

Organizing Executive Branch Agencies: Structure and Delegations of Authority

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Organizing Executive Branch Agencies: Structure and Delegations of Authority

In early 2025, the Trump Administration issued executive orders that indicated that the White House may consider reorganizing certain executive branch agencies. In the ensuing months, the Trump Administration has embarked on efforts to restructure and downsize numerous agencies in the federal government. These developments have increased congressional interest in understanding the roles that Congress and the executive branch play in the composition of the federal government.

The Constitution establishes roles for both the legislative branch and the executive branch regarding the operation and organization of federal agencies. Congress has significant authority pursuant to the Constitution to create and maintain federal offices and can structure the federal bureaucracy as it deems appropriate. Legislative enactments create executive agencies and delegate authority to those entities to carry out various statutory functions and duties. Meanwhile, appropriations legislation establishes congressional priorities by allotting resources to agencies to carry out their functions.

As the head of the executive branch of government, the President implements and oversees the execution of the law. The President, therefore, has the power to establish agency policy priorities, exercise enforcement discretion, and execute permissive authorities as he deems appropriate and in accordance with the law. The President exercises control over executive agencies through his powers to appoint and supervise the officers that lead them.

The President and the executive agencies created by Congress are bound by the laws creating the agencies and endowing them with authority to act. The Supreme Court has established that “agencies are creatures of statute” and “possess only the authority that Congress has provided.” *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 117 (2022). Therefore, the Court has indicated that if an agency desires to reorganize its internal structure, it can only do so if Congress has authorized the action. Still, in establishing agencies, Congress often provides agency heads with a degree of discretion to structure their offices internally. Agencies rely on both agency-specific and generally applicable statutes to establish, modify, consolidate, or transfer offices within an agency.

Just as laws may provide agencies with a degree of discretion in organizing their internal structure, agencies may also enjoy discretion with regard to reassigning statutory functions within the agency. Statutory authorizations often do not specify a particular office within the agency that must carry out a function and, instead, delegate authority to the agency head. At the same time, Congress has routinely authorized agency heads to delegate responsibilities to subordinate officers or employees within their departments. Thus, agency heads may also affect a reorganization by redelegating duties and functions to different offices within an agency as authorized by statute.

Similarly, Congress often delegates authority directly to the President, rather than to a particular agency. Congress has authorized the President to delegate many authorities vested in him to his subordinate officers. These delegations are not permanently fixed. Therefore, Presidents can reorganize functions vested in the presidency across agencies to comport with their policy preferences.

Efforts to reorganize executive branch agencies through the structural modifications or transfers of statutory functions must align with existing statutory authorities. Courts may enjoin agency reorganizations that exceed the agency’s statutory authority.

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In early 2025, the Trump Administration issued executive orders indicating that the White House may consider reorganizing certain executive branch agencies.¹ In addition, the Trump Administration has embarked on an effort to transfer certain authorities from the U.S. Agency for International Development (USAID) to the Department of State or other departments.² Similarly, during President Trump’s first Administration, the Office of Management and Budget issued a proposal titled *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*.³ That plan proposed to reorganize various agencies and departments through methods such as moving programs from one agency to another, merging agencies, or restructuring a specific agency.⁴

These developments and proposals have increased congressional interest in understanding the roles that Congress and the executive branch play in the composition of the federal government: who decides how to organize agencies and departments within the executive branch? The Constitution establishes roles for both the legislative branch and the executive branch regarding the operation and organization of federal agencies. Congress has significant authority pursuant to the Constitution to create and maintain federal offices and can structure the federal bureaucracy as it deems appropriate.⁵ Legislative enactments create executive agencies and delegate authority to those entities to carry out various statutory functions and duties.⁶ Appropriations legislation establishes congressional priorities by allotting resources to agencies to carry out their functions.⁷ The President and the executive agencies created by Congress are restricted by these laws creating the agencies and endowing them with authority to act.⁸

The President, however, plays a significant role in the operation of the agencies that Congress structures and funds. The President exercises control over the executive branch agencies through the appointment and oversight of the officers that lead them.⁹ The Constitution provides that the President implements and oversees the execution of the law.¹⁰ The President, therefore, has the power to establish agency policy priorities, exercise enforcement discretion,¹¹ and execute

¹ See, e.g., Exec. Order No. 14,210, 90 Fed. Reg. 9669, 9670 (Feb. 11, 2025).

² Letter from Marco Rubio, Secretary of State, to James Risch, Chairman, Senate Committee on Foreign Relations, et al. (Feb. 3., 2025); see also Laura Kelly, *Rubio Notifies Congress of Potential USAID ‘Reorganization,’* THE HILL (Feb. 3, 2025, 5:28 PM), <https://thehill.com/homenews/administration/5124136-rubio-notifies-congress-of-potential-usaid-reorganization/>.

³ OFF. OF MGMT. & BUDGET, *DELIVERING GOVERNMENT SOLUTIONS IN THE 21ST CENTURY: REFORM PLAN AND REORGANIZATION RECOMMENDATIONS* (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>.

⁴ See, e.g., *id.* at 32 (calling for reorganization of federal food safety functions into a single agency).

⁵ See *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 500 (2010).

⁶ *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 117 (2022) (“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.”).

⁷ U.S. CONST. art. I, § 9, cl. 7. See generally Cong. Rsch. Serv., *Overview of Appropriations Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S9-C7-1/ALDE_00001095 (last visited Apr. 28, 2025).

⁸ See *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986).

⁹ *Seila Law LLC v. CFPB*, 591 U.S. 197, 204 (2020) (stating that the “President’s power to remove—and thus supervise—those who wield executive power on his behalf follows from the text of Article II”).

¹⁰ U.S. CONST. art. II, § 1, cl. 1 (“The executive Power shall be vested in a President of the United States of America.”); *id.* art. II, § 3 (providing that the President “shall take Care that the Laws be faithfully executed”). See generally Cong. Rsch. Serv., *Overview of Take Care Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S3-3-1/ALDE_00001160/ (last visited Apr. 28, 2025).

