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Presidential Reorganization Authority: Potential Approaches for Congressional Consideration

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SUMMARY

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Presidential Reorganization Authority: Potential Approaches for Congressional Consideration

Between 1932 and 1984 Congress periodically authorized the President to develop plans to reorganize portions of the federal government and to present those plans to Congress. Under most versions of this authority, a submitted plan would be considered under special parliamentary 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." To the extent this process was used in lieu of lawmaking through the regular legislative procedures in which Congress passes legislation and then presents it to the President for signature or veto, it favored the President's plan: 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 response to the Supreme Court ruling in *Immigration and Naturalization Service v. Chadha* holding a legislative veto to be unconstitutional, the parliamentary procedure mechanism was amended in 1984 to require Congress to affirmatively approve a plan in order for it to go into force. As with the regular legislative process, congressional and presidential affirmation would be needed for a plan to go into effect. However, the special expedited legislative procedures would make plan approval easier than would be the case under the regular process.

The most recent version of this authority expired in 1984 and has not been available to the President since then. Before it lapsed, Presidents used this 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 (1953); the Environmental Protection Agency (1970); and the Federal Emergency Management Agency (1978). The reorganization authority provisions enacted by Congress varied greatly over the 52 years from 1932 and 1984. During some periods, Congress delegated relatively broad authority to the President, while during others the authority was more circumscribed.

The current, inoperative authority remains codified in chapter 9 of Title 5 of the *U.S. Code*. Some Presidents have requested, and Congress has periodically considered, reauthorization of this statute. During the 119th Congress, legislation to renew and amend presidential reorganization authority was introduced in the House and Senate. S. 538 was introduced on February 13, 2025, and referred to the Senate Committee on Homeland Security and Governmental Affairs. H.R. 1295, introduced the same day, was considered by the House Committee on Oversight and Government Reform and ordered reported on March 25, 2025. In addition to renewing the authority, the House bill, as ordered reported, would amend the statute to make changes to its purpose, definitions, permissible reorganization plan contents, and limitations on powers.

These legislative and committee activities coincided with President Donald Trump's administrative reorganization and downsizing of the executive branch. There has been support for these efforts among some Members, and a renewal of this authority might make it easier for the Administration to carry out such reorganization and downsizing. Such a renewal might involve certain trade-offs, including, for example, a reduction in congressional control over the federal bureaucracy.

The history and evolution of the authority from 1932 to 1984 and the reauthorization proposals put forward since then might inform congressional consideration of current reauthorization legislation and other legislative options. 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 further on reauthorization legislation or by actively rejecting it. If Congress elects to renew the authority, it might do so without modifications, with the proposed 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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Between 1932 and 1984, Congress periodically authorized the President to develop plans to reorganize portions of the federal government and present those plans to Congress for consideration.[1] Under most versions of this authority, a submitted plan would be considered under special parliamentary 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."[2] To the extent this process was used in lieu of lawmaking through the regular legislative procedures in which Congress passes legislation and then presents it to the President for signature or veto, it favored the President's plan: 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.

The statute is no longer in effect, however, having become inoperative in 1984. In the decades since, some have called for a reauthorization of this statute or a similar authority. Such proposals have sometimes received congressional consideration but have not been enacted.

During the 119th Congress, legislation to renew and amend presidential reorganization authority has been introduced in the House and Senate. S. 538 was introduced on February 13, 2025, and referred to the Committee on Homeland Security and Governmental Affairs. H.R. 1295, introduced the same day, was considered by the House Committee on Oversight and Government Reform and ordered reported on March 25, 2025. In addition to renewing the authority, the House bill, as ordered reported, would amend the statute to make changes to its purpose, definitions, permissible reorganization plan contents, and limitations on powers.

This congressional activity coincided with President Donald Trump's comprehensive administrative reorganization and downsizing of the executive branch. There has been support for these efforts among some Members, and a renewal of this authority might make it easier for the Administration to carry out such reorganization and downsizing. However, such a renewal might involve certain trade-offs, such as a reduction in congressional control over the organizational arrangements of the federal bureaucracy.

This report begins with a brief history of the evolution and uses of presidential reorganization authority during the middle of the 20th century. It then provides a summary of proposals since 1984 to reactivate the authority, including those introduced during the 119th Congress. The report also identifies potential congressional options for establishing some form of reorganization authority subject to expedited legislative processes. It concludes with summary observations about the political and institutional context for presidential reorganization authority.

[1] Presidential reorganization authority is codified at Title 5, Sections 901-912, of the *U.S. Code*. The statute became inoperative on December 31, 1984, the deadline for the President to submit reorganization plans to Congress under the authority (§§905(b) and 908(1)).

[2] In a 1983 ruling in *Immigration and Naturalization Service v. Chadha*, the Supreme Court held legislative veto to be unconstitutional (INS v. Chadha, 462 U.S. 919, 944-559 (1983)). The parliamentary procedure mechanism in presidential reorganization authority was amended in 1984 to require Congress to affirmatively approve a plan in order for it to go into force, and this version of the mechanism is the one that would be operative if the authority were renewed without further amendment.

Brief History of Presidential Reorganization Authority

Congressional Grants of Presidential Reorganization Authority, 1932-1984

The roots of presidential reorganization authority can be traced to the Administration of President Herbert Hoover (1929-1933).[3] While Secretary of Commerce during the 1920s, Hoover had been a proponent of the idea that Congress should authorize the President to propose reorganizations of the executive branch for the purposes of improved economy and efficiency, subject to some form of congressional disapproval.[4] 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 enacted the first version of presidential reorganization authority.[5]

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.[6] In the event of an adjournment of Congress within the 60-day period, the order could not become effective until 60 days following reconvening.

[3] On at least one occasion prior to 1932, Congress had delegated limited reorganization authority to the President. During World War I, 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 would automatically 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.

After the United States entered World War II, Congress again provided the President with temporary and limited wartime reorganization authority. The First War Powers Act was enacted December 18, 1941, 11 days after the attack on Pearl Harbor (55 Stat. 838). The statute provided the President with authority similar to that conveyed through the Overman Act.

[4] Speaking at a 1924 hearing, Secretary Hoover 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, 68th Cong., 1st sess. (GPO, 1924), p. 353. On Hoover's government improvement views generally, see Joan Hoff Wilson, *Herbert Hoover: Forgotten Progressive* (Little, Brown, 1975).

[5] The Economy Act of 1932 (47 Stat. 413) was Part II of the Legislative Appropriations Act for FY1933, enacted during the first session of the 72nd Congress.

[6] As discussed below, in its 1983 ruling in *INS v. Chadha*, the Supreme Court found this process to be unconstitutional. INS v. Chadha, 462 U.S. 919, 944-559 (1983).

During the ensuing decades, Congress reshaped the contours of the authority in response to experience and political context. Congress continued to delegate authority to the President while seeking to protect congressional prerogatives. Although the specific terms varied under different versions of the authority, the statutory framework evolved to include three key elements that defined the potential scope of the President's plans and the congressional role in passing judgment on such proposals. These basic elements were (1) specification of the range of actions that could be undertaken under the authority, (2) a series of limitations constraining the breadth of those actions, and (3) some opportunity for Congress to consider—and potentially block—a plan before its effective date.

Successive congressional renewals of the authority sometimes narrowed and other times expanded the scope of potential reorganization activities. In addition, the expedited-resolution-of-disapproval procedures were altered in such a way that it became easier or harder to defeat a President's plan, although always easier than under regular House and Senate procedures. In general, over time Congress tended to provide more circumscribed authority and to make it easier for Congress to defeat a plan.

The reorganization authority was refined and reauthorized on a number of occasions between 1932 and 1984.[7] (See text box.) On some occasions—such as 1939, 1945, and 1949—Congress enacted completely new statutes. On other occasions, modifications were made through amendment and extension of the most recent reorganization authority act. As a result, the now-expired 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.

Although Congress renewed presidential reorganization authority periodically between 1932 and 1984, it was not continuously authorized.[8] The authority was reactivated for at least a portion of each of the presidencies during this period, except that of President Gerald Ford.[9]

Selected Reorganization Authority Changes, 1932-1984

- The stated purposes of the authority were fairly consistent from 1932 through 1984. The 1932 statute introduced four policy goals, three of which endured through all versions of the authority. These three—grouping of agencies according to major purpose, consolidation of agencies with similar functions, and elimination of overlapping and duplication of effort—are listed as the last three of six policy goals in the most recent version of the statute.

