



**MEMORANDUM**

July 25, 2018

**Subject:** Trump Administration Reform and Reorganization Plan: Discussion of 35  
“Government-Wide” Proposals

**From:** Henry B. Hogue, Coordinator, Specialist in American National Government,  
hhogue@crs.loc.gov, 7-0642  
Clinton T. Brass, Coordinator, Specialist in Government Organization and Management,  
cbrass@crs.loc.gov, 7-4536

**This memorandum was prepared to enable distribution to more than one congressional office.**

---

This memorandum provides a brief summary and some preliminary analysis of the Donald J. Trump Administration’s recent proposals to restructure and reform agencies, programs, and operations in the executive branch.<sup>1</sup> Specifically, the memorandum covers the 32 proposals characterized by the Trump Administration as “Government-wide.”<sup>2</sup> The 32 proposals include several sub-proposals, which, when enumerated separately as they are in this memorandum, bring the total to 35.<sup>3</sup> The analysis of each proposal includes, to the extent possible, a discussion of statutes that might be involved in the proposed changes, and whether some changes might be achieved through administrative action. The memorandum includes research and writing of analysts and information professionals from across the Congressional Research Service (CRS).<sup>4</sup>

---

<sup>1</sup> U.S. Executive Office of the President, Office of Management and Budget (hereinafter OMB), *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], at <https://www.whitehouse.gov/omb/management/government-reform/> and <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>. See also the related “fact sheet”: U.S. President (Trump), “President Donald J. Trump Is Reforming the Federal Government, Making it More Efficient, Effective, and Accountable,” June 21, 2018, at <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-reforming-federal-government-making-efficient-effective-accountable/>.

<sup>2</sup> The plan lists 32 “Government-wide” proposals in the document’s table of contents and some 50 additional “Agency-Specific Reform Proposals.” Although most of the 32 proposals involve more than one agency, arguably only a subset of these reaches across the entirety of the executive branch. Some proposals, such as the structural change at the U.S. Agency for International Development and the consolidation of applied energy offices at the Department of Energy, do not appear to involve more than one agency, much less to apply across the executive branch.

<sup>3</sup> The Trump Administration enumerated the proposals on pp. 15-18 of the plan. The Trump Administration’s proposal #2 includes two separate components, the first of which is listed in this memorandum as proposal #2 and the second of which is listed as #2(a). The Administration explicitly breaks out proposal #15 in three parts as #15(a), #15(b), and #15(c), which this memorandum mirrors.

<sup>4</sup> CRS staff across multiple research divisions contributed to this memorandum, as shown in footnotes for each sub-section, below. These authors may be contacted directly by Members and congressional staff with questions about specific proposals. The coordinators of the memorandum may be contacted for assistance with more general questions.

The next section of this memorandum identifies each proposal, as enumerated and described by the Trump Administration. For each proposal, the memorandum provides the following:

- **Entry heading and author information:** a heading, generally taken verbatim from the table of contents of the Trump Administration’s document, accompanied by a footnote that identifies the entry’s CRS author(s) and provides their contact information;
- **Brief summary:** a brief summary of the proposal;
- **Affected agencies/programs:**
  - information about departments, agencies, or programs that might be affected by the proposal, if the proposal were enacted or implemented; or
  - an indication whether the proposal would be executive branch-wide in implementation across all departments, agencies, or programs;
- **Statutes:** illustrative statutes, if any, that might need to be amended, repealed, or otherwise modified in order to implement the proposal;
- **Administrative actions:** illustrative administrative actions, if any, that could be taken to implement aspects of a proposal;
- **Uncertainties:** a brief discussion, if applicable, of uncertainties associated with the proposal in light of the information that the Trump Administration provided and other perspectives that may help to illuminate issues of potential interest; and
- **Observations:** a discussion, if applicable, of any relevant observations that might be helpful for contextualizing the proposal or related issues (e.g., past legislation or administrative actions, historical developments).

Several caveats attend the information in this memorandum.

- CRS is not able to predict future actions by the President or executive agencies, including how they will interpret relevant statutes and exercise any associated discretion in pursuit of the Administration’s proposals. Consequently, this memorandum’s discussion of the proposals should not be considered to be forecasts or definitive interpretations of how discretion may be used.
- The aim of this memorandum is to provide timely, brief discussion of selected aspects of the Administration’s proposals. Consequently, the information in this memorandum is illustrative and not necessarily comprehensive. Furthermore, the memorandum generally does not discuss the potential policy and societal implications of each proposal, if it were to be implemented, along with any associated advantages or disadvantages.
- Each entry uses a standard set of subheadings. However, the format, content, and length of written material under each of the subheadings differs depending on the nature of the underlying proposal and associated issues. Some proposals would make changes in organizational structures, while others would change procedures or policy. The memorandum uses citations as each respective policy community typically cites them, which may make citations inconsistent in format across policy domains.

A table of contents is included, below, for easier reference to each proposal. Congressional readers may contact the relevant authors directly with questions about specific proposals or contact the coordinators with more general questions.

## Table of Contents

Capsule Discussions of Discrete Proposals .....	3
---	---

Proposal #1: “Department of Education and the Workforce” .....	5
Proposal #2: “Consolidate Non-Commodity Nutrition Assistance Programs into HHS, Rename HHS the Department of Health and Public Welfare...” .....	9
Proposal #2(a): “Establish the Council on Public Assistance” .....	12
Proposal #3: “Consolidate Mission Alignment of Army Corps of Engineers Civil Works with Those of Other Federal Agencies” .....	15
Proposal #4: “Reorganize Primary Federal Food Safety Functions into a Single Agency, the Federal Food Safety Agency” .....	18
Proposal #5: “Move Select USDA Housing Programs to HUD” .....	21
Proposal #6: “Merge the National Marine Fisheries Service (NMFS) with the U.S. Fish and Wildlife Service (FWS)” .....	23
Proposal #7: “Consolidation of Environmental Cleanup Programs” .....	25
Proposal #8: “Optimization of Humanitarian Assistance” .....	28
Proposal #9: “Development Finance Institution” .....	30
Proposal #10: “Structural Transformation of Central Washington-Based Bureaus at the U.S. Agency for International Development” .....	33
Proposal #11: “Reorganizing the U.S. Office of Personnel Management” .....	34
Proposal #12: “Consolidation of Veterans Cemeteries” .....	38
Proposal #13: “Reorganizing Economic Statistical Agencies” .....	40
Proposal #14: “Consolidation of the Department of Energy’s Applied Energy Offices and Mission Refocus” .....	43
Proposal #15(a): “Divesting Federal Transmission Assets” .....	47
Proposal #15(b): “Restructure the Postal Service” .....	50
Proposal #15(c): “DOT Mission Adjustments” .....	52
Proposal #16: “Reform Federal Role in Mortgage Finance” .....	57
Proposal #17: “Create the Bureau of Economic Growth” .....	59
Proposal #18: “U.S. Public Health Service Commissioned Corps” .....	63
Proposal #19: “Improving NASA’s Agility through Increased Use of Federally Funded Research and Development Centers” .....	65
Proposal #20: “Management Consolidation of Federal Graduate Research Fellowships” .....	67
Proposal #21: “Rationalize the Federal Real Property Approach” .....	69
Proposal #22: “Consolidate and Streamline Financial Literacy Efforts” .....	70
Proposal #23: “Streamline Small Business Programs” .....	73
Proposal #24: “Consolidation of Certain Protective Details” .....	75
Proposal #25: “Small Grants Consolidation” .....	78
Proposal #26: “Transition to Electronic Government” .....	79
Proposal #27: “Customer Experience (CX) Improvement Capability” .....	82
Proposal #28: “Next Generation Federal Student Aid Processing & Servicing Environment” .....	85
Proposal #29: “Solving the Federal Cybersecurity Workforce Shortage” .....	87
Proposal #30: “The GEAR Center” .....	90
Proposal #31: “Transfer of Background Investigations from the Office of Personnel Management to the Department of Defense” .....	93
Proposal #32: “Strengthening Federal Evaluation” .....	94

## Capsule Discussions of Discrete Proposals

This section of the memorandum discusses the 32 proposals that are included among the Trump Administration’s “Government-wide reorganization proposals” in the plan’s table of contents. The memorandum addresses the proposals in 35 sections to separately discuss significant sub-components of proposals #2 and #15. Each heading reflects the Trump Administration’s enumeration of proposals (see

pp. 15-18 of the plan) and the short titles given to the proposals in the underlying document's table of contents.

Many of the Trump Administration's proposals focus on moving organizational units and statutory functions, while other proposals focus on operational or policy changes.<sup>5</sup> Some involve a mixture of these kinds of proposals. Moving or redistributing units and functions may raise questions regarding when and under what conditions a proposed change would require legislation.

Reorganizations that exceed the boundaries of one department or agency, or that are inconsistent with existing law, generally are accomplished through the legislative process. In some cases, Congress has changed organizational arrangements within a department or agency by shifting funding and functions between offices. Where functions are statutorily vested in the President, they may be delegated and redelegated. In general, department heads have discretion, consistent with existing statutory mandates, to organize and manage the day-to-day operations of the organizations for which they are responsible. These authorities do not, however, supersede or conflict with specific statutory directives, limitations, or organizational arrangements.<sup>6</sup> A CRS *Legal Sidebar* elaborates further:

The [Trump] Administration has indicated that it considers some of these proposals to be within its existing authority, while others may require new legislation authorizing such action. These orders and proposals have prompted a recurring question concerning the composition of the federal government: who decides how to organize agencies and departments within the executive branch? The ultimate answer to this question is Congress. Legislative enactments create executive agencies and delegate authority to those entities to carry out various statutory functions and duties. But executive branch agencies also typically enjoy some discretion in determining how best to structure themselves to carry out their statutory responsibilities, provided that reorganization does not conflict with their governing statutes or legislative funding restrictions.<sup>7</sup>

With regard to proposals that focus primarily on operational or procedural changes, the assessment of whether a proposal may be implemented administratively, without resort to legislation, can be challenging and typically is assessed on a case-by-case basis. Complicating the matter, the explanatory text and justification that accompanies proposals of this type may not be precise regarding which statutory authorities are being relied upon for current activities and whether proposed changes to activities or processes could take place under the authorities. In addition, authorizing statutes often do not specify in detail all aspects of how a policy or process shall be carried out, and they also often include general instead of highly specific statements of purpose. Consequently, the implementation of statutes often necessitates that agencies exercise some level of discretion.

A general treatment of how agencies may exercise discretion is beyond the scope of this memorandum. With respect to more operational matters within agencies, however, multiple points of reference may be relevant from time to time in how agencies may seek to exercise discretion in carrying out statutes, including but not limited to the following.

- 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. The agency head's authority does not, however, supersede congressional authority to provide for specific organizational arrangements or to vest powers, duties, or authorities in particular offices established in this way.<sup>8</sup>

---

<sup>5</sup> CRS Insight IN10920, *The Trump Administration's Reform Plan and Reorganization Recommendations*, by Henry B. Hogue.

<sup>6</sup> CRS Report R44909, *Executive Branch Reorganization*, by Henry B. Hogue.

<sup>7</sup> CRS Legal Sidebar LSB10158, *Organizing Executive Branch Agencies: Who Makes the Call?*, by Jared P. Cole.

<sup>8</sup> In addition, an agency may face constraints associated with appropriations acts in how it may use discretion to create, eliminate, or reorganize its organizational subunits. For example, appropriations committees often include language in statutory text to

- Section 301 of Title 5, *U.S. Code*, provides in part 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, and the custody, use, and preservation of its records, papers, and property.”<sup>9</sup>
- 31 U.S.C. 1301(a), relating to the purposes for which appropriations are made, provides that “[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” The Government Accountability Office (GAO) has discussed interpretation of this provision in light of the “necessary expense rule.”<sup>10</sup> Under this framework, an appropriation of funds for a particular object or purpose confers authority to an agency to incur expenses which are necessary or proper or incident to the proper execution of the object or purpose. This typically means that an agency may, unless otherwise prohibited or directed by law, exercise some discretion in how to allocate funding among certain organizational subunits, objects (e.g., salaries, rent, contracts), and policy priorities, within the contours of the agency’s statutory authorities and obligations.<sup>11</sup>

## Proposal #1: “Department of Education and the Workforce”<sup>12</sup>

### Brief Proposal Summary

This proposal would merge the Departments of Education (ED) and Labor (DOL) into a single Cabinet agency, the Department of Education and the Workforce (DEW). The proposed goals of the new agency stated in the proposal would include streamlining education and workforce development programs in a single agency and creating four main sub-agencies focused, respectively, on (1) K-12 education, (2) higher education/workforce development, (3) enforcement, and (4) research/evaluation/administration. One stated goal of the proposed merger is to eliminate possible duplication of effort between the workforce development and education programs currently housed at ED and DOL.

---

prohibit reprogramming of funds within a single appropriations account that would create, eliminate, or reorganize organizational units in an agency, without advance notification. After this notification is made, the provision would not necessarily prevent these changes from being made. However, some committees may use notification requirements like these as opportunities to engage with agencies and exert influence over their use of discretion, to ensure the agencies follow congressional intent.

<sup>9</sup> 5 U.S.C. §101 specifies the current list of 15 executive departments.

<sup>10</sup> The Government Accountability Office (hereinafter GAO) was called the General Accounting Office until July 2004.

<sup>11</sup> According to GAO, “The Comptroller General has never established a precise formula for determining the application of the necessary expense rule. In view of the vast differences among agencies, any such formula would almost certainly be unworkable. Rather, the determination must be made essentially on a case-by-case basis.” GAO employs a three-step analysis in applying the rule: (1) “The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available.”; (2) “The expenditure must not be prohibited by law.”; and (3) “The expenditure must not be otherwise provided for, that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme.” See GAO, *Principles of Federal Appropriations Law*, 4<sup>th</sup> ed., “Chapter 3, Availability of Appropriations: Purpose,” 2017 revision, GAO-17-797SP, pp. 3-14 – 3-17, at <https://www.gao.gov/assets/690/687162.pdf#page=14>.

<sup>12</sup> This section was prepared by David H. Bradley, Specialist in Labor Economics, [dbradley@crs.loc.gov](mailto:dbradley@crs.loc.gov), 7-7352; Boris Granovskiy, Analyst in Education Policy, [bgranovskiy@crs.loc.gov](mailto:bgranovskiy@crs.loc.gov), 7-7759; and Rebecca R. Skinner, Specialist in Education Policy, [rskinner@crs.loc.gov](mailto:rskinner@crs.loc.gov), 7-6600.

---

## Affected Departments, Agencies, or Programs

The two federal agencies that would be most directly affected by this proposal are the Department of Education (ED) and the Department of Labor (DOL). While the proposal might affect other entities, this analysis considers only ED and DOL.

### *Department of Education*

ED, created in 1979 through the Department of Education Organization Act (DEOA; P.L. 96-88), is the federal agency with the primary responsibility for administering federal elementary, secondary, and postsecondary education programs. It supports the general welfare of the United States by working to ensure equal access to educational opportunity, and it supplements the efforts of state, local, and private entities in improving the quality of education. ED's mission is “to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.”

The majority of the federal programs, activities, and benefits supportive of education at the elementary, secondary, and postsecondary levels are authorized by a handful of major education laws. While federal education programs, activities, and benefits have varied foci and address many different aims, broadly speaking, they collectively provide for the following:

- *Research and statistics* on the progress and condition of education and on the efficacy of programs and practices;
- *Supplemental grants* supporting core services and programs in elementary and secondary schools serving concentrations of disadvantaged students;
- *Targeted grants* supporting the creation, improvement, and/or operation of programs targeting particular educational aims, at all levels of education; and
- *Financial aid for postsecondary students*, such as grants, loans, work-study assistance, and tax benefits to encourage college access, persistence, and attainment.<sup>13</sup>

### *Department of Labor*

DOL was created in 1913 by “An Act to create a Department of Labor” (P.L. 62-426) with the purpose “to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.” The act initially authorized a new mediation service and four pre-existing bureaus, two of which covered immigration. Numerous laws since 1913 have added responsibilities to DOL such that it is now comprised of multiple entities that provide services related to employment and training, worker protection, income security, and contract enforcement. DOL administers and enforces more than 180 federal laws.<sup>14</sup>

The DOL entities fall primarily into three main functional areas—workforce development, worker protection, and income security:

- **Workforce Development.** Several DOL entities administer workforce employment and training programs—such as the Workforce Innovation and Opportunity Act (WIOA) state formula grant programs, Job Corps, and the Employment Service—that provide direct funding for employment and training activities. Also included in this area is the Veterans' Employment and Training Service (VETS), which provides employment services specifically for the veteran population.

---

<sup>13</sup> For more information on the functions of the Department of Education, see CRS In Focus IF10551, *A Summary of Federal Education Laws Administered by the U.S. Department of Education*, by Adam Stoll, Rebecca R. Skinner, and David P. Smole.

<sup>14</sup> <https://www.dol.gov/general/aboutdol/majorlaws>.

- **Worker Protection.** Several agencies provide various worker protection services, such as the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), and the Wage and Hour Division (WHD). DOL entities focused on worker protection provide services to ensure worker safety, adherence to wage and overtime laws, and contract compliance, among other duties.
- **Income Security.** DOL administers income security programs, including the Unemployment Insurance program and certain provisions of the Employee Retirement Income Security Act.

In addition to these three main functional areas, DOL's Bureau of Labor Statistics (BLS) collects data and provides analysis on the labor market and related labor issues.<sup>15</sup>

## Statutes

The proposal would appear to require statutory changes to the laws that established ED and DOL, as well as to the laws administered by each agency. The extent of needed changes may vary by law.

### *Department of Education*

- Provisions contained within the DEOA include the creation of several Assistant Secretary positions<sup>16</sup> and establish a number of offices in statute. These include the Office for Civil Rights, the Office of Elementary and Secondary Education, the Office of Postsecondary Education, the Office of Vocational and Adult Education,<sup>17</sup> the Office of Special Education and Rehabilitative Services, and several others.<sup>18</sup>
- In addition to the DEOA, there are several laws currently administered by ED that it appears would need to be amended if this proposal was implemented. These include the Elementary and Secondary Education Act, the Higher Education Act, the Individuals with Disabilities Education Act, the Perkins Career and Technical Education Act, among others.

### *Department of Labor*

Although the act establishing DOL in 1913 (P.L. 62-426) authorized five bureaus, numerous subsequent laws have created offices, bureaus, and divisions within DOL to implement and enforce various labor statutes. The major statutes that DOL administers and that it appears would have to be amended are listed below, organized by thematic area.

- Wages and Hours. The Fair Labor Standards Act of 1938; labor standards provisions of the Immigration and Nationality Act; Migrant and Seasonal Agricultural Worker Protection Act.
- Workplace Safety and Health. Occupational Safety and Health Act; Mine Safety and Health Act.

---

<sup>15</sup> Under the Administration's reorganization plan, BLS would be moved from DOL to the Department of Commerce; see "Proposal #13: Reorganizing Statistical Agencies" in this memorandum.

<sup>16</sup> P.L. 96-88, Section 202.

<sup>17</sup> Later renamed the Office of Career, Technical, and Adult Education.

<sup>18</sup> P.L. 96-88, Sections 204-214.

---

- Workers' Compensation. The Longshore and Harbor Workers' Compensation Act; Energy Employees Occupational Illness Compensation Program Act; Federal Employees' Compensation Act; Black Lung Benefits Act.
- Employee Income and Benefit Security. Employee Retirement Income Security Act; Pension Benefit Guaranty Corporation; Unemployment Insurance.
- Labor Relations. Labor-Management Reporting and Disclosure Act; Civil Service Reform Act.
- Veterans. Uniformed Services Employment and Reemployment Rights Act; Veterans' Preference; Jobs for Veterans Act.
- Workplace Rights. Employee Polygraph Protection Act; Consumer Credit Protection Act (garnishment of wages provisions); Family and Medical Leave Act; Worker Adjustment and Retraining Notification Act.
- Labor Standards for Federal Contracts. Davis-Bacon Act; McNamara-O'Hara Service Contract Act; Walsh-Healey Public Contracts Act; Copeland Act.
- Workforce Development. Workforce Innovation and Opportunity Act; Wagner-Peyser Act; Community Service Senior Opportunities Act.

Finally, the proposal would consolidate the state formula grants from four programs – WIOA Adult, WIOA Dislocated Worker, Employment Service, and Jobs for Veterans State Grants. These four programs have three different authorizing statutes that it appears would have to be amended in order for fund consolidation to occur.

### **Administrative Actions**

- Section 413 of the DEOA allows the Secretary of Education to “allocate or reallocate functions among the officers of the Department, and to establish, consolidate, alter, or discontinue such organizational entities within the Department as may be necessary or appropriate.” However, this authority does not appear to extend to entities established in statute, including entities established by the DEOA.
- Section 6 of P.L. 62-426 states that “all laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service by this Act transferred to and made a part of the Department of Labor shall, so far as the same are not in conflict with the provisions of this Act, remain in full force and effect, to be executed under the direction of the Secretary of Labor.”

### **Uncertainties**

Given the lack of specificity in the proposal, it is not clear what the proposed changes would mean at the programmatic level for many ED and DOL programs and which statutory or administrative actions would be required to implement these proposals. A few specific measures to consolidate or streamline several programs were mentioned in the proposal that seemingly would require statutory action. Specifically:

- Streamline workforce development programs by “moving from the current arrangement or more than 40 programs at 15 agencies to 16 workforce development programs at seven agencies.”
  - Consolidate a “range of disparate grants programs into a single fund that is focused on testing and replicating effective apprenticeship, workforce development, and postsecondary education models.”
-



- Consolidate “three Native American-serving workforce development programs currently spread across three agencies.”

## Observations

Proposals for the elimination of ED, the consolidation of ED and DOL, or the consolidation of DOL with other federal agencies have been introduced by previous administrations and considered by past Congresses. For example, the Reagan Administration put forth a proposal to eliminate ED in 1984, during the 98<sup>th</sup> Congress,<sup>19</sup> and Congress considered merging ED, DOL, and the Equal Employment Opportunity Commission during the 104<sup>th</sup> and 105<sup>th</sup> Congresses.<sup>20</sup> In addition, bills were introduced in the 112<sup>th</sup> and 113<sup>th</sup> Congresses that would have merged DOL, the Department of Commerce, and the Small Business Administration into a new Department of Commerce and the Workforce.<sup>21</sup>

Most recently, bills have been introduced in the 115<sup>th</sup> Congress that would abolish ED.<sup>22</sup> Past proposals have ranged from those similar to the current proposal under consideration, in that they would preserve most of the current functions of the Department, to those that would eliminate a number of the Department’s core functions and shift administrative responsibility for a number of federal education programs to the states. Some of the proposals that would eliminate ED would transfer the federal student aid functions of ED to other agencies, such as the Department of the Treasury.

## Proposal #2: “Consolidate Non-Commodity Nutrition Assistance Programs into HHS, Rename HHS the Department of Health and Public Welfare...”<sup>23</sup>

### Brief Proposal Summary

The plan proposes to move specific nutrition assistance programs from the U.S. Department of Agriculture (USDA) into the Department of Health and Human Services (HHS), which would be renamed the Department of Health and Public Welfare (DHPW). Those programs are: the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), and the Farmers’ Market Nutrition Programs.

The proposal differentiates between non-commodity or “near-cash” nutrition programs, which provide money to participants in the form of a voucher or electronic benefit transfer card, and commodity-based programs, which, in part, involve federal procurement and distribution of U.S.-produced food. The plan notes that with the exception of CACFP, the programs to be moved are near-cash assistance programs. As a rationale for the reorganization, the plan asserts, “Near-cash benefit programs do not need to leverage USDA’s expertise in food procurement or delivery, nor do they primarily fit with USDA’s core mission of supporting American farmers and agriculture. Rather, these programs are designed to support low-

---

<sup>19</sup> For more information on this proposal, see <http://www.cq.com/doc/weeklyreport-WR098403991?0&search=VWwBwNrp>.