¹¹ See, e.g., *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (holding that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion”).

permissive authorities as he deems appropriate and in accordance with the law.¹² Further, though bound by the laws established by Congress, executive branch agencies also typically enjoy some discretion in determining how best to structure themselves to carry out their statutory responsibilities, provided that any implemented structural changes do not conflict with their governing statutes or legislative funding restrictions.¹³ This report lays out several legal considerations relevant to analyzing potential agency reorganizations.

Constitutional Principles

The respective constitutional authorities of the political branches guide any discussion of the organization of executive branch agencies. The Constitution empowers Congress with the authority to establish federal agencies, delegate authority to carry out statutory functions, and control funding to those agencies.¹⁴ The President exercises control over federal agencies by implementing the laws enacted by Congress and by appointing and supervising personnel charged with overseeing the congressionally established agencies.¹⁵ This section of the report provides a brief overview of the constitutional principles that grant and limit congressional control over the executive agencies.

Although Congress's authority to create federal agencies is not explicitly mentioned in the Constitution,¹⁶ its power to do so is well established.¹⁷ Congress's authority derives from its enumerated powers under Article I,¹⁸ the Necessary and Proper Clause,¹⁹ and Article II's Appointments Clause.²⁰ The Supreme Court has stated that Congress enjoys the power to establish federal offices.²¹ In *Myers v. United States*, the Court explained that Congress has authority over "the establishment of offices" and "the determination of their functions and jurisdiction."²² Likewise, in *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, the

¹² See, e.g., *Lincoln v. Vigil*, 508 U.S. 182, 192–93 (explaining that an agency's allocation of funds from lump-sum appropriations are "committed to agency discretion").

¹³ See, e.g., 5 U.S.C. § 301.

¹⁴ See, e.g., *Mozilla Corp. v. FCC*, 940 F.3d 1, 83 (D.C. Cir. 2019) ("And it is Congress to which the Constitution assigns the power to set the metes and bounds of agency authority.").

¹⁵ U.S. CONST. art. II, § 2, cl. 2; *Seila Law LLC v. CFPB*, 591 U.S. 197, 204 (2020) ("The President's power to remove—and thus supervise—those who wield executive power on his behalf follows from the text of Article II, was settled by the First Congress, and was confirmed in the landmark decision *Myers v. United States*." (citing *Myers v. United States*, 272 U.S. 52 (1926))).

¹⁶ Congress's power is limited to those powers granted to it by the Constitution. *Murphy v. NCAA*, 554 U.S. 453, 471 (2018) ("The legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers.").

¹⁷ See, e.g., *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010) ("No one doubts Congress's power to create a vast and varied federal bureaucracy").

¹⁸ See, e.g., U.S. CONST. art. I, § 8, cl. 3 (conferring upon Congress the power to regulate foreign and interstate commerce).

¹⁹ *Id.* art. I, § 8, cl. 18 (authorizing Congress to "make all laws which shall be necessary and proper for carrying into execution" not only Congress's own enumerated powers, but "all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."); *Buckley v. Valeo*, 424 U.S. 1, 138, (1976) (per curiam) ("Congress may undoubtedly under the Necessary and Proper Clause create 'offices' . . . and provide such method of appointment to those 'offices' as it chooses.").

²⁰ *Id.* art. II, § 2, cl. 2 (authorizing the President to appoint "officers" to positions "which shall be established by law") (emphasis added).

²¹ See, e.g., *Free Enter. Fund*, 561 U.S. at 500; *Myers v. United States*, 272 U.S. 52, 109 (1925).

²² *Myers*, 272 U.S. at 129.

Court observed that “Congress has plenary control over the salary, duties, and even existence of executive offices.”²³

Congress exerts its “plenary control” over executive agencies by enacting legislation.²⁴ Laws establishing agencies dictate the organizational structure of the agency, the functions it is permitted to perform, and funding levels to implement statutory programs.²⁵ Agencies may only take actions authorized by law and must comply with statutory restrictions placed on those agencies’ structure and scope of authority.²⁶ The Supreme Court has explained that “agencies are creatures of statute” and “possess only the authority that Congress has provided.”²⁷ Therefore, as with any action an agency may undertake, if an agency desires to reorganize its operations, it can only do so if Congress has authorized the action in statute.²⁸ Similarly, an agency is not permitted to ignore a statutory mandate that has been imposed by Congress.²⁹ When agencies fail to take a required action, courts have required agencies to perform those duties.³⁰

Congress also exerts legislative control over federal agencies by exercising its “power of the purse.”³¹ The Constitution vests Congress with the power to appropriate funds for the operation of executive branch agencies.³² It also prohibits agencies from spending money drawn from the Treasury except pursuant to statute.³³ Layered on top of the constitutional substrate, the Antideficiency Act bars federal officers and employees from spending money that exceeds appropriated funds.³⁴ These constraints upon agencies’ use of federal funds not only affect how those entities may spend allocated money but also may limit executive discretion to reorganize the structure or functions of federal agencies. For example, if Congress appropriates funds to a specific executive branch entity to implement a particular function or duty, the executive branch generally may not reassign those funds to a different entity to carry out those authorities without legislative authorization.³⁵

Although Congress enjoys “plenary authority” over the creation of federal agencies, Congress’s authority over the operations of executive agencies is not all-encompassing. The President, as the

²³ *Free Enter. Fund*, 561 U.S. at 500.

²⁴ *City of Arlington v. FCC*, 569 U.S. 290, 291 (observing that agencies’ “power to act and how they are to act is authoritatively prescribed by Congress”).

²⁵ *Id.*

²⁶ *La. Pub. Svc. Comm’n v. FCC*, 476 U.S. 355 (1986); *United States v. Giordano*, 416 U.S. 505, 508.

²⁷ *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 117 (2022) (“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.”).

²⁸ *See, e.g., Halverson v. Slater*, 129 F.3d 180 (D.C. Cir. 1997) (holding that an agency head could not transfer statutorily delegated authorities to another agency without authority from Congress); *Consolidation of Bureaus in the Department of Commerce and Labor*, U.S. Op. Atty. Gen 542, 546 (1909) (advising that an agency head could not consolidate two bureaus within his department due to lack of statutory authorization).