[7] 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).

[8] The authority 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. From 1941 through 1945, however, Congress provided the President with temporary and limited wartime reorganization authority distinct from the authority discussed in this report. Under the First War Powers Act, enacted in 1941, the President could transfer and consolidate agencies by executive order without congressional consultation, approval, or (as in the Reorganization Act of 1939) acquiescence—so long as his actions related to the conduct of the war. In contrast with the Reorganization Act of 1939, the reorganizations implemented under the First War Powers Act were temporary. After the war, the organizational structures of the departments and agencies were to revert to their pre-war status unless arrangements had been statutorily changed in the interim.

[9] In 1975, President Ford asked Congress to renew and extend the Reorganization Act of 1949 for another four-year period. See U.S. President (Ford), "Extension of the Reorganization Act of 1949," *Weekly Compilation of Presidential Documents*, vol. 11 (April 9, 1975), p. 354. It appears that no legislation to this effect was introduced.

- A fourth policy goal of 1932—segregation of "regulatory agencies and functions from those of an administrative and executive character"—did not endure. The apparent aim of this provision was to maintain an organizational distinction between regulatory boards and commissions, which had a level of independence from the President, and other agencies and departments, which were understood to be more immediately under his direction. The provision was not carried over after the 1933 statute.
- Two additional purposes were introduced in 1933: the reduction of "expenditures to the fullest extent consistent with efficient" government operation and an increase in government efficiency "to the fullest extent practicable within the revenues." Similar provisions were included through 1984.
- Nearly all versions of the authority provided for a specialized legislative path for disapproval of plans submitted by the President. One exception was the 1933 version, which was enacted just prior to the first inauguration of Franklin D. Roosevelt during the Great Depression. While plans were to be submitted to Congress and were subjected to a waiting period, the 1933 statute provided for no method of congressional disapproval outside of the regular legislative process. The other exception is the current, inoperative statute, which has a specialized legislative path for approval rather than disapproval.
- In general, congressional disapproval of plans was made easier over time. The 1932 version of the authority allowed for either house to veto the President's plan by simple resolution, but the resolution was not subject to expedited procedures. As just noted, the 1933 version provided no special process for disapproval of a plan. The 1939 and 1945 versions allowed Congress to veto a plan through a concurrent resolution of disapproval—which required passage by both houses—and, for the first time, provided expedited procedures for consideration of such legislation. Beginning in 1949, congressional disapproval could be achieved through a simple resolution of disapproval passed under expedited procedures in either chamber, arguably the lowest threshold during the authority's 52-year history. Under the version enacted in 1984, the default status of a submitted plan was "not approved." For the plan to go into effect, Congress must pass, under expedited procedures, a joint resolution of approval. (In contrast to a concurrent resolution, enactment of a joint resolution also requires the President's signature.)
- The 1932 act explicitly prohibited the use of the authority to abolish an agency. In the 1933 act, the abolishment of an agency or its functions was explicitly permitted except with regard to a department or all of its functions. The 1939 act instead provided that an agency could be abolished if, as a result of transfers or terminations, it ended up with no functions. Notably, no provision was made for the abolishment of functions in that year. Under the 1945 act, however, a plan could abolish all or part of the functions of any agency. In addition, this statute continued the 1939 provision for abolishment of an agency with no functions. Both of these provisions continued to be included in all succeeding versions of the authority. In the 1977 statute and succeeding versions, however, the abolishment of functions was limited: No enforcement function or statutory program could be abolished under the authority.
- Prior to 1971, the authority included no limits on the number of plans or the pace at which they could be submitted. That year, the authority was amended to limit, to one, the rate of plan transmittals within a period of 30 consecutive days. This amendment was modified in 1977 to instead permit no more than three plans to be pending before Congress at one time, and this provision remained through the most recent version of the statute.
- Beginning in 1971, the statute limited each reorganization plan and its implementation to deal with no more than one "logically consistent subject matter."
- Prior to 1977, reorganization authority statutes had not provided the President with a mechanism for amending or modifying a plan once it had been transmitted to Congress. Under the 1977 act, the President could amend or modify a plan, after its transmittal, within 30 days of continuous session of Congress so long as a related resolution had not been reported in either house. Presumably, this feature would permit modifications of a plan based on negotiations with Members of Congress.

Legislative Veto Deemed Unconstitutional

Nearly all versions of presidential reorganization authority provided for a one- or two- house legislative veto. Each iteration of the authority in effect from 1949 through 1980 provided for such one-house legislative vetoes.[10] In 1983, however, the Supreme Court, in a different statutory

[10] See, for example, Reorganization Act of 1949, §6; 63 Stat. 205; and Reorganization Act of 1977, §2, where amending 5 U.S.C. §906; 91 Stat. 32.

context, ruled that legislative vetoes are unconstitutional.[11] In *INS v. Chadha*, the Court held that Congress could not alter "the legal rights, duties and relations of persons … outside the legislative branch" without following the Constitution's bicameralism and presentment requirements.[12] That is, to take a legislative act, *both* houses of Congress must pass the legislation and then present it to the President for signature. Thus, the congressional check in the form of a legislative veto, similar to that which existed in prior executive reorganization authority statutes, is unconstitutional.[13]

The Court's ruling in *INS v. Chadha* raised concerns in Congress 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.[14]

Congress also amended Chapter 9 of Title 5 of the *U.S. Code* to address this issue and extended the authority for approximately two months at the end of 1984.[15] Under the amended version of the law, 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 required both chambers to pass the resolution and the President to sign it for the plan to have the force of law.[16]

From a procedural perspective, enacting a President's reorganization plan was thus made somewhat more difficult than under earlier versions of presidential reorganization authority. Under the legislative veto, the President's plan would take effect unless opponents in either chamber garnered enough votes to reject it. Under the new process, the plan would not take effect unless both houses of Congress took action to approve it. As is the case under the regular legislative process, the result of congressional inaction would be the status quo.

This last revision and extension of presidential reorganization authority was never used.[17] The last plan was submitted in 1980, by President Jimmy Carter. The 1984 authority expired and therefore

[11] INS v. Chadha, 462 U.S. 919, 944-559 (1983).

[12] Ibid., at 944-59.

[13] See ibid.

[14] P.L. 98-532, 98 Stat. 2705.

[15] P.L. 98-614, 98 Stat. 3192. 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.

[16] If the President vetoes a joint resolution, it may still take effect if Congress overrides the presidential veto with a vote of two-thirds of each chamber.

[17] Although technically the 1984 amendments reactivated the authority, it appears that President Reagan had little, if any, opportunity to use it at that time. Among other provisions, the amendments 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 President had virtually no opportunity to use the newly reauthorized statute.

is not available to the President, but its provisions remain codified in Chapter 9 of Title 5 of the *U.S. Code*.[18]

Improving Management or Changing the Role of Government: The Hoover Commission and Presidential Reorganization Authority

Congress enacted the Reorganization Act of 1949 soon after the start of President Harry 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.[19] 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.

Congress established the Hoover Commission by public law on July 7, 1947.[20] The 80th Congress (1947-1948), which enacted this statute, was led by Republicans, and many Members favored containing and shrinking the plethora of federal government agencies that had emerged under Democratic leadership 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 1930s 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, 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.[21]

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. 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.

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 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 was apparently 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.[22] 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,

[18] The time limit on the authority is set out in Title 5, Section 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," and Section 908(1), which stipulates that the expedited procedures under which reorganization plans may be considered are "applicable only … in the case of resolutions with respect to any reorganization plans transmitted to Congress … on or before December 31, 1984."

[19] A second Hoover Commission was formed in 1953. Consequently, the two commissions are sometimes referred to as Hoover I and Hoover II, respectively.

[20] P.L. 80-162, 61 Stat. 246.

[21] 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, 80th Cong., 1st sess., June 24, 1947, S. Rept. 80-344 (GPO, 1947), p. 4.

[22] Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905-1996*, 2nd ed., revised (University of Kansas, 1998), pp. 142-143; and William E. Pemberton, *Bureaucratic Politics: Executive Reorganization During the Truman Administration* (University of Missouri, 1979), pp. 87-91.