<sup>20</sup> For more information on this proposal, see GAO, *Congressional Proposal to Merge Education, Labor, and EEOC*, HEHS-95-140, June 28, 1995, <https://www.gao.gov/products/HEHS-95-140>.

<sup>21</sup> S. 1116 in the 112<sup>th</sup> Congress, and S. 1836 in the 113<sup>th</sup> Congress.

<sup>22</sup> See, for example, H.R. 899 and H.R. 1510.

<sup>23</sup> This section was prepared by Kara Clifford Billings, Analyst in Social Policy, [kbillings@crs.loc.gov](mailto:kbillings@crs.loc.gov), 7-2043, and Randy Alison Aussenberg, Specialist in Food Assistance Policy, [raussenberg@crs.loc.gov](mailto:raussenberg@crs.loc.gov), 7-8641.

income Americans, a mission area better situated in [DHPW].”<sup>24</sup> The plan also states the proposed reorganization “would allow for better and easier coordination across programs that serve similar populations, ensuring consistent policies and a single point of administration for the major public assistance programs.”<sup>25</sup>

### **Affected Departments, Agencies, or Programs**

- USDA, Food and Nutrition Service (FNS)
  - SNAP
  - WIC
  - CACFP
  - Farmers’ Market Nutrition Programs<sup>26</sup>
    - Seniors Farmers’ Market Nutrition Program (SFMNP)
    - WIC Farmers’ Market Nutrition Program (FMNP)
- HHS, Administration for Children and Families (ACF)<sup>27</sup>

### **Statutes**

For policy, legal, and technical reasons, relocating the specified USDA nutrition programs to HHS is likely to involve many statutory changes, in particular, to the authorizing laws of the to-be-moved nutrition programs, SNAP, WIC, CACFP, SFMNP, and WIC FMNP. As a threshold matter, the authorizing laws of each of these USDA nutrition programs require the Secretary of Agriculture to administer them by defining “Secretary” as “Secretary of Agriculture.”<sup>28</sup> In the case of CACFP, the definition of Secretary applies to all programs authorized by the Richard B. Russell National School Lunch Act, so the Administration’s proposal to move CACFP but not to move other programs authorized by the National School Lunch Act may require amending this provision accordingly.

As far as renaming HHS, the department’s current name was established in Section 509 of the Department of Education Organization Act (P.L. 96-88, 93 Stat. 668, 695; 20 U.S.C. §3508). Changes to this provision may be necessary to change the department’s name.

### **Administrative Actions**

While statutory changes may be necessary for a different department to administer these nutrition assistance programs, some administrative actions within USDA might be taken to further the

---

<sup>24</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 28.

<sup>25</sup> *Ibid.*

<sup>26</sup> The Administration’s proposal does not name these programs, but they are generally understood to be SFMNP and WIC FMNP as listed in this memorandum.

<sup>27</sup> The proposal specifically notes ACF’s administration of Temporary Assistance for Needy Families (TANF), Head Start, and Child Care. It is possible that all ACF programs could be affected by relocating the nutrition programs.

<sup>28</sup> Respective definitions of Secretary are located as follows: SNAP (Section 3(p) of the Food and Nutrition Act of 2008, 7 U.S.C. §2012(p)); WIC and WIC FMNP (Section 17(b)(12) of the Child Nutrition Act, 42 U.S.C. §1786(b)(12)); CACFP (Section 12(d)(7) of the Richard B. Russell National School Lunch Act, 42 U.S.C. §1760(b)(12)). SFMNP’s authorizing law does not include a definition of Secretary; rather, it specifically directs the Secretary of Agriculture to carry out the program (Section 4402 of P.L. 111-203, 7 U.S.C. §3007).

Administration's stated objectives, such as coordinating cash assistance and near-cash assistance policies. In general, these authorities might include:

- **Rulemaking and guidance.** To the extent it is consistent with programs' statutes, the respective departments could consult each other in developing regulations and guidance, and/or develop policies or reporting requirements that are in sync.
- **Waiver authorities.** With limitations specified in law, the Secretary of Agriculture has the authority to conduct demonstrations or pilot projects, testing new policies that differ from the programs' authorizing laws.<sup>29</sup> USDA-FNS recently clarified its protocol for this waiver authority in the child nutrition programs.<sup>30</sup>

Changes made by these actions may be time-limited or may be changed by subsequent Administrations, so the administrative authorities may not carry the same weight as the proposed reorganization.

## Uncertainties

**SNAP Categorical Eligibility.** The Administration's proposal cites SNAP's categorical eligibility with Temporary Assistance for Needy Families (TANF) benefits as an example of the need to co-locate the programs. Depending on the desired change to this policy, it is not clear that a reorganization alone would address this. Without more details, it is unclear whether changes to statutory or regulatory authority would also be required.<sup>31</sup>

**Commodity Foods in CACFP.** Of the programs listed, CACFP is the only program that utilizes commodity foods. It is unclear whether DHPW would assume responsibility for distributing commodity foods to CACFP institutions or whether this responsibility would be shared with or retained by USDA. In FY2017, CACFP institutions received \$152.5 million in commodity assistance or cash-in-lieu of commodities (4.3% of total program costs).<sup>32</sup>

**Authorization of Retailers.** Unique from the HHS-ACF programs, the USDA near-cash programs also entail retailer policy. For instance, SNAP and WIC benefits are redeemable only at authorized retailers. For SNAP, USDA-FNS sets policy and processes retailers' applications, including on-site inspections. Farmers' markets and direct-to-consumer outlets redeem program benefits; these outlets may receive funding and technical assistance from other USDA agencies. If the near-cash USDA programs were moved to DHPW, it is not clear from the proposal if or how retailer policy would be maintained or revised.

**Role of the States.** Under current law, states have considerable flexibilities in their administration of the HHS ACF programs, including TANF and Child Care programs. There also is wide variation between states' WIC programs, and states vary in their adoption of SNAP state options. Often, these ACF and FNS programs are not all administered by the same state agencies. It is not clear from the proposal whether the proposal would also change state flexibilities, including states' selection of administering agencies.

---

<sup>29</sup> See, for example, Secretary of Agriculture's pilot or experimental projects to test program changes in SNAP (Section 17(b) of the Food and Nutrition Act of 2008, 7 U.S.C. §2026(b)), and Secretary of Agriculture's waiver authority regarding CACFP and other child nutrition programs (Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. §1760(l)).

<sup>30</sup> USDA-FNS, *Child Nutrition Program Waiver Request Guidance and Protocol - Revised*, May 24, 2018, <https://www.fns.usda.gov/child-nutrition-program-waiver-request-guidance-and-protocol-revised>.

<sup>31</sup> See CRS Report R42054, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility*.

<sup>32</sup> Food and Nutrition Service, "Data and Statistics: Nutrition Assistance Programs Keydata Release," May 2018 (data through March 2018), <http://www.fns.usda.gov/data-and-statistics>. Figure excludes bonus commodities.

## Observations

### *Moving SNAP (formerly Food Stamp Program) from USDA*

Prior administrations have proposed reorganization and/or consolidation of food assistance programs with welfare programs; these reorganizations were never completed. For example, in 1970, President Richard Nixon announced plans to “Submit a reorganization plan ... to transfer the food stamp program from the Department of Agriculture to the Department of Health, Education, and Welfare” (HEW) as part of a welfare reform extension proposal.<sup>33</sup> In another example, in 1977, President Jimmy Carter proposed “consolidating” the Food Stamp Program with the Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) programs.<sup>34</sup> The welfare reform proposal, called The Program for Better Jobs and Income, would have abolished the three programs and created a “single cash assistance program” (a negative income tax).<sup>35</sup> The new program would have been administered by HEW and the Department of Labor.<sup>36</sup>

### *FY2018, FY2019 President's Budget Proposals*

Legislative proposals for SNAP were included in both the FY2018 and FY2019 President’s budget submissions.<sup>37</sup> Neither budget proposed to move the program to HHS. Both budgets did include a proposal to restrict categorical eligibility to households receiving TANF, an example cited in the reorganization plan. They also both included proposals to restrict the link between the Low-Income Home Energy Assistance Program (ACF-administered program) and SNAP.

## **Proposal #2(a): “Establish the Council on Public Assistance”<sup>38</sup>**

### **Brief Proposal Summary**

The President’s reorganization proposal would establish a permanent Council on Public Assistance within the reorganized Department of Health and Public Welfare (DHPW). According to the proposal, the council’s goal would be to ensure a “unified coordinated focus on cross-cutting welfare and workforce issues.” It would be given statutory authority to approve state and local government service plans and requests for “waivers” to operate “welfare-to-work” projects, design uniform work requirements to be implemented across all welfare programs, resolve policy disputes among federal agencies, and design cross-program standards for programmatic and operational changes at the federal, state, and local levels. The council would be composed of agency heads or representatives from the U.S. Department of Agriculture, Department of Education and Workforce, Department of Housing and Urban Development (HUD), and others, and chaired by senior leadership in DHPW.

---

<sup>33</sup> The American Presidency Project, “Richard Nixon: ‘Statement Announcing Extensions of Welfare Reform Proposals’ on June 10, 1970,” <http://www.presidency.ucsb.edu/ws/?pid=2539>. See also “Presidential Budget Message: Nixon’s Fiscal 1975 Budget: A Record Breaking \$304.4-Billion.” In *CQ Almanac 1974*, 30<sup>th</sup> ed. 2-A-7-A. Washington, DC: Congressional Quarterly, 1975.

<sup>34</sup> The American Presidency Project, “Jimmy Carter: ‘Welfare Reform Message to the Congress’ on August 6, 1977,” <http://www.presidency.ucsb.edu/ws/?pid=7942>

<sup>35</sup> Ibid.

<sup>36</sup> Testimony of Assistant Secretary for Food and Consumer Affairs, Department of Agriculture Carol Tucker Foreman, in U.S. Congress, Senate Committee on Finance, Subcommittee on Public Assistance, *Welfare Reform Proposals*, hearings, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 7, 1978.

<sup>37</sup> See FY2018 USDA Budget Congressional Justification (for FNS), pp. 32-91 to 32-94, FY2019 USDA Budget Congressional Justification (for FNS), pp. 32-81 to 32-87. Documents available at [https://www.obpa.usda.gov/explan\\_notes.html](https://www.obpa.usda.gov/explan_notes.html).

<sup>38</sup> This section was prepared by Gene Falk, Specialist in Social Policy, [gfalk@crs.loc.gov](mailto:gfalk@crs.loc.gov), 7-7344.

## Affected Departments, Agencies, or Programs

The proposal does not define “public assistance.” In general, public assistance programs provide cash, food, housing, or medical assistance to needy families so that they can meet their basic needs. Programs that meet this criterion are administered in the agencies mentioned for the council. For example, DHPW would administer the Temporary Assistance for Needy Families (TANF) block grant, Supplemental Nutrition Assistance Program (SNAP), and Medicaid. HUD administers housing assistance programs. The Social Security Administration, which administers the public assistance programs for the elderly, blind, and disabled—Supplemental Security Income—is not mentioned, although the proposal allows for other agencies to be included in the council as appropriate.

## Statutes

The proposal mentioned that the council would be given statutory authority to accomplish its goals, but is not specific about what that authority would include. Some programs (e.g., TANF and SNAP) have existing, statutory provisions related to work and requiring work.<sup>39</sup> There is also existing statutory authority to “waive” federal requirements for programs authorized by the Social Security Act.<sup>40</sup> However, when President Obama sought to exercise that authority in TANF, the House passed legislation to prevent the implementation of “waivers” that affected TANF work requirements.<sup>41</sup> That legislation was not enacted, but no waivers were granted. The Trump Administration rescinded the waiver initiative in 2017.<sup>42</sup>

## Administrative Actions

As discussed above, some public assistance programs already have “waiver” authority for demonstration projects. The Secretary of the department administering the program currently has the authority to approve or disapprove these waivers.<sup>43</sup> The proposal would give that authority to the council.

## Uncertainties

The proposal does not define what is meant by “public assistance” programs, so the scope of the proposal is unknown. It is unknown whether the council would have the authority to address policies in programs that do not meet a colloquial definition of public assistance (e.g., benefits to meet basic needs), such as education and social services programs that target low-income individuals and families. The proposal is not specific about what it means to “design” uniform work requirements across programs, and whether those requirements would be advisory or whether it is envisioned that the council would be given the statutory authority to impose requirements different from those in specific programs’ statutes.

---

<sup>39</sup> For example, TANF requirements related to work and participation are in Section 407 and section 408(b) of the Social Security Act. The SNAP work rules are in Section 6(d)(1) of the Food and Nutrition Act of 2008.

<sup>40</sup> The “waiver” authority is in Section 1115 of the Social Security Act. It gives the Secretary of Health and Human Services the authority to waive compliance with certain federal requirements which in the judgment of the Secretary promotes the objective of the program.

<sup>41</sup> For a discussion of the waiver initiative and legislation that sought to prevent its implementation, see CRS Report R42627, *Temporary Assistance for Needy Families (TANF): Welfare Waivers*.

<sup>42</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, *Rescinding guidance concerning waiver and expenditures authority under section 1115 of the Social Security Act*, TANF-ACF-IM-2017-01, August 30, 2017.

<sup>43</sup> As discussed above, for Social Security Act programs, this authority is provided in Section 1115 of the Social Security Act to the Secretary of HHS.

## Observations

President Trump's FY2018 budget proposed establishing "Welfare to Work Projects," demonstrations that would allow states to streamline funding from multiple public assistance programs, and redesign service delivery so that it is tailored to their constituents' specific needs. A requirement of these demonstrations is that they be evaluated.

Proposals to provide consistent policymaking and address cross-program issues affecting low-income families and individuals, such as "program integration," have a long history.<sup>44</sup> In 1987, President Reagan proposed legislation to "authorize demonstration of innovative methods to simplify existing programs of low-income assistance."<sup>45</sup> The proposed bill would have established a Low-Income Opportunity Assistance Board, which would have had the responsibility to certify and evaluate those demonstrations. While this legislation was never enacted, the Reagan Administration established an Interagency Low Income Opportunity Board within the White House, which coordinated requests for waivers under existing statutory authority.<sup>46</sup>

In 2002, the George W. Bush Administration's TANF reauthorization plan included a superwaiver proposal. Under that proposal, states could seek "new waivers for integrating funding and program rules across a broad range of public assistance and workforce development programs." States that received waivers would have been required to develop integrated performance objectives and outcomes, which could have altered reporting and performance requirements in affected programs. An evaluation of the demonstration would have been required. The superwaiver proposal passed the House three times: in 2002 (H.R. 4737, 107<sup>th</sup> Congress), 2003 (H.R. 4, 108<sup>th</sup> Congress) and 2005 (S. 1932, 109<sup>th</sup> Congress, as it passed the House), but was never enacted.

Several related bills have been introduced in the 115<sup>th</sup> Congress. The proposed "HAND UP" Act (H.R. 2249, introduced by Representative Tom Reed) would establish authority for demonstration projects to test program integration and coordination of services among selected programs, including TANF, SNAP, Title I of the Workforce Innovation and Opportunity Act, and Medicaid. The proposed EMPOWERS Act (S. 1427, Senator Ernst) would establish an Interagency Board for Empowering Low-Income Families that would have the authority to approve four-year waivers of federal program requirements to consolidate, replace or alter eligibility requirements in specified programs.

The House-passed Farm Bill (H.R. 2) would make changes to SNAP work requirements. A bill reported from the House Ways and Means Committee (H.R. 5861) would alter the work rules that exist under the current TANF program.

---

<sup>44</sup> For an overview of this history, see CRS Report RL32859, *The "Superwaiver" Proposal and Service Integration: A History of Federal Initiatives*.

<sup>45</sup> U.S. Congress, House, *Proposed Legislation--"Low Income Opportunity Improvement Act of 1987"*, Message from the President of the United States Transmitting a Draft of Proposed Legislation to Encourage State-Sponsored and Community-Based Demonstrations in Public Assistance Policy, 100th Cong., February 26, 1987, H.Doc. 100-39.

<sup>46</sup> For a discussion of the initiation of the board, the research it fostered, and its eventual dissolution, see Judith M. Gueron and Howard Rolston, "Chapter 7. Waiver Evaluations: How Random Assignment Evaluation Became the Standard for Approval," in *Fighting for Reliable Evidence* (New York: Russell Sage Foundation, 2013), pp. 217-261.

---

## Proposal #3: “Consolidate Mission Alignment of Army Corps of Engineers Civil Works with Those of Other Federal Agencies”<sup>47</sup>

### Brief Proposal Summary

The proposal is to move U.S. Army Corps of Engineers (USACE or Corps) civil works activities from the Department of Defense (DOD) to the Department of Transportation (DOT) and the Department of the Interior (DOI) “to consolidate and align” the USACE civil works missions with these agencies.

### Affected Departments, Agencies, or Programs

USACE performs both military and civil works activities.<sup>48</sup> Its civil works responsibilities are to support coastal and inland commercial navigation, reduce riverine flood and coastal storm damage, and protect and restore aquatic ecosystems in U.S. states and territories. In undertaking projects for these purposes, USACE also may pursue additional project benefits related to water supply, hydropower, recreation, fish and wildlife enhancement, and other purposes. USACE performs certain regulatory responsibilities that Congress has assigned to the Secretary of the Army; these include issuing permits for private actions that may affect navigation, wetlands, and other waters of the United States. Proposal #3 may affect the following federal departments and agencies:

- Department of Defense, U.S. Army Corps of Engineers: removal of USACE civil works activities from DOD.
- U.S. Department of Transportation: transfer of USACE navigation activities to DOT.
- U.S. Department of the Interior: transfer to DOI the remaining USACE civil works activities (flood and storm damage reduction, aquatic ecosystem restoration, regulatory, and all other activities).

### Statutes

The legislative history of USACE civil works activities has evolved since the mid-1820s, when legislative references to using the military corps of engineers for public surveys and improvements first appeared. The agency has no principal piece of legislation or organic act establishing and defining its suite of civil works responsibilities. Instead, a lengthy set of statutory provisions, which typically reference the Secretary of the Army, authorize general or project-specific water resource activities. Depending on the specific reorganization actions undertaken pursuant to this proposal, implementation could potentially fall into the category of activities that would need to be accomplished through legislation.<sup>49</sup> In 2010, GAO identified selected statutes that have shaped USACE civil works missions.<sup>50</sup> The Secretary of the Army

---

<sup>47</sup> This section was coordinated by Nicole T. Carter, Specialist in Natural Resources Policy, [ncarter@crs.loc.gov](mailto:ncarter@crs.loc.gov), 7-0854.

<sup>48</sup> USACE’s military mission consists of providing engineering, construction, real estate, stability operations, and environmental management products and services for the Army, Air Force, other assigned federal agencies, and foreign governments.

<sup>49</sup> Implementation of the proposal may involve transferring responsibilities from DOD to DOT and DOI that Congress assigned in statute to the Secretary of the Army. For example, Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) prohibits the obstruction of navigation unless recommended by the USACE Chief of Engineers and authorized by the Secretary of War (now Secretary of the Army); Section 404 of the Clean Water Act (33 U.S.C. §1344) provides that the Secretary of the Army acting through the agency’s Chief of Engineers may issue permits for the discharge of dredged or fill material into navigable waters; and Section 2 of the Flood Control Act of 1944, as amended (33 U.S.C. §701a-1) provides that “Federal investigations and improvements of river and other waterways for flood control and allied purposes shall be under the jurisdiction of and shall be prosecuted by the Department of the Army under the direction of the Secretary of the Army.”

<sup>50</sup> GAO, *Army Corps of Engineers: Organizational Realignment Could Enhance Effectiveness, but Several Challenges Would Have to Be Overcome*, GAO-1-819, October 2010, Appendix III, <https://www.gao.gov/assets/320/310469.pdf>.

typically has delegated the civil works responsibilities to the Assistant Secretary of the Army for Civil Works, which is a position established in law (10 U.S.C. §3016).

## Administrative Changes

Given that proposal #3 would shift responsibilities across departments, and given that most of the responsibilities have been designated in statute for the Secretary of the Army, it is unclear how much of the proposal could be accomplished administratively. Certain activities potentially could be transferred without legislative action, although it is unclear whether these limited transfers would accomplish the stated goals of consolidation and alignment, absent other statutory changes. For example, many emergency response statutes provide authority to the President, rather than specifying the secretaries and departments to undertake response actions. Thus, some of the emergency response functions assigned to USACE under the National Response Framework, which guides the national response to all types of disaster and emergencies by describing principal roles and responsibilities, might be assigned to an entity other than USACE. Currently USACE is assigned the lead role for public works and engineering.<sup>51</sup>

## Uncertainties

- **Splitting USACE Responsibilities and Their Administration.** While splitting some USACE responsibilities between DOI and DOT may be straightforward, splitting others between two departments—such as responsibilities for multipurpose and navigation-related environmental projects—may be more complex. Proposal #3 does not specify whether the transferred USACE navigation assets and responsibilities would be managed by an existing DOT entity (e.g., DOT’s Maritime Administration, which promotes waterborne transportation) or as a separate DOT agency. Similarly, it does not specify whether USACE responsibilities transferred to DOI would be combined with DOI’s water resource agency—the Bureau of Reclamation, which delivers water in 17 western states to irrigators and other users pursuant to contracts—or administered separately in a single agency or across multiple agencies.<sup>52</sup>
- **Navigation Transfer to DOT.** Congress has assigned the Secretary of the Army, through USACE, responsibility for construction and operation of federally authorized coastal and inland navigation improvements (e.g., channel dredging, locks and dams). The Trump Administration plan calls for greater nonfederal involvement in planning and funding navigation infrastructure, but does not provide details. At present, DOT primarily funds transportation through grants and loans to states, local governments, and public-private partnerships, and generally does not own and operate transportation infrastructure (with an exception being Federal Aviation Administration’s ownership of air traffic facilities

---

<sup>51</sup> In this role, USACE provides technical assistance and engineering, and construction management, as well as emergency contracting and emergency power and repair for critical facilities. The agency also assists in monitoring, stabilizing, or demolishing damaged structures and provides technical assistance in debris clearing, removal, and disposal and in establishing ground and water routes into affected areas. In contrast to USACE roles under the National Response Framework, there are some emergency authorities that are specifically assigned to the Secretary of the Army. USACE performs emergency floodfighting activities that are recommended by the agency’s Chief of Engineers pursuant to an authority that allows the Secretary of the Army to use existing appropriations for emergency activities (33 U.S.C. §701n(a)), and the Secretary of the Army may provide emergency water supplies in certain circumstances (33 U.S.C. §701n(b)).

<sup>52</sup> A mid-1980s proposal by the Office of Management and Budget to merge Reclamation and USACE was not supported by the Secretaries of the Interior and Defense reportedly because the two agencies’ programs had little overlap and sufficient savings from merging them could not be realized (e.g., see U.S. Congress, House Committee on Appropriations, Subcommittee on Energy and Water Development, *Energy and Water Development Appropriations for 1986*, 99<sup>th</sup> Cong., 1st sess., February 20, 1985, pp. 136-137). For more on this proposal and other attempts at reorganization of federal water agencies and responsibilities, see D. McCool, *Command of the Water: Iron Triangles, Federal Water Development, and Indian Water* (Tucson, AZ: Univ. of Arizona Press, 1994), p. 199.



and equipment). Proposal #3 raises uncertainties about what entities may be responsible in the future for maintaining existing navigation infrastructure and managing new investments, especially for waterways that traverse multiple states. Proposal #3 does not reference how the Inland Waterways Trust Fund and the Harbor Maintenance Trust Fund (which fund many USACE inland and coastal navigation activities through authorized user fees and taxes) would be managed.