²⁹ *See, e.g., In re Aiken County*, 725 F.3d 255, 260–67 (D.C. Cir. 2013) (ordering agency to take statutorily mandated action and stating that “the President must follow statutory mandates so long as there is appropriated money available and the President has no constitutional objection to the statute”).

³⁰ *Id.*; *see also Am. Fed’n of Gov’t Emps. v. Phillips*, 358 F. Supp. 60, 77–78 (1973) (holding agency head could not terminate grant program mandated by Congress).

³¹ *See* U.S. CONST. art. I, §§ 8, 9, cl. 7. *See generally* Cong. Rsch. Serv., *Overview of Spending Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C1-2-1/ALDE_00013356 (last visited Apr. 28, 2025).

³² U.S. CONST. art. I, § 9 cl. 7.

³³ *Id.*

³⁴ 31 U.S.C. § 1341.

³⁵ *Id.* § 1532. For more information on Congress’s power over appropriations, see CRS Report R46417, *Congress’s Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean Stiff (2020).

head of the executive branch of government,³⁶ also wields power over the administrative state. Once Congress has established an agency, the Constitution vests the President with the power to oversee the execution of the law.³⁷ Through his authority to implement the law, the President can establish agency policy priorities, exercise enforcement discretion, and execute permissive authorities as he deems appropriate and in accordance with the law.³⁸ Because implementing the law is an executive function, Congress cannot structure an agency in a manner that places itself in a position to implement the laws that it enacts.³⁹ Similarly, the Constitution vests the power to appoint and remove officers that oversee agency operations with the President.⁴⁰ Congress cannot structure an agency in a manner that impermissibly intrudes on this executive authority.⁴¹ To that end, Congress cannot establish an agency to be headed by a principal officer over whom Congress, rather than the President, retains control⁴² and cannot establish removal protections for agency heads that interfere with the President's duty to "take Care that the Laws be faithfully executed."⁴³

In addition, external constraints found elsewhere in the Constitution may place some limits on congressional control over agency functions.⁴⁴ Congress's power to dictate the functions of agencies may be forced to yield if Congress intrudes upon a power that is exclusive to the President under Article II of the Constitution.⁴⁵ For example, the Supreme Court has held that Congress cannot compel the State Department to perform functions which contravene the President's exclusive power to recognize a foreign state.⁴⁶ Expanding on this principle, the Department of Justice's Office of Legal Counsel (OLC) has at times taken the position that certain statutes interfere with the President's exclusive authority to conduct diplomatic relations.⁴⁷

³⁶ U.S. CONST. art II, § 1 (vesting executive power in the President).

³⁷ *Id.*; *id.* art. II, § 3 (providing that the President "shall take Care that the Laws be faithfully executed").

³⁸ *See, e.g.,* Heckler v. Chaney, 470 U.S. 821, 831 (1985) (holding that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion"); Lincoln v. Vigil, 508 U.S. 182, 192–93 (explaining that an agency's allocation of funds from lump-sum appropriations are "committed to agency discretion").

³⁹ *See* Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc., 501 U.S. 252, 265–77 (1991).

⁴⁰ U.S. CONST. art II, § 2 cl. 2 (vesting the President with the power to appoint officers "by and with the advice and consent of the Senate," and permitting Congress to vest appointment of "inferior Officers . . . in the President alone, in the Courts of Law, or in the Heads of Departments"); Myers v. United States, 272 U.S. 52, 119 (holding that the "power of removal of executive officers [is] incident to the power of appointment"); Seila Law LLC v. CFPB, 591 U.S. 197, 204 (2020) ("The President's power to remove—and thus supervise—those who wield executive power on his behalf follows from the text of Article II, was settled by the First Congress, and was confirmed in the landmark decision Myers v. United States." (citing *Myers*, 272 U.S. at 119)).

⁴¹ *See, e.g.,* Seila Law LLC, 591 U.S. at 213.

⁴² *See* Bowsher v. Synar, 478 U.S. 714, 733–34 (1986).

⁴³ U.S. CONST. art II, § 3; *see, e.g.,* Seila Law LLC, 591 U.S. at 213 (holding removal protections to be unconstitutional when applied to an agency headed by a single individual); Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477, 492 (2010) (holding that "dual for-cause limitations on the removal of Board member contravene the Constitution's separation of powers"); *Myers*, 272 U.S. at 176 (holding that a law providing for Senate approval to remove an officer is unconstitutional).

⁴⁴ Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

⁴⁵ *Id.* at 637–39 ("Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject.").

⁴⁶ Zivotofsky *ex rel.* Zivotofsky v. Kerry, 576 U.S. 1, 32 (2015).

⁴⁷ *See, e.g.,* Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy, 35 Op. O.L.C. 1, 5 (2011) ("The President's power over the conduct of diplomacy also includes exclusive authority 'to determine the individuals who will represent the United States in those diplomatic exchanges.'" (quoting Prohibition of Spending to Send Delegations to U.N. Agencies Chaired by Countries That Support International Terrorism, 33 Op. O.L.C. 221, (continued...))

(While OLC legal opinions do not bind courts or Congress,⁴⁸ the executive branch generally treats them as binding on itself.⁴⁹) Although the Supreme Court has recognized that the President exercises significant authority over foreign affairs,⁵⁰ the Court has declined to address arguments that the President has exclusive authority to conduct diplomatic relations.⁵¹ Nonetheless, to the extent that the congressional creation, organization, or delegated function of an agency interferes with the President's exercise of a constitutional power granted exclusively to the President—in foreign affairs or otherwise—the President may be able to take action pursuant to his own independent authority even in the face of restricting legislation.⁵²

Reorganization Practice for Executive Agencies

As discussed above, agencies must abide by their enabling acts. Although agencies are bound to follow the law, those laws may provide specific authority for an agency to reorganize or provide general discretion to an agency to manage its internal structure and functions.⁵³ As a practical matter, individual agencies often reorganize themselves within the statutory limitations placed by Congress. This section of the report discusses two ways in which agencies often implement a reorganization. The report first discusses *structural* changes to executive agencies—that is, actions related to the establishment, modification, consolidation, or elimination of offices within an agency or across the executive branch. Following that discussion, the report examines the *transfer* of statutorily delegated functions—that is, moving statutory responsibilities between offices within an agency or across the executive branch.