Thomas E. Dewey; disagreements among commission members; the relationship between President Truman and former President Hoover; and Truman Administration influence.[23]

President Truman generally endorsed the work of the commission,[24] and he used reorganization authority to implement some of its recommendations. During President Truman's second term, he submitted 41 reorganization plans, 36 of which were explicitly connected to the work of the commission.[25]

Plans Submitted Under Presidential Reorganization Authority

Presidents used the authority regularly when it was in effect. Between 1932 and 1980, more than 100 plans were submitted to Congress under various forms of presidential reorganization authority, and a majority of these went into effect.[26] 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[27] ;
- in the mid-1940s to facilitate the organizational transition from wartime to peacetime[28];
- in the late 1940s and early 1950s to implement some of the administrative changes recommended by the first Hoover Commission[29] such as the consolidation of authority in the heads of departments and agencies (see text box);
- in 1953 to elevate the Federal Security Agency to department status when it was reorganized to form the Department of Health, Education, and Welfare[30];
- in 1970 to reorganize the Bureau of the Budget as the Office of Management and Budget (OMB) and to establish the Environmental Protection Agency and the National Oceanic and Atmospheric Administration[31]; and

[23] Pemberton, *Bureaucratic Politics*, 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* (Simon and Schuster, 2012), pp. 43-51.

[24] 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* (GPO, 1964), pp. 244-245.

[25] Detailed information on reorganization plans that were submitted to Congress from 1939 through 1984 may be found in an April 5, 2012, CRS Congressional Distribution Memorandum, "Plans Submitted to Congress Under Presidential Reorganization Authority, 1939-1984," by Henry B. Hogue. Copies of this memorandum are available to the congressional community from its author.

[26] CRS Congressional Distribution Memorandum, "Plans Submitted to Congress Under Presidential Reorganization Authority, 1939-1984," by Henry B. Hogue.

[27] Reorganization Plan No. 1 of 1939.

[28] See, for example, Reorganization Plan No. 3 of 1946 and Reorganization Plan No. 1 of 1947.

[29] A second Hoover Commission was formed in 1953. The recommendations of the 1953 commission were generally not adopted under this authority.

[30] Reorganization Plan No. 1 of 1953. In 1979, the education functions of the Department of Health, Education, and Welfare (HEW) provided the foundation for the newly created Department of Education, and HEW was renamed the Department of Health and Human Services. P.L. 96-88, 93 Stat. 668.

[31] Reorganization Plans No. 2, 3, and 4 of 1970.

- in 1978 to consolidate federal emergency management functions and create the Federal Emergency Management Agency.[32]

Reorganization plans that went into effect are included in two standard legal references. The text of plans as they went into effect can generally be found in *United States Statutes at Large* toward the end of the volumes for the years during which they went into effect.[33] The amended version of each reorganization plan that went into effect may be found in the appendix to Title 5 of the *United States Code*. Generally, individual plans have also been classified to the notes of statutory provisions to which the particular reorganizations are related.[34]

Post-1984 Reauthorization Efforts

In the decades since this authority last expired, Presidents have sometimes advocated for a renewal of reorganization authority, and Congress has, from time to time, considered such a reauthorization.

1985-2000

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."[35] The President's proposal was reiterated in the budget the following year.[36] Legislation to extend reorganization authority was introduced early in the 99th Congress (1985-1986).[37] The Senate Committee on Governmental Affairs held a hearing on the bill together with other legislative initiatives of the President related to governmental management.[38] No further legislative action was taken. The budget documents for FY1988, released at the beginning of the 100th 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.

It appears that President George H. W. Bush did not request renewal of presidential reorganization authority and that no such legislation was introduced during his Administration.

One of the initial reports issued by the Clinton Administration's principal executive branch reform vehicle, the National Performance Review, recommended reactivation of the authority as a

[32] 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), the agency became part of the new Department of Homeland Security.

[33] See, for example, Reorganization Plan No. 2 of 1949 at 63 Stat 1065.

[34] For example, Reorganization Plan No. 4 of 1970 (National Oceanic and Atmospheric Administration) can be found at 15 U.S.C. §1511 note.

[35] 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.

[36] 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.

[37] H.R. 537 and S. 1657 (99th Congress).

[38] 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, 99th Cong., 2nd sess., February 25, 1986, S.Hrg. 99-618 (GPO, 1986).

tool for administrative reform efforts.[39] It appears, however, that President Clinton did not directly request reauthorization and that no such legislation was introduced during his presidency.

George W. Bush Administration (2001-2008)

In the aftermath of the terrorist attacks on the United States on September 11, 2001, President George W. Bush called for a renewal of presidential reorganization authority. As discussed below, legislation introduced during the 108th Congress (2003-2004) would have renewed the authority in modified form. These provisions passed the House but were not enacted.

President Bush's FY2003 budget proposal, released in early 2002, announced that 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."[40] 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.[41]

Early in the 108th Congress, the chairman of the House Committee on Government Reform announced his intention to introduce legislation to re-establish reorganization authority.[42] The committee heard testimony in support of reauthorization from the House majority leader, the deputy director of OMB, and a public administration scholar.[43] The witnesses pointed to the history of successful uses of the authority as well as to the size and complexity of the federal bureaucracy and the need for a process to quickly and efficiently improve its organization and management. Representatives of two federal employee unions testified against the proposal, arguing that the reorganizations under the fast-track procedure would eliminate the opportunity for stakeholders and the public to iron out differences through the regular legislative process. The House Subcommittee on Civil Service and Agency Organization also heard testimony about the potential benefits and drawbacks of the proposed reauthorization during a hearing on the connection between federal personnel issues and government reorganization.[44] The full committee held another presidential-reorganization-authority-related hearing in 2004, during which perceived redundancy and duplication of executive branch child welfare programs was presented as a case study in the need for reauthorization.

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[39] Office of the Vice President, *Creating a Government That Works Better and Costs Less: Transforming Organizational Structures*, Accompanying Report of the National Performance Review, September 1993.

[40] *Budget of the United States Government–Fiscal Year 2003* (GPO, 2002), p. 52.

[41] National Commission on the Public Service, *Urgent Business for America: Revitalizing the Federal Government for the 21st 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.

[42] 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, http://www.govexec.com/management/2003/03/davis-seeks-to-put-reorganization-on-fast-track/13590/. It does not appear that standalone legislation was introduced at this time. It appears, instead, that the proposal was included as Section 5021 of H.R. 10 (108th Congress), the Intelligence Reform and Terrorism Prevention Act of 2004.

[43] U.S. Congress, House Committee on Government Reform, *Toward a Logical Governing Structure: Restoring Executive Reorganization Authority*, 108th Cong., 1st sess., April 3, 2003 (GPO, 2003).

[44] 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*, 108th Cong., 1st sess., September 17, 2003 (GPO, 2004).

As part of legislative activity that led to the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 during the 108th Congress,[45] the House passed provisions that would have renewed the President's reorganization authority in a modified form.[46] 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.[47]
- 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."[48]
- Seven limitations on the President's authority under this chapter would have been eliminated, including the prohibition on creating or renaming executive departments or abolishing or transferring an existing department or independent regulatory agency.[49]
- Provisions for the creation of new agencies would have been explicitly permitted.[50]
- 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."[51]

These provisions were removed in conference with the Senate, and they were not included in the bill as enacted.[52]

Obama Administration (2009-2016)

In a January 2012 press release, President Obama announced that he would ask Congress to reinstate presidential reorganization authority.[53] The following month, the Administration

[45] P.L. 108-458, 118 Stat. 3638.

[46] H.R. 10 (108th Congress) as passed by the House was inserted as an amendment to S. 2845, replacing the Senate-passed text and laying the groundwork for a conference on the Senate bill. The text of the House-passed reorganization authority provisions may be found at S. 2845, Engrossed Amendment House version, §5021.

[47] S. 2845 (Engrossed Amendment House) (108th Cong.), §§5021(b), 5021(d), and 5021(e)(2)(A).

[48] S. 2845 (Engrossed Amendment House) (108th Cong.), §5021(b).

[49] S. 2845 (Engrossed Amendment House) (108th Cong.), §5021(b).

[50] S. 2845 (Engrossed Amendment House) (108th Cong.), §5021(c).

[51] S. 2845 (Engrossed Amendment House) (108th Cong.), §5021(a).

[52] 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." See OMB, *Fiscal Year 2006 Analytical Perspectives* (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 would have been considered by Congress under expedited procedures.

[53] U.S. White House, Office of the Press Secretary, "President Obama Announces Proposal to Reform, Reorganize, and Consolidate Government," January 13, 2012, https://obamawhitehouse.archives.gov/the-press-office/2012/01/13/president-obama-announces-proposal-reform-reorganize-and-consolidate-gov.

conveyed a legislative proposal to Congress.[54] Bills based on the proposed language were subsequently introduced during the 112th Congress in the Senate (S. 2129) and the House (H.R. 4409).

