the agencies that might be part of a plan. The agencies selected perhaps reflected the Administration's highest priority reorganization at the time. The new amended Section 905 would have provided that plans would be limited to the following organizations: the Office of the National Intelligence Director; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence Analysis of the Department of the Treasury; the elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard; and such "other elements of any other department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community."<sup>192</sup>

### **Potential Changes to Expedited Congressional Procedures<sup>193</sup>**

Should Congress grant the President renewed reorganization authority, lawmakers might choose to include expedited parliamentary procedures that are the same as those last authorized in 1984, or they may choose instead to modify these procedures in whole or in part. Conversely, Congress might reject the idea of including fast track procedures entirely, and instead decide to have Congress consider a joint resolution of approval or disapproval or a reorganization implementing bill under its regular parliamentary procedures, rather than special rules enacted in law.

Broadly speaking, when considering what type of expedited legislative procedures might be enacted as part of reorganization authority, several structural questions might be considered by lawmakers.<sup>194</sup> The first is whether to make the parliamentary vehicle for congressional consideration a joint resolution of *approval* or one of *disapproval*. Joint resolutions of approval arguably have the effect of tilting the balance of power to Congress and away from the President by requiring affirmative congressional action for any reorganization plan to go into force. Joint resolutions of disapproval, on the other hand, strengthen the hand of the President vis-a-vis Congress because they establish a situation in which a President's reorganization plan will go into force unless Congress is able to stop it, something which would likely require supermajority votes of the House and Senate to override presidential veto of a disapproval resolution.<sup>195</sup>

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<sup>191</sup> P.L. 79-263, §5(e); 59 Stat. 616.

<sup>192</sup> S. 2845 (Engrossed Amendment House) (108<sup>th</sup> Cong.), Sec. 5021(b).

<sup>193</sup> This section was written by (name redacted), Analyst on Congress and the Legislative Process. He may be contacted by telephone, at 7-...., or by e-mail, at [redacted]@crs.loc.gov.

<sup>194</sup> Congress has established expedited parliamentary procedures in a number of instances for a variety of purposes. These include, for example, those provided for in the War Powers Act and the Trade Act of 1974. See CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted Into Law*, by (name redacted).

<sup>195</sup> As noted elsewhere in this report, expedited parliamentary procedures under earlier versions of reorganization authority permitted Congress to approve or disapprove a proposed reorganization plan in whole or in part by adopting a (continued...)

Another consideration to take into account relating to expedited procedures is whether to include mandatory pre-consultation requirements that the President must adhere to before submitting a reorganization plan to Congress. Some expedited procedure statutes, such as the Trade Act of 1974,<sup>196</sup> do require the President to consult with Congress in various ways and on various questions before submitting a proposed implementing bill to the House and Senate. Should policymakers include such pre-consultation provisions, they could choose to make them broad or extremely prescriptive.

Still another question is whether Congress should be permitted to amend a reorganization plan once it is submitted. Generally speaking, prior versions of expedited authority did not allow Congress to directly do this, although the most recent version of reorganization authority provided the President with a limited window to amend or withdraw his own reorganization plan once submitted. From a parliamentary standpoint, it should be noted that if a congressional amendment process is permitted in an expedited procedure either at the committee or floor stage of consideration, it is not possible to guarantee that Congress will be able to complete consideration of a legislative measure for presentment to the President.

## Concluding Observations

Government reorganization is often cast in terms of potential administrative benefits, such as improved program effectiveness, greater efficiency, reduced cost, and improved policy integration across related programs. Whenever Congress has delegated reorganization authority to the President in the past, it has clearly stated in the statutory provisions that the objective of reorganization is such administrative improvement. Congress has often required that reorganization plans submitted by the President certify that such improvements are at least part of the objective of the proposed reorganization. In more recent versions of the law, the President is required to articulate the plan's means of achieving such improvements.

In addition to these administrative goals, reorganization efforts often have spoken or unspoken political goals and outcomes.<sup>197</sup> The political nature of reorganization arises from the fact that it redistributes power and resources, and interests inside and outside the federal bureaucracy stand to gain or lose in this process. Depending on the scope and limitations of the authority available to the President, organizational units and functions might not only be moved, but could be abolished. Employees in the reorganized agencies will often be the most directly impacted, but outside interests, such as those who are regulated by, or receive benefits from, such agencies are affected as well. Congressional committees may also be impacted by a reorganization, directly through potential jurisdictional changes or indirectly through constituent groups. Although a

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(...continued)

simple or concurrent resolution. In contrast, the 1984 version of reorganization authority established the legislative vehicle to be considered by Congress as a joint resolution of approval, a lawmaking form of legislation requiring the President's signature. This change was made in response to the 1983 Supreme Court decision in *Immigration and Naturalization Service v. Chadha* (462 U.S. 919 (1983)) (invalidating the legislative veto and holding that legislative power must be "exercised in accord with a single, finely wrought and exhaustively considered procedure").

<sup>196</sup> 19 U.S.C. §§2191-2194.

<sup>197</sup> See Harold Seidman and Robert Gilmour, *Politics, Position, and Power*, 4<sup>th</sup> ed. (New York: Oxford University Press, 1986). Although partisan conflict may develop in relation to a particular reorganization, the term political as used here refers to the process that determines, as Harold Lasswell put it, "who gets what, when, how." Harold D. Lasswell, *Politics: Who Gets What, When, How* (New York: McGraw-Hill, 1936).

government reorganization may have beneficial outcomes over time, it is axiomatic that it is disruptive, at least in the short term, to the functioning of the organizational systems involved. It is likely to upset existing power dynamics, rearrange relationships, create uncertainty and anxiety, and generally interrupt the flow of work.

Proponents of a delegation to the President of broad reorganization authority might argue that the President can be more effective than Congress in conceptualizing, as well as implementing, government-wide reorganization. Some critics argue that Congress is often unable to develop consensus and pass meaningful reorganization legislation. Where such consensus is arrived at, critics might assert that political, rather than administrative reform concerns are primary in its crafting.

Opponents of reauthorizing the President's reorganization authority might argue that Congress is better suited as a place for sorting out the competing demands and interests involved in broad reorganizations. They might argue that Congress, by representing a greater cross section of interests, provides a better forum in which to shape the federal government. Critics of presidential reorganization authority might also note that Congress has successfully reorganized the federal government, in large and small ways, through the legislative process.

When Congress delegates reorganization authority to the President and establishes expedited procedures for the consideration of resulting plans, it cedes some of its institutional power to the President. The history of such delegations suggests that Congress has been selective about when and under what terms it does so. Among the factors that appear to influence this decision-making process are the perceived administrative need and expected benefits, the record of collaborative efforts between a particular Congress and a particular President, and other political contextual factors.

## **Author Contact Information**

(name redacted)  
Analyst in American National Government  
[redacted]@crs.loc.gov, 7-....

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