



Executive Branch Reorganization Initiatives During the 112th Congress: A Brief Overview

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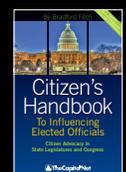
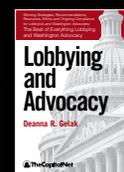
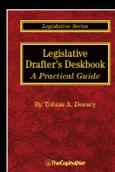


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Summary

President Barack Obama announced, in his State of the Union address, that his Administration would be proposing a reorganization of executive branch agencies. On March 11, 2011, the President issued a memorandum to the heads of departments and executive branch agencies providing further detail and direction on the development of a reorganization plan. The Deputy Director for Management (DDM) at the Office of Management and Budget was given the responsibility for “leading the effort to create a plan” for executive branch reorganization, with a “first focus ... on the executive departments and agencies and the functions that support one of our most important priorities—increasing trade, exports, and our overall competitiveness (‘trade and competitiveness’).” The DDM is to submit related recommendations, based on specified principles, to the President within 90 days of the memorandum’s issuance (i.e., by June 9, 2011).

A number of bills with reorganization-related provisions have been introduced in the House and Senate during the 112th Congress. Some of these provisions would defund or abolish specified government programs and agencies (e.g., H.R. 1, H.R. 861, H.R. 672, and S. 162). Some introduced bills would merge existing agencies and their functions or consolidate programs (e.g., H.R. 1782, S. 892, and S. 945). Other bills would establish bipartisan commissions that would evaluate current organizational arrangements and develop legislation that would be considered by Congress under expedited procedures (e.g., H.R. 155 and S. 14). Still other bills would make changes to organizational arrangements that were newly established by the 111th Congress, such as the Consumer Financial Protection Bureau and the Independent Payment Advisory Board (e.g., H.R. 557, H.R. 1355, H.R. 1121, S. 737, H.R. 452, and S. 668).

The context within which the Obama Administration and Congress are proposing and considering changes to the federal bureaucracy is shaped by a number of factors. These factors include heightened concerns about the federal debt, the deficit, job creation, and economic recovery; controversy related to financial regulatory and health care financing-related agencies established by legislation enacted during the 111th Congress; a belief, among some, that the federal government should be smaller and more efficient; and a perception that some agencies have failed to fulfill their responsibilities.

Constitutionally, the establishment and organization of governmental entities, such as departments and agencies, is the province of Congress. The President has often played a leadership role in reorganization of the executive branch by transmitting proposals and advocating legislative action in public statements and private negotiations. In the past, Congress has provided the President with greater leverage to statutorily change executive branch organizational arrangements by enacting time-limited expedited reorganization processes. Presidents and their political appointees also have a variety of administrative tools at their disposal for making smaller-scale structural and process organizational changes.

This report describes the ways that executive branch reorganization can occur as a result of Administration and congressional actions, and describes recent initiatives in the context of that typology. The report concludes with some observations regarding federal reorganization efforts.

This report will be updated as warranted by events.

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On January 25, 2011, President Barack Obama announced, in his State of the Union address, that his Administration would be proposing a reorganization of executive branch agencies. He stated,

We live and do business in the Information Age, but the last major reorganization of the government happened in the age of black-and-white TV. There are 12 different agencies that deal with exports. There are at least five different agencies that deal with housing policy. Then there's my favorite example: The Interior Department is in charge of salmon while they're in fresh water, but the Commerce Department handles them when they're in saltwater.... I hear it gets even more complicated once they're smoked....

Now, we've made great strides over the last two years in using technology and getting rid of waste. Veterans can now download their electronic medical records with a click of the mouse. We're selling acres of federal office space that hasn't been used in years, and we'll cut through red tape to get rid of more. But we need to think bigger. In the coming months, my administration will develop a proposal to merge, consolidate, and reorganize the federal government in a way that best serves the goal of a more competitive America. I will submit that proposal to Congress for a vote, and we will push to get it passed.¹

A White House press release concerning the address suggested that the Administration might seek statutory authority to design and carry out such reorganizations under an expedited process:

The President announced that, in the coming months, he will ask for the authority to merge, consolidate, and reorganize the Federal Government in a way that makes America more competitive—the first such reorganization in half a century.²

This text appears to be referring to statutory presidential reorganization authority similar to that granted by Congress at various times during the 20th century.³ This authority, currently dormant, allowed the President to present reorganization plans to Congress under an expedited process.⁴

The Obama Administration initiative to reorganize federal agencies is the most recent in a long series of reorganization efforts, and represents one method by which government reorganization can be accomplished. As used in this report, reorganization means the “purposeful (intended) changes in purpose, functions, procedures, assignments, and relationships in organizations.”⁵ It involves more than just structural rearrangement of organizational units and personnel, and can occur within agencies as well as among two or more agencies. Government reorganizations can also entail changes in interagency processes or the distribution of resources and functions among agencies.

Primary constitutional responsibility for the organization of the executive branch of the federal government, as well as the creation of the principal components of that branch, rests with

¹ U.S. President (Obama), “Address Before a Joint Session of the Congress on the State of the Union,” *Daily Compilation of Presidential Documents*, (January 25, 2011), pp. 8-9.

² U.S. White House, Office of the Press Secretary, “FACT SHEET: The State of the Union: President Obama’s Plan to Win the Future,” January 25, 2011, at <http://www.whitehouse.gov/the-press-office/2011/01/25/fact-sheet-state-union-president-obamas-plan-win-future>.

³ The most recent version of the authority, now dormant, is codified at 5 U.S.C. § 9901 et seq.

⁴ The history of the authority and its uses is discussed in greater detail below.