## Observations

- **Effect of Transfer of USACE Civil Works.** Proposal #3 and past proposals to transfer USACE civil works have focused on the potential efficiencies of having USACE water resource activities within the same organization as other water, natural resource, transportation, or land management activities. Part of the opposition to past proposals, especially in the late 1940s, included arguments that the agency's water resource projects and floodfighting and disaster response activities functioned as peacetime training and work for military engineers. Most USACE offices currently support both military and civil works activities; these dual-use offices include a number of USACE districts, research and development facilities, and geospatial information and analysis offices.
- **Consolidation of Agencies Involved in Natural Resource Regulatory Activities.** USACE regulatory activities are receiving significant attention in the context of Trump Administration efforts to expedite and facilitate federal approvals for infrastructure investments and private actions. Proposal #3 (along with proposal #6, related to a merger of Department of Commerce's National Marine Fisheries Service within DOI's Fish and Wildlife Service) would consolidate federal decision-making related to certain federal natural resource-related permits and approvals within the DOI. Thus, these proposals may in some ways be related.
- **Emergency Response.** Proposal #3 indicated that all USACE civil works activities other than navigation would be transferred to DOI. USACE's assignment to perform initial electric power repairs in Puerto Rico following Hurricane Maria in 2017 is an illustration of how the agency at times has been tasked with significant engineering assignments as part of federal emergency response activities. These responses at times have called upon both USACE military (e.g., 249<sup>th</sup> power battalion and military contracting authorities) and civil works authorities, personnel, and expertise.
- **Transfer to DOI.** DOI's current water resource responsibilities are in many ways different from USACE's civil works responsibilities, and separate House and Senate authorizing committees have jurisdiction over USACE civil works and DOI water resource development activities managed by the Bureau of Reclamation. The proposed transfer of USACE activities could alter DOI from being primarily a land and mineral resource management department to becoming a department with extensive water resource assets across the country, multiple water-related regulatory authorities, and a significant emergency response role.
- **Navigation Transfer to DOT.** When DOT was created in the mid-1960's, the Lyndon B. Johnson Administration specifically chose not to propose moving USACE navigation functions to DOT because of the multipurpose nature of water resource projects.<sup>53</sup> A 2012 GAO study that examined the roles of USACE and DOT for port-related infrastructure

---

<sup>53</sup> Message from the President, *A Proposal For A Cabinet-Level Department of Transportation Consolidating Various Existing Transportation Agencies*, H.Doc. No. 399, 89<sup>th</sup> Congress, 2<sup>nd</sup> Sess., March 2, 1966.

found limited coordination, and concluded that national freight and maritime system-wide investments would benefit from greater USACE involvement.<sup>54</sup>

## **Proposal #4: “Reorganize Primary Federal Food Safety Functions into a Single Agency, the Federal Food Safety Agency”<sup>55</sup>**

### **Brief Proposal Summary**

The Administration’s reorganization proposal would combine the food safety functions of the U.S. Department of Health and Human Services’ (HHS) Food and Drug Administration (FDA) and the U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS) into a single *Federal Food Safety Agency*. The new agency would be located in USDA.

### **Affected Departments, Agencies, or Programs**

The Administration’s reorganization proposal would affect FDA and FSIS—the primary agencies responsible for the safety of the U.S. food supply. Both agencies ensure that U.S. domestic and imported foods are unadulterated, wholesome, and accurately labeled. FDA has primary responsibility for most foods, except that FSIS is responsible for meat, poultry, processed egg products, and catfish.<sup>56</sup>

FDA regulates the safety of foods (including dietary supplements), cosmetics, and radiation-emitting products; the safety and effectiveness of drugs, biologics, and medical devices; and public health aspects of tobacco products. The Center for Food Safety and Applied Nutrition (CFSAN) within FDA oversees the safety of food (including dietary supplements) and cosmetic products, while the FDA’s Center for Veterinary Medicine (CVM) is responsible for ensuring that all animal drugs, feeds (including pet foods), and veterinary devices are safe for animals, are properly labeled, and produce no human health hazards when used in food-producing animals. CFSAN’s primary responsibilities include: the safety of substances added to food (e.g., food additives); safety of foods and ingredients developed through biotechnology; programs addressing health risks associated with foodborne, chemical, and biological contaminants; food and nutrition labeling, including restaurant menu and allergen labeling; the safety of dietary supplements, infant formulas, and medical foods; as well as industry outreach and consumer education. FDA’s Office of Regulatory Affairs (ORA) conducts field activities such as inspections, in collaboration with CFSAN.

The FSIS conducts continuous (all hours of operation) inspection at facilities that slaughter meat and poultry; and FSIS inspectors visit meat, poultry, and egg processing facilities during each shift. FSIS ensures that state meat and poultry inspection program standards are at least equivalent to federal standards, and that meat and poultry products imported into the United States are produced under standards equivalent to U.S. inspection standards. FSIS operates on a science-based inspection system, known as the Hazard Analysis and Critical Control Point (HACCP) system, which places emphasis on the identification, prevention, and control of foodborne hazards.

---

<sup>54</sup> GAO, *Maritime Infrastructure: Opportunities Exist to Improve the Effectiveness of Federal Efforts to Support the Marine Transportation System*, GAO-13-80, November 13, 2012.

<sup>55</sup> This section was prepared by Joel L. Greene, Analyst in Agricultural Policy, [jgreene@crs.loc.gov](mailto:jgreene@crs.loc.gov), 7-9877, Agata Dabrowska, Analyst in Health Policy, [adabrowska@crs.loc.gov](mailto:adabrowska@crs.loc.gov), 7-9455, and Sahar Angadjivand, Analyst in Agricultural Policy, [sangadjivand@crs.loc.gov](mailto:sangadjivand@crs.loc.gov), 7-1286.

<sup>56</sup> Catfish inspection was transferred from FDA to FSIS through provisions in the 2008 farm bill (P.L. 110-246) and the 2014 farm bill (P.L. 114-79). The final rule implementing the transfer was issued December 2015; implemented March 2016.

## Statutes

FDA primarily conducts its food safety mission under the authority of the Federal Food, Drug, and Cosmetic Act, as amended (FFDCA; 21 U.S.C. §§341 et seq.). The Food Safety Modernization Act (FSMA; 21 U.S.C. §§2201 et seq.) significantly expanded FDA's authorities over food safety, excluding meat and poultry products regulated by USDA. The Fair Packaging and Labeling Act (15 U.S.C. §1454) vested within FDA the authority to promulgate regulations for certain labeling of food (and other consumer commodities), and the Public Health Service Act (PHSA; 42 U.S.C. §§201 et seq.) authorizes FDA to award food safety grants. Other sources of FDA authority include the Federal Import Milk Act (21 U.S.C. §§141-149), the Federal Anti-Tampering Act (18 U.S.C. §1365), and the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. §1401). The FSIS meat, poultry, and egg products inspection activities are conducted under the authorities of the Federal Meat Inspection Act (FMIA; 21 U.S.C. §§601 et seq.), the Poultry Products Inspection Act (PPIA; 21 U.S.C. §§451 et seq.), and the Egg Products Inspection Act (EPIA; 21 U.S.C. §§1031 et seq.). FSIS may also conduct voluntary inspection under the Agriculture Marketing Act (AMA; 7 U.S.C. §§1621 et seq.).

To the extent a reorganization would transfer an agency or entity vested by law in a particular department to a different department, additional legislation might be needed. These food safety laws specifically delegate authority to HHS in the case of FFDCA and FSMA, and USDA in the case of the FMIA, PPIA, EPIA (FDA shares authority under EPIA for shell eggs).

## Administrative Actions

GAO has issued numerous reports and made recommendations on reorganizing the U.S. food safety oversight. Many of the recommendations suggest changes that agencies could make internally that would improve efficiency and strengthen coordination across agencies, and implementation of some of these might be possible through administrative action.<sup>57</sup>

If the Administration's proposed reorganization were to take place and CFSAN was no longer responsible for food safety activities, the FDA Commissioner would likely need to rename that office and reorganize its remaining functions (e.g., dietary supplements and cosmetics). Currently, FSIS applies FDA food additives requirements and "generally recognized as safe" (GRAS) determinations to FSIS regulated products. Assuming this expertise remains in FDA, the FDA Commissioner and USDA Secretary might need to revisit certain existing interagency agreements and memoranda of understanding (MOU) to facilitate the exchange of information related to food safety. Currently, FDA and FSIS have several MOUs with each other,<sup>58</sup> as well as with other federal agencies and foreign food safety authorities.

The Under Secretary of Agriculture for Food Safety<sup>59</sup> oversees the USDA food safety activities through the FSIS administrator. If a future statutory change directs that a new food safety agency be created within USDA, the Secretary of Agriculture may need to be granted authorities to organize the FDA functions and the FSIS meat and poultry inspection functions in a single agency.

## Uncertainties

The proposal states that the FDA would be renamed the "Federal Drug Administration" and would focus on drugs, devices, biologics, tobacco, dietary supplements, and cosmetics. However, it is not clear what

---

<sup>57</sup> See GAO reports: *Food Safety and Nutrition: FDA Can Build on Existing Efforts to Measure Progress and Implement Key Activities*, GAO-18-174, January 31, 2018; and *Food Safety: A National Strategy is Needed to Address Fragmentation in Federal Oversight*, January 13, 2017, GAO-17-74.

<sup>58</sup> For example, MOU 225-99-2001 facilitates the exchange of information between FDA and FSIS about establishments and operations that are subject to the jurisdiction of both agencies.

<sup>59</sup> USDA has not had a permanent Under Secretary of Agriculture for Food Safety in place since December 2013.

would happen to CFSAN and its other responsibilities. The Administration's proposal would keep cosmetics and dietary supplements within FDA's jurisdiction, but it does not address whether FDA would continue to have authority over food and nutrition labeling, food additives, infant formula, or medical foods. Additionally, the proposal does not address CVM's role in protecting the safety of animal feeds and whether those responsibilities would be delegated to the proposed Federal Food Safety Agency.

FDA's and FSIS's approaches to food safety vary greatly. FDA periodically inspects food facilities, and issues guidance and good manufacturing practices for the food industry to follow. FSIS inspects meat and poultry facilities whenever they operate to ensure they are following inspection regulations. The Administration's plan raises questions about whether or not there will be an effort to align the FSIS and FDA food safety systems. For example:

- FDA regulates foods on the basis of risk; FSIS uses HACCP. Would food safety regulations need to be adjusted for these two approaches?
- FDA has mandatory recall authority; FSIS does not. Would there need to be a reconciliation of the approaches?
- FDA CFSAN has expertise in food additives and GRAS. Does the current relationship between FDA and FSIS remain in place?
- The import inspection systems are different between the two agencies, with many arguing that the FSIS equivalency process is more rigorous than the FDA process. Would the import processes remain the same, or move in one direction or the other?

## Observations

Proposals to reorganize the oversight of the U.S. food safety system are not new. This issue has been debated ever since FDA was removed from USDA in the 1940s. Since then, a number of congressional and Administration initiatives have debated creating a single federal food safety agency.<sup>60</sup> Some Members of Congress have advocated for reforms to the nation's food safety system, particularly with respect to coordination and organization among federal agencies. Efforts to establish a single food safety agency were active from the 103<sup>rd</sup> Congress through the 114<sup>th</sup> Congress.<sup>61</sup> The Obama Administration also proposed to establish a single federal food agency, as part of its FY2016 budget request, which would have transferred existing food safety functions into a new agency within HHS.<sup>62</sup>

Establishing a single federal food agency has the support of GAO and the National Academies of Sciences, Engineering, and Medicine (NASEM),<sup>63</sup> among others within academia,<sup>64</sup> as documented in various studies and reports. However, the idea also has its detractors. While some view consolidation as

---

<sup>60</sup> For a full summary of these previous efforts, see CRS Report 98-400, *Food Safety: Recommendations for Changes in the Organization of Federal Food Safety Responsibilities, 1949-1997* (available upon request from CRS).

<sup>61</sup> H.R. 3751/S. 2350 and S. 1349 (103<sup>rd</sup> Congress); H.R. 2801/S. 1465 (105<sup>th</sup> Congress); H.R. 2345/S. 1281 (106<sup>th</sup> Congress); H.R. 1671/S. 1501 (107<sup>th</sup> Congress); H.R. 5259/S. 2910 (108<sup>th</sup> Congress); H.R. 1507/S. 729 (109<sup>th</sup> Congress); H.R. 1148/S. 654 (110<sup>th</sup> Congress); H.R. 6552 (111<sup>th</sup> Congress); and H.R. 609/S. 287 (114<sup>th</sup> Congress).

<sup>62</sup> OMB, *Fiscal Year 2016 Budget of the U.S. Government*, February 2, 2015, <https://www.gpo.gov/fdsys/pkg/BUDGET-2016-BUD/pdf/BUDGET-2016-BUD.pdf>.

<sup>63</sup> See, for example, National Research Council (NRC) and the Institute of Medicine (IOM), *Enhancing Food Safety: The Role of the Food and Drug Administration*, 2010.

<sup>64</sup> See, for example, Center for Agriculture and Food Systems at the Vermont Law School and the Harvard Law School Food Law and Policy Clinic, *Blueprint for a National Food Strategy*, February 2017.

an opportunity for improving the efficiency and effectiveness of food safety regulation, others worry that it could unnecessarily compromise day-to-day food safety efforts.<sup>65</sup>

## **Proposal #5: “Move Select USDA Housing Programs to HUD”<sup>66</sup>**

### **Brief Proposal Summary**

The plan proposes to move the U.S. Department of Agriculture (USDA) rural housing loan guarantee and rental assistance programs to the Department of Housing and Urban Development (HUD).<sup>67</sup> HUD currently also administers housing loan guarantee and rental assistance programs that can be used in rural areas, but are not limited to use in rural areas. The Administration’s plan contends this proposal would allow both agencies to focus on their core missions and, over time, further align the federal government’s role in housing policy and lead to administrative efficiencies.

The plan proposes to move the U.S. Department of Agriculture (USDA) rural housing loan guarantee and rental assistance programs to the Department of Housing and Urban Development (HUD). HUD currently also administers housing loan guarantee and rental assistance programs that can be used in rural areas, but are not limited to use in rural areas. The Administration’s plan contends this proposal would allow both agencies to focus on their core missions and, over time, further align the federal government’s role in housing policy and lead to administrative efficiencies.

### **Affected Departments, Agencies, or Programs**

- HUD. HUD would be tasked with administering the rural housing programs transferred from USDA.
- USDA, Office of Rural Development, Rural Housing Service (RHS). The Rural Housing Service currently administers a variety of single family and multifamily housing programs, as well as rural community facilities programs. The language in the proposal references transferring single family and multifamily loan guarantee and rental assistance programs to HUD. Programs administered by USDA that fit that description include:
  - Section 502 Single Family Housing Guaranteed Loan Program;
  - Section 538 Multifamily Housing Loan Guarantees program; and
  - Section 521 Multifamily Housing Rental Assistance.

### **Statutes**

- Title V of the Housing Act of 1949, as amended (42 U.S.C. Subchapter III-Farm Housing). The rural housing programs currently administered by USDA are all authorized under Title V of the Housing Act of 1949, as amended. Title V explicitly authorizes the Secretary of Agriculture to undertake the programs authorized under the Act. Thus, references to the Secretary of Agriculture may need to be amended in order to authorize the Secretary of HUD to undertake the program activities. Specifically:
  - The Section 502 Single Family Housing Loan Guarantee Program (42 U.S.C. §1472(h));

---

<sup>65</sup> Danny Vinik, “Who’s watching the chickens?” *Politico*, March 17, 2016, <https://www.politico.com/agenda/story/2016/03/federal-agency-food-safety-regulation-000068>.

<sup>66</sup> This section was prepared by Maggie McCarty, Specialist in Housing Policy, [mmccarty@crs.loc.gov](mailto:mmccarty@crs.loc.gov), 7-2163.

<sup>67</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], pp. 35-36.

- The Section 538 Multifamily Housing Loan Guarantees Program (42 U.S.C. §1485); and
- The Section 521 Rural Rental Assistance Program (42 U.S.C. §1490).

Additional relevant statutes may include:

- Section 562 of the Housing and Community Development Act of 1987 (42 U.S.C. 3608a), related to requiring the Secretary of Agriculture to report on the racial and ethnic characteristics of participants in rural and community development programs. It may need to be amended to refer to the HUD Secretary.
- Section 632 of the Rural Development, Agriculture and Related Agencies Appropriations Act of 1988 (42 U.S.C. 1479 note), related to square foot area exceptions in the Section 502 program. It may need to be amended to allow the HUD Secretary to establish those exceptions for the portion of the Section 502 program transferred to HUD.
- Section 925(b) of the Housing and Community Development Act of 1992 (42 U.S.C. 1471 note), related to authorizing the Secretary of Agriculture to establish performance goals for the major housing programs of the Farmers Home Administration. It may need to be amended to allow the HUD Secretary to set performance goals for the programs transferred to HUD.

USDA rural housing programs and HUD housing programs are generally under the jurisdiction of the same authorizing committees;<sup>68</sup> the programs' funding is generally under the jurisdiction of separate appropriations subcommittees.<sup>69</sup>

### **Administrative Actions**

It is possible that HUD and USDA could make administrative changes to better align their programs. For example, the Obama Administration convened a Rental Policy Working Group in 2010 with the aim of improving the HUD and USDA rental programs both in terms of administrative efficiency as well as tenant outcomes. The group came up with a set of ten areas in which administrative streamlining could take place, and some administrative alignment actions were undertaken as a result.<sup>70</sup>

### **Uncertainties**

Given that the proposal does not explicitly list the programs it intends to transfer, CRS assumed for purposes of this memorandum that the proposal only intends to transfer programs that could be categorized as rental assistance and loan guarantee programs, consistent with the language used in the proposal. It is possible the intent of the proposal is to encompass a broader set of rural housing programs. For example, USDA also administers certain direct loan programs and grant programs related to housing.

---

<sup>68</sup> The Financial Services Committee in the House and the Banking Committee in the Senate.

<sup>69</sup> USDA RHS programs are generally funded in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies subcommittee; HUD programs are generally funded in the Transportation, Housing and Urban Development, and Related Agencies subcommittee of the House and Senate Appropriations Committees.

<sup>70</sup> For more information about the initiative, including some of the policy changes resulting from the initiative, see [https://www.huduser.gov/portal/aff\\_rental/home.html](https://www.huduser.gov/portal/aff_rental/home.html).

## Observations

The Administration’s plan states that the proposed reorganization could be modeled after the draft FHA-Rural Regulatory Improvement Act of 2011.<sup>71</sup> The transfer proposed by Section 13 of that bill was broader in scope than the Trump Administration proposal appears to be, in that it would have transferred all rural housing programs (not just loan guarantees and rental assistance) from USDA to HUD. Further, it included the creation of a Deputy Assistant Secretary for Rural Housing at HUD to administer the transferred programs.<sup>72</sup>

The proposal also notes that GAO has issued various reports identifying fragmentation, overlap and duplication among USDA and HUD housing programs. Those reports have not directly recommended that USDA programs be transferred to HUD, but they have recommended that federal agencies “evaluate and report on the specific opportunities for consolidating similar housing programs, including those that would require statutory changes.”<sup>73</sup> According to GAO testimony in 2015, “RHS and other federal housing agencies have not yet taken other recommended steps to build on interagency efforts—for example, by evaluating specific opportunities for consolidating similar housing programs, including those that would require statutory changes.”<sup>74</sup>

## Proposal #6: “Merge the National Marine Fisheries Service (NMFS) with the U.S. Fish and Wildlife Service (FWS)”<sup>75</sup>

### Brief Proposal Summary

This proposal would merge the National Oceanic and Atmospheric Administration’s (NOAA) National Marine Fisheries Service (NMFS), also known as NOAA Fisheries, within the Department of Commerce with the Department of the Interior’s (DOI) U.S. Fish and Wildlife Service (FWS). The proposed merger would consolidate the administration of the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) in one agency and combine the Services’ science and management capacity among other potential effects.

### Affected Departments, Agencies, or Programs

The proposal includes:

- National Marine Fisheries Service – located in the Department of Commerce’s National Oceanic and Atmospheric Administration
- U.S. Fish and Wildlife Service – located in the Department of the Interior

---

<sup>71</sup> The draft bill, which is available on the website of the House Financial Services Committee ([financialservices.house.gov/UploadedFiles/fha\\_rural.pdf](https://financialservices.house.gov/UploadedFiles/fha_rural.pdf)), was the focus of a two-part committee hearing entitled “Legislative Proposals to Determine the Future Role of FHA, RHS, and GNMA” on May 25, 2011, and September 8, 2011.

<sup>72</sup> Note that while that draft bill has been the only bill to propose a full transfer of USDA rural housing programs to HUD that CRS identified in research for this memorandum, other legislative housing finance reform proposals have contemplated changes to the governance and structure of mortgage insurance programs that could affect the structure and governance of USDA rural housing programs.

<sup>73</sup> GAO, *Housing Assistance: Opportunities Exist to Increase Collaboration and Consider Consolidation*, GAO-12-554, August 2012, <https://www.gao.gov/products/GAO-12-554>.

<sup>74</sup> GAO, *Rural Housing Service: Progress on GAO Recommendations and Preliminary Observations on Loan Guarantee Risk Management*, GAO-15-625T, May 19, 2015, <https://www.gao.gov/products/GAO-15-625T>.

<sup>75</sup> This section was prepared by Harold F. Upton, Analyst in Natural Resources Policy, [hupton@crs.loc.gov](mailto:hupton@crs.loc.gov), 7-2264, and R. Eliot Crafton, Analyst in Natural Resources Policy, [rcrafton@crs.loc.gov](mailto:rcrafton@crs.loc.gov), 7-7229.

The proposal highlights consolidation of activities under the Endangered Species Act (ESA; 16 U.S.C. §§1531-1543) and Marine Mammal Protection Act (MMPA; 16 U.S.C. §§1361 et seq.), which are currently split between the two agencies based primarily on habitat. Other NOAA activities that may require integration into FWS programs could include habitat conservation, law enforcement, scientific research, international affairs, and aquaculture.

While the proposal highlights potential streamlining for ESA and MMPA implementation, each agency has other responsibilities that generally do not overlap. For example, NMFS has jurisdictional responsibility over marine fisheries and the NOAA seafood inspection program, while FWS has jurisdiction over the National Wildlife Refuge System and enforcement over several other environmental statutes. While these programs may not be impacted as directly, it is unclear how the merger may affect these programs.

In FY2017, there were 2,723 full time equivalents (FTEs) in NMFS of which 727 FTEs worked in the Office of Protected Resources (OPR). OPR accounted for \$183.3 million of NMFS's total discretionary and mandatory appropriations of \$987.7 million. In FY2017, FWS had 8,809 FTEs of which 1,490 worked in the Ecological Services activity, which includes many, though not all, of FWS's responsibilities related to protected species. Ecological Services received \$240.0 million of FWS's total \$2.935 billion in discretionary (\$1.520 billion) and mandatory (\$1.415 billion) appropriations.

## Statutes

Statutory changes may be required to relocate NMFS into the FWS and to change responsibilities from the Secretary of Commerce to the Secretary of the Interior.<sup>76</sup> Changes may also be required where specific responsibilities are delineated in statute. For example, the MMPA identifies specific species that are under the authority of each of the agencies.