Structural Reorganizations

One manner in which Congress exercises “plenary control” over federal agencies is by establishing the structure of those agencies upon their creation.⁵⁴ Structural characteristics can

231 (2009)); Statutory Restrictions on the PLO's Washington Office, 42 Op. O.L.C. 108, 127 (2002) (“The President’s exclusive authority over diplomatic affairs necessarily implies the discretion to permit the PLO to maintain a mission within the United States.”); Congressionally Mandated Waiting Period for Submitting a Notice of Withdrawal, 44 Op. O.L.C. 184, 193 (2020) (“The decision to withdraw from the Open Skies Treaty implicates the President’s exclusive constitutional authorities to execute a treaty of the United States and to conduct the Nation’s diplomacy.”).

⁴⁸ See *McElroy v. United States ex rel. Guagliardo*, 361 U.S. 281, 285–86 (1960) (declining to follow an Attorney General opinion and explaining that such opinions are entitled to some weight but do not have the force of judicial decisions).

⁴⁹ See MEMORANDUM FROM DAVID J. BARRON, ACTING ASSISTANT ATT’Y GEN., OLC, TO ATT’YS OF THE OFFICE, RE: BEST PRACTICES FOR OLC LEGAL ADVICE AND WRITTEN OPINIONS 1 (July 16, 2010), <https://www.justice.gov/olc/pdf/olc-legal-advice-opinions.pdf>. For a discussion of the statutory and historical underpinnings of the authority of OLC opinions for the executive branch, see Arthur H. Garrison, *The Opinions by the Attorney General and the Office of Legal Counsel: How and Why They Are Significant*, 76 ALB. L. REV. 217 (2012), which explains: “The foundation of the OLC’s authority to issue binding opinions on the rest of the executive branch is based on the [statutory] authority of the Attorney General to issue such opinions, and administrative traditions within the Department of Justice and the executive branch.” *Id.* at 237 (citing 28 U.S.C. § 512).

⁵⁰ *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 315–16, 318, 319 (1936).

⁵¹ *Zivotofsky*, 576 U.S. at 19–20 (“The Secretary now urges the Court to define the executive power over foreign relations in even broader terms. He contends that under the Court’s precedent the President has ‘exclusive authority to conduct diplomatic relations,’ along with ‘the bulk of foreign-affairs powers.’ . . . This Court declines to acknowledge that unbounded power.” (citations omitted)).

⁵² See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637–38 (1952) (Jackson, J., concurring).

⁵³ See, e.g., 5 U.S.C. § 301 (providing agencies with authority to manage the operations of its business).

⁵⁴ *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 500 (2010); see *Buckley v. Valeo*, 424 U.S. 1, 138 (continued...)

have implications for how an agency functions, its relationship with the President and Congress, and how its programs get prioritized.⁵⁵ Among other structural determinations, Congress makes decisions regarding an agency's placement within the executive branch⁵⁶ and an agency's internal organization.⁵⁷ To the extent that Congress establishes an agency and delineates its structure in statute, the executive branch is bound by those laws.⁵⁸

Although the executive branch cannot contravene a statute establishing an agency's organizational structure, Congress often provides agency heads with a degree of discretion concerning how they structure their offices internally.⁵⁹ In some cases, Congress specifically authorizes an agency to establish, modify, consolidate, or transfer offices within an agency.⁶⁰ Agencies so authorized may take action to shuffle offices within an agency. For example, pursuant to its statutory authority to organize the Department of Homeland Security (DHS),⁶¹ the Secretary of DHS moved the Federal Air Marshal Service from the Transportation Security Administration (TSA) to another DHS component, Immigration and Customs Enforcement, in 2003, and then moved it back to TSA in 2005.⁶²

Many internal agency offices are not established in statute but instead are administratively created.⁶³ One such authority for administratively establishing such offices appears to derive from 5 U.S.C. § 301, commonly referred to as the agency "housekeeping statute."⁶⁴ This provision grants general authority to executive departments to issue regulations relating to the management of its operations. It provides:

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, and the custody, use, and preservation of its records, papers, and property.⁶⁵

(1976) (per curiam) ("Congress may undoubtedly under the Necessary and Proper Clause create 'offices' . . . and provide such method of appointment to those 'offices' as it chooses.").

⁵⁵ See, e.g., Brian D. Feinstein, *Designing Executive Agencies for Congressional Influence*, 69 ADMIN. L. REV. 259, 278–88 (2017) (studying the impact agency design features have on congressional oversight).

⁵⁶ Compare 6 U.S.C. § 111 ("There is established a Department of Homeland Security, as an executive department of the United States.") with *id.* § 313 (establishing the Federal Emergency Management Agency (FEMA) within DHS).

⁵⁷ See, e.g., 38 U.S.C. §§ 305–307 (establishing within the Department of Veterans Affairs (VA) the Under Secretary for Health, the Under Secretary for Benefits, and the Under Secretary for Memorial Affairs and placing them in charge of, respectively, the VA's Veterans Health Administration, Veterans Benefits Administration, and National Cemetery Administration).

⁵⁸ See, e.g., *Am. Fed'n of Gov't Emps. v. Phillips*, 358 F. Supp. 60, 77–78 (1973) (holding agency head could not terminate the existence of an agency established by Congress).

⁵⁹ See, e.g., 38 U.S.C. § 510 (authorizing the VA Secretary, "except to the extent inconsistent with law," to "consolidate, eliminate, abolish, or redistribute the functions of the Administrations, offices, facilities, or activities in the Department" or to "create new Administrations, offices, facilities, or activities in the Department").

⁶⁰ *Id.*

⁶¹ 6 U.S.C. § 452.

⁶² S. REP. NO. 112-249, at 36 (2012) ("Lastly, the reorganization plan . . . moved the Federal Air Marshal Service, which had previously been moved from TSA to ICE, back to TSA . . .").

⁶³ See, e.g., Administration for Community Living, 77 Fed. Reg. 23250 (Apr. 18, 2012) (establishing the Administration for Community Living within the Department of Health and Human Services).

⁶⁴ See, e.g., Isaac Cui et al., *Governing by Assignment*, 173 U. PA. L. REV. 157, 210 (2024); Aram A. Gavoort & Steven A. Platt, *U.S. Department of Justice Executive Branch Engagement on Litigating the Administrative Procedure Act*, 75 ADMIN. L. REV. 429, 439 (2023).