⁵ *Government Reorganizations: Cases and Commentary*, ed. Frederick C. Mosher (New York: Bobbs-Merrill, 1967), p. xv. The author reported a definition arrived at by the Inter-University Case Program, Inc., a project which he led.

Congress.⁶ Moreover, Congress has long sought to promote efficiency, transparency, accountability, public participation, and economy in the operations of the executive departments, agencies, and other governmental entities through specifications of both government-wide and agency-specific processes. Federal organizational structures and processes are under continual congressional and administrative study and alteration in response to changing contexts and priorities. The President has often played a leadership role in reorganization of the executive branch by transmitting proposals and advocating legislative action in public statements and private negotiations. Presidents and their political appointees also have a variety of administrative tools at their disposal for making smaller scale structural and procedural organizational changes.

The context within which the Obama Administration and Congress are proposing and considering changes to the federal bureaucracy is shaped by a number of factors. These factors include heightened concerns about the federal debt, the budget deficit, job creation, and economic recovery; controversy related to financial regulatory and health care financing-related agencies established by legislation enacted during the 111th Congress; a belief, among some, that the federal government should be smaller and more efficient; and the perceived failure of some agencies to fulfill their responsibilities.

This report describes the ways that executive branch reorganization can occur as a result of presidential, administrative, and congressional actions, and describes recent initiatives in the context of that typology. The report concludes with some observations regarding federal reorganization efforts.

Executive Branch Initiatives

As noted above, President Obama announced during his 2011 State of the Union address that his Administration would be proposing government reorganization. On January 30, 2011, the White House announced that Jeffrey Zients, the Deputy Director for Management (DDM) in the Office of Management and Budget,⁷ would be leading the Administration's reorganization efforts. According to the announcement, which was in a blog by Dan Pfeiffer, White House Communications Director,

The President believes that we need to reform our government to make it better organized and better equipped to support American competitiveness. We want to ensure that we're aligning all of the resources we have into negotiating the best agreements, enforcing our trade rights, supporting our exporters and promoting their products.⁸

⁶ Congress, in exercising its powers to legislate under Article I, section 8, and other provisions of the Constitution, is empowered to provide for the execution of those laws by officers appointed pursuant to the Appointments Clause (Art. II, § 2, cl. 2) and, under the Necessary and Proper Clause (Art. I, § 8, cl. 18), it has the authority to create and locate offices, establish their powers, duties, and functions, determine the qualifications of officeholders, prescribe their appointments, and generally promulgate the standards for the conduct of the offices.

⁷ Under the Obama Administration, the Deputy Director for Management in the Office of Management and Budget is also known as the Chief Performance Officer. For clarity, the official's statutory title is used in this report.

⁸ U.S. White House, "Jeff Zients Will Lead Reorganization of Federal Government," *The White House Blog*, posting by Dan Pfeiffer, White House Communications Director, January 30, 2011, at <http://www.whitehouse.gov/blog/2011/01/30/jeff-zients-will-lead-reorganization-federal-government>.

The Obama Administration's first reorganization focus, according to the blog, "will be looking at trade and exports to see how we can better reform these functions to give American companies a leg up in the global economy."⁹

The reorganization initiative was given further emphasis as a part of the President's FY2012 budget message, which was submitted to Congress in February 2011. It stated,

We live and do business in the information age, but the organization of our Government has not kept pace. Organizations have grown out of inertia, straying from their core mission. Duplicative efforts have sprung up that inhibit the efficacy of our efforts; for instance, there are 12 different agencies that deal with exports. Winning in the world economy will take a private sector that has at its disposal all it needs to compete with firms and workers from around the world. The President is committed to reorganizing the Federal Government so that it is better able to facilitate the needs of American companies, entrepreneurs, and innovators. In the coming months, the Administration will develop a proposal to merge, consolidate, and reorganize the Federal Government in a way that best serves the goal of a more competitive America.¹⁰

On March 11, 2011, the President issued a memorandum to the heads of departments and executive branch agencies providing further detail and direction on the development of a reorganization plan. As previously announced, the DDM was given the responsibility for "leading the effort to create a plan" for executive branch reorganization, with a "first focus ... on the executive departments and agencies and the functions that support one of our most important priorities—increasing trade, exports, and our overall competitiveness ('trade and competitiveness')." ¹¹ In furtherance of this purpose, the DDM was directed to

Establish a Government Reform for Competitiveness and Innovation Initiative, led by an Executive Director, to conduct a comprehensive review of the Federal agencies and programs involved in trade and competitiveness, including analyzing their scope and effectiveness, areas of overlap and duplication, unmet needs and possible cost savings.¹²

In carrying out this review, the memorandum directed the DDM and the initiative's executive director to consult with executive branch agency heads and other "stakeholders," including Members of Congress. Agencies were directed to provide the DDM and the executive director with requested information and assistance to aid them with carrying out this review.

The DDM was directed to submit related recommendations to the President within 90 days of the memorandum's issuance (i.e., by June 9, 2011). These recommendations were directed to be based on the following principles:

⁹ Ibid.

¹⁰ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012* (Washington: GPO, 2011), at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/message.pdf>, pp. 27-28.

¹¹ U.S. President (Obama), "Memorandum on Government Reform for Competitiveness and Innovation," *Daily Compilation of Presidential Documents*, (March 11, 2011). Also on March 11, DDM Jeffrey Zients posted a White House Blog entry concerning this memorandum as well as the work of the President's Management Advisory Board. This blog entry may be found at <http://www.whitehouse.gov/blog/2011/03/11/two-more-steps-toward-better-government>.

¹² Ibid.