The President's legislative proposal would have amended Chapter 9 of Title 5 of the *U.S. Code* to do the following:

- 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
- Add and define the term *efficiency-enhancing plan* as a reorganization plan that the director of 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
- Remove a prohibition on abolishing or renaming an existing department or creating a new department
- Remove a prohibition on consolidating two or more departments
- Remove a prohibition on creating a new agency that is not part of an existing department or independent agency

The January press announcement included information about the President's planned use of the authority should it be granted:

> The President laid out his first proposed use of that authority consolidating six agencies into one more efficient agency to promote competitiveness, exports and American business. Currently, there are six major departments and agencies that focus primarily on business and trade in the federal government. The six are: U.S. Department of Commerce's core business and trade functions, the Small Business Administration, the Office of the U.S. Trade Representative, the Export-Import Bank, the Overseas Private Investment Corporation, and the U.S. Trade and Development Agency.[55]

The House bill was not acted upon. The Senate bill was the subject of a hearing of the Senate Committee on Homeland Security and Governmental Affairs. During her opening remarks, the ranking member of the committee expressed skepticism about granting the authority, noting the then-recent actions of Congress to reorganize the executive branch:

> Congress has surely failed more times than not in reorganizing government in a major way. I would note, however, that two of the most significant such reorganizations in the past 10 years—comprehensive intelligence reform and the creation of the Department of Homeland Security (DHS)—have emerged as a result of this Committee's efforts, not by presidential fiat.

[54] The legislative proposal was presented in attachments to letters from Acting Director of OMB Jeffrey D. Zients to House Speaker John Boehner and President of the Senate Joe Biden. A copy of the letter to Speaker Boehner as well as the accompanying legislative proposal are available at https://obamawhitehouse.archives.gov/sites/default/files/omb/legislative/letters/reorg-authority-letter-and-legislation-to-speaker-of-the-house.pdf.

[55] U.S. White House, Office of the Press Secretary, "President Obama Announces Proposal to Reform, Reorganize, and Consolidate Government," January 13, 2012.

> While I understand that Congress is sometimes an obstacle to speedy reform, it is important that, in considering ways to expedite the process, we do not undermine Congress' ability to carefully consider and amend legislation.[56]

An Administration witness acknowledged that Congress had been 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.[57]

The Senate bill was not further acted upon. From this point through the end of his second term, President Obama noted his proposal for renewed authority in his budget requests.[58] Reauthorization legislation was again introduced in the House during the 113th Congress, but it was not acted upon.[59] It does not appear that legislation to renew the authority was introduced in the 114th Congress.

Allowing the Renaming of Departments

The authority of the President to rename existing executive departments has sometimes been included in reorganization authority, but it has never been successfully used. It would not be permitted under the current statutory language.

The 1932 and 1933 presidential reorganization statutes did not explicitly allow for or prohibit the renaming of a department, and no such action was attempted.[60] Enactment of the Reorganization Act of 1939 followed a period of disagreement about whether to establish a new Department of Social Welfare and a new Department of Public Works.[61] The 1939 authority did not permit a plan to create a new department nor to rename an existing department. These limitations were continued in the 1945 act but dropped from the Reorganization Act of 1949 at the request of the Truman Administration. President Truman submitted plans to establish new departments but not to rename existing ones.

Subsequent versions of the statute remained free of the renaming limitation until the 1984 amendments. At this time the restriction was reinstated in response to an unsuccessful Carter Administration initiative 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:

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[56] U.S. Congress, Senate Homeland Security and Governmental Affairs Committee, *Retooling Government for the 21st Century: The President's Reorganization Plan and Reducing Duplication*, 112th Cong., 2nd sess., March 21, 2012, S.Hrg. 112-531 (GPO, 2012), p. 3.

[57] U.S. Congress, Senate Homeland Security and Governmental Affairs Committee, *Retooling Government for the 21st Century*, p. 20.

[58] *Budget of the United States Government—Fiscal Year 2013* (GPO, 2012), pp. 40-41; *Budget of the United States Government—Fiscal Year 2014* (GPO, 2013), p. 50; *Budget of the United States Government—Fiscal Year 2015* (GPO, 2014), p. 39; *Budget of the United States Government—Fiscal Year 2016* (GPO, 2015), p. 81; and *Budget of the United States Government—Fiscal Year 2017* (GPO, 2016), p. 107.

[59] H.R. 37 (113th Congress), Title II.

[60] The 1932 statute permitted a reorganization order to "designate and fix the name and functions of any consolidated activity or executive agency" (Economy Act of 1932, §403(4); 47 Stat. 413). The statute appears to have differentiated between the terms *executive department* and *agency*, however, and it is unclear whether this section would have applied to departments. In any event, none of the 11 executive orders submitted to Congress under the authority would have renamed a department.

[61] Richard A. Polenberg, *Reorganizing Roosevelt's Government* (Harvard University, 1966), pp. 25, 31-35, 47, 191-195.

> 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.[62]
>
> Reauthorization legislation introduced in 2012 and 2018 would have permitted the renaming of a department. Reauthorization legislation introduced in 2025, discussed in detail below, would also permit this.

First Trump Administration (2017-2020)

It does not appear that President Donald Trump publicly requested a renewal of presidential reorganization authority during his first term. However, reauthorization legislation was introduced in the House and Senate, and the Administration was supportive of the bills' aims.[63] The Reforming the Government Act of 2018 was introduced and referred to the Senate Committee on Homeland Security and Governmental Affairs on June 26, 2018.[64] A similar bill was introduced and referred to the Committee on Oversight and Government Reform and the Committee on Rules on September 12, 2018.[65] The House bill was not further acted upon. In the Senate, the committee amended and reported the bill.[66] But the bill did not see floor action before the end of the 115th Congress.

The legislation, as introduced, would have amended Chapter 9 of Title 5 of the *U.S. Code* to 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 limit the period during which the authority can be used. It included provisions similar to those included the 2012 legislation discussed above. The provisions included in both bills would have amended Chapter 9 by:

- adding and defining the term *efficiency-enhancing plan* as one that the director of OMB determines is likely to result in a decrease in the number of agencies or cost savings,
- requiring that each submitted plan be an efficiency-enhancing plan,
- removing a prohibition on abolishing or renaming an existing department or creating a new department,
- removing a prohibition on consolidating two or more departments, and
- removing a prohibition on creating a new agency that is not a component of an existing department or independent agency.

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[62] U.S. Congress, Senate Committee on Governmental Affairs, *Reorganization Act of 1981*, report to accompany S. 893, 97th Cong., 1st sess., June 8, 1981, S. Rept. 97-132 (GPO, 1981), p. 8.

[63] In a written response to a follow-up question about the Administration's stance on reorganization authority renewal, Deputy Director of OMB for Management Margaret Weichert stated, "I appreciate the recent introduction in the Senate of a bill (S. 3137) renewing Presidential reorganization authority…. I expect that the Administration would utilize such reorganization authority if granted by Congress, while remaining open to other appropriate vehicles for advancing reorganization proposals through the legislative process." See U.S. Congress, House Oversight and Government Reform Committee, *Examining the Administration's Government-Wide Reorganization Plan*, 115th Cong., 2nd sess., June 27, 2018, H.Hrg. 115-88 (GPO, 2018), pp. 83-84.

[64] S. 3137 (115th Congress).

[65] H.R. 6787 (115th Congress).

[66] The committee held a hearing on the President's separate reorganization initiative soon after the introduction of S. 3137. Although presidential reorganization authority was not the focus of the hearing, the chair discussed S. 3137's provisions. See U.S. Congress, Senate Homeland Security and Governmental Affairs Committee, *Reviewing the Administration's Government Reorganization Proposal*, 115th Cong., 2nd sess., July 18, 2018, S.Hrg. 115-547 (GPO, 2019), pp. 2-3.

The 2018 bill also included provisions not included in the 2012 legislation. The provisions that were included in the 2018 bill only would have amended Chapter 9 by:

- expanding the definition of *reorganization* to include a "transfer, consolidation, authorization, abolition, or *creation*";[67] and
- permitting creation of a new agency that is not a component or part of an existing executive department or independent agency.