⁶⁵ 5 U.S.C. § 301.

Agency heads have used this authority—in conjunction with authority to delegate functions to subordinates⁶⁶—to establish subunits within their agencies.⁶⁷ For example, in 1977, the Secretary of Health, Education and Welfare (HEW)⁶⁸ established the Office of Human Development Services within HEW.⁶⁹ The Comptroller General reviewed HEW’s actions and determined that the Secretary’s authority to delegate responsibilities to subordinate officers, combined with the general housekeeping authority, permitted the creation of the subordinate office.⁷⁰

Federal circuit courts have also upheld agency actions establishing offices pursuant to this authority.⁷¹ In *Willy v. Administrative Review Board*, the Secretary of Labor had established an Administrative Review Board (ARB) and delegated to it the authority to issue final agency decisions on behalf of the Secretary on appeals related to whistleblower cases.⁷² Although no federal statute created the ARB, the U.S. Court of Appeals for the Fifth Circuit held that the broad language of the Reorganization Plan No. 6 of 1950, allowing for the Labor Secretary to delegate functions, and the general authority provided by 5 U.S.C. § 301 provided the Labor Secretary “with ample authority to create the ARB, appoint its members, and delegate final decision-making authority to them.”⁷³

On occasion, Congress has also statutorily authorized the President to execute large-scale reorganizations of the executive branch.⁷⁴ For example, a since-expired statute authorized the President to submit reorganization plans to Congress proposing to transfer, consolidate, or abolish “the whole or part of an agency” to promote “the more effective management of the executive branch.”⁷⁵ The President’s plan would take effect unless one or both houses of Congress passed a resolution rejecting the plan (a procedure known as a *legislative veto*).⁷⁶ Presidents used this authority to consolidate agency functions into new agencies—for example, President Richard Nixon used this process to create the Environmental Protection Agency.⁷⁷ Congress allowed that reorganization authority to expire shortly after the Supreme Court, in a different context, ruled that one-house legislative vetoes were unconstitutional.⁷⁸ In another example, in 2002, Congress

⁶⁶ See *infra* “Transfer of Functions.”

⁶⁷ For example, the Secretary of Agriculture established the department’s Food Safety and Inspection Service to conduct inspections pursuant to the Federal Meat Inspection Act. U.S. Dep’t. of Agric., Reorganization of Department, Secretary Memorandum 1000-1 (June 17, 1981).

⁶⁸ The agency has since been renamed the Department of Health and Human Services. 20 U.S.C. § 3508.

⁶⁹ *In re* Gen. Couns., B-199491.OM, 1980 WL 16137, at *1 (Comp. Gen. Aug. 14, 1980).

⁷⁰ *Id.* at *2 (“Under this authority the Secretary of HEW was empowered to create [the Office of Human Development Services], place it under an assistant secretary, and make it responsible for the immediate control and supervision of program agencies such as the Administration on Aging (AOA).”).

⁷¹ *Willy v. Admin. Rev. Bd.*, 423 F.3d 483, 491–92 (5th Cir. 2005); *Varnadore v. Sec’y of Lab.*, 141 F.3d 625, 631 (6th Cir. 1998); *but see* *United States v. Janssen*, 73 M.J. 221, 225 (C.A.A.F. 2014).

⁷² *Willy*, 423 F.3d at 491–92.

⁷³ *Id.*

⁷⁴ See, e.g., 5 U.S.C. §§ 901–912 (authorizing, until its expiration in 1984, the President to submit a reorganization plan to Congress that would take effect upon enactment of a joint resolution of Congress approving the plan).

⁷⁵ Reorganization Act of 1949, Pub. L. No. 81-109, §§ 2–3, 63 Stat. 203 (1949).

⁷⁶ *Id.* § 6(a). In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court ruled that one-chamber legislative veto provisions are unconstitutional. *Id.* at 944–59 (holding that Congress cannot “alter[] the legal rights, duties and relations of persons . . . outside the legislative branch” absent bicameralism and presentment).

⁷⁷ Reorganization Plan No. 3 of 1970, 3 C.F.R. 199 (1970), *reprinted in* 5 U.S.C. app. at 216 (1970) *and in* 84 Stat. 2086 (1970). For more information on this expired executive reorganization authority, see CRS Report R44909, *Executive Branch Reorganization*, by Henry B. Hogue (2017).

⁷⁸ *Chadha*, 462 U.S. at 944–59. Following the decision in *Chadha*, Congress affirmatively ratified and codified into law (continued...)

expressly permitted the President to transfer certain executive branch functions and duties to the then-newly established DHS, subject to a joint resolution of disapproval; that reorganization authority also has since expired.⁷⁹

The extent of discretion afforded under various historical reorganization authorities conferred by Congress has generally remained untested in federal court. This circumstance is perhaps because of difficulties establishing standing to challenge a reorganization.⁸⁰ When disputes have arisen between Congress and the executive branch concerning agency reorganization, the political branches often resolve such disputes through accommodation and compromise.⁸¹

Limited caselaw exists showing that when Congress establishes an agency through statute, the executive branch is not permitted to eliminate that agency.⁸² For example, in 1973, the U.S. District Court for the District of Columbia enjoined actions by the Nixon Administration aimed at dismantling a federal agency established by Congress, the Office of Economic Opportunity (OEO).⁸³ In 1973, President Nixon sought to discontinue the grant programs administered by the OEO.⁸⁴ Congress had required OEO to implement the grant programs through June 1975 and had funded those operations through June 30, 1973.⁸⁵ In January 1973, President Nixon sent his 1974 budget message to Congress and indicated that he would not request funds for the OEO for the 1974 fiscal year.⁸⁶ The agency was to “cease to exist.”⁸⁷ Shortly after, the head of OEO issued a memorandum indicating that all grantees were required to begin phasing out their programs due to the President’s budget request and the anticipated end of the program.⁸⁸ However, the court enjoined the agency from terminating the programs early, stating that the agency head’s “responsibility to carry out the Congressional objectives of a program does not give him the power to discontinue that program, especially in the face of a Congressional mandate that it shall

all of the reorganization plans that had been submitted pursuant to the executive reorganization authority. Act of Oct. 19, 1984, Pub. L. No. 98–532, 98 Stat. 2705. Therefore, Congress has ratified by statute the creation of the Environmental Protection Agency and other agencies similarly established through the executive reorganization authority.