(a) the functions of the executive branch of the Federal Government involved in trade and competitiveness should be organized so that the Federal Government can most efficiently and effectively facilitate the competitiveness of American businesses, large and small, and American workers in the changing global economy;

(b) the responsibilities, authorities, programs, and requirements of agencies should be transparent, understandable, and easily accessible to the American public; and

(c) agencies and programs should be organized to reduce inefficiencies and overlapping responsibilities or functions, maximize return on taxpayer dollars, and best serve the American public.¹³

As part of his outreach effort, DDM Zients reportedly e-mailed federal workers seeking ideas for government reorganization and reform, particularly with regard to areas related to exports, trade, and business competitiveness.¹⁴ Such input could be submitted by federal employees, and viewed by the public, at <http://governmentreform.ideascale.com/>.

Reorganization of trade-related organizations in the executive branch was also a major focus of a December 2010 report from the Center for American Progress.¹⁵ One option advanced by the report was the creation of a Department of Business, Trade, and Technology that would combine elements of the Department of Commerce with trade-related functions of other agencies. In contrast, an October 2010 report from the Heritage Foundation recommended eliminating, among other federal government organizations, several trade-related agencies: the U.S. International Trade Commission, the Trade and Development Agency, and the Overseas Private Investment Corporation.¹⁶ These reports are discussed in greater detail below, under “Other Proposals and Recommendations.”

The Authority of the President

As noted above, the President has often played a leadership role in reorganization of the executive branch by transmitting proposals and advocating legislative action in public statements and private negotiations. The President may also direct members of his Administration to conduct reorganizations using the authorities discussed above. In addition, the President can redelegate authority that has been vested in him by Congress, as discussed below. Periodically during the 20th century, Congress established an expedited process for considering executive branch reorganization initiatives from the President. This authority, which has been dormant since 1984, is also discussed in more detail below. Finally, Congress has sometimes delegated to the President circumscribed authority to conduct time- and agency-specific reorganization activities.

¹³ Ibid.

¹⁴ Rebecca Kaplan, “Obama Solicits Ideas from Federal Workers for Government Reform,” *GovExec*, March 30, 2011, at http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0311/033011-obama-workers-video.htm&oref=search. On March 22, Zients posted another White House Blog entry discussing generally the reorganization review, and he made reference there to this outreach to government employees, as well as others. This blog entry may be found at <http://www.whitehouse.gov/blog/2011/03/22/reviewing-reorg>.

¹⁵ Center for American Progress, *A Focus on Competitiveness: Restructuring Policymaking for Results* (Washington: Center for American Progress, 2010).

¹⁶ Brian M. Riedl, *How to Cut \$343 Billion from the Federal Budget*, The Heritage Foundation, Background, Washington, DC, October 28, 2010, pp. 3-5, <http://www.heritage.org/Research/Reports/2010/10/How-to-Cut-343-Billion-from-the-Federal-Budget>.

Redelegation of Authorities Vested in the President

Where functions are statutorily vested in the President, he may delegate and redelegate those functions under authority provided in Section 301 of Title 3 of the *U.S. Code*. This authority states,

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

By re delegating such functions, the President can effect a reorganization of authorities among executive branch agencies. He cannot unilaterally move the funds and other resources that might be necessary to carry out such functions among budget accounts, however, unless Congress gives transfer authority to the President or an agency official who acts on the President's behalf.

Presidential Reorganization Authority

Between 1932 and 1984, Congress periodically delegated authority to the President that allowed him to develop plans for reorganization of portions of the federal government and to present those plans to Congress under special expedited procedures.¹⁷ Under these procedures, the President's plan would go into effect unless one or both Houses of Congress passed a resolution rejecting the plan, a process referred to as a "legislative veto." This process favored the President's plan because, absent congressional action, the default was for the plan to go into effect. Unlike the dynamics under the regular legislative process, the burden of action under these versions of presidential reorganization authority rested with opponents rather than supporters of the plan.

Presidents used this presidential reorganization authority regularly, submitting more than 100 plans between 1932 and 1984. The plans proposed a variety of changes, from relatively minor reorganizations within individual agencies to the creation of large new organizations, including the Department of Health, Education, and Welfare (HEW)¹⁸ in 1953, the Environmental Protection Agency (EPA) in 1970,¹⁹ and an independent Federal Emergency Management Agency (FEMA) in 1979.²⁰ The terms of the delegation varied greatly over the century; in general,

¹⁷ The President's reorganization authority is codified at 5 U.S.C. 901-912. The statute is no longer in effect, however, having expired on December 31, 1984 (Sec. 905(b)).

¹⁸ Reorganization Plan No. 1 of 1953. In 1979, the education functions of HEW provided the foundation for the newly created Department of Education, and HEW was renamed the Department of Health and Human Services (HHS). P.L. 96-88, 93 Stat. 668.

¹⁹ Reorganization Plan No. 3 of 1970.

²⁰ Reorganization Plan No. 3 of 1978. In March 2003, under the provisions of the Homeland Security Act of 2002 (P.L. 107-296, 116 Stat. 2135), FEMA became part of the new Department of Homeland Security.

Congress tended to provide more restrictive versions of presidential reorganization authority over time.²¹

In 1983, the Supreme Court ruled in *INS v. Chadha* that the legislative veto process was unconstitutional.²² Subsequently, Congress approved the Reorganization Act Amendments of 1984, which extended the reorganization plan authority from November 1984 to December 31, 1984. Under this authority, once the President submitted a reorganization plan, Congress was to consider, under an expedited procedure, a joint resolution approving the plan. The expedited procedure included limitations on the duration of committee consideration, the duration of floor debate, and amendments (although the President could amend or modify his plan during the first 60 days after submission). As a joint resolution, this vehicle had to be approved by the President to have the force of law. Unlike the legislative veto, the burden of action was placed on the proponents of the plan, rather than its opponents. As is the case under the regular legislative process, the default would be the status quo. The process of reorganizing the government was thus made somewhat more difficult than it would have been under earlier versions of presidential reorganization authority. This last statutory provision of presidential reorganization authority lapsed at the end of 1984.