According to MMPA definitions (16 U.S.C. §1362)

- 12(A) Except as provided in subparagraph (B), the term "Secretary" means -
1. (i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members other than walruses, of the order Pinnipedia, and
  2. (ii) the Secretary of the Interior as to all responsibility, authority, finding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

For ESA listed species, the delineation of responsibilities is not always as explicit, and jurisdiction is premised on the provisions included within Reorganization Plan Number 4 of 1970, which created NOAA within the DOC and transferred certain responsibilities from FWS and other departments to NOAA. NMFS has jurisdiction under ESA for most predominately marine species, including marine fish, anadromous fish, sea turtles, and invertebrates; FWS has jurisdiction over most freshwater and terrestrial species.<sup>77</sup>

NMFS implements a number of statutes based on authorities vested in the Secretary of Commerce. These include domestic fisheries programs (e.g., the Atlantic Coastal Fisheries Cooperative Management Act, 16 USC §§5101 et. seq.) and implementing legislation for various international agreements (e.g., the Atlantic Tunas Convention Act of 1975, 89 Stat. 385).

---

<sup>76</sup> For example, the Secretary of Commerce has the authority to approve, disapprove, or partially approve fishery management plans or amendments that have been developed by fishery management councils under the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. §1854(a)(3)).

<sup>77</sup> Anadromous species are born in freshwater, migrate to the ocean to mature, and return to the place of their birth to spawn.



## Administrative Actions

Administrative changes may be necessary to adjust responsibilities of current NMFS programs when they are integrated within FWS. However, the nature of these changes is difficult to determine without specific information such as the administrative structure of the new responsible entity. It is likely that the administrative structure of FWS may need to be modified to incorporate some NMFS programs while in other cases existing programs may be transferred but largely continue in their current form. Both agencies execute a number of grant programs and the transition may need to address ongoing, multi-year awards.

## Uncertainties

As mentioned above, the proposal does not provide a detailed analysis that describes how the organizational framework of FWS might be modified. For example, it is likely that some NMFS programs may be integrated into FWS programs to differing degrees. The proposal also lacks details regarding the timing of changes such as short-term and long-term goals. The long-term cost savings, potential benefits, potential challenges, or the costs of the initial transition period associated with the merger are uncertain given the level of detail in the current plan.

## Observations

As noted by GAO, the missions of these agencies have some broad similarities.<sup>78</sup> In addition to the ESA and MMPA, they implement programs with similar objectives in areas such as international activities, habitat conservation, scientific research, law enforcement, and aquaculture. However, the integration of these activities may be challenging because as in the case of ESA and MMPA, programs often differ with regard to geographic coverage, species and ecology, stakeholders, and other characteristics.

One potential challenge is the current relationship of NMFS and other line offices that would remain in NOAA. The Office of Marine and Aviation Operations (OMAO) supports ships and aircraft that provide a variety of services including the collection of fishery independent data. These data are used in developing NMFS stock assessments, which are essential for conservation and management of marine fisheries. Other programs in the National Ocean Service and Oceanic and Atmospheric Research line offices also overlap to varying degrees with NMFS activities including fisheries extension work, aquaculture, coral reefs, habitat conservation, and ocean and coastal research carried out by NOAA and through NOAA's Cooperative Institutes. It is difficult to anticipate what effects shifting NMFS to DOI may lead to with regard to future needs for transitioning capabilities or for interdepartmental collaboration.

## Proposal #7: "Consolidation of Environmental Cleanup Programs"<sup>79</sup>

### Brief Proposal Summary

The proposal would consolidate the environmental "cleanup" (i.e., remediation) of "abandoned mine sites" under the U.S. Department of the Interior (DOI) Central Hazardous Materials Program and the U.S. Department of Agriculture (USDA) Hazardous Materials Management Program into the U.S. Environmental Protection Agency (EPA) Superfund program. The proposal would apply to site remediation performed pursuant to the Comprehensive Environmental Response, Compensation, and

---

<sup>78</sup> GAO, *Government Reorganization Potential Benefits and Drawbacks of Merging the National Marine Fisheries Service into the Fish and Wildlife Service*, GAO-13-248, February 2013, <https://www.gao.gov/assets/660/652207.pdf>.

<sup>79</sup> This section was prepared by David M. Bearden, Specialist in Environmental Policy, [dbearden@crs.loc.gov](mailto:dbearden@crs.loc.gov), 7-2390.

Liability Act (CERCLA).<sup>80</sup> The proposal would appear to focus on abandoned *hardrock*<sup>81</sup> mining sites subject to this statute. The proposal does not include consolidation of the DOI Office of Surface Mining Reclamation and Enforcement that administers the reclamation of abandoned *coal* mining sites on federal and non-federal lands under Title IV of the Surface Mining Control and Reclamation Act (SMCRA).<sup>82</sup>

### Affected Departments, Agencies, or Programs

- **DOI Central Hazardous Materials Program.** The Bureau of Land Management and National Park Service within DOI administer the remediation of abandoned hardrock mining sites on lands within their respective jurisdictions.
- **USDA Hazardous Materials Management Program.** The U.S. Forest Service within USDA administers the remediation of abandoned hardrock mining sites on its lands.
- **EPA Superfund Program.** EPA administers sites on non-federal lands that it has designated on the National Priorities List (NPL) to evaluate whether remediation may be warranted, in coordination with the states. EPA oversees the remediation of NPL sites on DOI and USDA lands, but EPA does not perform the remediation. The states are the lead in overseeing the remediation of non-NPL sites on DOI, USDA, and other federal lands.

### Statutes

CERCLA applies to the release, or the substantial threat of a release, of a hazardous substance into the environment, and establishes liability for response costs (i.e., cleanup costs) to protect human health and the environment and for natural resource damages.<sup>83</sup> Pursuant to Section 107 of CERCLA, parties subject to this liability include current and former site owners and operators; persons who arranged for the disposal, treatment, or transport of hazardous substances released at a site; and persons who transported hazardous substances to a site for disposal or treatment and selected the site.<sup>84</sup>

The proposal would transfer federal responsibility under CERCLA to respond to releases of hazardous substances at abandoned hardrock mining sites on federal lands administered by DOI and USDA from these departments to EPA. Although the federal response authorities of Section 104(a) of CERCLA<sup>85</sup> are presidential authorities that generally may be delegated, Section 120 of CERCLA assigns responsibility for performance of the remediation of sites on federal lands to the department or agency with administrative jurisdiction of the lands.<sup>86</sup> Section 120 assigns EPA the responsibility to oversee the remediation of sites on federal lands performed by the department or agency with administrative jurisdiction of the lands, but not the performance of the remediation.

Principal provisions of Section 120 of CERCLA, and other related provisions, that establish the statutory framework for the remediation of sites located on federal lands are outlined briefly below.

---

<sup>80</sup> 42 U.S.C. §§9601-9675. For a broader discussion of CERCLA than presented in this memorandum, see CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by David M. Bearden.

<sup>81</sup> “Hardrock” minerals is a mining term that generally refers to gold, silver, copper, nickel, other metals, and other minerals found in igneous or metamorphic rock, in contrast to coal and other minerals found in softer sedimentary deposits.

<sup>82</sup> 30 U.S.C. §§1231-1244.

<sup>83</sup> CERCLA also applies to releases of other pollutants or contaminants that present an imminent and substantial danger to public health or welfare, but does not establish liability for such releases.

<sup>84</sup> 42 U.S.C. §9607.

<sup>85</sup> 42 U.S.C. §9604(a).

<sup>86</sup> 42 U.S.C. §9620.

- Section 120(a) applies the requirements of the statute to federal departments and agencies to the same extent as non-federal entities, including liability under Section 107.<sup>87</sup> Under the framework of this provision, the department or agency with administrative jurisdiction of a site on federal lands funds and performs the remediation acting as the site owner to fulfill the liability of the United States government, similar to owners of sites on non-federal lands that fund and perform the remediation to fulfill their liability. Under the proposal, EPA would fund and perform the remediation of abandoned hardrock mining sites on federal lands under the administrative jurisdiction of DOI and USDA, relieving these departments from acting as the site owners for this purpose.
- Section 120(e) requires federal departments and agencies with NPL sites on their lands to perform the remediation under an interagency agreement with EPA.<sup>88</sup> These agreements are the mechanism through which EPA oversees the remediation to determine whether the department or agency has satisfied applicable requirements of CERCLA. States may be parties to these agreements. Under the proposal, DOI and USDA would be relieved of the responsibility to perform the remediation of abandoned hardrock mining sites on their lands that are designated on the NPL, giving EPA the dual responsibility of performing the remediation of these sites and overseeing its own work.
- Section 120(a)(4) allows states to apply their own remediation laws to non-NPL sites on federal lands to compel the department or agency with administrative jurisdiction of the lands to comply with state requirements. Under the proposal, EPA would be responsible for performing the remediation of abandoned hardrock mining sites on DOI and USDA lands, potentially making EPA subject to state requirements in remediating these sites.
- Section 111(e)(3) generally prohibits the use of EPA Superfund appropriations to pay for remedial actions at sites on federal lands.<sup>89</sup> Congress has annually appropriated funding separately for the remediation of sites on federal lands to the department or agency that has administrative jurisdiction of the lands. The proposal would involve shifting funding from DOI and USDA to EPA for the remediation of abandoned hardrock mining sites on DOI and USDA lands. The proposal does not address how funding would be transferred among statutory appropriations accounts.

## Administrative Actions

A series of executive orders have delegated the presidential authorities of CERCLA to departments and agencies at sites on federal lands to carry out the statutory framework of responsibility in accordance with Section 120 of CERCLA and various other provisions of the statute. If Congress were to amend CERCLA to transfer responsibility for the remediation of abandoned hardrock mining sites on DOI and USDA lands to EPA, revisions to the following executive orders would be necessary to delegate the presidential response authorities, if consistency with such amendments to CERCLA were desired.

- E.O. 12580.<sup>90</sup>
- E.O. 13016.<sup>91</sup>
- E.O. 13308.<sup>92</sup>

---

<sup>87</sup> 42 U.S.C. §9620(a).

<sup>88</sup> 42 U.S.C. §9620(e).

<sup>89</sup> 42 U.S.C. §9611(e)(3).

<sup>90</sup> E.O. 12580, *Superfund Implementation*, January 23, 1987.

<sup>91</sup> E.O. 13016, *Amendment to Executive Order No. 12580*, August 28, 1996.

<sup>92</sup> E.O. 13308, *Further Amendment to Executive Order 12580, as Amended, Superfund Implementation*, June 20, 2003.

## Uncertainties

Various aspects of how the proposed consolidation would be implemented are not specified. For example, the negotiation of a memorandum of agreement between EPA and each department may be necessary to govern EPA access to lands outside its administrative jurisdiction to perform site remediation. Existing interagency agreements for NPL sites also may be subject to revision to implement changes in agency site responsibility. Existing oversight agreements with states at non-NPL sites also may be subject to revision to reassign responsibility to EPA. Although the proposal would shift program staff and funding from DOI and USDA to provide resources for EPA to assume responsibility for site remediation, this shift would be subject to annual appropriations by Congress. The capacity of EPA to assume this responsibility without placing competing demands among existing Superfund sites also would depend on the amount of funding.

## Observations

The Trump Administration stated that its proposal “would reduce inefficiencies, oversight costs, and indirect costs by consolidating the environmental assessment and cleanup activities under the agency with the most significant expertise.” The proposal states that DOI and USDA “inherited” abandoning mining sites over which these departments had no regulatory control prior to the mid-1970s, before mining reclamation requirements were in place. However, liability under CERCLA applies not only to site operators, but also to site owners. Congress added Section 120 to CERCLA in the 1986 amendments to the statute<sup>93</sup> to establish the statutory framework under which departments and agencies would act as the site owners or operators responsible for performing the remediation of sites on federal lands within their respective jurisdictions. President Reagan issued E.O. 12580 to delegate the presidential response authorities of CERCLA in accordance with these amendments. Since the enactment of the 1986 amendments and the issuance of E.O. 12580, EPA’s role on federal lands under the Superfund program has focused on oversight of the remediation. The proposed consolidation would have the effect of shifting owner liability of the United States government from DOI and USDA to EPA at abandoned hardrock mining sites on federal lands.

## Proposal #8: “Optimization of Humanitarian Assistance”<sup>94</sup>

### Brief Proposal Summary

This proposal does not prescribe specific actions, but rather a goal to “optimize Department of State (State) and U.S. Agency for International Development (USAID) humanitarian assistance to eliminate duplication of efforts and fragmentation of decision making.” It states that a more specific reorganization proposal will be submitted by State and USAID as part of their FY2020 budget requests.

### Affected Departments, Agencies, or Programs

The bulk of U.S. humanitarian assistance is currently provided by three U.S. government offices:

- The Bureau for Population, Refugees and Migration (PRM) at the State Department leads the U.S. response to refugee crises.
- The Office of U.S. Foreign Disaster Assistance (OFDA) at USAID coordinates humanitarian assistance to internally displaced people.

---

<sup>93</sup> P.L. 99-499, Superfund Amendments and Reauthorization Act of 1986.

<sup>94</sup> This section was prepared by Marian Lawson, Specialist in Foreign Assistance Policy, mlawson@crs.loc.gov, 7-4475.

- The Office of Food for Peace (FFP) at USAID provides food aid to both refugees and internally displaced people.

The Administration's proposal asserts that the current cross-agency structure results in gaps and incoherence in humanitarian response, inefficiency and duplication in providing aid, and reduced U.S. leverage within the international humanitarian system.

## Statutes

The bureaus and offices identified above as likely to be impacted by this proposal were not established by law. Though lack of detail in the proposed reforms makes it difficult to determine what statutory changes may be necessary for implementation, the Administration has broad authority to reorganize both the State Department and USAID. The Foreign Assistance Act of 1961 (FAA; P.L. 87-195) gives the President authority to carry out foreign assistance programs authorized by the Act (FAA Section 621). The President has delegated this authority to the Secretary of State in Executive Order 12163, and the Secretary of State delegated to the USAID Administrator authority for USAID programs in Department of State Delegation of Authority No. 293, as amended December 20, 2006.

## Administrative Actions

The Administration has not provided details on how it may reorganize humanitarian aid entities. In the past, Administrations have implemented restructuring through administrative actions such as executive orders, transfers of authority, and/or the reorganization processes described in USAID'S Automated Directives System (ADS) Chapter 102 or the State Department's Foreign Affairs Manual (1 FAM 014). To the degree that the more specific humanitarian assistance reforms that the Administration intends to propose next year are similar to past reorganizations, the Administration might seek to implement such reforms administratively as well.

## Uncertainties

The proposal does not include a plan of action, but states that State and USAID will submit a more specific reorganization proposal in their FY2020 budget. This leaves significant uncertainty in the near term about how the Administration may choose to implement such a reorganization.

## Observations

The FY2019 congressional budget justification stated the Administration's intent to consolidate OFDA and FFP within USAID, and the "Delivering Government Solutions in the 21<sup>st</sup> century" proposal includes such a consolidation as part of Proposal #10 (below), suggesting that this will likely be a key aspect of any reorganization of humanitarian assistance. Neither document says anything about the relationship between these USAID entities and the PRM Bureau at State.

For both FY2018 and FY2019 the Administration also proposed to eliminate the food aid program authorized through Title II of the Agricultural Trade Development and Assistance Act of 1954 (commonly referred to as "P.L. 480, Title II") implemented by FFP. The elimination of the food aid program, which constitutes the majority of FFP's work, could bolster the justification to eliminate this office and transfer remaining FFP activities into OFDA. But that proposal was not supported by Congress in FY2018 and is not supported in pending appropriations legislation for FY2019.

While a reorganization of humanitarian assistance programs may not require statutory changes, it appears that most such efforts would require congressional consultation. Section 7081 of Division K (State-Foreign Operations) of the Consolidated Appropriations Act of 2018 (P.L. 115-141) requires the State Department, USAID, and other agencies funded through the legislation to consult with the appropriate

committees of Congress prior to implementing a reorganization or redesign that would “expand, eliminate, consolidate, or downsize covered departments, agencies, or organizations, including bureaus and offices within or between such departments, agencies, or organizations, including the transfer to other agencies of the authorities and responsibilities of such bureaus and offices.”

## **Proposal #9: “Development Finance Institution”<sup>95</sup>**

### **Brief Proposal Summary**

The Administration proposes consolidating the U.S. government’s existing development finance tools, such as those of OPIC and the DCA component of USAID, into a new Development Finance Institution (DFI). In doing so, it aims to update and streamline these tools to address what the Administration views as current limitations. The Administration proposes that the new DFI be “reformed and modernized” to enable more effective cooperation with DFI partners; mitigate risks to U.S. taxpayers; and supplement, not compete with, the private sector. In addition to the existing tools of OPIC and DCA, the new DFI also would support development finance-related feasibility studies, project-specific grants, and equity investments. With the proposed new DFI, the Administration aims to leverage more private sector investment, offer strong alternatives to state-led models (such as those of China), create more innovative vehicles to open and expand markets for U.S. firms, and enhance U.S. taxpayer protections.

### **Affected Departments, Agencies, or Programs**

This proposal would be targeted towards the U.S. government’s development finance tools. It does not include an exhaustive list of affected departments, agencies, or programs, but provides two examples:

- **Overseas Private Investment Corporation (OPIC):** Often characterized as the official U.S. development finance institution, OPIC seeks to promote economic growth in developing economies by providing, on a demand-driven basis, project and other investment financing for overseas investments and insuring against the political risks of investing abroad, such as currency inconvertibility, expropriation, and political violence. OPIC provides loans, guarantees, and political risk insurance for qualifying investments by the U.S. private sector. The proposal appears to incorporate OPIC’s functions wholesale into the new DFI.
- **Development Credit Authority (DCA):** DCA is a component of USAID, which is the leading international humanitarian and development arm of the U.S. government. DCA supports bank lending for specific development purposes by employing the promise of U.S. government repayment typically of up to half of each loan in case of default. By lessening the liability to the lending bank, these partial loan guarantees aim to encourage banks to make loans for purposes and clients that they may have previously avoided as commercially unviable or too risky. Given USAID’s breadth of development work, it is possible that other parts of USAID may be brought into the proposed new DFI.

Inasmuch as the proposed DFI includes, but is not necessarily limited to, OPIC and DCA, other governmental entities might be folded into the new organization and, consequently, other departments or agencies might be affected by the implementation of this proposal.

The proposal may affect other agencies through interagency coordination. It calls for the new DFI to have “strong institutional linkages” to the Department of State and USAID to ensure that the DFI prioritizes

---

<sup>95</sup> This section was prepared by Shayerah Ilias Akhtar, Specialist in International Trade and Finance, [siliasakhtar@crs.loc.gov](mailto:siliasakhtar@crs.loc.gov), 7-9253.

projects that are critical to national security and development goals. Development goals are a core part of the calculus for OPIC and DCA, and viewed as a way to advance U.S. foreign policy and national security.

## Statutes

The statutes discussed below generally are cited as those authorizing the organizations and programs that appear to be involved in this proposal. In some cases the statutes vest in the President the authority to carry out certain functions. To the degree that some provisions might vest the authority to carry out certain functions in other specific officials or organizations and such functions are proposed to be transferred elsewhere, such statutes might need to be amended to implement the Administration's development finance consolidation proposal.

- **OPIC authorities:** OPIC is enabled under the Foreign Assistance Act (FAA) of 1961, as amended (P.L. 87-195; 22 U.S.C. §§2191 et seq.). It vests some powers in OPIC as a whole and some others in its leadership, as well as prescribes certain limitations on that power.
- **DCA authorities:** The appropriators cite FAA Section 635 (22 U.S.C. §2395) and Section 256 (22 U.S.C. §2212), dealing with microenterprise development credit, as the authority for DCA. In terms of USAID overall, the FY1999 appropriations act (P.L. 105-277, Section 1413) established USAID as an independent agency in 1998. Originally, USAID was established by the Secretary of State under State Department Delegation of Authority no. 104 as a consequence of Executive Order 10973, both issued on November 3, 1961, and both pursuant to the FAA of 1961. USAID was delegated responsibility for implementing multiple sections of the FAA, including broad authority to administer development assistance programs.
- To the degree that additional agencies or agency components not specified in the reform plan might be affected by the implementation of this proposal, additional related statutes might need to be amended, repealed, or otherwise modified.

## Administrative Actions

The consolidation of the U.S. government's development finance functions into a new DFI, particularly if including OPIC, likely could not be created through administrative action alone. However, some aspects of the proposal might be accomplished through administrative actions.

- **DCA:** The President has wide latitude with regard to the implementing structure for foreign assistance. Section 635 of the FAA of 1961 (22 U.S.C. §2395), one of the authorities for DCA noted above, allows the President to make loans, advances, and grants within the parameters of the legislation. It is possible that some changes to the DCA's organizational structure could be implemented through administrative action. This contrasts with USAID's microenterprise development functions, as there is a statutory requirement for an office of microenterprise development within USAID (22 U.S.C. §2211a(b)). Consolidation of this office into the new DFI (a change proposed in current bills on development finance consolidation, see below), likely could not be accomplished through administrative action alone.
- **DFI features:** Many of the features of the proposed DFI are similar to OPIC. For instance, the Administration envisions the new DFI as abiding by key principles of mitigating taxpayer risk and not displacing private sector resources. OPIC, by statute, already has risk mitigation requirements, and, by policy, aims for its activities to complement, rather

than compete with, the private sector. Other features, such as the ability to conduct feasibility studies, are similar to U.S. Trade and Development Agency (TDA) functions.

## Uncertainties

The Administration appears to view the Better Utilization of Investments Leading to Development (BUILD) Act of 2018 (H.R. 5105/S.2463), which was introduced on a bicameral and bipartisan basis in February 2018, as the primary vehicle for implementing its development finance consolidation proposal. The bills are nearly identical in many respects, but have some substantive differences that would need to be reconciled, chief among them being that H.R. 5105 would authorize the new DFI for seven years, while S. 2463 would authorize it until September 30, 2038. If Congress approves the BUILD Act, then an open question is whether the potential final version of the bill remains aligned with the President's goals (see below), as well as whether it sufficiently addresses the concerns he has raised about the bills' current treatment of interagency coordination and risk management.

## Observations

The BUILD Act would create a new U.S. International Development Finance Corporation (IDFC). Like the Administration's proposal, the legislation would consolidate OPIC's functions and the DCA. In addition, it would consolidate USAID's enterprise funds and development finance technical support functions into the new DFI. The Administration's reorganization plan expressed "strong support" for the BUILD Act, characterized it as "broadly consistent" with its proposal, and said it was working with Congress to make adjustments to the legislation through the legislative process.

The President's FY2019 budget proposed consolidating OPIC and other agency development finance functions, specifically noting DCA, into a new U.S. development finance agency to advance a number of U.S. policy objectives. In the budget, the President expressed overall support for the BUILD Act, but called for some modifications to enhance the proposed DFI's alignment with national interests and institutional linkages, as well as to address risk management and other concerns. The budget requests \$56 million in Economic Support and Development Fund (ESDF) money for development finance-related programming and authorizes "additional transfers" of funds from USAID.<sup>96</sup> OPIC leadership points to the ESDF as a possible way to fund grants by the new DFI.<sup>97</sup> This stands in contrast to the President's FY2018 budget, which requested \$60.8 million to manage OPIC's existing portfolio and start "orderly wind-down activities" of OPIC. Congress instead has continued to provide annual appropriations for OPIC, as well as a renewal of authority in appropriations legislation.