During markup of the Senate bill, the Committee on Homeland Security and Governmental Affairs adopted an amendment propounded by a committee member of the minority party that would have further amended Chapter 9 to include:

- a prohibition on consideration of any reorganization plan under expedited procedures until the Congressional Budget Office issued a cost estimate for the plan or 45 days have passed, whichever occurred first;
- a requirement that OMB report on the implementation of the reorganization proposal within one year of its approval by Congress;
- a requirement that OMB submit to Congress, for oversight purposes, any reorganization plan that the President would implement with an independent statutory authority and an explanation of that independent statutory authority[68];
- a requirement that the President respond within 30 days to a request from Congress for information about a plan; and
- a modification of the authority's expedited procedures to require three-fifths of the members of the Senate to vote for passage of the resolution unless the plan is sponsored by at least five members from the majority party and five members from the minority party, in which case the resolution would pass with a simple majority vote on the Senate floor.[69]

As amended, the bill had bipartisan support in committee. The committee voted to report the bill, as amended, but it was not taken up by the full Senate.

Biden Administration (2021-2024)

It appears that President Joe Biden did not request renewal of presidential reorganization authority and that no reauthorization legislation was introduced during his Administration.

[67] Emphasis added.

[68] This provision of the legislation, as reported, stated, "Any reorganization plan prepared by the President … that purports to advance the policies described in section 901(a) shall be subject to the approval process under this chapter, absent an independent statutory authority to implement the plan. If the President implements a reorganization plan that advances policies described in section 901(a) and relies on an independent statutory authority, the President shall transmit to Congress an explanation of the plan and its independent statutory authority consistent with the requirement of section 903 and 904 and this section, which Congress may use, at its discretion, to conduct oversight of the reorganization plan for any purpose consistent with the mandates of Congress under Article I of the Constitution of the United States."

[69] U.S. Congress, Senate Homeland Security and Governmental Affairs Committee, *Reforming Government Act of 2018*, report to accompany S. 3137, 115th Cong., 2nd sess., November 26, 2018, S.Rept. 115-381 (GPO, 2018).

Reauthorization Legislation in the 119th Congress

At the beginning of the 119th Congress, legislation to amend and renew the presidential reorganization authority through 2026 was introduced in the House (H.R. 1295) and Senate (S. 583).[70] The bills, titled the Reorganizing Government Act of 2025, would amend the statute to make changes to its purpose, definitions, permissible reorganization plan contents, and limitations on powers. The House Committee on Oversight and Government Reform voted to report the House bill on March 25, 2025.

Both bills, as introduced, would broaden the purposes of presidential reorganization authority by including:

- the "elimination of operations determined to be unnecessary for the execution of constitutional duties" as a means of increasing government efficiency,
- the reduction of the number of federal employees,
- the amendment of regulations to decrease compliance costs and difficulties and to eliminate "unnecessary and burdensome" regulations, and
- the elimination of government operations not it the "public interest."

The two bills, as introduced, would also amend the definitions section of the current statute. They would replace *agency*, which is currently defined as "an Executive agency or part thereof … and … an office or officer in the executive branch," with the term *executive department*, newly defined as "any executive department, agency or independent establishment of the United States," wholly owned government corporation, or executive branch office or officer.[71] It does not appear that these differences in terminology would change, in general, the universe of federal agencies to which the purpose section refers and, consequently, would be covered by the authority.[72]

The two bills, as introduced, would also amend the sections of the current statute that circumscribe the range of reorganization activities that can be included in a plan by eliminating four existing prohibitions and adding a new one. These amendments would change the scope of the authority to:

- permit the abolishment of an enforcement function or statutory program,
- permit abolishing or renaming of any of the 15 existing executive departments or creating a new department,[73]
- permit transferring any of the 15 existing executive departments or all its functions or consolidating two or more of the 15 existing executive departments or all their functions,[74]

[70] S. 583 was introduced in the Senate on February 13, 2025, and referred to the Committee on Homeland Security and Governmental Affairs. H.R. 1295, introduced in the House the same day, was referred to the Committee on Oversight and Government Reform.

[71] This would establish a definition of *executive department* that differs from the definition laid out in Title 5, Section 101, of the *U.S. Code*, which otherwise applies through Title 5.

[72] The current definition of *agency* for presidential reorganization authority explicitly excludes the Government Accountability Office (GAO) and the Comptroller General. This explicit exception would be maintained under the new "executive department" definition.

[73] In the current statute, including this provision, *executive department* means one of the 15 executive branch departments delineated in Section 101 or Title 5 of the *U.S. Code*.

[74] As above, in this provision, executive department means one of the 15 executive branch departments delineated in Section 101 or Title 5 of the *U.S. Code*.

- permit abolishing or transferring an independent regulatory agency or all its functions or consolidating two or more independent regulatory agencies or all their functions, and
- prohibit a net increase in the number of federal employees or expenditures in a reorganization plan.

The House bill as reported out of committee retained the amendments discussed above and would further amend the statute to include the purpose of reducing the number of functions carried out by federal agencies.

Potential Approaches for Congressional Consideration

Each of the elements of the reorganization authority is integral to its overall scope and effect, but a few of these more strongly influence the relative authority of the President and Congress and the resulting balance of power between the two branches: the *reorganization plan contents*, the *limitations on power*—that is, the scope and range of actions that can be included in a plan—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 President during this process. The Administration may see such requirements as easing or making more difficult a plan's enactment and implementation.

Where a renewal of the reorganization mechanism in Chapter 9 of Title 5 of the *U.S. Code* is under consideration, 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 proposal or by actively rejecting it. Alternatively, Congress could renew the authority (1) without modifications, (2) with any amendments requested by reauthorization proponents in Congress or the Administration, or (3) with a different set of amendments. Each of these approaches is discussed in greater detail below.

Presidential reorganization authority raises administrative, political, and institutional questions for congressional consideration, 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 Congress might deem problematic from a policy or institutional point of view?

- Should government entities that exercise predominantly regulatory functions, such as rulemaking and adjudication, be treated differently from those that exercise predominantly executive functions, such as enforcement?
- What mechanisms should be in place to ensure that Congress has sufficient input into the reorganization plans?
- Do congressional procedures allow for a sufficient congressional check on the President's use of this authority?
- Should the President have the ability to reorganize the executive branch as he or she sees fit, or should the Administration be required to lay out its plan prior to obtaining the authority?
- Should the scope of government entities to which the authority applies include independent regulatory agencies?
- Should the reorganization authority apply to any portion of the executive branch, or should it be limited to specific policy areas (e.g., intelligence, education)?
- 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, the Government Accountability Office, and other stakeholders?

Answers to these questions could provide a basis for evaluating the potential approaches discussed below.

Option I. No Renewal of Reorganization Authority

Congress might elect not to enact reauthorization legislation. In this case, present legal authorities would continue to define the range of potential changes to organizational arrangements. For example, agency heads could direct reorganization activities within their agencies to the extent permitted by law. In addition, under Section 301 of Title 3 of the *U.S. Code*, the President could alter organizational arrangements by redelegating functions that Congress has vested in him.[75]

In addition, reorganization activities might still be accomplished legislatively. For example, a President could transmit a legislative proposal to abolish or reorganize certain executive branch agencies in a way that is consistent with the President's executive orders. Congress could consider and, potentially, modify this proposal through the lawmaking process.

Advocates of Option I 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 unnecessarily grant the President a greater role vis-à-vis Congress in establishing and shaping the federal bureaucracy. Such an argument might cite examples of the ability of Congress to carry out this role, pointing to the establishment of the Department of Homeland Security (DHS),[76] the reorganization of the intelligence community,[77] the increase of autonomy for the Federal Emergency Management

[75] For more on existing administrative authorities, see CRS Report R44909, *Executive Branch Reorganization*, by Henry B. Hogue; and CRS Report R48523, *Organizing Executive Branch Agencies: Structure and Delegations of Authority*, by Daniel T. Shedd and Jared P. Cole.

[76] Homeland Security Act of 2002, P.L. 107-296, 116 Stat. 2135.

[77] Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458, 118 Stat. 3638.

Agency within DHS,[78] the abolishment of the Office of Thrift Supervision,[79] the establishment of the Consumer Financial Protection Bureau,[80] the abolishment of the Overseas Private Investment Corporation,[81] and the establishment of the U.S. International Development Finance Corporation.[82] It could further be argued that Congress, through its committee system, is well 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.[83]

On the other hand, proponents of renewing the authority have argued that Congress has been ineffective in improving federal organizational arrangements legislatively. 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.[84]

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 Congress renews presidential reorganization authority. In the past, Congress has also sometimes established blue-ribbon commissions to conduct additional investigations and analyses of federal organization in a particular context. 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 newly re-elected President Harry Truman. (See text box.)