In the decades since this authority last expired, some presidential administrations have advocated its restoration, and some have not. Neither the Reagan Administration, which did not use the authority in 1984, nor the George H. W. Bush Administration sought its extension. Initial reports issued by the Clinton Administration's National Performance Review included the recommendation that the reorganization authority be reauthorized,²³ but President Clinton did not directly request this action from Congress. The George W. Bush Administration called for a renewal of presidential reorganization, and legislation introduced during the 108th Congress included provisions that would have renewed the authority in modified form.²⁴ This legislation was not enacted.

As previously noted, a White House press release concerning President Obama's 2011 State of the Union address suggested that his Administration might seek a renewal of the authority.²⁵

The Authority of Agency Heads

In general, agency heads have discretion, consistent with existing statutory mandates, to organize and manage the day-to-day operations of the agencies for which they are responsible.²⁶ In

²¹ For a more detailed discussion and analysis of presidential reorganization authority see CRS Report RL30876, *The President's Reorganization Authority: Review and Analysis*, by Ronald C. Moe.

²² 462 U.S. 919 (1983).

²³ Office of the Vice President, *Creating a Government That Works Better & Costs Less: Transforming Organizational Structures*, Accompanying Report of the National Performance Review (Washington: September 1993).

²⁴ As part of legislative activity that led to the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 during the 108th Congress, the House passed such provisions. See 108th Congress, H.R. 10, § 5021, as reported in the House.

²⁵ U.S. White House, Office of the Press Secretary, "FACT SHEET: The State of the Union: President Obama's Plan to Win the Future," January 25, 2011, at <http://www.whitehouse.gov/the-press-office/2011/01/25/fact-sheet-state-union-president-obamas-plan-win-future>. The release stated, "The President announced that, in the coming months, he will ask for the authority to merge, consolidate, and reorganize the Federal Government in a way that makes America more competitive – the first such reorganization in half a century."

²⁶ See Basil J. Mezines, Jacob A. Stein, and Jules Gruff, *Administrative Law*, vol. 1 (New York: Matthew Bender, (continued...))

addition, since the 1950s, the powers, duties, and functions of the component offices of most agencies have been vested in the agency head, who is, in turn, empowered to delegate these powers, duties, and authorities. Furthermore, Section 301 of Title 5 of the U.S. Code provides that the “head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business.” The agency head’s authority does not, however, supercede congressional authority to provide for specific organizational arrangements or to vest powers, duties, or authorities in particular offices established in this way.

One example of the use of this authority is the reorganization, in the Department of the Interior (DOI), of leasing and regulatory functions related to offshore oil and gas recovery.²⁷ The Minerals Management Service (MMS) was established within DOI, in 1982, by secretarial authority to carry out these functions. In a reorganization that began in 2010, following the Deepwater Horizon Oil Spill, the functions that had been delegated to MMS were divided among three newly established subunits. Both the 1982 and 2010 reorganizations were carried out under authority that had been vested in the Secretary of the Interior in 1950. Reorganization Plan No. 3 of 1950 provided that, except with regard to the functions vested by the Administrative Procedure Act in hearing examiners and the functions of the Virgin Islands Corporation or of its board of directors or officers, functions that had previously been vested in the heads of the Interior Department’s component entities were transferred to the Secretary of the Interior, thus centralizing authority over the department.²⁸ The secretary was also authorized, by the reorganization plan, to redelegate these functions to any department agency, employee, or officer, unless otherwise prevented by law from doing so.

Delineated Secretarial Authority

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

[t]he Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units with the Department, but only ... after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.... [This authority] does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.²⁹

(...continued)

2006), pp. 4-18 to 4-27.

²⁷ For a full discussion of this reorganization, see CRS Report R41485, *Reorganization of the Minerals Management Service in the Aftermath of the Deepwater Horizon Oil Spill*, by Henry B. Hogue.

²⁸ 43 U.S.C. § 1451, note. It is worth noting that Reorganization Plan No. 3 of 1950 was, itself, enacted under the President’s reorganization authority, as it had been delegated by Congress at that time. Such delegations to the President are discussed later in this report.

²⁹ 6 U.S.C. § 452. The Secretary of Homeland Security used this authority on at least nine occasions between the establishment of the department in 2003 and mid-2007. Beginning in May 2007, Congress limited the use of appropriated funds for carrying out section 872 reorganizations. Section 3501 of the U.S. Troop Readiness, Veterans’ (continued...)

The first part of this provision arguably widens the scope of potential reorganizational actions beyond the range that would otherwise be available to the secretary. In addition, it requires that Congress be informed, but includes no mechanism for congressional “veto” of a proposed action. The final part of the cited provision explicitly prevents the secretary from overriding statutes for the purpose of abolishing entities, programs, or functions. Notably, it does not address his or her capacity to override statutes for the purpose of other reorganizational actions. For example, this authority has been used to alter some of the organizational arrangements provided for in the department’s organic act, the Homeland Security Act of 2002.³⁰

Congressional Responses to Particular Agency Head Actions

When an agency head has reorganized a portion of his or her agency under such delegated authority, Congress has, on occasion, endorsed the action without giving it statutory underpinnings. For example, Congress has sometimes validated an agency reorganization through the appropriations process, by adjusting the agency’s appropriation to match the new configuration or by addressing the action in the conference report.³¹ Similarly, Congress has recognized some newly created entities by delegating to them specific authorities, or otherwise making reference to them in statute. On the other hand, Congress can also register its disapproval of a reorganization by appropriating little or no funding for a new entity, by condemning the action in conference report language, or by redelegating authority to competing organizations.