⁷⁹ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (codified as amended at 6 U.S.C. §§ 101–681g). In some other instances, Congress has constrained the President’s authority over an executive reorganization, establishing the details of the reorganization via legislation—that is, Congress expressly stated in law how certain departments should be organized without delegating notable discretion to the President. For example, the National Security Act of 1947 and its 1949 amendment created the Department of the Air Force and reorganized the military branches into the Department of Defense. National Security Act of 1947, ch. 343, § 2, 61 Stat. 496 (codified as amended at 50 U.S.C. § 3002).

⁸⁰ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

⁸¹ For a discussion of the accommodation process between Congress and the executive branch in the context of congressional oversight, see CRS Report RL30240, *Congressional Oversight Manual*, coordinated by Ben Wilhelm, Todd Garvey, and Christopher M. Davis (2022).

⁸² *See* *Am. Fed’n of Gov’t Emps. v. Phillips*, 358 F. Supp. 60, 77–78 (1973).

⁸³ *Id.* at 63 (“These three consolidated actions have been brought to declare unlawful and enjoin what the plaintiffs alleged to be the unlawful dismantlement of the [OEO].”).

⁸⁴ *Id.* at 70.

⁸⁵ *Id.* at 72.

⁸⁶ *Id.* at 70.

⁸⁷ *Id.* at 80 (“[T]he Court must conclude that . . . the defendant is terminating or abolishing the [grant] function and OEO itself.”).

⁸⁸ *Id.* at 71–72.

go on.”⁸⁹ It further held that, “in the absence of any contrary legislation, the defendant’s plans to terminate . . . the OEO itself are unlawful as beyond his statutory authority.”⁹⁰

Transfer of Functions

In addition to Congress’s authority to create and structure federal offices, Congress also has the authority to delegate specific authority to an agency to act.⁹¹ Congress can delegate authority to federal agencies to carry out statutory programs, so long as Congress provides the agency with an “intelligible principle” to guide its decisionmaking.⁹² When agencies exercise their authority delegated to them by Congress, they are limited to taking actions authorized by law.⁹³ The Supreme Court has stated that “an agency literally has no power to act . . . unless and until Congress confers power upon it.”⁹⁴ Consequently, agencies may not exceed the statutory bounds of their authority.⁹⁵

These principles may restrict the executive branch’s authority to reorganize by transferring statutory functions from one federal entity to another.⁹⁶ For example, if Congress has statutorily delegated a function to one agency, the executive branch will be unable to task a different agency with carrying out the function unless Congress has also “confer[red] power upon” the latter entity.⁹⁷ However, the analysis of whether an agency function can be transferred from one agency to another depends on the statutes at issue. For example, if Congress delegates authority to the President, rather than a specific department or agency in the executive branch, the President may redelegate that authority to one of his officers to carry out the task.⁹⁸ Similarly, Congress may grant an agency head authority to delegate responsibilities vested in him to offices or officials under his purview.⁹⁹ This section of the report explores congressional delegations of authority to agencies and the potential for those agencies to redelegate those statutory responsibilities.

Congress often vests specific statutory duties and functions within particular departments, agencies, or officers.¹⁰⁰ As described above, agencies may only take actions that are authorized by

⁸⁹ *Id.* at 77–78; *see also In re Aiken Cnty.*, 725 F.3d 255, 260–67 (D.C. Cir. 2013) (issuing mandamus ordering agency to process applications in light of statute requiring agency to take action).

⁹⁰ *Am. Fed’n of Gov’t Emps.*, 358 F. Supp. at 80.

⁹¹ *Ctr. for Biological Diversity v. Zinke*, 313 F. Supp. 3d 976, 989 (D. Alaska 2018) (“The authority of an executive agency comes from Congress and is subject to modification by Congress.” (citing *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000))).

⁹² *See, e.g., Mistretta v. United States*, 488 U.S. 361, 372 (1989) (“Applying this ‘intelligible principle’ test to congressional delegations, our jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives.”).

⁹³ *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986).

⁹⁴ *Id.*

⁹⁵ *See, e.g., West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (“Agencies have only those powers given to them by Congress, and ‘enabling legislation’ is generally not an ‘open book to which the agency [may] add pages and change the plot line.’” (quoting Ernest Gellhorn & Paul Verkuil, *Controlling Chevron-Based Delegations*, 20 CARDOZO L. REV. 989, 1011 (1999))).

⁹⁶ *See, e.g., Mozilla Corp. v. FCC*, 940 F.3d 1, 83 (D.C. Cir. 2019) (“No matter how desirous of protecting their policy judgments, agency officials cannot invest themselves with power that Congress has not conferred.”).

⁹⁷ *See La. Pub. Serv. Comm’n*, 476 U.S. at 374.

⁹⁸ 3 U.S.C. § 301.

⁹⁹ *See, e.g., 18 U.S.C. § 4102* (authorizing the Attorney General to “delegate the authority conferred by this chapter to officers of the Department of Justice”).

¹⁰⁰ *See, e.g., 21 U.S.C. § 603* (authorizing the Secretary of Agriculture to perform inspections under the Federal Meat (continued...))

law.¹⁰¹ Therefore, to the extent that Congress specifies that a particular officer is authorized to act, that authorization does not permit other officers to take the same action.¹⁰² The OLC has echoed this understanding in its own opinions, stating that the “President may not transfer the statutory duties and functions of a bureau in one Cabinet department to another Cabinet department without an act of Congress.”¹⁰³

Just as laws may provide agencies with a degree of discretion in organizing their internal structures,¹⁰⁴ agencies may also enjoy discretion with regard to assigning statutory functions within the agency. Statutory authorizations often do not specify a particular office within the agency that must carry out a function and, instead, delegate authority to the agency head.¹⁰⁵ At the same time, Congress has routinely authorized agency heads to delegate responsibilities to subordinate officers or employees within their departments.¹⁰⁶ What might be referred to as an *intra-agency* reorganization could include delegating, redelegating, or even subdelegating duties and functions within an agency as authorized by statute.