Option II. Renew the Authority Without Modification

Congress could reauthorize the statue 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 in significant ways. Perhaps chief among these differences is the law's requirement for Congress to enact a joint resolution to approve

[78] Post-Katrina Emergency Management Reform Act of 2006, P.L. 109-295, Title VI, 120 Stat. 1394.

[79] Enhancing Financial Institution Safety and Soundness Act of 2010, P.L. 111-203, Title III, 124 Stat. 1520.

[80] Consumer Financial Protection Act of 2010, P.L. 111-203, Title X, 124 Stat. 1955.

[81] Better Utilization of Investment Leading to Development (BUILD) Act of 2018, P.L. 115-254, Division F, 132 Stat. 3485.

[82] BUILD Act of 2018, P.L. 115-254, Division F, 132 Stat. 3485.

[83] For a further discussion of the respective roles of Congress and the President in reorganizing the executive branch, generally, see U.S. Government Accountability Office, *Government Efficiency and Effectiveness: Opportunities for Improvement and Considerations for Restructuring*, GAO-12-454T, March 21, 2012, pp. 6-9, https://www.gao.gov/assets/gao-12-454t.pdf. For a discussion of potential implementation consequences that might result from inadequate consultation with stakeholders in advance of reorganization, see Carl Grafton, "The Reorganization of Federal Agencies," *Administration and Society*, vol. 10 (February 1979), pp. 437-464.

[84] U.S. President (Obama), "Remarks on Government Reform," *Daily Compilation of Presidential Documents*, January 13, 2012, p. 1.

submitted plans rather than providing for a legislative veto. In addition, the scope of the 1984 statute is more limited than that of the Carter-era authority.[85]

This course of action might be seen as representing continuity. Many of the Members of Congress who last considered and renewed this authority were also Members at the time it was last in use during the Carter Administration (1977-1981).[86] 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 98th Congress was drawing to a close. The bill was signed into law on November 8, 1984.[87]

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.[88] 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 98th 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 Amended by H.R. 1295 or S. 583

A third possible approach to the question of presidential reorganization authority would be for Congress to enact one of the reauthorization bills introduced in the 119th Congress. As previously described, legislation to amend and renew the authority through 2026 was introduced in the House (H.R. 1295) and Senate (S. 583). In addition to reactivating the authority, the Reorganizing Government Act of 2025 (RGA) would change the statute's purpose, definitions, permissible reorganization plan contents, and limitations on powers under the authority.

As previously discussed, the House Committee on Oversight and Government Reform voted to report an amended version of the RGA. This version of the RGA would further amend the purpose section of Chapter 9 of Title 5.

Reauthorization Through 2026

The proposed reauthorization through 2026 is consistent with the duration of many past extensions of this authority.[89] On other occasions, Congress delegated this authority to the

[85] Under the 1984 statute, renaming of existing departments is not permitted, and a plan could not create a new, freestanding agency. Also, the 1984 statute differs from the earlier version by requiring that the President's message include additional detailed information regarding implementation of a plan.

[86] 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.

[87] P.L. 98-614, 98 Stat. 3192.

[88] The lack of controversy associated the passage of the bill in the Senate might have also been associated with other factors, such as the match between the Senate and the White House in terms of political party control.

[89] Congress granted authority of approximately two years in 1939 (approximately 21 months), 1945 (approximately 27 (continued...)

President for longer periods. 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.[90] 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,"[91] only 53 days later.[92]

Changes to Purpose and Definitions Sections

The purpose section of the authority articulates the goals of an executive branch reorganization. The most recent (now inoperative) version states that the "public interest demands" pursuing these goals, that this authority is a speedier way to accomplish such a change than through reorganization legislation, and that the President is charged with identifying organizational changes consistent with these goals. It expresses congressional intent that the President seek citizen advice and participation as part of the reorganization process.

The goals in this section embody values that are understood in public administration to be central to good government: economy, efficiency, and effectiveness:

> (1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;
>
> (2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;
>
> (3) to increase the efficiency of the operations of the Government to the fullest extent practicable;
>
> (4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;
>
> (5) 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; and
>
> (6) to eliminate overlapping and duplication of effort.[93]

The RGA as introduced in the Senate and the House would amend Section 901(a) to broaden the statute's aims to include "the elimination of operations determined to be unnecessary for the execution of constitutional duties," the reduction of the number of federal employees, the review of federal rules and regulations so as to reduce the cost and difficulty of compliance and to

months), 1953 and 1955 (approximately 26 months each), 1957 (approximately 21 months), 1961 (approximately 26 months), and 1969 (approximately 24 months).

[90] Reorganization Act of 1949 (63 Stat. 203). Other relatively long extensions include the 1965 reauthorization, which extended the authority for approximately three and a half years to nearly the end of the Johnson Administration, and the 1977 act, which provided the authority for a period of three years from enactment.

[91] 5 U.S.C. §905(b). Similarly, Title 5, Section 908, provides that the expedited congressional procedures established in Chapter 9 are "applicable only with respect to … resolutions with respect to any reorganization plans transmitted to Congress … on or before December 31, 1984."

[92] The statute also required that plans be submitted to each house when it was in session (5 U.S.C. §903(b)), and there was no such time during that 53-day period. Thus, it appears that President Reagan had virtually no opportunity to use the authority.

[93] 5 U.S.C. §901(a).

eliminate those that are unnecessary, and the elimination of "government operations that do not serve the public interest."[94] In addition, the House bill, as ordered reported, would include as a purpose reducing the number of functions carried out by federal agencies.

As discussed above, the RGA would replace the term *agency* with the term *executive department*, as newly defined. . (See "Reauthorization Legislation in the 119th Congress," above.)[95] It does not appear that this difference in terminology would change the universe of federal agencies covered by the authority.[96] The RGA would substitute the new term *executive department* for *agency* throughout the chapter.

Prohibiting Increased Federal Employment or Expenditures

The RGA would add a prohibition on creating a net increase in the number of federal employees or expenditures through a reorganization plan. The authority has not previously included provisions of any kind regarding the number of federal employees associated with a reorganization plan. It has long included a reduction of expenditures among its purposes, but it has not explicitly prohibited plans that might lead to a net increase in them.

The introductory statement for the 1932 statute called for a reduction in expenditures and increased efficiency in government. The introductory statements for 1933 and 1939 were narrowed to reduced expenditures and linked this goal to contemporary concerns about the nation's economic downturn and increased deficits, respectively. Beginning in 1945, one of the delineated purposes of the authority was to "reduce expenditures and promote economy, where consistent with efficient governmental operations."[97]

Change to Permissible Reorganization Plan Contents

Since 1939, the President's vehicle for transmitting his reorganization proposals under this authority to Congress has been a reorganization plan. As codified, Section 903(a) identifies the six kinds of reorganizational actions permitted to be included in such a plan:

1. The transfer of all or part of an agency, or all or part of its functions, 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 may be abolished
3. The consolidation or coordination of all or part of an agency or its functions with all or part of another agency or its functions
4. The consolidation or coordination of part of an agency or its functions with another part of the same agency or its functions
5. The authorization of an officer to delegate any of his or her functions
6. The abolition of all or part of an agency that does not—or, when the plan goes into effect, will not—have any functions[98]

The RGA would amend the second paragraph above by striking the phrase that categorically excludes the abolishment of enforcement functions and statutory programs. Consequently, under

[94] H.R. 1295 (119th Cong.), §2(1).

[95] The current definition of *agency* does not include the Government Accountability Office or the Comptroller General, and this exception would be maintained under the "executive department" definition.

[96] The present definition of *agency* as "an Executive agency or part thereof" appears to reference Title 5, Section 105, of the *U.S. Code*. This section defines, for the purposes of Title 5, *executive agency* as "an Executive department, a Government corporation, and an independent establishment." Defined this way, the term appears to have a meaning that is similar, if not identical, to "executive department," as defined in the reauthorization legislation.

[97] 5 U.S.C. §901(a).

[98] 5 U.S.C. §903(a).

the amended authority, the President would be able to submit a reorganization plan to abolish enforcement functions and statutory programs.