General Limits on Reorganizations in Specific Agencies

In some cases, Congress has selectively limited secretarial reorganization authority by statute. For example, the Secretary of Energy is “authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate.”³² This authority does not, however, extend to the National Nuclear Security Administration (NNSA), which is located within the Department of Energy.³³ Instead, Congress elected to delegate the authority to reorganize NNSA to the administrator of that organization.³⁴ Likewise, although the Secretary of Homeland Security has the statutory authority, under Section 872 of the Homeland Security Act, to reorganize most parts of DHS,³⁵ the Post-Katrina

(...continued)

Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, enacted on May 25, 2007, instituted such limitations for the balance of FY2007. Succeeding DHS appropriations acts have included similar provisions.

³⁰ P.L. 107-296; 116 Stat. 2135. For an example of the use of this authority, see CRS Report RL33042, *Department of Homeland Security Reorganization: The 2SR Initiative*, by Harold C. Relyea and Henry B. Hogue. (The first author of this archived report is now retired. Please contact the second author with any questions about the report.) See also CRS Report RS21450, *Homeland Security: Scope of the Secretary’s Reorganization Authority*, by Stephen R. Vina. (The author of this archived report is no longer at CRS. Questions may be directed to Henry B. Hogue.)

³¹ U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition Volume I*, GAO report GAO-04-261SP (Washington: Jan. 2004), pp. 2-61 through 2-65. This report summarizes the principles to be applied in this situation by quoting a Comptroller General’s opinion as follows: “‘To conclude that Congress through the appropriations process has ratified agency action, three factors generally must be present. First, the agency takes the action pursuant to at least arguable authority; second, the Congress has specific knowledge of the facts; and third, the appropriation of funds clearly bestows the claimed authority’” (p. 2-65).

³² 42 U.S.C. § 7253(a).

³³ 42 U.S.C. § 7253(b).

³⁴ 50 U.S.C. § 2402(e).

³⁵ P.L. 107-296; 6 U.S.C. § 452.

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Emergency Management Reform Act of 2006 exempts the Federal Emergency Management Agency (FEMA) from that authority.³⁶

An appropriations limitation with regard to the reorganization authority of the Secretary of Homeland Security illustrates another tool Congress has used to generally proscribe such activity. Since May 2007, Congress has limited the use of appropriated funds for carrying out the Section 872 reorganizations described above. Section 3501 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, enacted on May 25, 2007, instituted such limitations for the balance of FY2007, stating,

None of the funds provided in this Act, or P.L. 109-295 [Department of Homeland Security Appropriations Act, 2007], shall be available to carry out section 872 of P.L. 107-296 [Homeland Security Act of 2002].³⁷

Succeeding DHS appropriations acts have included similar provisions.³⁸

Reorganization Through Interagency Coordination

Sometimes organizational functioning and program operations are improved through the use of an interagency coordinative mechanism.³⁹ Such mechanisms include, for example, interagency working groups, task forces, and joint decision-making processes. These arrangements sometimes exist informally, but numerous arrangements have also been established formally by public law, executive order, administrative directive, or memorandum of understanding. Formal directives may be particularly helpful in clarifying relationships among different agencies that have overlapping jurisdiction or shared responsibilities, because such arrangements fall outside the control of any single agency head.

Interagency coordinative mechanisms are often used as a means of establishing cooperation between agencies with shared missions, similar functions, or overlapping jurisdiction. Some arrangements provide for collaboration among equals, while others designate a lead agency with authority to direct activities.

Interagency coordinative mechanisms can address organizational problems without the potential pitfalls of a structural reorganization. Where effective, for example, such a mechanism might reduce policy fragmentation, improve policy formulation and implementation, provide a forum for mitigating misunderstanding and conflict among agencies, reduce redundancy, increase efficiency, and facilitate oversight and accountability. It might also help program implementers to work around vague or imprecise legislative language, or statutory limitations on individual

³⁶ P.L. 109-295, § 611(13), new Homeland Security Act Sec. 506(b).

³⁷ P.L. 110-28; 121 Stat. 112 at 143.

³⁸ See, for example, a provision of the Consolidated Appropriations Act, 2008: "None of the funds provided in this Act shall be available to carry out section 872 of Public Law 107-296" (P.L. 110-161, § 546; 121 Stat. 2080). Similar provisions were included in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (P.L. 110-329, § 529; 122 Stat. 3686); and the Department of Homeland Security Appropriations Act, 2010 (P.L. 111-83, § 525; 123 Stat. 2173).

³⁹ For more on interagency collaborative arrangements and coordinative mechanisms, including examples of these, see CRS Report R41803, *Interagency Collaborative Arrangements and Activities: Types, Rationales, Considerations*, by Frederick M. Kaiser; and CRS Report RL31357, *Federal Interagency Coordinative Mechanisms: Varied Types and Numerous Devices*, by Frederick M. Kaiser.

agencies that might hamstring effective or efficient administration of a shared program. In some circumstances, such arrangements might be used temporarily to facilitate effective implementation of a law with known imperfections until such time as Congress develops legislative remedies.