Instead of vesting authority in a specific agency, some statutes authorize the *President* to take certain actions or implement programs.¹⁰⁷ In such a situation, the President has the authority to delegate the powers vested in him to another office.¹⁰⁸ The President’s authority to delegate tasks to his subordinates has been codified in 3 U.S.C. § 301, which states:

The President of the United States is authorized to designate and empower the head of any department or agency in the executive branch, or any official thereof who is required to be appointed by and with the advice and consent of the Senate, to perform without approval,

Inspection Act); 51 U.S.C. § 60607 (authorizing the “Administrator of the National Oceanic and Atmospheric Administration” to establish a pilot program related to gathering “space weather data”).

¹⁰¹ *La. Pub. Serv. Comm’n*, 476 U.S. at 374.

¹⁰² Centralizing Border Control Policy Under the Supervision of the Attorney General, 26 Op. O.L.C. 22, 23 (2002) (It has long been established that, “[i]f the laws . . . require a particular officer by name to perform a duty, not only is that officer bound to perform it, but no other officer can perform it without a violation of the law.” (quoting *The President and Accounting Officers*, 1 Op. Att’y Gen. 624, 625 (1823))); *see also, e.g., Halverson v. Slater*, 129 F.3d 180, 185 (D.C. Cir. 1997). In *Halverson*, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) examined a statute, 46 U.S.C. § 2104, that authorized the Secretary of Transportation to delegate certain statutory duties to the U.S. Coast Guard. *Id.* at 181. In that case, the Transportation Secretary delegated those duties to another entity that the Secretary supervised. *Id.* at 182. The D.C. Circuit ruled that doing so violated the statute because it specifically authorized delegations to the U.S. Coast Guard and that drafting decision was intended to exclude delegations to other officials. *Id.* at 185.

¹⁰³ Centralizing Border Control Policy Under the Supervision of the Attorney General, 26 Op. O.L.C. 22, 23 (2002).

¹⁰⁴ *See supra* “Structural Reorganizations.”

¹⁰⁵ *See, e.g.,* 21 U.S.C. § 603 (authorizing the Secretary of Agriculture to perform inspections under the Federal Meat Inspection Act); 43 U.S.C. § 1712 (requiring the Secretary of the Interior to develop land use plans in administering public lands of the United States).

¹⁰⁶ *See, e.g.,* 18 U.S.C. § 4102 (authorizing the Attorney General to “delegate the authority conferred by this chapter to officers of the Department of Justice”); 6 U.S.C. § 112 (authorizing the Secretary of Homeland Security to “delegate any of the Secretary’s functions to any officer, employee, or organizational unit of the Department”); 38 U.S.C. § 512 (authorizing the Secretary of Veterans Affairs to “assign functions and duties, and delegate, or authorize successive redelegation of, authority to act and to render decisions, with respect to all laws administered by the Department, to such officers and employees as the Secretary may find necessary”).

¹⁰⁷ *See, e.g.,* 42 U.S.C. § 9604(a)(1) (“Whenever [] any hazardous substance is released or there is a substantial threat of such a release into the environment . . . the President is authorized to act . . . to remove or arrange for the removal of . . . such hazardous substance.” (emphasis added)).

¹⁰⁸ *Myers v. United States*, 272 U.S. 52, 117 (1926) (“The vesting of the executive power in the President was essentially a grant of the power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates.”).

ratification, or other action by the President (1) any function which is vested in the President by law . . .¹⁰⁹

This authority allows the President to decide which agencies or officers carry out the duties that are statutorily vested in the President. For instance, the President has sometimes authorized the Secretary of the Treasury to carry out the powers vested in the President by the International Emergency Economic Powers Act when declaring a national emergency.¹¹⁰ In another example, the President is vested with statutory authority to review and approve agency regulations implementing Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.¹¹¹ An executive order delegated those functions to the Attorney General.¹¹²

A delegation made by the President under § 301 is not permanently fixed; the statute provides that such delegations “shall be revocable at any time by the President in whole or in part.”¹¹³ Though one Administration may find it advisable for one office to carry out particular functions vested in the President, a subsequent Administration could revoke the delegation and authorize a different office to perform the duties instead. In such a manner, Presidents can reorganize functions vested in the Presidency across agencies to comport with their policy preferences.

In a legal challenge, courts would review an agency head’s delegation of authority to ensure the agency official comports with the laws authorizing the delegation.¹¹⁴ In *Fleming v. Mohawk Wrecking & Lumber Co.*, for example, the Supreme Court reviewed whether the Administrator of the Office of Price Administration was authorized to delegate his power to issue subpoenas under the Emergency Price Control Act.¹¹⁵ Although the law did not specifically grant authority to delegate the power to issue subpoenas, the Court reasoned that the Administrator had been granted *general* authority to delegate and to issue “orders as he may deem necessary or proper . . . to carry out the purposes” of the law.¹¹⁶ In upholding the delegation, the Court emphasized that nothing in the statute indicated that the subpoena power should be excluded from this general authority.¹¹⁷ In *United States v. Touby*, the Attorney General delegated authority temporarily to schedule drugs under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration, despite a lack of explicit authority to delegate those specific responsibilities.¹¹⁸ The U.S. Court of Appeals for the Third Circuit noted that the “central inquiry with respect to a subdelegation challenge is whether Congress intended to limit the delegatee’s power to subdelegate.”¹¹⁹ It upheld the delegation pursuant to the Attorney General’s general authority to delegate.¹²⁰

¹⁰⁹ 3 U.S.C. § 301.

¹¹⁰ 50 U.S.C. § 1701; Blocking Iranian Government Property: Message to the Congress Reporting on the U.S. Action, 2 PUB. PAPERS 2119 (Nov. 14, 1979); Exec. Order 12,170, 44 Fed. Reg. 65729 (Nov. 14, 1979).

¹¹¹ 42 U.S.C. § 2000d-1; 28 U.S.C. § 1682.

¹¹² Exec. Order 12,250, 45 Fed. Reg. 72995 (Nov. 2, 1980).