Changes to Limitations on Powers

In addition to specifying permissible reorganization action under this authority, Chapter 9 of Title 5 explicitly delineates seven limits on the President's use of the authority. The permissible reorganization action provisions in combination with those circumscribing the authority's use set the parameters of a reorganization that the President can propose. For example, Section 903(a) permits a reorganization plan to include several kinds of federal agency reorganizations—for example, transfer, abolishment, or consolidation—where *agency* means "an Executive department, a Government corporation, and an independent establishment."[99] However, Section 905(a)(1) prohibits such reorganization actions for executive departments and independent regulatory agencies.

Currently, Section 905(a) specifies that a reorganization plan may not provide for, or have the effect of:

> (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 the office; or
>
> (7) dealing with more than one logically consistent subject matter.

The RGA would amend this section to lift certain existing limits and impose one other. It would:

- permit the abolishment or renaming of an existing executive department or the creation of a new department,[100]
- permit the transfer of an executive department or all its functions or the consolidation of two or more executive departments or all their functions,
- permit the abolishment or transfer of an independent regulatory agency or all its functions or the consolidation of two or more independent regulatory agencies or all their functions, and
- prohibit a net increase in the number of federal employees or expenditures in a reorganization plan.

[99] 5 U.S.C. §105.

[100] In the current statute, including this provision, *executive department* means one of the 15 executive branch departments delineated in Title 5, Section 101, of the *U.S. Code*.

The lifting of prohibitions described in the first three bullets would add executive departments and independent regulatory commissions to the universe of federal organizations that could be transferred, consolidated, or abolished by a reorganization plan. The text box discusses the historical inclusion and exclusion of these two groups of agencies under presidential reorganization authority.

The additional limitation described in the fourth bullet, prohibiting a net increase in federal employees or expenditures, does not specify how these terms are to be defined, nor does it provide for a standardized measure of these two figures at the time the plan is written and considered by Congress. Consequently, disagreements might arise about whether a particular plan is within the bounds of this limitation. For example, the President might assert that the plan would result in a net decrease in federal workers and expenditures, while the Congressional Budget Office might score the plan as likely to increase these figures. (See text box for further discussion.)

Changing or Abolishing Departments and Independent Regulatory Agencies

The RGA would broaden the universe of federal agencies that could be transferred, consolidated or abolished by a reorganization plan to include executive departments and independent regulatory agencies. Some of these powers have been available in at least one previous version of the reorganization authority, but none was available under the most recent version of the statute.

Abolishing or Transferring Functions of a Department

All reorganization statutes thus far have prohibited the abolishment or transfer of a department or all its functions.[101] The Obama Administration requested the removal of this limitation to allow a reorganization plan to abolish the Department of Commerce as part of a possible reorganization of trade-related agencies.[102] Legislation introduced in 2018 would have also removed this limitation.[103]

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.[104]

Consolidating Two or More Departments

The consolidation of two or more departments or all of their functions was explicitly prohibited for the first time by the Reorganization Act of 1949.[105] It could be argued, however, that such a reorganization would have been

[101] See, for example, Economy Act of 1932, §406, "Whenever … the President concludes that any executive department or agency created by statute should be abolished … the authority granted in this title shall not apply" (47 Stat. 414); Reorganization Act of 1949, §5(a), "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 departments or all the functions thereof" (63 Stat. 205); and Reorganization Act of 1977, §2, where amending 5 U.S.C. §905(a), "A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of … creating a new executive department, abolishing or transferring an executive department" (91 Stat. 31).

[102] U.S. White House, Office of the Press Secretary, "President Obama Announces Proposal to Reform, Reorganize, and Consolidate Government," January 13, 2012, https://obamawhitehouse.archives.gov/the-press-office/2012/01/13/president-obama-announces-proposal-reform-reorganize-and-consolidate-gov.

[103] S. 3137 (115th Congress), as reported, §2(b)(1).

[104] P.L. 62-426, 37 Stat. 736; P.L. 96-88, 93 Stat. 695.

[105] 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 (continued...)

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 that was explicitly prohibited. The 1949 act also 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 prohibition on the creation of a new department 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 simply stated that the new language "conforms to the belief of the President that the elimination of an executive department should only be effected by statute."[106] Although the prohibition on creating a new department was added back into the statute in the 1964 amendments, the prohibition on consolidation remained. Both provisions were then part of all succeeding versions of the law.

The 2012 and 2018 proposals to reauthorize the statute would have lifted the consolidation prohibition.

Abolishing, Consolidating, or Transferring Functions of an Independent Regulatory Agency

The 1932 reorganization statute prohibited using the authority to abolish any agency and to transfer the functions to another department or agency or eliminate them entirely. It provided, instead, that the President should report such recommendations to Congress.[107] This prohibition was lifted in the 1933 reauthorization. The 1939 reorganization act prohibited consolidation, abolition, or transfer of functions of 21 specified independent agencies, many of which were regulatory agencies.[108] The 1945 reorganization act prohibited specified reorganization plan features with regard to 11 specified independent agencies, most of which were regulatory agencies.[109] The Reorganization Act of 1949 lifted limitations on the consolidation, abolition, or transfer of functions of independent regulatory agencies. The Reorganization Act of 1977 established the limitations on such reorganization activities, and these remain part of the current law. The accompanying Senate report stated:

> Congress has deliberately made these regulatory agencies independent of the direct control of the President because of the sensitive nature of their functions. If the existence of such organizations is to be abolished, it should be by regular legislation rather than through a reorganization plan proposed by the President.
>
> The amendment would not prohibit the President from submitting plans reorganizing the internal structure of an independent regulatory agency, such as by changing the administrative functions of the individuals heading the agency. Similarly, a plan could transfer a function to or from an independent regulatory agency as long as it did not amount, in effect, to abolishing the agency.[110]

When the 1949 act was in effect, several reorganization plans abolished or transferred functions from independent regulatory agencies. For example, a 1961 reorganization abolished the Federal Maritime Board and transferred its regulatory functions to a newly established Federal Maritime Commission, and Reorganization Plan No. 3 of 1970 established the Environmental Protection Agency and transferred to it certain functions of the Atomic Energy Commission.

Proposal as a Whole

If the RGA were enacted, it would make a delegation of authority including provisions that both have and have not been used before. The statute's purpose would include aims that have not previously been part of presidential reorganization authority: "the elimination of operations determined to be unnecessary for the execution of constitutional duties," the reduction of the number of federal employees, the review of federal rules and regulations so as to reduce the cost

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.])

[106] U.S. Congress, Senate Committee on Expenditures in the Executive Departments, *Reorganization Act of 1949*, report to accompany S. 526, 81st Cong., 1st sess., April 7, 1949, S. Rept. 232 (GPO, 1949), p. 8.

[107] Economy Act of 1932, §406; 47 Stat. 414.

[108] Reorganization Act of 1939, §3; 53 Stat. 561.

[109] Reorganization Act of 1945, §5(b); 59 Stat. 615.

[110] U.S. Congress, Senate Governmental Affairs Committee, *Reorganization Act of 1977*, report to accompany S. 626, 95th Cong., 1st sess., March 1, 1977, S. Rept. 95-32 (GPO, 1977), p. 9.

and difficulty of compliance and to eliminate those that are unnecessary, and the elimination of government operations that "do not serve the public interest."[111]

It appears that the RGA would provide the President with greater flexibility to use a reorganization plan to establish, consolidate, and abolish departments and independent regulatory agencies than has previously been provided. It could be argued that this expanded purpose and flexibility might be circumscribed, in part, by a prohibition of a net increase in the number of federal employees or expenditures. As discussed above, however, determination of whether a plan would result in such a net increase could be complicated by an absence of specifications about the terms used in this restriction and what authority, if any, would verify such projections.

The congressional procedures for consideration of a submitted plan would perhaps pose a greater constraint on the President's power under the RGA. 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, whose plans would go into effect in the absence of congressional action.

Option IV. Enact the Authority with Other Amendments

Congress could renew presidential reorganization authority in its current form or as amended by the RGA. Alternatively, 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.

Changes made to one of the 12 sections might sometimes interact with existing or new provisions in other sections of the authority—particularly those pertaining to the *reorganization plan contents*, the *limitations on power*, and the *expedited parliamentary procedures*—to further define the potential scope of a reorganization that the President can propose. For example, the current, inoperative statute allows consolidation of all or part of an agency's functions with those of another agency through a reorganization plan.[112] The same act provides that a reorganization plan may not have the effect of "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."[113] In this way, the general consolidation authority is modified under specific circumstances. That is, it appears that a program could not be reauthorized by a reorganization plan. 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 an executive branch 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 Section 903 of Title 5, 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;

[111] H.R. 1295 (119th Cong.), §2(1).