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

One example of an interagency coordinative mechanism is the Trade Promotion Coordinating Committee. This interagency committee was established by the Export Enhancement Act of 1992 “to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government; and ... to develop a governmentwide strategic plan for carrying out Federal export promotion and export financing programs.”⁴⁰ The committee, which is chaired by the Secretary of Commerce, was originally comprised of representatives of 12 federal agencies, but the membership has since grown to 20 agencies. Among its principal activities is the periodic publication of the *National Export Strategy*, which prioritizes U.S. trade promotion activities and estimates, by agency and function, trade promotion spending. This report generally guides U.S. commercial export promotion activities.⁴¹ Assessments of the committee’s work by the Government Accountability Office (GAO) suggest that it has experienced both some of the strengths and some of the weaknesses of interagency mechanisms.⁴²

Some collaborative initiatives and arrangements might require new legislation, while others could be undertaken without congressional action. Along with this, modern Presidents have sometimes tried to coordinate policy development and implementation among departments and agencies from the White House. They have, for example, sometimes appointed high-level presidential advisors and charged them with such a role. In some instances such advisors have been referred

⁴⁰ P.L. 102-429, § 201; 106 Stat. 2199.

⁴¹ For more on the Trade Promotion Coordinating Committee and other export promotion-related organizations, see CRS Report R41495, *U.S. Government Agencies Involved in Export Promotion: Overview and Issues for Congress*, coordinated by Shayerah Ilias.

⁴² In March 17, 2009 testimony, a GAO staffer stated, “One of the longstanding congressional concerns we have addressed is a lack of effective coordination of trade promotion activities. We have reviewed the TPCC several times since its inception and we testified in 2006 that the TPCC had made progress over time in improving coordination. However, we also testified that its *National Export Strategy* continued to provide limited information on agencies’ goals and progress relative to broad national priorities. Examples of positive steps we reported on across TPCC member agencies included improvements in interagency training and joint outreach to better serve small business. We further noted that the strategies did not review agencies’ allocation of resources in relation to government-wide export promotion priorities. We note now that the 2008 *National Export Strategy* contains information regarding the status of priority initiatives identified in the prior year’s annual report. It also contains information on individual TPCC member agencies’ export promotion strategies and results. However, the strategy still lacks an overall review of agencies’ allocation of resources relative to government-wide export promotion priorities.” (U.S. Government Accountability Office, *International Trade: Effective Export Programs Can Help In Achieving U.S. Economic Goals*, GAO-09-480T, March 17, 2009, p. 3, <http://www.gao.gov/new.items/d09480t.pdf>. Footnote omitted.)

to, by the Administration, in some cases, and by the media, as “czars.” The precise role and authority of such individuals in the policy development and implementation processes is often difficult for Congress and the public to discern. In some cases, this lack of clarity of role and authority and the perceived lack of accountability to Congress have been the source of controversy.⁴³

Congressional Initiatives

Statutory Reorganization

Reorganizations that exceed the boundaries of one department or agency, or that are inconsistent with existing law, are accomplished through the legislative process. As noted above, Congress uses its lawmaking ability to shape the federal agency landscape. It creates and locates or relocates offices; delegates to them specific or general missions, powers, duties, and functions; defines the parameters of personnel systems; confirms the leadership; provides funding; and ultimately evaluates whether or not an agency shall continue in existence. At times, Congress has also specified, in statute, organizational process requirements, such as those that shape decision making and coordination.

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

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

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

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

⁴³ For more on such positions, see CRS Report R40856, *The Debate Over Selected Presidential Assistants and Advisors: Appointment, Accountability, and Congressional Oversight*, by Barbara L. Schwemle et al.

and the State Justice Institute. It would also rearrange certain programs and agencies. For example, it would transfer the U.S. Coast Guard from the Department of Homeland Security to the Department of Defense, and it would transfer veteran housing programs of the Department of Housing and Urban Development to the Department of Veterans Affairs and defund all other programs of the Department of Housing and Urban Development.

Some introduced bills would merge existing agencies and their functions or consolidate programs. For example,

- S. 892 would establish a Department of Energy and the Environment, which would, among other effects, comprise many of the functions of the Department of Energy and the Environmental Protection Agency; and
- H.R. 1782 and S. 945 would, among other things, direct the head of OMB to coordinate actions by department and agency heads to “eliminate, consolidate, or streamline Government programs and agencies with duplicative and overlapping missions identified in” a March 2011 GAO report, which is discussed later in this report.⁴⁸ Under these bills, the Director of OMB would also identify legislative changes that would be necessary to take further action of this nature, and would report these to Congress.

Other bills would establish bipartisan commissions that would evaluate current organizational arrangements and develop legislation that would be considered by Congress under expedited procedures. For example,

- H.R. 155 would establish a 12-member bipartisan commission to assess current executive branch organizational arrangements, identify instances of mission overlap or obsolescence, review and report to the President and Congress on specified prior governmental reform reports and recommendations, and submit a proposed reorganization plan for executive branch organizations to the President and to Congress. The Director of the Office of Management and Budget (OMB) would, in turn, issue a public report on savings that might result from the plan’s implementation. The bill would provide for a process by which the plan could be revised, and an expedited congressional consideration process for any reorganization plan that has been endorsed and introduced by the President; and
- S. 14 would establish a seven-member bipartisan commission to evaluate the effectiveness and accountability of agency programs. This commission would establish a systematic method for such evaluation; divide such programs into four equal budgetary parts; conduct the evaluation of these four parts over four years; submit to Congress, each year, recommendations of agencies and programs that should be realigned or eliminated; and propose legislation that would implement these recommendations. Such legislation would be subject to expedited congressional consideration.

⁴⁸ U.S. Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP, March 1, 2011, <http://www.gao.gov/new.items/d11318sp.pdf>. See “Government Accountability Office Report on Duplicative Programs,” below, for more information on this report.