¹¹³ 3 U.S.C. § 301.

¹¹⁴ *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 119–22 (1947); *United States v. Touby*, 909 F.2d 759, 769 (3d Cir. 1990), *aff’d*, 500 U.S. 160 (1991).

¹¹⁵ *Fleming*, 331 U.S. at 119–22.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Touby*, 909 F.2d at 769.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 770 (holding that the general authority for the Attorney General to delegate functions to subordinates provided by 28 U.S.C. § 510 is sufficient authority to delegate temporary scheduling of controlled substances).

Agencies cannot, however, contradict the terms of a governing statute. When Congress specifies to whom powers may be delegated, courts will likely invalidate attempts to delegate authority to a different individual.¹²¹ For example, in *United States v. Giordano*,¹²² the Supreme Court examined a statute that authorized the Attorney General, or any Assistant Attorney General he specifically designated, to seek a wiretap order from a federal judge.¹²³ In that case, the Attorney General designated an executive assistant to do so.¹²⁴ The Court concluded that the statute “confine[d] the authority” to seek wiretaps to specific positions; accordingly, to allow delegations outside of those positions would violate the statute.¹²⁵ As a result, the Court ruled that the evidence obtained under that wiretap must be suppressed on a proper motion.¹²⁶ Likewise, in *Halverson v. Slater*,¹²⁷ the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) examined a statute that authorized the Secretary of Transportation to delegate certain statutory duties to the Coast Guard.¹²⁸ The Transportation Secretary instead had delegated those duties to another entity that the Secretary supervised.¹²⁹ The D.C. Circuit ruled that doing so violated the statute because it specifically authorized delegations to the Coast Guard, which excluded delegations to other officials.¹³⁰

These cases indicate that efforts to reorganize executive branch agencies through the transfer of statutory functions must align with existing statutory authorities. When Congress specifies precisely who may exercise a specific authority, courts will likely invalidate attempts to transfer those authorities beyond statutory parameters absent an overriding legal problem, such as a constitutional violation.¹³¹ This principle is consistent with the views of the OLC, which has taken the position that “the President may not transfer the statutory duties and functions of a bureau in one Cabinet department to another Cabinet department without an act of Congress.”¹³²

Considerations for Congress

As outlined above, agency reorganizations generally occur through structural reorganizations or by transferring the power to exercise delegated authority from one agency to another.¹³³ Where such actions are not already permitted by statute, implementing an agency reorganization would require new authorizing legislation.¹³⁴ However, agencies often enjoy at least some discretion over their internal organization and management of functions.¹³⁵ Executive authority to implement any reorganization proposal ultimately will depend on the circumstances of the

¹²¹ *United States v. Giordano*, 416 U.S. 505 (1974); *Halverson v. Slater*, 129 F.3d 180 (D.C. Cir. 1997).

¹²² *Giordano*, 416 U.S. 505 (1974).

¹²³ 18 U.S.C. § 2516.

¹²⁴ *Giordano*, 416 U.S. at 508.

¹²⁵ *Id.* at 523.

¹²⁶ *Id.* at 524.

¹²⁷ *Halverson v. Slater*, 129 F.3d 180 (D.C. Cir. 1997).

¹²⁸ 46 U.S.C. § 2104.

¹²⁹ *Halverson*, 129 F.3d at 182.

¹³⁰ *Id.* at 185.

¹³¹ *Id.* at 188; *Giordano*, 416 U.S. at 508.

¹³² Centralizing Border Control Policy Under the Supervision of the Attorney General, 26 Op. O.L.C. 22, 23 (2022).

¹³³ See *infra* “Reorganization Practice for Executive Agencies.”

¹³⁴ See *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (holding that agencies can only act pursuant to statutory authorization).

¹³⁵ See *infra* “Structural Reorganizations.”

particular plan at issue and the precise scope of authority delegated by Congress, together with any inherent executive authority.

Congress can, of course, pass new legislation to reorganize executive branch agencies, as well as bestow new authority for agencies to move functions or offices. For example, one bill introduced in the 119th Congress, the Reorganizing Government Act of 2025, would revive the President’s authority to submit reorganization plans under the Executive Reorganization Act.¹³⁶ Congress would consider such plans under fast-track procedures.¹³⁷ Apart from broad executive-branch-wide authorizations, Congress could also enact legislation providing for organizational changes to a particular agency.¹³⁸ Alternatively, Congress could pass legislation to curtail the discretion agencies have to reorganize or to redelegate functions.¹³⁹ Similarly, if Congress wants to restrain the President from transferring authority statutorily vested in the President from one agency to another, Congress could amend existing law to specify that a particular agency, rather than the President, has authority to carry out the statutory program. As always, Congress may exercise its oversight powers to exert political influence on agency decisions concerning agency organization.¹⁴⁰ Congress may also opt to retain the status quo. The executive branch still will be bound by the legal parameters established in an agency’s enabling act.¹⁴¹ Courts, to the extent that private litigants have standing to bring a suit, will evaluate the agency’s statutory authority to determine whether a particular agency action runs afoul of Congress’s commands.¹⁴²

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¹³⁶ Reorganizing Government Act of 2025, H.R. 1295, 119th Cong. § 2 (2025); 5 U.S.C. § 901–12.

¹³⁷ H.R. 1295, § 2.

¹³⁸ See, e.g., National Oceanic and Atmospheric Administration Act of 2023, H.R. 3980, 118th Cong. §§ 101, 204 (2023) (proposing to establish the National Oceanic and Atmospheric Administration (NOAA) as an “independent agency” and require the Administrator of NOAA to “develop a reorganization plan” for the agency).

¹³⁹ See, e.g., 6 U.S.C. § 316 (establishing that FEMA “shall be maintained as a distinct entity within the [DHS]” and removing authority of the DHS Secretary to reorganize “any function or organizational unit of [FEMA]”).

¹⁴⁰ For a discussion on Congress’s oversight powers, see CRS Report RL30240, *Congressional Oversight Manual*, coordinated by Ben Wilhelm, Todd Garvey, and Christopher M. Davis (2022).

¹⁴¹ Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., 595 U.S. 109, 117 (2022) (“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.”).

¹⁴² See *id.*

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