Development finance reorganization has been a longstanding theme in the development community, increasingly viewed as a way to enhance OPIC's impact and to make it more competitive with DFIs of other countries. The Administration notes that its proposal is similar to proposals in recent years by a range of think tanks, such as the Modernizing Foreign Assistance Network (MFAN) and Center for Strategic and International Studies (CSIS). Other groups, not cited in the proposal, such as Center for Global Development (CGD), have also advocated for development finance reorganization.

---

<sup>96</sup> ESDF is a proposed account that would encompass the presently existing Economic Support Fund, Development Assistance, Democracy Fund, and Assistance for Europe and Eurasia accounts.

<sup>97</sup> U.S. Congress, House Committee on Foreign Affairs, *Financing Overseas Development: The Administration's Proposal*, Testimony of Ray W. Washburne, President & CEO, OPIC, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., April 11, 2018.



## **Proposal #10: “Structural Transformation of Central Washington-Based Bureaus at the U.S. Agency for International Development”<sup>98</sup>**

### **Brief Proposal Summary**

This proposal calls for “an extensive, agency-driven structural reorganization of headquarters Bureaus and Independent Offices at USAID” as a means of promoting partner country self-reliance, U.S. national security, and effective and efficient use of U.S. foreign assistance.

### **Affected Departments, Agencies, or Programs**

The proposal calls for the following changes to USAID’s current organizational structure:

- A new position of Associate Administrator for Relief, Response and Resilience to manage humanitarian assistance, food security and resilience activities, and conflict and crisis prevention and response.
- A new Bureau for Humanitarian Assistance to consolidate FFP and OFDA. The Bureau would report to the new Associate Administrator for Relief, Response and Resilience.
- A new Bureau for Resilience and Food Security that would combine the existing Bureau for Food Security, the Office of Water, and the Climate Adaptation team to support four “centers” providing expertise to missions on agriculture, resilience, water and nutrition. This Bureau would also report to the new Associate Administrator for Relief, Response and Resilience.
- A new Bureau for Conflict Prevention and Stabilization to house the current Offices of Transition Initiatives, Civilian-Military Cooperation, Conflict Management and Mitigation Program, and Program and Policy Management, as well as staff focused on Countering Violent Extremism. The Bureau would report to the new Associate Administrator for Relief, Response and Resilience.
- A new Bureau for Development, Democracy and Innovation, which would incorporate the current Bureau for Economic Growth, Education and the Environment (E3), the Center for Democracy, Human Rights and Governance, the Global Development Lab, and the regional bureaus, among other components.
- A new position of Associate Administrator for Strategy and Operations to be accountable for all day-to-day management functions, reducing the number of people reporting to the Administrator and Deputy Administrator.
- A new Bureau for Policy, Resources and Performance to consolidate staff from the current budget and management offices. The Bureau would report to the Associate Administrator for Strategy and Operations.
- A merger of the current Bureau for Human Capital and Talent Management and the Office of Security into the Bureau for Management to simplify the operational structure. The Bureau would report to the Associate Administrator for Strategy and Operations.
- Reintegration of the Office of Afghanistan and Pakistan Affairs into the Bureau for Asia.

---

<sup>98</sup> This section was prepared by Marian Lawson, Specialist in Foreign Assistance Policy, mlawson @crs.loc.gov, 7-4475.

---

## Statutes

In the past, most USAID reorganizations have been implemented administratively. To the degree that the proposed reorganization is of a similar nature, the Administration might seek to implement this proposal administratively as well. The Foreign Assistance Act of 1961, as amended (FAA; P.L. 87-195), authorizes most foreign assistance programs and gives the President discretion to implement these programs through the agency or office of his choice (FAA Section 621). The FAA does specify that the President may appoint 12 officers with primary responsibility for implementing part 1 of the FAA (which encompasses most USAID activities), but the proposed changes would not appear to conflict with that provision (FAA Section 624).

## Administrative Actions

To date, it appears that the Administration has not implemented any of these proposed structural changes within USAID.

## Uncertainties

While the restructuring plan is detailed with respect to the organization of bureaus, uncertainty remains about the impact on certain smaller components. For example, the proposal notes that the “technical expertise” of the Global Development Lab would be brought under the new Bureau for Development, Democracy and Innovation, but also states that the proposed Bureau for Policy, Resources and Performance will consolidate staff from a number of current offices, including the Global Development Lab.

## Observations

Although the proposed restructuring does not appear to require congressional action, it appears that most such efforts would require congressional consultation. Section 7081 of Division K (State-Foreign Operations) of the Consolidated Appropriations Act of 2018 (P.L. 115-141) requires the State Department, USAID, and other agencies funded through the legislation to consult with the appropriate committees of Congress prior to implementing a reorganization or redesign that would “expand, eliminate, consolidate, or downsize covered departments, agencies, or organizations, including bureaus and offices within or between such departments, agencies, or organizations, including the transfer to other agencies of the authorities and responsibilities of such bureaus and offices.”

## Proposal #11: “Reorganizing the U.S. Office of Personnel Management”<sup>99</sup>

### Brief Proposal Summary

The Office of Personnel Management (OPM) is an “independent establishment<sup>100</sup> in the executive branch” with a director who is “appointed by the President, by and with the advice and consent of the

---

<sup>99</sup> This section was prepared by Barbara L. Schwemle, Analyst in American National Government, bschwemle@crs.loc.gov, 7-8655 (coordinator and Employee Services proposal); Katelin P. Isaacs, Specialist in Income Security, kisaacs@crs.loc.gov, 7-7355 (Retirement Services proposal); and Kathryn A. Francis, Analyst in Government Organization and Management, kfrancis@crs.loc.gov, 7-2351 (Human Resources Solutions proposal).

<sup>100</sup> 5 U.S.C. §104 provides that, for the purpose of Title 5 of the *U.S. Code*, “independent establishment” means “an establishment in the executive branch (other than the United States Postal Service or the Postal Regulatory Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment.”

Senate.”<sup>101</sup> It is not a Cabinet agency. As a central personnel agency, OPM carries out numerous functions related to human resources (HR) management for much of the executive branch. The Trump Administration’s plan proposes to realign these OPM functions: Employee Services (ES), which performs HR policy functions, would be placed under the Executive Office of the President (EOP); the Retirement Services (RS) program office would be moved over to the renamed “Government Services Administration” (GSA, formerly the “General Services Administration”); and Human Resources Solutions (HRS), which provides HR products and services to agencies on a reimbursable basis through individual program offices and user-centric IT systems that automate agency core HR functions, also would be transferred to the renamed GSA.<sup>102</sup> In suggesting the possible realignment of ES, the proposal seeks to “centralize policy decisions”<sup>103</sup> and “drive strategic management of the workforce” characterized by and “committed to: A holistic view of the Federal workforce; Assessment of innovations and contextual changes that drive the future of work; Data-driven policy development; Data analytics and strategic workforce management; Agency policy advice and change management assistance; and Identification and advancement of leading practice throughout the Federal Government.”<sup>104</sup> In general, the RS and HRS proposals: “would yield an organization with a focus on providing Government-wide services and solutions associated with the full Federal employee lifecycle.”<sup>105</sup>

### Affected Departments, Agencies, or Programs

- OPM/ES: Includes Recruitment and Hiring, Pay and Leave, Senior Executive Service (SES) and Performance Management, Partnership and Labor Relations, Veterans Services, Chief Learning Officer, OPM Human Resources, Strategic Workforce Planning, and Talent Management.
- OPM/RS: This proposal would affect the two programs administered by RS: the Civil Service Retirement System (CSRS) and the Federal Employees’ Retirement System (FERS). Currently, CSRS and FERS benefits are mandatory entitlements authorized in statute: Chapter 83 (CSRS) and Chapter 84 (FERS) of Title 5 of the *U.S. Code*. This office determines eligibility and administers benefits for almost 2.6 million federal retirees and their survivors under CSRS and FERS; these pension systems cover the majority of the civilian federal workforce.<sup>106</sup> Both CSRS and FERS include retirement, disability, and survivor components. CSRS and FERS benefits are financed through a dedicated federal trust fund, the Civil Service Retirement and Disability Fund (CSRDF).<sup>107</sup>

---

<sup>101</sup> 5 U.S.C. §1101 and 5 U.S.C. §1102.

<sup>102</sup> The plan also proposes to transfer Healthcare and Insurance to the renamed GSA. This issue is outside the purview of this memorandum.

<sup>103</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>, p. 53.

<sup>104</sup> *Ibid.*, p. 52.

<sup>105</sup> *Ibid.*, p. 53.

<sup>106</sup> For additional information on RS, see Office of Personnel Management, *Congressional Budget Justification and Annual Performance Plan, Fiscal Year 2019*, February 2018, <https://www.opm.gov/about-us/budget-performance/budgets/congressional-budget-justification-fy2019.pdf>, p. 32. (Hereinafter referred to as OPM Congressional Budget Justification.)

<sup>107</sup> In general, CSRS covers most civilian federal employees first hired before 1984; FERS covers most civilian federal employees first hired in 1984 or later. For additional information on CSRS and FERS, see CRS Report 98-810, *Federal Employees’ Retirement System: Benefits and Financing*. For additional information on the CSRDF, see CRS Report RL30023, *Federal Employees’ Retirement System: Budget and Trust Fund Issues*.

- OPM/HRS: Realignment of HRS to GSA could include the transfer of (1) five separate program areas that encompass multiple institutions and programs, and (2) six separate IT systems.<sup>108</sup>

## Statutes

- OPM's statutory authority is codified in Chapter 11 of Title 5 of the *U.S. Code* and establishes OPM as an "independent establishment in the executive branch" (5 U.S.C. §1101); provides for a Director, Deputy Director, and Associate Directors (5 U.S.C. §1102); vests the Director with specific functions and responsibilities (5 U.S.C. §1103); and provides for delegation of authority for personnel management (5 U.S.C. §1104). To the degree that implementation of the proposal entails the transfer of functions currently vested by statute in OPM or its Director to another agency, OPM's organic act might need to be amended.
- Other statutes reference OPM and its director. For example, 5 U.S.C. §8461 specifically sets out the "Authority of the Office of Personnel Management." Therefore, it seems likely that the retirement proposal would require statutory amendments throughout Chapters 83 and 84 of Title 5 in order to remove/edit references to OPM and the OPM Director (and potentially replace them with references to the new GSA).

## Administrative Actions

Under OPM's current statutory authority, the director generally has administrative discretion to organize the agency to carry out its functions. For example, in October 2017, the agency established new and restructured existing internal units. Changes included creating the new Office of Strategy and Innovation, establishing a new Employee Services/Outreach, Diversity, and Inclusion center, establishing the agency's internal Human Resources office as a stand-alone staff office, and realigning the USAJOBS program office from the Office of the Chief Information Officer to HRS and the Office of Actuaries to Healthcare and Insurance.<sup>109</sup>

## Uncertainties

The proposal stated that the placement of other OPM offices and functions would be determined later. These other offices and functions may include some 16 remaining agency functions (including Merit System Accountability and Compliance) that are included on OPM's current organizational chart.<sup>110</sup> In the absence of further details on this reorganization proposal, it is unclear whether there would be any additional changes to the composition and staffing levels of the current ES, RS, and HRS workforces.

---

<sup>108</sup> The program areas are Federal Staffing Group, HR Strategy and Evaluation Solutions, Center for Leadership Development, Training and Management Assistance Program, and Administrative Law Judges Program. The IT systems are USA Staffing, USA Hire, USA Performance, USA Survey, USALearning, and USAJOBS. OPM, "Human Resources Solutions, Program Divisions," at <https://www.opm.gov/about-us/our-people-organization/program-divisions/human-resources-solutions/>; OPM, "Technology Systems," at <https://www.opm.gov/services-for-agencies/technology-systems/>.

<sup>109</sup> OPM Congressional Budget Justification, p. 27.

<sup>110</sup> These functions may include: Office of the Director; Office of Communications; Merit System Accountability and Compliance; General Counsel; Office of Strategy and Innovation; Facilities, Security, and Emergency Management; Chief Information Officer; Chief Financial Officer; Congressional, Legislative and Intergovernmental Affairs; Equal Employment Opportunity; Human Resources; Office of Procurement Operations; Office of Small and Disadvantaged Business Utilization; Federal Prevailing Rate Advisory Committee; Suitability Executive Agent; and Office of Inspector General. See <https://www.opm.gov/about-us/our-people-organization/organizational-chart/>. Proposal #31 in the Trump Administration Reform Plan would transfer the National Background Investigations Bureau from OPM to the Department of Defense.

The proposal does not discuss the magnitude or integration of the possible realignment of HRS functions to GSA. Regarding magnitude, realignment could involve transferring *all*, or only *some*, of HRS program areas and IT systems (and related functions, staff, and funding) to GSA. Regarding integration, HRS program areas could be maintained as separate units within GSA, merged into a single GSA unit, or divided among multiple GSA units. Further, the proposal does not discuss potential impacts of the proposed realignment on HRS's funding structure. HRS is primarily financed through OPM's revolving fund, which can only be used for specific types of activities.<sup>111</sup> Consequently, the following remains unclear: (1) whether GSA possesses the statutory authority to use its existing revolving funds to finance HRS functions, and any statutory changes required to provide that authority; (2) how, and what portion of, OPM's revolving fund might be transferred to GSA to finance HRS functions; and (3) additional appropriations, if any, needed to finance HRS staffing and activities upon transfer to GSA.

## Observations

It does not appear that this reorganization proposal would make any changes to CSRS or FERS programs or benefits themselves. Rather, there would be a shift in the federal entity that administers these benefits from OPM to the newly reconstituted GSA. It is unclear whether there would be additional impacts, including unintended ones (i.e., beyond the intended administrative shift), on CSRS and FERS. Although OPM has administered FERS since its creation in 1986 under the Federal Employees' Retirement System Act of 1986 (P.L. 99-335), the initial creation of CSRS under the Civil Service Retirement Act of 1920 (P.L. 66-215) predated the existence of OPM. Prior to the creation of OPM under the Civil Service Reform Act (CSRA) of 1978 (P.L. 95-454), the Civil Service Commission administered the CSRS program.

OPM's budget request for FY2019 did not include the proposals that are suggested in the Administration's plan. The agency's funding is provided in the annual Financial Services and General Government (FSGG) Appropriations Act. Congress could include any directives for the agency in the FSGG bill.

Protection of the merit system has been a bedrock principle underlying the Civil Service and OPM's administration of HRM functions since the agency's creation.<sup>112</sup> The potential impact of the Administration's plan on the capacity of OPM to protect the merit system has been mentioned. For example, a former OPM Director expressed the views that "a central personnel agency" creates a "firewall between the agency and the political personnel at the White House as it relates to personnel practices, particularly hiring and other actions, to be sure the oversight for compliance for merit systems

---

<sup>111</sup> 5 U.S.C. §1304(e)(1). The law authorizes use of the revolving fund for, among other things, functions performed "on a reimbursable basis, including personnel management services performed at the request of individual agencies (which would otherwise be the responsibility of such agencies)." More detailed information on HRS funding's structure is available at OPM Congressional Budget Justification, pp. 15, 117, and 129.

<sup>112</sup> Section 3 of P.L. 95-454, Civil Service Reform Act of 1978, enacted on October 13, 1978, provides, in part: "(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices." (92 Stat. 1112) The U.S. Merit Systems Protection Board (MSPB) and the National Academy of Public Administration (NAPA), among others, have reiterated that protection of the merit system must continue to underlie federal workforce management. MSPB, "The Merit System Principles Keys to Managing the Federal Workforce," January 2017, <https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumber=1371890&version=1377261&application=ACROBAT>; and NAPA, "No Time to Wait: Building a Public Service for the 21<sup>st</sup> Century," July 1, 2017, <https://www.napawash.org/studies/academy-studies/no-time-to-wait-building-a-public-service-for-the-21st-century>.

principles is handled independently” and that the plan “at a minimum creates a perception that [the] firewall is gone.”<sup>113</sup>

The final staff report of the 1977 President’s Reorganization Project stated that: “Serious consideration was given to recommending that the new central personnel agency be placed in the Executive Office of the President, particularly in view of the close cooperation needed between the central personnel agency and the Office of Management and Budget. This was rejected, however, in accordance with the desire of the President to keep the Executive Office of the President as small as possible.” The staff report recommended an “independent administrative agency” with a director appointed by the President with Senate confirmation, and “Cabinet rank status.”<sup>114</sup>

## Proposal #12: “Consolidation of Veterans Cemeteries”<sup>115</sup>

### Brief Proposal Summary

Under this proposal, 11 specific cemeteries currently administered by the Department of the Army would be transferred to the Department of Veterans Affairs (VA), National Cemetery Administration (NCA) for inclusion in the national cemetery system. Of these 11 Army cemeteries, 10 are located at inactive Army facilities, and 1 is located at Fort Devens, which has been repurposed from an active facility to an Army Reserve Forces Training Area. These 11 transferred cemeteries would add to the 135 national cemeteries currently administered by the NCA. Other cemeteries administered by the Army and the other military departments, as well as the two national cemeteries administered by the Army—Arlington National Cemetery and Soldiers’ and Airmen’s Home National Cemetery—would not be affected by the proposal.

### Affected Departments, Agencies, or Programs

- Department of Defense (DOD), Department of the Army: would have 11 of its cemeteries transferred from its administration.
- VA, NCA: would receive 11 cemeteries transferred to its administration from the Army.
- Department of the Interior (DOI): may have existing authority to transfer land for the 11 cemeteries from the Army to the NCA.

### Statutes

The extent to which statutory changes may be needed is unclear; all potentially relevant statutory authorities have not been fully examined.<sup>116</sup> The National Cemeteries Act of 1973 established the NCA and the current NCA national cemetery system.<sup>117</sup> Section 6 of the act transferred to the NCA all national

---

<sup>113</sup> Linda M. Springer quoted in Eric Katz and Erich Wagner, “Proposed OPM Reorganization Draws Widespread Criticism,” *Government Executive*, June 22, 2018, <https://www.govexec.com/management/2018/06/proposed-opm-reorganization-draws-wide-criticism/149225/>. Springer was OPM Director during the second term of the presidency of George W. Bush.

<sup>114</sup> The President’s Reorganization Project, Personnel Management Project, Volume 1, Final Staff Report, December 1977, pp. 233-234, and Volume 2, Appendices to the Final Staff Report, Appendix VIII, p. 4. Title II, Sec. 201 (a) of P.L. 95-454 provided for an “independent establishment in the executive branch” and a director “appointed by the President, by and with the advice and consent of the Senate.” (92 Stat. 1119) The law did not place the position of director in the Cabinet.

<sup>115</sup> This section was prepared by Scott Szymendera, Analyst in Disability Policy, [sszymendera@crs.loc.gov](mailto:sszymendera@crs.loc.gov), 7-0014, and Carol Hardy Vincent, Specialist in Natural Resources Policy, [chvincent@crs.loc.gov](mailto:chvincent@crs.loc.gov), 7-8651.

<sup>116</sup> For example, CRS has not examined laws that specifically apply to the transfer or disposal of land owned or administered by the Department of Defense or military departments.

<sup>117</sup> P.L. 93-43; 38 U.S.C. §§2400-2414.

cemeteries administered at that time by the Army, with the exception of Arlington National Cemetery and Soldiers' and Airmens' Home National Cemetery. Section 6 also transferred any other cemeteries administered by the Army, Navy, or Air Force, "which the President determines would be appropriate in carrying out the purposes of this Act," except for the cemeteries at the service academies and the United States Naval Home Cemetery in Philadelphia. The act authorizes the NCA to accept lands for additional national cemeteries by purchase, gift, exchange, or transfer from other federal agencies<sup>118</sup> and gives the NCA the authority over "any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, or later acquired or developed by the Secretary."<sup>119</sup>

The act provides that all cemeteries administered by the NCA "shall be considered national shrines as a tribute to our gallant dead."<sup>120</sup> As this requirement to maintain cemeteries as "national shrines" does not apply to cemeteries administered by the military departments, the transfer of 11 cemeteries from the Army to the NCA may require the NCA to make capital or aesthetic improvements to these cemeteries to bring them up to the level of national shrines.

### Administrative Actions

The Secretary of the Interior may transfer jurisdiction over federal land from one agency to another in certain circumstances under the Federal Land Policy and Management Act (FLPMA).<sup>121</sup> The extent to which the Secretary's authority in FLPMA could be used for the 11 cemetery parcels at issue or other administrative authorities might be applicable to these parcels has not been fully analyzed.

Provisions of FLPMA provide authority to the Secretary of the Interior to withdraw federal lands in order to set aside, withhold, or reserve these lands for specific public purposes.<sup>122</sup> The Secretary also can withdraw lands for the purpose of "transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency."<sup>123</sup> In the case of lands administered by departments or agencies other than DOI, the Secretary of the Interior can make withdrawals only with the consent of the head of the department or agency concerned.<sup>124</sup>

Withdrawals under FLPMA are subject to various procedural requirements set out in the law and related regulations.<sup>125</sup> For instance, when the Secretary proposes a withdrawal, or an application is made by another agency or department head, the Secretary must publish a notice in the *Federal Register* and segregate the lands from the operation of the public land laws to the extent specified in the notice. This segregation lasts up to two years while the Secretary decides whether to make the withdrawal, a process that typically includes public comment.<sup>126</sup> Additionally, withdrawals are generally limited by certain temporal constraints regarding their maximum length of time, with factors including the size of the parcels and their intended use. Further, withdrawals exceeding 5,000 acres are subject to congressional approval procedures.<sup>127</sup>

---

<sup>118</sup> 38 U.S.C. §2406.

<sup>119</sup> 38 U.S.C. §2400(b)(3). The Veterans' Administration became the Department of Veterans Affairs in 1989.

<sup>120</sup> 38 U.S.C. §2403(c).

<sup>121</sup> 43 U.S.C. §§1701 et seq.

<sup>122</sup> 43 U.S.C. §1714.

<sup>123</sup> 43 U.S.C. §1702(j).

<sup>124</sup> 43 U.S.C. §1714(i). This provision does not apply to emergency withdrawals.

<sup>125</sup> The regulations are contained in 43 CFR Subpart 2300 and Subpart 2310.

<sup>126</sup> These provisions do not apply to emergency withdrawals under 43 U.S.C. §1714(e).

<sup>127</sup> 43 U.S.C. §1714(d) pertains to withdrawals of less than 5,000 acres. 43 U.S.C. §1714(c) applies to withdrawals of 5,000 acres

Since the enactment of the National Cemeteries Act of 1973, the NCA has once received a transfer of a cemetery from a military department. This involved the transfer of the cemetery at Fort Richardson in Alaska from the Army in 1984. This transfer was made by DOI (through the Bureau of Land Management) by a Public Land Order pursuant to FLPMA.<sup>128</sup> While administrative action under FLPMA was used in the 1984 cemetery transfer, CRS has not fully analyzed the extent to which the Secretary's authority in FLPMA to transfer administrative jurisdiction over federal land is specifically applicable to the 11 cemetery parcels in this proposal. Such analysis would require an examination of the size, location, and current management of the parcels and other authorities (e.g., laws and executive orders if any) governing the lands, among other variables. Further, CRS has not fully explored the extent to which other administrative authorities if any are applicable to the specific lands in question.

## Uncertainties

This proposal is specific and limited to the 11 named cemeteries. Thus, there are no additional uncertainties to discuss in this memorandum.

## Observations

This proposal was not included in the President's FY2018 or FY2019 budget submissions.

## Proposal #13: "Reorganizing Economic Statistical Agencies"<sup>129</sup>

### Brief Proposal Summary

The proposal calls for the reorganization of the U.S. Census Bureau (Census), the Bureau of Economic Analysis (BEA), and the Bureau of Labor Statistics (BLS), under the Department of Commerce's Under Secretary for Economic Affairs. Census and BEA are currently housed under the Under Secretary for Economic Affairs, while BLS is currently housed within the Department of Labor. The proposal suggests that reorganizing these three agencies under the Department of Commerce would achieve increases in operational efficiencies; reductions in respondent burden; enhancements in privacy protections; and improvements in data quality and availability.