Still other bills would make changes to organizational arrangements that were newly established by the 111th Congress. For example,

- H.R. 557 and H.R. 1355 would transfer to the Department of the Treasury the Consumer Financial Protection Bureau (CFPB), which is currently an independent agency in the Federal Reserve System, and which was created by the Consumer Financial Protection Act of 2010;
- H.R. 1121 and S. 737 would change the CFPB from an agency headed by a single director to an agency headed by a five-member commission;⁴⁹ and
- H.R. 452 and S. 668 would abolish the Independent Payment Advisory Board, which was established by the Patient Protection and Affordable Care Act.

Other Proposals and Recommendations

In addition to these congressional reorganization proposals, several other organizations have issued reports within the past year that may be reviewed or acted upon by the 112th Congress.

2010 Fiscal Commission Recommendations

In late 2010, two bipartisan groups released studies regarding the national fiscal situation, and these studies included related federal organization and management proposals. The December 2010 report of the National Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, recommended reducing discretionary spending.⁵⁰ A separate draft document posted on the Fiscal Commission's website, entitled "\$200 Billion in Illustrative Savings," identified more than 50 actions that reportedly would, in the aggregate, save more than \$200 billion in 2015. Among these actions are several that would involve alterations to current federal organizational arrangements, including the following: merging the Department of Commerce and Small Business Administration into a single agency and trimming its budget by 10%; eliminating the Office of Safe and Drug-Free Schools at the Department of Education; and eliminating the Economic Development Administration at the Department of Commerce. The November 2010 report of the Debt Reduction Task Force of the Bipartisan Policy Center, *Restoring America's Future: Reviving the Economy, Cutting Spending and Debt, and Creating a Simple, Pro-Growth Tax System*, included a more general recommendation, to "reorganize and scale down the federal regional government structure."⁵¹

⁴⁹ A May 5, 2011, letter from 44 Republican Senators to President Obama stated that they "believe that the Senate should not consider any nominee to be CFPB director until the CFPB is properly reformed." The reforms the letter calls for include changing the leadership of the bureau from a single director to a board of directors. The text of the letter is included as part of a news release by Senator Richard Shelby available at <http://shelby.senate.gov/public/index.cfm/2011/5/44-u-s-sens-to-obama-no-accountability-no-confirmation>.

⁵⁰ See p. 20.

⁵¹ See p. 95.

Heritage Foundation Recommendations

An October 28, 2010, report on reducing the federal budget that was published by the Heritage Foundation included a list of recommended spending cuts for FY2012 that would reshape the federal government. Organizations targeted for elimination included

- Foreign Agricultural Service in the Department of Agriculture (USDA);
- Rural Utilities Service in USDA;
- Economic Development Service in the Department of Commerce (DOC);
- Appalachian Regional Commission;
- Denali Commission;
- Minority Development Business Agency in DOC;
- Delta Regional Authority;
- International Trade Commission, transferring to the Department of the Treasury oversight of intellectual property rights;
- Trade and Development Agency;
- Overseas Private Investment Corporation;
- U.S. Institute of Peace;
- Japan-United States Friendship Commission;
- Legal Services Corporation;
- Community Relations Service in the Department of Justice (DOJ);
- Office of National Drug Control Policy in the Executive Office of the President;
- State Justice Institute;
- Maritime Administration in the Department of Transportation (DOT);
- Small Business Administration;
- Institute of Museum Services and Library Services;
- National Endowment for the Humanities;
- National Endowment for the Arts;
- Commission of Fine Arts;
- National Capital Planning Commission; and
- Advisory Council on Historic Preservation.⁵²

⁵² Brian M. Riedl, *How to Cut \$343 Billion from the Federal Budget*, The Heritage Foundation, Background, Washington, DC, October 28, 2010, pp. 3-5, <http://www.heritage.org/Research/Reports/2010/10/How-to-Cut-343-Billion-from-the-Federal-Budget>.

Center for American Progress Recommendations

Like the Obama Administration initiative, a December 2010 report from the Center for American Progress centered on reorganization of trade-related organizations in the executive branch. One option advanced by the report was the creation of “a Department of Business, Trade, and Technology by combining relevant agencies and offices within the Department of Commerce with trade and business-focused agencies and offices, including the Office of the United States Trade Representative, the Small Business Administration, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, and the U.S. Trade and Development Agency.”⁵³ As part of such a reorganization effort, evaluations conducted by an independent panel of the National Academies would help to determine the future organization location of the National Oceanic and Atmospheric Administration (NOAA) and the Economics and Statistics Administration, including the Bureau of Economic Analysis and the U.S. Census Bureau. A second option would create “a more expansive ‘competitiveness agency’ by adding to the new department ... job training and higher education programs” from the Department of Labor and the Department of Education. The third option discussed by the report would further build upon the envisioned department by relocating to it programs that promote science for economic development purposes, such as those in the Department of Energy, the Department of Transportation, the Department of Housing and Urban Development. Under this option, science coordination functions presently delegated to the Office of Science and Technology Policy in the Executive Office of the President would be reassigned to the new department.

Government Accountability Office Report on Duplicative Programs

A March 1, 2011, GAO report on federal programs that have duplicative goals or activities speaks directly and indirectly to potential reorganization activities.⁵⁴ The report, which is to be the first in an annual series, was published in response to a new statutory mandate:

The Comptroller General of the Government Accountability Office shall conduct routine investigations to identify programs, agencies, offices, and initiatives with duplicative goals and activities within Departments and governmentwide and report annually to Congress on the findings, including the cost of such duplication and with recommendations for consolidation and elimination to reduce duplication identifying specific rescissions.⁵⁵

The 345-page report also “highlight[s] other opportunities for potential cost savings or enhanced revenues.”