[112] 5 U.S.C. §903(a)(3).

[113] 5 U.S.C. §905(a)(3).

> (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 apart 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 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 by, for example, allowing the establishment of new federal organizations. Legislation proposed by the George W. Bush Administration would have explicitly permitted the creation of new agencies by adding a seventh paragraph to that effect to Section 903.[114]

At present, the authority specifies that "no more than three plans may be pending before the Congress at one time." Given finite congressional resources and the potential scope and complexity of a reorganization plan, Congress might specify that only one plan could be submitted at a time or within a span of time.[115]

Potential Changes to Limitations

Congress has employed a range of limitations in the various versions of reorganization authority. The current, inoperative statute includes seven limitations on what may be included in a reorganization plan. A plan could not have the effect of:

> (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

[114] S. 2845 (Engrossed House Amendment) (108th Cong.), §5021(c).

[115] A provision limiting the rate of plan submission was included in a previous version of presidential reorganization authority. The 1971 reauthorization of the Reorganization Act of 1949 included an amendment providing that the President "shall not transmit more than one such plan to Congress within any period of thirty consecutive days" (P.L. 92-179, §2(b); 85 Stat. 575).

(7) dealing with more than one logically consistent subject matter.[116]

The RGA would lift certain existing limits and add a limit that has not been part of the statute previously. (See "Changes to Limitations on Powers," above.) Alternatively, Congress might elect to further constrain the President's exercise of reorganization authority. Some potential limitations were included in past versions of reorganization authority but are no longer included:

- 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 prohibited "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" in a plan.[117] Congress could specify that a plan could not reorganize categories of agencies, such as legislative branch and judicial branch agencies. Alternatively, it could establish this limitation for delineated agencies by name.
- 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 impose "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.[118] Congress could, for example, specify this limit for these or other functions, such as auditing, grant-making, or functions of regional offices.
- A third provision, also adopted in 1945, exempted from alteration any organizational arrangements that Congress had enacted since the beginning of that year.[119] Congress could include similar temporal specifications to allow recently statutorily reorganized entities to adjust to new organizational arrangements before further reorganizing them. Such specifications might also lead Administration reorganization planners to focus on organizational units that had not recently been reviewed.

President George W. Bush's proposal took a different approach to limitations. It would have repealed all seven existing limitations and instead circumscribed, by mission, agencies that might be part of a plan.[120] The agencies selected perhaps reflected the high priority the Administration gave to reorganization of the intelligence community after the 9/11 terrorist attacks. Plans would have been limited to specified intelligence-related government organizations.[121] Congress could

[116] 5 U.S.C. §905.

[117] P.L. 76-19, §3(b); 53 Stat. 561.

[118] P.L. 79-263, §5(a)(6); 59 Stat. 615.

[119] P.L. 79-263, §5(e); 59 Stat. 616.

[120] S. 2845 (Engrossed Amendment House) (108th Cong.), §5021(b).

[121] These organizations included 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." S. 2845 (Engrossed Amendment House) (108th Cong.), §5021(b).

consider similarly limiting the scope of its use to specified government agencies, such as those related to educational or environmental policy.

Potential Changes to Expedited Congressional Procedures[122]

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, lawmakers might consider several structural questions.[123] 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-à-vis Congress because they establish a situation in which a President's reorganization plan would go into force unless Congress is able to stop it, which would likely require supermajority votes of the House and Senate to override a presidential veto of a disapproval resolution.[124]

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[122] This section was written by Christopher M. Davis, Analyst on Congress and the Legislative Process.

[123] 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 Christopher M. Davis.

[124] 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 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 *INS 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").

If Congress chose to provide presidential reorganization authority without requiring a joint resolution of approval to enact the proposed plan, questions could potentially be raised concerning whether the law complies with the nondelegation doctrine, which provides that Congress may not impermissibly "delegate its legislative power to another Branch." Mistretta v. United States, 488 U.S. 361, 372 (1989). However, the Supreme Court has held that so long as Congress provides an "intelligible principle" to guide the exercise of delegated authority, "such legislative action is not a forbidden delegation of legislative power" (ibid.). In the 1930s, at least two courts upheld the transfer of authority from one agency to another pursuant to presidential reorganization authority in the face of a nondelegation challenge, Isbrandtsen-Moller Co. v. United States, 14 F. Supp. 407, 412 (S.D.N.Y. 1936); Swayne & Hoyt v. United States, 18 F. Supp. 25, 28 (D.D.C 1936), and later, in 1984, another district court reached the same conclusion. E.E.O.C. v. Ingersoll Johnson Steel Co., 583 F. Supp. 983, 990 (S.D. Ind. 1984).

However, these cases involved the transfer of existing statutory functions from one agency to another to improve administrative efficiency (see ibid.). The analysis could change if, absent procedures requiring bicameralism and presentment to enact a proposal, the President were authorized to abolish an agency's statutory functions or confer new authority on an agency (see ibid.). In one opinion, the court indicated that permitting the President to take such actions could run afoul of the nondelegation doctrine (upholding the Reorganization Act of 1977 in the face of a nondelegation challenge, in part, because the President's power under the law was "essentially organizational" and the law did not permit the President to "confer or abolish substantive powers"; see ibid.). Similarly, questions could be raised whether the President abolishing a statutory function is effectively amending or repealing portions of a law outside the "finely wrought" procedures required by the Constitution. See Clinton v. City of New York, 524 U.S. 417, 440. (holding Line Item Veto Act, which authorized President to cancel certain provisions of enacted laws, unconstitutional because it (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,[125] 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 specific and prescriptive.[126]

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, if a congressional amendment process is permitted in an expedited procedure at either 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.[127]

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, it has clearly stated that the objective is such administrative improvement. Congress has often required that reorganization plans certify that such improvements are at least part of the objective of the proposed reorganization. In the current, inoperative version of the law, the President is required to articulate a plan's means of achieving such improvements.[128]

Reorganization efforts also often have spoken or unspoken political goals and outcomes.[129] 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

impermissibly gave "the President the unilateral power to change the text of duly enacted statutes"). A full discussion of these potential legal concerns is beyond the scope of this report.

[125] 19 U.S.C. §§2191-2194.

[126] For a further discussion and examples of expedited procedures, see CRS Report RS20234, *Expedited or "Fast-Track" Legislative Procedures*, by Christopher M. Davis; CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted into Law*, by Christopher M. Davis.

[127] For a discussion of the complications that can arise where amendments are allowed within an expedited procedure, see "House Floor Amendments" and "Coordination with the Senate" in CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted into Law*, by Christopher M. Davis.

[128] "The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process" (5 U.S.C. §903(b)).

[129] See Harold Seidman and Robert Gilmour, *Politics, Position, and Power*, 4th ed. (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* (McGraw-Hill, 1936).

units and functions might not only be moved but could be abolished. Employees in the reorganized agencies would be directly impacted, and outside interests—such as those who are regulated by or receive benefits from such agencies—are affected as well. A reorganization may also impact congressional committees directly through potential jurisdictional changes or indirectly through constituent groups. Although a government reorganization may have beneficial outcomes over time, it is axiomatic that it is disruptive, at least in the short term, to 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.[130]

A reauthorization of presidential reorganization authority would provide the President with greater authority to reorganize the executive branch than is currently the case. Should it elect to take any action to renew this authority, Congress might reauthorize the statute in a form that is more restrictive than the current version, as it has sometimes done in the past. Alternatively, Congress could renew the statute in a more expansive form, as is contemplated in legislation under consideration during the 119th Congress. Regardless, it could be argued that such renewed authority would be limited in impact so long as it was available for a defined period. As a consequence, the executive branch could be reconfigured such that, absent a further renewal of authority, it could not be further adjusted other than by enactment of new statutes. Future Presidents might seek similar reorganization authority with the support of precedent and a request for similar administrative flexibility.

Proponents of broad presidential 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 to sort out the competing demands and interests involved in broad reorganizations and that Congress, by representing a greater cross section of interests, provides a better forum in which to shape the federal government. They 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. History suggests that Congress has been selective about when and under what terms it does so. Among the factors that appear to influence this decisionmaking process are the perceived administrative need and expected benefits, the record of collaboration between a particular Congress and a particular President, and other political contextual factors.

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[130] Arguably, such disruption can be mitigated through diligent implementation planning and effective congressional oversight. See U.S. Government Accountability Office, *Government Efficiency and Effectiveness*, pp. 10-14.

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