### Affected Departments, Agencies, or Programs

- Department of Commerce: Census<sup>130</sup> and BEA<sup>131</sup>

---

or more. The procedure in 43 U.S.C. §1714(c) for Congress to terminate a withdrawal by concurrent resolution is legally questionable under *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983).

<sup>128</sup> Department of the Interior, Bureau of Land Management, "Alaska; Modification of Executive Order No. 8102, as Amended; Transfer of Administrative Jurisdiction from the Department of the Army to the Veterans Administration," 49 *Federal Register* 20815, May 17, 1984. The public land order also specified that the transfer of administrative jurisdiction was done in accordance with certain Alaska specific authorities.

<sup>129</sup> This section was prepared by Jeffrey Stupak, Analyst in Macroeconomics, [jstupak@crs.loc.gov](mailto:jstupak@crs.loc.gov), 7-2344; Jennifer D. Williams, Specialist in American National Government, [jwilliams@crs.loc.gov](mailto:jwilliams@crs.loc.gov), 7-8640; and Benjamin Collins, Analyst in Labor Policy, [bcollins@crs.loc.gov](mailto:bcollins@crs.loc.gov), 7-7382.

<sup>130</sup> Census is one of the federal government's principal statistical agencies. It produces numerous statistical products including: the decennial population census for apportioning U.S. House of Representatives seats and generating data used to redraw within-state legislative boundaries; the quinquennial economic census and census of governments; numerous recurring surveys, some for other federal agencies on a reimbursable basis; and population estimates and projections. Census data are used by the government, businesses, nonprofits, and researchers, and in numerous government formulas to allocate funding.

<sup>131</sup> BEA is one of the federal government's principal statistical agencies, and produces macroeconomic and industry statistics,



- Department of Labor: BLS<sup>132</sup>

## Statutes

Depending on the overall breadth of a final, more specific proposal, the required statutory changes could vary considerably. If the Administration wants only to transfer BLS to the Under Secretary for Economic Affairs, to join Census and BEA, the statutory changes could be more limited. Alternatively, if the administration wants to more fundamentally reorganize Census, BEA, and BLS, into a new singular agency under the Under Secretary for Economic Affairs, for example, the required statutory changes could be more extensive.

- 13 U.S.C. §§1-402: This portion of the *U.S. Code* establishes Census as part of the Department of Commerce and specifies its mission and major functions. The proposed reorganization would keep Census in the Department of Commerce, so no additional statutory changes might be required for Census. However, any reorganization that could affect the way Census meets its statutory responsibilities could possibly require statutory changes to the corresponding portions of 13 U.S.C. §§1-402.<sup>133</sup>
- 15 U.S.C. §§172-196: This portion of the *U.S. Code* establishes BEA as part of the Department of Commerce and specifies its major functions. The proposed reorganization would keep BEA in the Commerce Department, so no additional statutory changes might be required for BEA. However, any reorganization that could affect the way BEA meets its statutory responsibilities could possibly require statutory changes to the corresponding portions of 15 U.S.C. §§172-196.
- 29 U.S.C. §1-9b: This portion of the *U.S. Code* establishes BLS as part of the Department of Labor and lays out its major functions, including the responsibility to “acquire and diffuse among the people of the United States useful information on subjects connected with labor” as well as “collect, collate, report, and publish at least once each month full and complete statistics of the volume of and changes in employment.” With certain limited exceptions, Reorganization Plan No. 6 of 1950 “transferred to the Secretary of Labor all functions of all other officers of the Department of Labor and all functions of all agencies and employees of such Department.”<sup>134</sup> In order to reorganize BLS as part of the Department of Commerce, it appears that certain BLS-related functions might need to be statutorily transferred from the Department of Labor to the Department of Commerce.

---

including Gross Domestic Product. Numerous parties rely on data produced by BEA, including federal agencies, Congress, private industry, and researchers.

<sup>132</sup> BLS is one of the federal government’s principal statistical agencies, and produces labor economics research and statistics, including employment, compensation, and inflation data. Numerous parties rely on data produced by BLS, and its data are incorporated into formulas to determine federal funding for numerous federal programs.

<sup>133</sup> For example, Title 13, Section 131, provides for the quinquennial economic census; Section 141, for the decennial census of population; Section 161, for the quinquennial census of governments; and Section 181, for Census to produce population estimates in the years between decennial censuses.

<sup>134</sup> 5 U.S.C. Appx., Reorganization Plan No. 6 of 1950. Between 1932 and 1981, Congress periodically delegated authority to the President that allowed him to develop plans for reorganization of portions of the federal government and to present those plans to Congress under special expedited procedures. Presidents used this presidential reorganization authority regularly, submitting more than 100 plans between 1932 and 1984.

---

## Administrative Actions

The Secretary of Commerce has statutorily specified authority to reorganize and consolidate the statistical offices and bureaus within the Department of Commerce, which it appears currently would extend to both Census and BEA.

- 15 U.S.C. §1516: This portion of the *U.S. Code* grants the Secretary of Commerce control over the work of gathering and distributing statistical information relating to subjects confided to the Department of Commerce, and the ability to rearrange and/or consolidate any of the statistical bureaus within the Department of Commerce. As such, the Secretary of Commerce could reorganize and/or consolidate aspects of Census and BEA administratively, so long as those changes are not explicitly restricted by statute elsewhere.

## Uncertainties

The proposal suggests eliminating data products that may be considered duplicative and developing new data products using combined sources. It is unclear how data from a reorganized agency may be comparable to previous data. For example, many BLS data series have been developed and maintained as time series in which data from different periods can be compared, often going back decades. If the reorganized agency makes changes to data collection processes and estimation methodology, new data may not be comparable to prior estimates, though it may be possible to reconstruct prior data to be comparable to the new data.<sup>135</sup>

Additionally, many agencies are statutorily required to use certain statistical products from Census, BEA, and BLS to adjust funding allocations or other aspects of federal programs.<sup>136</sup> If, in an effort to consolidate statistical efforts, some of these products are retired or changed as part of the reorganization, additional statutory changes could likely be needed to update statutory references to these alternative statistical products.

## Observations

Census, BEA, and BLS are already statutorily directed to identify opportunities to eliminate duplicative work among the agencies, enter into joint statistical projects to improve data quality and reduce the cost of statistical programs, and share data between designated statistical agencies as part of the Confidential Information Protection and Statistical Efficiency Act of 2002.<sup>137</sup>

In checking the Administration's budget submissions for FY2018 and FY2019, CRS found no proposals comparable to this one. Nevertheless, it is the latest, not the first, proposal concerning the reorganization of Census, BEA, and BLS, as the following bills from the 104<sup>th</sup> Congress illustrate. None of these bills became law.

---

<sup>135</sup> For example, the Current Employment Statistics (CES) program at BLS changed industry classification systems in 2003. Some data were reconstructed going back to 1939 and all national data series were reconstructed going back to at least 1990. For more information, see Lyda Ghanbari and Michael D. McCall, "Current Employment Statistics survey: 100 years of employment, hours, and earnings," *Monthly Labor Review*, U.S. Bureau of Labor Statistics, August 2016, <https://www.bls.gov/opub/mlr/2016/article/current-employment-statistics-survey-100-years-of-employment-hours-and-earnings.htm>.

<sup>136</sup> For example, 7 U.S.C. §2036a specifies that funding for the Supplemental Nutrition Assistance Program is adjusted annually based on growth of the Consumer Price Index produced by the Bureau of Labor Statistics.

<sup>137</sup> P.L. 107-347.

- H.R. 2521 would have consolidated the three agencies into a new Federal Statistical Service.
- S. 929 would have abolished the Commerce Department, and, as amended, would have consolidated the Census Bureau and BEA with BLS under the Department of Labor.
- H.R. 1756, legislation similar to S. 929, would have transferred Census and BEA to the Department of Labor and consolidated BEA with BLS.
- The report<sup>138</sup> accompanying the House version of the FY1996 budget reconciliation bill, H.R. 2491, would have dismantled the Commerce Department, and transferred Census and BEA to a new Federal Statistics Agency. As passed by the House, the bill retained the provision to dismantle Commerce, but instead of establishing the new statistics agency, it would have transferred Census and BEA to the Labor Department. The conference agreement on the legislation did not include the provision to abolish Commerce. President Clinton vetoed the legislation on December 6, 1995.

Additionally, a proposal from the Obama Administration in 2012 would have consolidated Census, BEA, BLS, and a number of other agencies, into a new cabinet level department.<sup>139</sup>

GAO has also produced reports and offered testimony before Congress in the past discussing the structure of federal statistical agencies, the potential impact of consolidating some or all of them, and comparisons between the decentralized system of statistical agencies in the United States with more centralized systems abroad.<sup>140</sup>

## Proposal #14: “Consolidation of the Department of Energy’s Applied Energy Offices and Mission Refocus”<sup>141</sup>

### Brief Proposal Summary

The Trump Administration proposes three changes to refocus the mission of the Department of Energy (DOE): create a new Office of Energy Innovation; maintain the newly created Office of Cybersecurity, Energy Security, and Emergency Response (CESER); and create a new Office of Energy Resources and Economic Strategy.<sup>142</sup>

The Office of Energy Innovation would organize applied energy research under one office—instead of the existing structure that organizes offices by major energy technology or primary energy source. In this

<sup>138</sup> U.S. Congress, House Committee on the Budget, *Seven-Year Balanced Budget Reconciliation Act of 1995*, report to accompany H.R. 2491, 104<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 104-280 (Washington, DC: GPO, 1995).

<sup>139</sup> Alice Lipowicz, “Obama reorganization could affect at least 12 agencies,” *FCW*, 2012, <https://fcw.com/articles/2012/01/17/obama-reorganization-would-move-noaa-ntia-and-nist-as-well.aspx>.

<sup>140</sup> GAO, *Statistical Agencies: Statutory Requirements Affecting Government Policies and Programs*, GGD-96-106, 1996, <https://www.gao.gov/products/GGD-96-106>; GAO, *Statistical Agencies: Consolidation and Quality Issues*, T-GGD-97-78, 1997, <https://www.gao.gov/products/T-GGD-97-78>; GAO, *Statistical Agencies: Proposed Consolidation and Data Sharing Legislation*, T-GGD-98-91, 1998, <https://www.gao.gov/products/T-GGD-98-91>; and GAO, *Statistical Agencies: A Comparison of the U.S. and Canadian Statistical Systems*, GGD-96-142, 1996, <https://www.gao.gov/products/GGD-96-142>.

<sup>141</sup> This section was coordinated by Corrie Clark, Analyst in Energy Policy, [cclark@crs.loc.gov](mailto:cclark@crs.loc.gov), 7-7213, with contributions from Peter Folger, Specialist in Energy and Natural Resources Policy, [pfolger@crs.loc.gov](mailto:pfolger@crs.loc.gov), 7-1517; Mark Holt, Specialist in Energy Policy, [mholt@crs.loc.gov](mailto:mholt@crs.loc.gov), 7-1704; and Daniel Morgan, Specialist in Science and Technology Policy, [dmorgan@crs.loc.gov](mailto:dmorgan@crs.loc.gov), 7-5849.

<sup>142</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, June 21, 2018, pp. 63-65, <https://www.whitehouse.gov/omb/management/government-reform/> and <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>. (Hereinafter, Reform Plan.)

manner, the proposal objective is to “reduce a practice of picking energy technology winners and losers and pitting fuel types against one another for government funding and attention.”<sup>143</sup> Instead of “presupposing the fraction of the budget necessary for certain energy technologies or sources,” the proposed office would require all research and development (R&D) “to compete for resources in the new environment.”<sup>144</sup> Another objective of this proposed consolidation would be “to integrate the positive attributes of the [Advanced Research Projects Agency-Energy] ARPA-E model, such as coordination with industry and ability to incorporate cross-cutting research into program outcomes.”<sup>145</sup>

The proposal would separately maintain CESER “to address the critical mission” of U.S. energy security.<sup>146</sup> CESER is the federal government’s lead entity for energy sector-specific responses to energy security emergencies—whether caused by physical infrastructure problems or by cybersecurity issues.<sup>147</sup>

The Office of Energy Resources and Economic Strategy would manage the Department’s “monitoring, analyzing, and administering” of physical energy assets.<sup>148</sup> The office would provide “oversight and solution development for both the physical and market aspects of the nation’s energy system.”<sup>149</sup>

### Affected Departments, Agencies, or Programs

The proposal would affect only DOE, specifically several DOE offices and programs. To create the Office of Energy Innovation, the proposal would primarily consolidate assistant secretarial offices that are currently organized under the Office of the Under Secretary of Energy.<sup>150</sup> The assistant secretarial offices that would likely be consolidated under the proposal—and are generally considered to be the “applied energy programs”—include:

- The Office of Electricity (OE),<sup>151</sup>
- The Office of Energy Efficiency and Renewable Energy (EERE),
- The Office of Fossil Energy (FE), and
- The Office of Nuclear Energy (NE).

---

<sup>143</sup> Ibid., p. 64.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid. ARPA-E was authorized by the America COMPETES Act (P.L. 110-69) to support transformational energy technology research projects, and according to DOE budget documents, ARPA-E’s mission is overcoming long-term, high-risk technological barriers to the development of energy technologies. The Trump Administration’s proposed consolidation of DOE’s applied energy programs states that “it makes little strategic sense that this entity exists independent of DOE’s main applied research programs.”

<sup>146</sup> Ibid., p. 65.

<sup>147</sup> DOE, *Multiyear Plan for Energy Sector Cybersecurity*, March 2018, p.16, [https://www.energy.gov/sites/prod/files/2018/05/f51/DOE%20Multiyear%20Plan%20for%20Energy%20Sector%20Cybersecurity%20\\_0.pdf](https://www.energy.gov/sites/prod/files/2018/05/f51/DOE%20Multiyear%20Plan%20for%20Energy%20Sector%20Cybersecurity%20_0.pdf).

<sup>148</sup> Ibid., p. 65.

<sup>149</sup> Ibid.

<sup>150</sup> See DOE, *Organization Chart of the Department of Energy*, May 2018, <https://www.energy.gov/leadership/organization-chart>.

<sup>151</sup> According to the latest organization chart (May 2018), the Office of Electricity includes not only the applied R&D programs from the former Office of Electricity Delivery and Energy Reliability but also the Power Marketing Administrations (PMAs). The Trump Administration proposes to divest the federal transmission assets associated with the PMAs as discussed in “Divesting Federal Transmission Assets.”

The proposal also mentions ARPA-E although it is not clear whether the agency would be incorporated or whether similar functions would be incorporated into the Office of Energy Innovation. Other offices and programs not listed here may also be affected by the consolidation.

The proposal would also establish the Office of Energy Resources and Economic Strategy. The proposal does not indicate which existing offices or programs it would include.

## Statutes

The Department of Energy Organization Act (P.L. 95-91, 42 U.S.C. §§7101 et seq.) established the DOE in 1977. According to 42 U.S.C. §7132, principal officers in addition to the Secretary, shall include: a deputy secretary; three under secretaries—one for science, one for nuclear security, and one as prescribed by the Secretary; and a general counsel.<sup>152</sup> According to 42 U.S.C. §7133, the department shall have eight assistant secretaries whose functions shall be assigned by the Secretary. Within 42 U.S.C. §7133, those programs that are generally considered to be “applied energy programs” are grouped under “energy research and development functions.” As assistant secretaries can be assigned multiple functions under 42 U.S.C. §7133, it appears that the Secretary could consolidate those offices that are generally considered to be the “applied energy programs” under the Office of Energy Innovation and create the Office of Energy Resources and Economic Strategy. However, if the newly proposed offices include programs from offices that report to the Office of the Under Secretary of Science, the Office of the Under Secretary of Nuclear Security, or directly to the Secretary, statutory changes may be needed. For example, the Director of ARPA-E is required by statute to report to the Secretary.<sup>153</sup> Additionally, although “applied energy programs” have supported research on energy storage, energy storage research centers are managed through the Office of Science, as required by statute.<sup>154</sup>

The proposed changes to the department’s structure and approach might also necessitate changes to its annual appropriations, as discussed under “Observations,” below.

## Administrative Actions

Secretary Perry established CESER in 2018 “to address emerging threats to U.S. energy security from cyber, natural, or other sources.”<sup>155</sup> Per the authorities of the Department of Energy Organization Act (P.L. 95-91, 42 U.S.C. §7101 et seq.), it appears that the Secretary could similarly establish both the Office of Energy Innovation and the Office of Energy Resources and Economic Strategy.

## Uncertainties

The proposal does not describe all of the programs and offices that would likely be affected by the proposed reorganization. The proposal refers to “applied energy programs,” but it does not explain what is meant by that term. A search did not find a definition of the term by DOE; however, a similar term, “applied energy technology offices,” has been used by DOE to refer to EERE, NE, FE, OE, and the Office

---

<sup>152</sup> 42 U.S.C. §7132 was last amended by the Energy Policy Act of 2005 (P.L. 109-58).

<sup>153</sup> 42 U.S.C. §16538 establishes ARPA-E, and 42 U.S.C. §16538(d)(3) specifies that “the Director [of ARPA-E] shall report to the Secretary.” Furthermore, 42 U.S.C. §16538(d)(4) clarifies that “no other programs within the Department shall report to the Director.”

<sup>154</sup> According to the United States Energy Storage Competitiveness Act of 2007 (Subtitle D of P.L. 110-140, 42 U.S.C. §17231), energy storage research centers “shall be managed by the Under Secretary for Science of the Department.” Energy storage R&D is largely supported through OE (see DOE, *FY2019 Congressional Budget Request*, March 2018, vol 3, part 1, pp. 27-32).

<sup>155</sup> Reform Plan, p. 63.

of Indian Energy (IE).<sup>156</sup> According to the Administration's FY2019 budget request, IE does not explicitly conduct R&D but "achieves the mission by implementing policies, facilitating partnerships between tribes and private industry, and deploying technical assistance, education, and financial assistance."<sup>157</sup> It is uncertain whether IE (or other offices) would be included within the Office of Energy Innovation. ARPA-E is not generally considered an "applied energy program;" however, the proposal discusses integrating "positive attributes" of ARPA-E into the Office of Energy Innovation.

The proposal does not specify what programs and offices would be within the Office of Energy Resources and Economic Strategy. It is uncertain what the implications of creating this office would be to the overall organization of DOE.

## Observations

The proposed consolidation would enable energy R&D "to [achieve] nationally significant outcomes and breakthroughs, rather than incremental changes for individual fuel types that may have limited if any strategic connection to one another."<sup>158</sup> If the reorganization were to proceed as intended, the approach would need to be reconciled with the fuel- and technology-specific accounting structure that Congress has for DOE appropriations. Under the proposed approach with a focus on "early-stage R&D" and innovation, programs may leave technology demonstration and deployment to the private sector. The Trump Administration has previously proposed to reduce DOE funding for energy programs to focus on "early-stage R&D" in the FY2018 and FY2019 budget requests. The proposed reductions to energy R&D for FY2018 were not included in the Consolidated Appropriations Act, 2018 (P.L. 115-141), nor were they included in the House- or Senate-passed versions of the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019 (H.R. 5895).

CESER was established to address energy security issues and was proposed in the FY2019 budget request. The description of CESER in the House version of H.R. 5895 is consistent with the Administration's request. The description of CESER in the Senate version of H.R. 5895 includes R&D activities previously associated with OE.

Further information on the proposed Office of Energy Resources and Economic Strategy would be needed to make additional observations.

---

<sup>156</sup> DOE, *FY2016 Science and Energy Plan*, September 2015, pp. 11-12, <https://www.energy.gov/downloads/science-and-energy-plan>. DOE's FY2016 Science and Energy Plan defines "applied energy technology offices" as those that pursue "RDD&D [research, development, demonstration, and deployment] activities across a broad range of energy resources and energy-consuming sectors of the economy." This is consistent with testimony by Under Secretary Franklin Orr, "The FY 2016 Budget Request across the Department of Energy's applied energy portfolio is \$4.76 billion. This funding will support important advances in fossil energy, energy efficiency and renewable energy, grid modernization, cyber security, nuclear energy, and Indian energy policy and programs while increasing funding for new initiatives and priorities," U.S. Congress, House Committee on Appropriations, Subcommittee on Energy and Water Development, and Related Agencies, *FY 2016 Budget Hearing: Department of Energy's Applied Energy accounts*, Written Testimony of Under Secretary for Science and Energy Franklin Orr, 114th Cong., 1st sess., March 17, 2015, p. 3, <https://appropriations.house.gov/calendar/eventsingle.aspx?EventID=394035>.

<sup>157</sup> DOE, *FY2019 Congressional Budget Request*, vol. 2, March 2018, p. 185, <https://www.energy.gov/cfo/downloads/fy-2019-budget-justification>.

<sup>158</sup> Reform Plan, p. 64.

## Proposal #15(a): “Divesting Federal Transmission Assets<sup>159</sup>”

### Brief Proposal Summary

The Trump Administration proposes to sell the transmission assets owned and operated by the Tennessee Valley Authority (TVA) and the federal Power Marketing Administrations (PMAs).<sup>160</sup> The Department of Energy is home to three PMAs which operate and maintain transmission facilities: the Southwestern Power Administration (SWPA), the Western Area Power Administration (WAPA), and the Bonneville Power Administration (BPA). The fourth PMA, the Southeastern Power Administration (SEPA) does not operate or maintain transmission facilities.<sup>161</sup>

The proposal suggests that “eliminating or reducing” the federal government’s role in owning and operating transmission assets, and increasing the private sector’s role, would “encourage a more efficient allocation of economic resources and mitigate unnecessary risk to taxpayers.” The proposal recognizes that the federal role in electricity production and marketing largely dates back to the New Deal, when significant regions of the United States were not electrified. Over time, the federal government expanded its involvement to include owning and operating electric transmission assets through the TVA and PMAs. However, the Trump Administration believes that “a strong justification no longer exists for the Federal Government to own and operate these systems,” as “the private sector already meets the vast majority of the Nation’s electricity needs.”

The proposal calls for federal transmission infrastructure assets (lines, towers, substations, and/or rights of way) to be sold, with the private sector and/or state and local entities potentially taking over the transmission functions now provided by TVA and the PMAs. Federal electric power generating facilities would then contract with other utilities to provide transmission services for the delivery of federal power, similar to what SEPA does currently. According to the Administration’s FY 2019 budget justification, the sale of federal transmission assets would result in a net budgetary savings of \$9.5 billion, in total, over a 10-year window.<sup>162</sup>

### Affected Agencies, Departments, or Programs

TVA is a federal government corporation established by the Tennessee Valley Authority Act (16 U.S.C. §831) in 1933. The preamble to the TVA Act lists flood control, reforestation, and agricultural and industrial development as primary considerations in the original establishment of the TVA.

The Department of Energy (DOE) is the administrative home to three PMAs which operate and maintain transmission facilities.<sup>163</sup>

- Southwestern Power Administration (SWPA),
- Western Area Power Administration (WAPA), and
- Bonneville Power Administration (BPA).

---

<sup>159</sup> This section was prepared by Richard J. Campbell, Specialist in Energy Policy, at rcampbell@crs.loc.gov or 7-7905.

<sup>160</sup> OMB, *Delivering Government Solutions in the 21st Century*, Reform Plan and Reorganization Recommendations, June 21, 2018, pp. 66-67, <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>. (Hereinafter, Reform Plan)

<sup>161</sup> DOE, *Power Marketing Administrations*, 2018, <https://www.energy.gov/ea/power-marketing-administrations>.