Government scholars have noted that duplication in goals and activities may serve administrative or political purposes. The purpose of identifying such duplication in this instance, however, was to facilitate its reduction or elimination. As the report’s summary states,

⁵³ Center for American Progress, *A Focus on Competitiveness: Restructuring Policymaking for Results* (Washington: Center for American Progress, 2010), p. 4.

⁵⁴ U.S. Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP, March 1, 2011, <http://www.gao.gov/new.items/d11318sp.pdf>.

⁵⁵ P.L. 111-139, § 21, 124 Stat. 29; 31 U.S.C. § 712 Note.

Overlap and fragmentation among government programs or activities can be harbingers of unnecessary duplication. Reducing or eliminating duplication, overlap or fragmentation could potentially save billions of tax dollars annually and help agencies provide more efficient and effective services.⁵⁶

In general, the duplication, overlap, and fragmentation of program goals and activities might, in some cases, be addressed by reorganizations of structures or processes. Where such situations exist within a single agency, they might be addressed with administrative changes to organizational processes or structures under the agency head's authority. As discussed further below, organizational changes to address duplication across two or more agencies might be accomplished through legislation or the development of an interagency coordinative mechanism. To some extent, overlap, duplication, and fragmentation might be unavoidable, or even considered necessary for where multidimensional approaches are employed to solve complex public policy problems.⁵⁷

In the context of identifying duplication of goals and activities, the GAO report included new or repeated recommendations that Congress consider certain reorganizations. For example, the report reiterated GAO's recommendation that Congress take steps toward reorganizing, in some manner, the federal food safety system.⁵⁸

Concluding Observations

A number of factors have contributed to the organizational change initiatives currently under development and consideration by elected officials. These factors include heightened concerns about the federal debt, the deficit, job creation, and economic recovery; controversy related to financial regulatory and health care financing-related agencies established by legislation enacted during the 111th Congress; a belief, among some, that the federal government should be smaller and more efficient; and the perceived failure of some agencies to fulfill their responsibilities. Some of these initiatives might become the subject of legislative or oversight activity during the first session of the 112th Congress.

As is the case for much legislative activity, the prospects, during the 112th Congress, for reorganization that requires statutory changes may be governed by the evolving national political context, the views and actions of affected stakeholders, and external events. Reorganization legislation that explicitly speaks to the policy concerns identified above might be more successful than reorganization efforts that are developed to address other concerns. To the degree that legislation would be required to implement a reorganization, this may be easier to accomplish during the first session of the 112th Congress than later, when greater attention is given to electoral politics in advance of the 2012 election.

⁵⁶ GAO-11-318SP, p. 2.

⁵⁷ See section on "Accountability" in CRS Report RL34329, *Crosscut Budgets in Ecosystem Restoration Initiatives: Examples and Issues for Congress*, by Pervaze A. Sheikh and Clinton T. Brass.

⁵⁸ GAO-11-318SP, pp. 9-11.

Reorganization: An Administrative and Political Process

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

Indeed, administrative improvement underlies the President’s stated principles guiding his Administration’s development of a reorganization plan:

- (a) the functions of the executive branch of the Federal Government involved in trade and competitiveness should be organized so that the Federal Government can most efficiently and effectively facilitate the competitiveness of American businesses, large and small, and American workers in the changing global economy;
- (b) the responsibilities, authorities, programs, and requirements of agencies should be transparent, understandable, and easily accessible to the American public; and
- (c) agencies and programs should be organized to reduce inefficiencies and overlapping responsibilities or functions, maximize return on taxpayer dollars, and best serve the American public.⁵⁹

In addition to these administrative goals, reorganization efforts often have spoken or unspoken political goals and outcomes.⁶⁰ The political nature of reorganization arises from the fact that it redistributes power and resources. Although it may have beneficial outcomes over time, it is axiomatic that a government reorganization is disruptive, at least in the short term, to the functioning of the organizations involved. Implementation of a reorganization plan can affect existing power dynamics, rearrange relationships, create uncertainty, and generally interrupt the flow of work. Government workers in the reorganized agencies will often be the most directly affected, but congressional committees of jurisdiction and outside interest groups are affected as well. These parties, including policy advocates, usually work toward obtaining the organizational outcome most beneficial to their interests. Such efforts may continue through the implementation phase of the reorganization, where the distribution of power and resources may be decided in finer detail.

Research suggests that successful governmental reorganizations—statutory or otherwise—are characterized by political consensus on the goals and approaches. Where goals are unarticulated or consensus has not been achieved prior to a reorganization, affected interests may intentionally or unintentionally undermine the success of the new arrangement. The result of such a situation

⁵⁹ U.S. President (Obama), “Memorandum on Government Reform for Competitiveness and Innovation,” *Daily Compilation of Presidential Documents*, (March 11, 2011).

⁶⁰ Harold Seidman and Robert Gilmour, *Politics, Position, and Power*, 4th ed. (New York: Oxford University Press, 1986). Although partisan conflict may develop in relation to a particular reorganization, the term political as used here refers to the process that determines, as Harold Laswell put it, who gets what, when, and how.

may be instability leading to further reorganization within a relatively short time.⁶¹ Political consensus concerning new organizational arrangements may be achieved, in part, through negotiation and accommodation among affected interests.

An explicit articulation of the goals of a reorganization could also aid in determining, after implementation, whether or not these goals have been met. In addition to goals, reorganization directives or statutes might include agreed-upon methods for measuring progress toward those goals. Absent such explicit goals and agreed-upon measures, Congress may find it difficult to evaluate the success or failure of a particular reorganization project.

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⁶¹ Carl Grafton, "The Reorganization of Federal Agencies," *Administration and Society*, vol. 10, February 1979, pp. 437-464.

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