<sup>162</sup> Reform Plan.

<sup>163</sup> The four PMAs were largely created between 1937 and 1977, and were transferred from the Department of the Interior to the Department of Energy through the Department of Energy Organization Act of 1977, P.L. 95-91.

TVA is independent of DOE, but has a similar mission in providing electricity at the lowest possible cost to the communities it serves. The PMAs largely market electric power produced by federal dams operated by the U.S. Army Corps of Engineers, and the Bureau of Reclamation (part of the Department of the Interior).<sup>164</sup> PMAs must give preference to public utility districts and cooperatives, and sell their power at cost-based rates set at the lowest possible rate consistent with sound business principles.

PMAs operate in 34 states. Their transmission assets consist primarily of more than 33,000 miles of high voltage transmission lines and 587 substations.<sup>165</sup>

PMA customers are responsible for repaying all power program expenses, plus the interest on capital projects. Since FY2011, power revenues associated with the PMAs have been classified as discretionary offsetting receipts (i.e., receipts that are available for spending by the PMAs), thus the agencies are sometimes noted as having a “net-zero” spending authority. Only the capital expenses of WAPA and SWPA require appropriations from Congress.<sup>166</sup>

Like the TVA, BPA is self-financed through electricity rates and receives no federal appropriations. Since passage of the Federal Columbia River Transmission System Act of 1974 (16 U.S.C. §838), BPA covers its operating costs through power rates set to ensure repayment to the U.S. Treasury of capital and interest on funds used to construct the Columbia River power system. BPA also has permanent Treasury borrowing authority, which it may use for capital on large projects. This money is also repaid, with interest, through electric power sales.

## Statutes

- Urgent Supplemental Appropriations Act (USAA; P.L. 99-349).

Under USAA Section 208, the executive branch is prohibited from spending funds to study or draft proposals to transfer from federal control any portion of the assets of the PMAs or TVA unless specifically authorized by Congress.

Under the TVA Act (16 U.S.C. §§831-831ee), TVA is a self-financing government corporation, funding operations through electricity sales and bond financing in order to meet its future capacity needs, fulfill its environmental responsibilities, and modernize its aging generation system. The proposed sale of TVA’s transmission facilities could potentially affect TVA’s electricity rates used for these purposes.

Electricity rates must cover power system operating costs, debt service, and other costs at rates as low as feasible.<sup>167</sup> TVA provides electricity in an area that is largely free of competition from other electric power providers. This service territory is defined primarily by two provisions of federal law: the “fence,” and the “anti-cherry-picking” provision. The fence limits the region in which TVA or distributors of TVA power may provide power.<sup>168</sup> The anti-cherry-picking provision limits the ability of others to use the TVA transmission system for the purpose of serving customers within TVA’s service area.<sup>169</sup> Depending upon the specifics of the divestiture, these provisions may need to be altered to allow for the proposed divestiture of TVA’s transmission assets.

---

<sup>164</sup> “The federal government has statutory responsibilities for monitoring, upkeep, and repair of federally owned dams. The two main federal agencies that own dams are the [U.S. Army Corps of Engineers] and the Bureau of Reclamation.... Together, these agencies own 34% of federal dams, including many large dams.” CRS In Focus IF10606, *Dam Safety: Federal Programs and Authorities*, by Charles V. Stern, Nicole T. Carter, Megan Stubbs, and Kelsi Bracmort.

<sup>165</sup> CRS Report R44895, *Energy and Water Development: FY2018 Appropriations*, by Mark Holt and Corrie Clark.

<sup>166</sup> *Ibid.*

<sup>167</sup> TVA Act, §15d(f).

<sup>168</sup> See [http://www.tva.gov/environment/reports/energyvision2020/ev2020\\_vol1ch01.pdf](http://www.tva.gov/environment/reports/energyvision2020/ev2020_vol1ch01.pdf).

<sup>169</sup> *Ibid.*



PMAAs sell their power, with preference given to publicly or cooperatively-owned utilities at the lowest possible rates to consumers consistent with sound business practices. The primary statutes governing PMAAs are:

- Flood Control Act of 1944, as amended (FCA; 16 U.S.C. §825s);
- The 1937 Bonneville Project Act (BPA; 16 U.S.C. §832c); and
- The Reclamation Project Act of 1939 (RPA; 43 U.S.C. §485h(c)).

These laws also stipulate a preference of public bodies for the sale of federal power. Selling federally-owned transmission assets could potentially affect the “lowest possible” rates of sale (BPA), and the preference for publicly or cooperatively-owned utilities to be the vehicle for sale of electric power produced by federal facilities (FCA, BPA, RPA).

### Administrative Actions

It is unclear what potential administrative actions might be undertaken in association with this proposal. In recent budgets, the Administration has proposed both divestiture of PMA transmission assets and reforms to PMA statutory requirements for cost recovery in ratemaking.<sup>170</sup> These proposals have not been enacted. However, the Administration may use the current proposal as an opportunity to undertake a broader strategic review of PMA and TVA activities.

The Trump Administration may also undertake a strategic review of the concept of PMA and TVA’s provision of electric power rates essentially at cost for preference customers.<sup>171</sup> This review could consider whether such requirements constitute either direct or indirect subsidies that the federal government would not continue to support. This potentially may be a step towards potential amendments to divest certain assets (i.e., transmission) of the TVA and the PMAAs.

### Uncertainties

The Administration’s proposal to divest transmission assets of TVA and the PMAAs states that the federal government’s role in owning and operating transmission assets creates “unnecessary risk for taxpayers” and “distorts private markets that are better equipped to carry-out this function.” However, there is no discussion of these potential risks, nor are the market distortions clearly discussed in the proposal.

While PMA transmission assets are currently operated to recover costs, private sector utilities or other for-profit entities interested in buying the divested transmission assets pursuant to this proposal would likely be seeking to make a profit on the investment. Some might suggest that this would likely lead to an increase in transmission rates. However, others might argue that private sector utilities could operate these transmission assets with greater efficiency and thereby maintain or reduce costs. Thus, it is unclear whether the sale of these assets would lead to changes in rates paid by PMA and TVA electricity customers.

### Observations

TVA, and most of the PMAAs, came into being because of the opportunity to generate electricity from dams built largely for flood control, irrigation or other purposes, and to promote small community and

---

<sup>170</sup> See OMB, *Budget of the U.S. Government: Major Savings and Reforms, FY2019*, <https://www.whitehouse.gov/wp-content/uploads/2018/02/msar-fy2019.pdf>, pp 134-135.

<sup>171</sup> Preference customers “largely consist of publicly-owned and cooperative-owned utilities, although small amounts of power are also sold to Indian tribes, federal entities, investor-owned utilities, and some industrial customers.” Energy Information Administration, *Federal Power Marketing Administrations operate across much of the United States*, June 12, 2013, <https://www.eia.gov/todayinenergy/detail.php?id=11651>.

farm electrification—that is, to provide electric service to customers whom it would not be profitable for a private utility to serve. PMAs largely sell to these preference customers, many of which are rural electric cooperatives and public power entities. The proposal for divestment may lead to for-profit entities buying the transmission assets, and these entities would likely seek a return on their investment in lieu of current cost-based rates for transmission services.

Proposals to sell all or part of the PMAs, and the TVA, are not new, and have been made by almost every President since Reagan, based mostly on budgetary considerations. In its FY2014 budget, the Obama Administration proposed a strategic review of the TVA, concerned that the agency was likely to incur substantial future costs (exceeding the agency’s \$30 billion statutory cap on indebtedness) as it sought to modernize its electric power generation plants and meet environmental requirements.<sup>172</sup>

## **Proposal #15(b): “Restructure the Postal Service”<sup>173</sup>**

### **Brief Proposal Summary**

The Trump Administration’s proposal identifies potential methods for restructuring the “United States Postal System,” either by reorganizing the United States Postal Service (USPS) in the form of a “sustainable business model” or by “prepar[ing]” the USPS for “future conversion” into a privately-held corporation.<sup>174</sup>

The proposal indicates the President’s Task Force on the United States Postal System (hereinafter, task force) will be responsible for detailing “recommendations for reform consistent with this reorganization proposal.”<sup>175</sup> The President established the task force on April 12, 2018, through Executive Order 13829.<sup>176</sup> Under the executive order, the task force is directed to, among other things, “evaluate the operations and finances of the USPS.”

The Administration’s proposal indicates that the task force’s recommendations will include both administrative and legislative changes “without shifting additional costs to taxpayers,” and that the task force’s report will be available by August 10, 2018.<sup>177</sup>

### **Affected Departments, Agencies, or Programs**

The scope of the Administration’s proposal is not yet clear. If the task force recommends restructuring USPS or making other changes that the Administration embraces, the proposed changes could affect some or all components of USPS and any agencies that work with or use the USPS.

---

<sup>172</sup> CRS Report R43172, *Privatizing the Tennessee Valley Authority: Options and Issues*, by Richard Campbell.

<sup>173</sup> This section was prepared by Meghan M. Stuessy, Analyst in Government Organization and Management, mstuessy@crs.loc.gov, 7-1281.

<sup>174</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], pp. 68-70. Two of the three pages of the Trump Administration’s proposal identify perceived advantages of privatization.

<sup>175</sup> *Ibid.*, p. 70.

<sup>176</sup> The President, “Executive Order 13829 of April 12, 2018: Task Force on the United States Postal System,” 83 *Federal Register* 17281-17283, April 18, 2018. For more information on Executive Order 13829 and the task force, see CRS Insight IN10893, *Establishment of Task Force on the U.S. Postal Service*, by Meghan M. Stuessy.

<sup>177</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 70.

## Statutes

Article I, Section 8 of the U.S. Constitution provides Congress with the power “To establish Post Offices and post Roads.”<sup>178</sup> Congress saw fit to address these topics in law at 39 U.S.C. §101(a), which states that “The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people.”<sup>179</sup>

Furthermore, 39 U.S.C. §101(a) stipulates that

The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

The Trump Administration’s proposal calls for a new model “that adequately finances USPS while meeting the needs of rural and urban communities, large mailers, and small businesses.”<sup>180</sup> A focus on these topics may relate to USPS’s “universal service obligation,” a term observers associate with statutory language in 39 U.S.C. §101(b), which states

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

The statutory provision states that USPS shall provide “a maximum degree of effective and regular postal services;” however, the statute does not define what the universal service obligation means in practice, nor does it determine what level of service is adequate for customer satisfaction.<sup>181</sup>

## Administrative Actions

The Administration’s proposal does not detail reforms to the USPS. The proposal, however, does mention that the President’s task force is to produce a report that includes recommendations for possible reform.<sup>182</sup> Under the executive order, the task force must evaluate and provide a report on the following:

1. the expansion and pricing of package delivery services;
2. letter mail volume decline;
3. the definition of the “universal service obligation”;
4. the role of USPS in rural areas; and
5. USPS's business model and operations.

---

<sup>178</sup> U.S. Constitution, Article I, §8.

<sup>179</sup> 39 U.S.C. §101(a).

<sup>180</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 68.

<sup>181</sup> For a discussion of issues associated with the universal service obligation, see United States Postal Service, Office of Inspector General, *RARC Report: Delivering the Best Customer Experience*, Report Number RARC-WP-18-003, Arlington, VA, December 13, 2017, at <https://www.uspsoig.gov/sites/default/files/document-library-files/2018/RARC-WP-18-003.pdf>.

<sup>182</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 70.

According to the executive order, the task force is to comprise no fewer than three individuals, including the Secretary of the Treasury as chair, the Director of OMB, and the Director of the Office of Personnel Management, or their designees. The chair, at his discretion, may also designate any other department or agency head to serve on the task force.

Notably, the executive order requires the task force to consult with the Postmaster General and the Chairman of the Postal Regulatory Commission (PRC). The executive order does not require that they be members of the task force, however. Similarly, the executive order directs the task force to “engage” with the Attorney General, the Secretary of Labor, and state, local, and tribal officials.<sup>183</sup>

## Uncertainties

As noted above, the proposal says the task force will release its report on August 10, 2018. At that time, it will be possible to identify uncertainties associated with the task force’s recommendations.

## Observations

In recent years, Congress has considered various proposals to reform the USPS. Legislative measures have included options such as shifting from six- to five-day delivery, restructuring the USPS employee workforce, and right-sizing the USPS’s postal facility footprint. For a more comprehensive discussion of these and other options to reform the USPS considered by recent Congresses, see CRS Report R44603, *Reforming the U.S. Postal Service: Background and Issues for Congress*, coordinated by Michelle D. Christensen.

The Postal Accountability and Enhancement Act of 2006 (PAEA) is the most recent structural reform of the USPS. The PAEA made numerous changes to the USPS, including but not limited to

- prohibiting the USPS from developing new nonpostal products;<sup>184</sup>
- requiring the USPS to prefund its retiree health benefits;<sup>185</sup> and
- dividing postal products into market dominant and competitive product categories.<sup>186</sup>

## Proposal #15(c): “DOT Mission Adjustments”<sup>187</sup>

### Brief Proposal Summary<sup>188</sup>

The Administration proposes numerous changes affecting the U.S. Department of Transportation (DOT). The proposal would transfer responsibility for administering separate surface transportation security

---

<sup>183</sup> CRS Insight IN10893, *Establishment of Task Force on the U.S. Postal Service*, by Meghan M. Stuessy.

<sup>184</sup> P.L. 109-435, Title I, §§101-102, 120 Stat. 3199. Regulations subsequently issued by the PRC state that a *postal service* “refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto” and that a *postal product* “means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.” 39 C.F.R. §3001.5(s)-(t).

<sup>185</sup> For additional details on the prefunding requirement and issues related to USPS pension funding, see CRS Report R43349, *U.S. Postal Service Retiree Health Benefits and Pension Funding Issues*, by Katelin P. Isaacs and Annie L. Mach.

<sup>186</sup> P.L. 109-435, Title I, §102, 120 Stat. 3200. For the full list of current market dominant and competitive products, see U.S. Postal Regulatory Commission, Mail Classification Schedule (with revisions through April 1, 2018), January 21, 2018, at <http://www.prc.gov/mail-classification-schedule>.

<sup>187</sup> This section was prepared by David Randall Peterman, Analyst in Transportation Policy, [dpeterman@crs.loc.gov](mailto:dpeterman@crs.loc.gov), 7-3267; John Frittelli, Specialist in Transportation Policy, [jfrittelli@crs.loc.gov](mailto:jfrittelli@crs.loc.gov), 7-7033; and Bart Elias, Specialist in Aviation Policy, [belias@crs.loc.gov](mailto:belias@crs.loc.gov), 7-7771.

<sup>188</sup> The proposal also includes general language about “potential alternative structures” for the Office of the Secretary of Transportation, but the Administration’s text lacks specificity and is not addressed further here.

programs from two Department of Homeland Security (DHS) agencies, the Federal Emergency Management Agency (FEMA) and the Transportation Security Agency (TSA), to DOT. It seeks to transfer two Coast Guard navigation programs to DOT, transfer two sealift programs from DOT to the Department of Defense (DOD), and privatize the St. Lawrence Seaway Development Corporation. Federal responsibility for air traffic control services would be shifted from DOT to a non-profit entity.

### **Affected Departments, Agencies, or Programs**

- FEMA currently administers the Transit and Rail Security Grant Program, which provided \$88 million in FY2018 for grants to transit and rail agencies to support security activities. This program would be transferred to DOT's Federal Transit Administration (FTA), which currently administers a variety of formula and competitive grant programs, mainly for construction of transit projects and procurement of buses and rail cars. Security activities are an eligible expense under some of the current FTA programs.
- TSA has a Surface Transportation Security program (\$129 million in FY2018), the activities of which include assessing threats to surface transportation facilities, encouraging security planning and threat reporting, overseeing compliance with certain rail security regulations, and disseminating best-practice guidance to transportation companies and government agencies. The Administration's reform proposal does not indicate which DOT agencies would assume responsibility for the activities currently carried out under the TSA program.
- The Bridge Alteration Program, which seeks to ensure that road and rail bridges over navigable waterways do not present safety hazards to navigation by issuing permits for bridge construction and funding modifications to existing bridges, and the Aids to Navigation Program, which constructs and maintains navigation channel markers, would be transferred from the Coast Guard to DOT. The proposal does not specify which DOT agency or agencies would assume responsibility.<sup>189</sup>
- Two military sealift programs, the Maritime Security Program, which provides operating subsidies to privately owned U.S.-flag commercial ships that provide DOD auxiliary sealift if called upon, and the Reserve Fleet Program, which owns a fleet of docked cargo ships that serve as a reserve fleet for military sealift, would be transferred to DOD.
- St. Lawrence Seaway Development Corporation, a DOT agency responsible for operating and maintaining two locks and the shipping channels on the U.S. side of the St. Lawrence Seaway, would be "spun off from the government."
- The air traffic control responsibilities of DOT's Federal Aviation Administration (FAA) would be assigned to a private entity. This would affect principally the Air Traffic Organization, which accounts for 35,000 controllers, technicians, engineers, and support personnel, or approximately three-quarters of the FAA's workforce.

### **Statutes**

The proposed changes are broadly described. Absent a more detailed plan from the Administration, it is not clear what statutory changes may be required. An illustrative selection of laws, listed below, may be relevant to considerations of transferring responsibilities. Depending on the details, changes in law might be necessary to implement the proposals.

---

<sup>189</sup> As discussed above under Proposal #3, this consolidation also would transfer responsibility for certain navigation projects, including port dredging and maintenance of the inland waterways, from the Army Corps of Engineers to DOT.

- 6 U.S.C. §§1131-1186 assigns responsibility for surface transportation security, including grant programs for public transportation, rail transportation, and over-the-road bus transportation, to DHS. Transferring this responsibility to DOT might require a change in these statutes.
- The Truman-Hobbs Act of 1940 (33 U.S.C. §§511-524) authorizes the “Secretary of the Department in which the Coast Guard is operating” (now, the Department of Homeland Security) to administer this program. Transferring this program to DOT might require a change in this statute.
- Aids to Navigation has been specifically tasked by Congress to the Coast Guard as one of the duties listed in 14 U.S.C. §2(4), §81. Transferring this mission to DOT might require changing this statute.
- The Maritime Security Act of 1996 (P.L. 104-239, codified at 46 U.S.C. §§53101–53111) directs DOT to establish the Maritime Security Program fleet. Transferring this activity to DOD might require a change to this statute.
- Congress has directed DOT to administer the government-owned Reserve Fleet, in consultation with the Navy (46 U.S.C. §57101). Transferring this function to DOD might require a change in this statute.
- The St. Lawrence Seaway Development Corporation (SLSDC) was prohibited from assessing tolls beginning in 1986, when Congress created the Harbor Maintenance Trust Fund. Since then, the Seaway’s infrastructure needs have been met from that fund (Water Resources Development Act of 1986, P.L. 99-662, Section 805(a)(4); 33 U.S.C. §998a). Without a statutory change, the SLSDC might not be able to use tolls as a means of providing a return on potential private investment in the Seaway.
- As written, it appears that the proposed reorganization of air traffic control could be attempted through legislative action similar to that proposed in H.R. 2997 (115<sup>th</sup> Congress), the 21<sup>st</sup> Century Innovation, Reform, and Reauthorization (AIRR) Act.<sup>190</sup> Specifically, Title II of that bill details a proposal to establish a non-profit, government-chartered air traffic services corporation by adding a subtitle to Title 49 of the *U.S. Code*. The proposed reorganization also might require repealing or modifying 49 U.S.C. §44502 regarding the acquisition, establishment, improvement, and maintenance of air navigation and air traffic facilities and personnel; 49 U.S.C. §44505, regarding FAA’s mandate to develop, alter, test, and evaluate air traffic and air navigation systems; 49 U.S.C. §44506, regarding research on automation and human factors in air traffic control, controller training initiatives, and air traffic controller hiring; 49 U.S.C. Chapter 447, to possibly include the proposed non-governmental air traffic corporation as an entity regulated and overseen by FAA for safety compliance; 49 U.S.C. Chapter 451, concerning alcohol and controlled substance testing to possibly include safety-related jobs carried out by employees of the proposed air traffic corporation; and 49 U.S.C. Chapter 481, to define and establish user fees to pay for air traffic and air navigation services.

## Administrative Actions

It appears that no administrative action has taken place to transfer responsibility for the transportation security and maritime programs discussed above. With respect to air traffic control, under existing authorities and mandates set forth in various laws and executive orders, FAA has:

---

<sup>190</sup> For more information about this subject, see CRS Report R43844, *Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control*, by Bart Elias.

- established the position of chief operating officer and created the Air Traffic Organization as a stand-alone business unit to handle air traffic operations;
- transferred more than 250 non-radar air traffic control towers to contractor operations;
- transferred all flight service stations which provide weather information and advisories to aircraft, except those located in Alaska, to contract service provider operations; and
- contracted out maintenance, support, and data services associated with certain air traffic technologies to private contractors.

All of these actions were initiated prior to the Trump Administration, but the pertinent executive orders and regulations might require revision under the reorganization proposal.

## Uncertainties

- Currently, the Coast Guard Bridge Alteration Program is funded from the general fund of the U.S. Treasury. The Trump Administration's plan does not specify whether transferring the program to DOT would also entail shifting its funding source to the Highway Trust Fund, which normally funds bridge repairs. In recent years the federal government's receipts from taxes dedicated to the Highway Trust Fund have been inadequate to fund the highway program as authorized by Congress, requiring annual transfers from the general fund into the Highway Trust Fund.
- The reorganization plan does not indicate which branch of the armed forces would assume responsibility for the two ship fleets now overseen by the Maritime Administration in DOT. In general, the Army is more reliant on sealift for equipment and supplies than is the Navy.<sup>191</sup>
- It is uncertain how the St. Lawrence Seaway would be financed under the Trump Administration proposal. The Seaway currently receives cross-subsidies from Harbor Maintenance Tax revenue collected on cargo at busier ports outside the Great Lakes region.
- The proposal mentions user fees to fund the proposed air traffic services corporation but does not discuss the fee structure or federal control of, or oversight of, fees. Legislation (e.g., H.R. 2997, 115<sup>th</sup> Congress) has proposed a corporate board representing stakeholder interests that would be responsible for setting fees and general governance, with DOT retaining limited oversight over fee-setting. Some aviation interests have strongly objected to user fees for air traffic control.
- Although the proposal alludes to FAA's primary role in safety oversight, it does not specify how FAA would regulate and oversee the safety aspects of air traffic services performed by the proposed corporation. The proposal does not discuss what roles the corporation and FAA would play in carrying out research and development to advance air traffic technologies and procedures.

## Observations

The Administration's rationale for transferring the surface transportation security responsibilities of TSA to DOT is that DOT already interfaces directly with the relevant stakeholders on safety matters. It is not clear why the Administration did not also propose transferring the aviation security responsibilities of TSA to DOT, since the rationale for transferring surface transportation security responsibilities would

---

<sup>191</sup> CRS Report R44254, *Cargo Preferences for U.S.-Flag Shipping*, by John Frittelli.

seem to apply to aviation security responsibilities as well. TSA was originally created as a sub-agency within DOT, and was subsequently transferred to DHS as part of that department's creation.

The reorganization proposal raises questions about the future of TSA's Visible Intermodal Prevention and Response (VIPR) teams. These teams, which are authorized by 6 U.S.C. §1112 to "augment the security of any mode of transportation at any location within the United States," conduct searches and inspections at airports as well as at surface transportation facilities. They have been controversial, but Congress has not agreed to proposals by the Obama and Trump Administrations to reduce or eliminate the VIPR program. It is unclear whether it would be transferred to DOT or remain with TSA as an aviation security function.

The Administration plan would transfer two functions of the Coast Guard that provide navigation-related infrastructure to DOT. The Coast Guard was housed within DOT before it was transferred to the newly created DHS in 2002 (P.L. 107-296). There was discussion at that time about leaving its infrastructure-related functions in DOT, but Congress decided to transfer the entire agency.

While the Administration's plan would consolidate transportation infrastructure for all modes under DOT by adding the maritime mode, in so doing it would break up the maritime safety mission currently consolidated under the Coast Guard. For the other modes, DOT performs both infrastructure funding and safety regulation. In the past, some Members of Congress have been dissatisfied with the Coast Guard's performance of its vessel safety inspection mission and have sought to transfer this function to the DOT.<sup>192</sup>

In 2001, the George W. Bush Administration proposed transferring operating subsidies for the Maritime Security Program fleet from DOT's budget to DOD's budget. Congress did not agree with this transfer.

In its FY2006 budget request, the George W. Bush Administration proposed reinstating tolls at the two U.S. locks on the St. Lawrence Seaway. The Harbor Maintenance Tax would no longer have been assessed on cargo passing through the seaway. The Bush Administration asserted that reliance on tolls would provide the SLSDC with a more flexible and stable source of funding, allowing it to function more like a private corporation. Congress expressed no interest in this proposal.<sup>193</sup>

In 1998, the Canadian government transferred management of its portion of the St. Lawrence Seaway from Transport Canada, the federal department of transportation, to a not-for-profit corporation controlled by Canadian shippers and carriers that use the seaway. The corporation has a 20-year contract and is allowed to increase tolls by 2% per year. Canada settled on this arrangement after finding no private entities interested in purchasing or leasing its portion of the seaway.

The Trump Administration proposed reorganization of air traffic control in its FY2018 and FY2019 budgets, and it outlined a descriptive proposal for reforming the air traffic control system in June 2017.<sup>194</sup> Earlier proposals to realign air traffic services, including proposals by the Clinton Administration in the 1990s as well as prior proposals dating back to the 1970s, sought to establish wholly government-owned corporations to provide air traffic services and did not recommend privatization. Although the Trump Administration notes that approximately 60 countries have corporate air traffic organizations, almost all have established these as wholly government-owned corporations. NavCanada, mentioned by the Administration as a specific model, is unique in that it is a completely privatized corporation.

---

<sup>192</sup> CRS Report R44566, *The Coast Guard's Role in Safeguarding Maritime Transportation: Selected Issues*, by John Frittelli.

<sup>193</sup> CRS Report R44664, *The Great Lakes-St. Lawrence Seaway Navigation System: Options for Growth*, by John Frittelli.

<sup>194</sup> See White House, *Fact Sheet: President Donald J. Trump's Principles for Reforming the U.S. Air Traffic Control System*, June 5, 2017, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-principles-reforming-u-s-air-traffic-control-system/>.



## Proposal #16: “Reform Federal Role in Mortgage Finance”<sup>195</sup>

### Brief Proposal Summary

The proposal would, if implemented, affect the operation of Fannie Mae<sup>196</sup> (officially, the Federal National Mortgage Association) and of Freddie Mac<sup>197</sup> (officially, the Federal Home Loan Mortgage Corporation) and convert them from government-sponsored enterprises (GSEs) to ordinary stockholder-owned corporations.<sup>198</sup>

Presently, the GSEs’ primary business is to purchase “conforming” home mortgages that conform to their standards from lenders and to issue mortgage-backed securities (MBS) backed by those mortgages. The GSEs guarantee the performance of their MBS. The purchase of the mortgages and sale of the MBS is known as the secondary mortgage market. The GSEs can keep a limited amount of MBS in their investment portfolios, and they sell the rest to institutional investors such as commercial banks and mutual funds.

Under current law and practice, the GSEs’ charters impose special responsibilities for serving inadequately served housing markets and grant them special privileges such as being exempt from most state and local taxation.

In September 2008, the GSEs entered conservatorship with their regulator, the Federal Housing Finance Agency (FHFA), as their conservator. As conservator, FHFA assumed “all rights, titles, powers, and privileges” of the GSEs and their officers, directors, and shareholders and, thus, has wide ranging control of the GSEs.<sup>199</sup> The FHFA, as conservator, is empowered to “take such action as may be necessary to put the [GSE] in a sound and solvent condition ... and preserve and conserve the assets of property of the [GSE].”<sup>200</sup> In addition to being placed into conservatorships, the Department of the Treasury has contracted to provide approximately \$200 billion in financial support to each GSE.

The proposal would allow other companies to obtain similar charters similar to the GSEs’ new charters and to compete with the GSEs on an equal footing. There would be a backup federal guarantee that all companies securitizing mortgages would pay for and receive. The proposal would have an unspecified, but experienced, regulator oversee this market.

### Affected Departments, Agencies, or Programs

Fannie Mae and Freddie Mac are not federal agencies, but they do have congressional charters, which would be cancelled and replaced under the proposal. The proposal does not specify what federal regulator would oversee the secondary mortgage market, so the FHFA, currently an independent regulator, would be affected by either losing its regulatory authority over the secondary mortgage market or having its duties modified to address the secondary mortgage market that would emerge after the proposal’s implementation.

---

<sup>195</sup> This section was prepared by N. Eric Weiss, Specialist in Financial Economics, [eweiss@crs.loc.gov](mailto:eweiss@crs.loc.gov), 7-6209.

<sup>196</sup> 12 U.S.C. §§1716 et seq.

<sup>197</sup> 12 U.S.C. §§1451 et seq.

<sup>198</sup> For background information on the housing finance system, see CRS Report R42995, *An Overview of the Housing Finance System in the United States*, by N. Eric Weiss and Katie Jones, and for information on Fannie Mae and Freddie Mac, see CRS Report R44525, *Fannie Mae and Freddie Mac in Conservatorship: Frequently Asked Questions*, by N. Eric Weiss.

<sup>199</sup> 12 U.S.C. §4617(b)(2)(A).

<sup>200</sup> 12 U.S.C. §4617(b)(2)(D).

Some government agencies compete with the two GSEs by providing mortgage insurance and guarantees on mortgages that meet each agency's standards. These include the Department of Housing and Urban Development's Federal Housing Finance Agency (FHFA), the Department of Veterans Affairs (VA), and the U.S. Department of Agriculture Rural Housing. These mortgages can be pooled into MBS guaranteed by the Government National Mortgage Association (Ginnie Mae). Ginnie Mae MBS compete with those issued by the GSEs. As a result of this competition, the entire home mortgage finance system could be affected by the proposal, if implemented.

A third housing GSE, the Federal Home Loan Bank system, could be affected by the changed structure of the secondary mortgage market.<sup>201</sup>

If implemented, the proposal would require the MBS issuers to pay HUD a fee to support affordable housing. The fee would be based on the volume of MBS outstanding and transferred through congressional appropriations. The proposal does not discuss the affordable housing programs.

Additional agencies and programs might be affected, depending on the details of the specifics of the proposal.

## Statutes

The GSEs' charters give them life in perpetuity. To implement the Administration's reform proposal, certain statutory provisions may need to be modified or repealed:

- Fannie Mae's charter (12 U.S.C. §§1716 et seq.) could be modified to provide for its new status.
- Freddie Mac's charter (12 U.S.C. §§1451 et seq.) could be modified to provide for its new status.
- FHFA's charter (12 U.S.C. §§4511 et seq.) could be amended to reflect its new role.

Depending on the specifics of the reform legislation, the authorizations for FHFA, VA, and USDA Rural Housing mortgage insurance and guarantees might need to be modified, including

- FHFA (12 U.S.C. §§1707 et seq.),
- VA (38 U.S.C. §§3701 et seq.), and
- USDA Rural Housing (40 U.S.C. §§1471 et seq.).

The Federal Home Loan Banks charter might need to be revised (12 U.S.C. §§ 1421 et seq.).

Legislation providing for chartering new entities to participate in the secondary mortgage market may need to be adopted.

## Administrative Actions

Although FHFA cannot administratively modify the GSEs charters and issue new ones, in its role as conservator FHFA has unusually broad powers over Fannie Mae and Freddie Mac. FHFA has taken a number of actions to reduce the risk to taxpayers from the GSEs. By statute, there are a number of reasons that FHFA can place a GSE in receivership, such as if it were to fail to meet certain financial standards for 60 days. Under these conditions, FHFA could appoint itself the receiver of the GSE and liquidate it through an administrative receivership process.

---

<sup>201</sup> For more information on the Federal Home Loan Bank System, see CRS Report RL32815, *Federal Home Loan Bank System: Policy Issues*, by N. Eric Weiss.

## Uncertainties

The Administration's housing finance reform proposal lacks specificity. In the absence of specific legislative language, many details necessary for a complete analysis are unknown.

## Observations

The proposal assumes that if the GSEs lose all of the benefits and market support obligations they receive from their current charters, the private sector would enter the secondary mortgage market as competitors. This would depend on how profitable it would be to enter the secondary mortgage market, which depends on how the Administration's proposal would be implemented.

## Proposal #17: "Create the Bureau of Economic Growth"<sup>202</sup>

### Brief Proposal Summary

Under this proposal, the Trump Administration seeks to consolidate federal economic development assistance programs and activities currently administered by several agencies and federally-chartered development authorities under a newly created Bureau of Economic Growth at the Department of Commerce (DOC). The proposed bureau would carry out three operational functions: planning, grant-making, and technical assistance.

### Affected Departments, Agencies, or Programs

The proposed Bureau of Economic Growth would administer federal economic development assistance currently awarded by other departments and agencies to states, local governments, tribes and regional development entities. The proposal specifically identifies the following agencies and programs as candidates for consolidation under the aegis of the new bureau:

- **Economic Development Administration (EDA) assistance programs.** The competitively awarded programs of the EDA in the Department of Commerce, including public works program, economic adjustment assistance, assistance to planning organizations, technical assistance, university centers, regional innovation strategies, technical assistance, and trade adjustment assistance to firms.
- **U.S. Department of Housing and Urban Development (HUD), Community Development Block Grants (CDBG).** Under the formula-based CDBG program economic development assistance is one of 27 eligible activities that may be undertaken at the discretion of the state or local government grantee. Assistance for economic development projects, on average, accounted for 6.5% of total CDBG expenditures during the last five fiscal years (FY2013 to FY2017).<sup>203</sup>
- **U.S. Department of Agriculture (USDA) Rural Development Administration (RDA) Programs.** Rural business and community facilities programs administered by USDA's Rural Development Administration (RDA).
- **The economic development function of federally-chartered regional development authorities and commissions.** Those entities specifically identified in the proposal

---

<sup>202</sup> This section was prepared by Eugene Boyd, Analyst in Federalism and Economic Development Policy, eboyd@crs.loc.gov, 7-8689.

<sup>203</sup> U.S. Department of Housing and Urban Development, *CDBG Expenditure Reports*, National Expenditure Reports (FY2001-FY2017), All CDBG Disbursements, Washington, DC, <https://www.hudexchange.info/programs/cdbg/cdbg-expenditure-reports/>.

---

include the Delta Regional Authority, the Denali Commission, and the Northern Border Regional Commission. Others not specifically noted in the proposal include the Appalachian Regional Commission, the Southeast Crescent Regional Commission, the Southwest Border Regional Commission, and the Northern Great Plains Regional Authority.

## Statutes

The proposal calls for the creation of a new agency within the DOC and the consolidation of authorities currently administered by other departments. This may be accomplished by enacting enabling legislation, but similar proposals have been pursued administratively in the past, on some scale, without congressional action, which will be discussed in the next section. The following is a list of statutes that might be amended or repealed should Congress act on the President's proposal:

- Title I of the Housing and Community Development Act of 1974, P.L. 93-383, as amended, which authorizes the CDBG program.
- Public Works and Economic Development Act of 1965, P.L. 89-136, as amended, which created EDA and its programs.
- Trade Act of 1974, as amended (19 U.S.C. §§2341 et seq.), which authorized the Trade Adjustment Assistance to Firms program, also administered by EDA.
- Consolidated Farm and Rural Development Act, as amended; Section 306, P.L. 92-419, 7 U.S.C. §1926; and the Consolidated and Further Continuing Appropriations Act, 2013, P.L. 13-6, which authorized the community facilities grant and loan programs; and Section 310B of Consolidated Farm and Rural Development Act, 7 U.S.C §1932, which authorized the rural business and industry loan programs.
- Subtitle V of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246), which authorized the establishment of three new regional economic development authorities: the Southeast Crescent Regional Commission, the Southwest Border Regional Commission, and the Northern Border Regional Commission.
- Appalachian Regional Development Act, P.L. 89-4, which authorized the establishment of the Appalachian Regional Commission.
- The Denali Commission Act of 1998, 42 U.S.C. §3121.
- Consolidated Appropriations Act for FY2001, Title V, which authorized the creation of the Delta Regional Authority (DRA).

## Administrative Actions

The Administration's proposal does not state what precise administrative actions, if any, could be taken for successful implementation. Given the scope of the proposal, enabling legislation has typically been enacted in the past to accomplish consolidation of programs and activities involving multiple agencies and authorities. However, a few administrative actions could be pursued in an effort to facilitate the creation of the new bureau and the coordination, if not the *de facto* consolidation, of some federal economic assistance programs without congressional actions. The following are illustrative actions that the Administration might attempt without congressional input.

- **Issue an Executive Order.** The Administration could issue an executive order establishing the bureau and delineating its mission. The Richard M. Nixon Administration took this action when it created what the Office of Minority Business
-

Enterprise, now the Minority Business Development Agency,<sup>204</sup> with the signing of Executive Order (E.O.) 11458 on March 5, 1969.<sup>205</sup> However, congressional action might be needed to fund agency activities.

- **Create Interagency Partnerships.** The Administration could encourage interagency collaboration through partnership arrangements. In 2009, the Obama Administration created the Partnership for Sustainable Communities involving environmental, transportation, housing, and land use policies and programs administered by the Department of Transportation (DOT), the Environmental Protection Agency (EPA), and HUD.<sup>206</sup> During the 111<sup>th</sup> Congress, Senator Christopher Dodd introduced S. 1619, a bill that would have created an office within HUD focused on sustainable communities and an independent Interagency Council on Sustainable Communities to ensure interagency coordination of federal policy on sustainable development. The bill was voted out of Committee without a written report and the Senate took no further action on this bill. In the absence of legislative progress, the Obama Administration sought annual appropriations to fund the initiative. With the passage of the Consolidated Appropriations Act of 2010, P.L. 111-117, Congress appropriated \$150 million for a Sustainable Communities Initiative to improve regional planning efforts that integrate housing and transportation decisions, and increase the capacity to improve land use and zoning. Three years later, the Obama Administration faced a congressional rebuke when Congress did not appropriate funds for the initiative.<sup>207</sup>

## Uncertainties

The Administration's consolidation proposal does not address a number of potential issues and concerns. For example, the proposal, which would transfer the economic development functions of several federally-chartered regional development authorities and commissions, specifically identifies the Delta Regional Authority (DRA), the Denali Commission (DC), and the Northern Border Regional Commission (NBRC), but does not address other federally-chartered regional development commissions and authorities. The Administration's FY2019 budget request identified these same entities as candidates for termination. The FY2019 budget request noted that the Administration would seek statutory authority to transfer outstanding grant obligations and associated administrative and oversight responsibilities for these three named entities to the Department of Agriculture. It is unclear whether the Administration would include the other regional development authorities in its consolidation proposal, particularly the Appalachian Regional Commission (ARC). The Administration's FY2019 budget document noted that the ARC "administers a \$50 million competitive grant program for communities adversely impacted by the declining use of coal to develop economic diversification activities in emerging opportunity sectors."<sup>208</sup> It is unclear if the Administration would fold this activity into its consolidation proposal.

---

<sup>204</sup> For history of the Minority Business Development Agency see CRS Report R45015, *Minority Business Development Agency: An Overview of its History and Current Issues*, by Eugene Boyd.

<sup>205</sup> Executive Order 11458, "Prescribing Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise," 34 *Federal Register* 4937, March 5, 1969.

<sup>206</sup> U.S. Environmental Protection Agency, *Partnership for Sustainable Communities Partnership Agreement*, Washington, DC, June 16, 2009, <https://19january2017snapshot.epa.gov/sites/production/files/2014-02/documents/dot-hud-epa-partnership-agreement.pdf>.

<sup>207</sup> U.S. Congress, House Committee on Appropriations, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs For The Fiscal Year Ending September 30, 2012, and for Other Purposes*, conference report to accompany H.R. 2112, 112th Cong., 1st sess., November 14, 2011, 112-284 (Washington: GPO, 2011), p. 317.

<sup>208</sup> OMB, *Appendix, Budget of the United States Government, Fiscal Year 2019*, Washington, DC, February 12, 2018, p. 1133, <https://www.whitehouse.gov/omb/appendix/>.

In addition, the proposed termination of the CDBG program raises questions about the future of the CDBG-DR program. Congress has used the latter program as the federal government's *de facto* long-term recovery vehicle to provide assistance to states, communities, and Indian tribes impacted by natural and man-made disasters.

The Administration's proposal also does not identify an appropriation level for its new initiative. In the past, consolidation proposals have raised concerns that the reorganization would be accomplished by an overall reduction in federal support for state and local government economic development efforts.

## Observations

At least three examples exist of efforts by previous administrations to consolidate federal economic and community development programs. In 1974, the Richard M. Nixon Administration successfully sought the consolidation of seven programs administered by HUD to create the CDBG program. In 2006, the George W. Bush Administration included a proposal in its FY2006 budget request that would have consolidated the activities of at least 18 existing community and economic development programs into a two-part grant program called "Strengthening America's Communities Initiative." Responsibility for the 18 programs, administered by five federal agencies, including HUD and EDA, would have been transferred to the Department of Commerce. A formal proposal was not introduced during the Bush Administration.

In 2010, the Obama Administration requested and Congress approved an appropriation for its Sustainable Communities Initiative (SCI), which was a partnership between DOT, EPA, and HUD, aimed at improving land use policy by coordinating federal transportation, housing and community development, and environmental program in support of local smart growth efforts. The SCI, received a \$150 million appropriation in FY2010 and FY2011, but Congress did not approve authorizing legislation. As a result, Congress prohibited the Administration from transferring funds in the absence of passage of authorizing legislation.

The Trump Administration's budget proposals for FY2018 and FY2019 call for the elimination and defunding of many programs, including CDBG and EDA assistance, as part of an effort to devolve responsibility for community and economic development to states and local governments.

A number of programs identified in the Administration proposal as economic development assistance do not have economic development as their core or primary focus or mission. EDA and its programs, which are awarded competitively, are solely dedicated to supporting regional (multi-jurisdictional) economic development projects. Conversely, under the CDBG program, which awards assistance by formula to approximately 1,240 state and local governments, economic development assistance accounted for only 6.5% of total expenditures of CDBG funds during the latest 5-year period from FY2013 to FY2018. In addition, the RDA's community facilities program does not directly support economic development projects. Instead, funds are typically awarded to small rural communities to finance essential community facilities including hospitals, town halls, police and fire facilities.<sup>209</sup>

---

<sup>209</sup> An essential community facility is defined as a facility that provides an essential service to the local community for the orderly development of the community in a primarily rural area. The definition does not include private, commercial or business undertakings. See description of the community facilities loan and grant program at <https://www.rd.usda.gov/programs-services/community-facilities-direct-loan-grant-program>.

## Proposal #18: “U.S. Public Health Service Commissioned Corps”<sup>210</sup>

### Brief Proposal Summary

The Commissioned Corps of the U.S. Public Health Service (USPHS)—the “Corps”—is a branch of the U.S. uniformed services, but is not one of the armed services.<sup>211</sup> It is based in the Department of Health and Human Services (HHS) and employs about 6,700 commissioned officers—health professionals who serve clinical and public health roles in more than 20 different agencies across the federal government. A given officer may serve in more than one agency over the course of his or her career.

In 2010, the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) eliminated a statutory cap on the number of commissioned officers in the Corps, and established authority for a Ready Reserve component, additional personnel who could be called up when needed to respond to public health emergencies.<sup>212</sup> This Ready Reserve component has not been implemented.

Under current law, Corps officers’ salaries are paid by the employing agency, while retirement, survivors’ and medical benefits are paid by HHS from a specific annual appropriation, based on cost estimates.<sup>213</sup> The estimated total cost of these benefits for FY2018 is about \$639 million.

The Administration proposes three actions with respect to the Corps:<sup>214</sup>

1. “Reduce the Size of the Corps...to no more than 4,000 officers. Specifically,...1) civilianize officers who do not provide critical...services or support in public health emergencies; 2) require that...officers initially work in a hard-to-fill area and continue to serve there, or deploy as needed in a public health emergency...; and 3) enforce standards for...eligibility and readiness.”
2. “Create a Reserve Corps...that would deploy either in a public health emergency or to backfill critical positions left vacant during Regular Corps deployments.”
3. “[R]equire agencies to pay the accruing retirement costs....” The proposal states that under this change, the full cost of employing Corps officers would be borne by the various employing agencies rather than through the specific appropriation to HHS described above.

### Affected Departments, Agencies, or Programs

The first two proposals involve agencies in HHS. The third would affect all federal departments that currently employ Corps officers, namely HHS, Agriculture, Commerce, Defense, Homeland Security, Interior, and Justice.<sup>215</sup>

---

<sup>210</sup> This section was prepared by Sarah A. Lister, Specialist in Public Health and Epidemiology, [slister@crs.loc.gov](mailto:slister@crs.loc.gov), 7-7320.

<sup>211</sup> For more information see “U.S. Public Health Service Commissioned Corps” in CRS Report R43560, *Deployable Federal Assets Supporting Domestic Disaster Response Operations: Summary and Considerations for Congress*; and the Corps website, <https://usphs.gov/>.

<sup>212</sup> See “U.S. Public Health Service (USPHS) Commissioned Corps” in CRS Report R41278, *Public Health, Workforce, Quality, and Related Provisions in ACA: Summary and Timeline*.

<sup>213</sup> Appropriations and authorizing legislation are presented in HHS, “FY 2019 General Departmental Management Congressional Justification: Retirement Pay and Medical Benefits for Commissioned Officers,” <https://www.hhs.gov/sites/default/files/fy2019-retirement-pay-and-medical-benefits-accessible.pdf>.

<sup>214</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, Washington, DC, June 2018, pp. 81-82.

<sup>215</sup> HHS, Commissioned Corps of the U.S. Public Health Service, Active Duty Station Map, <https://www.usphs.gov/aboutus/agencies/dutystationmap.aspx>.

## Statutes

Pursuant to Public Health Service Act (PHSA) Section 206(d) (42 U.S.C. §207(d)), Corps strength is set by funding provided in appropriations acts, and could be reduced in this way. However, the Surgeon General generally cannot involuntarily separate an officer except for cause related to individual performance. (PHSA Section 201(g)-(i); 42 U.S.C. §219(g)-(i)). In addition, “civilianizing” officers would involve clarifying matters of pay and benefits in their transition from Corps employment pursuant to U.S.C. Title 42 to civilian employment pursuant to U.S.C. Title 5. Legislation could be needed to achieve this.

The proposal to require employing agencies to pay for officer retirement and medical benefits would necessitate new administrative and accounting systems in the various employing departments noted earlier, as well as at HHS, to track officers’ postings—perhaps at several different agencies—throughout their careers. Legislation could be needed to make this change.

## Administrative Actions

The proposal does not clarify whether the proposed Reserve Corps would be different from the Ready Reserve component authorized in PHSA Section 203 (42 U.S.C. §204). The current authority could be implemented if appropriations were available.

## Uncertainties

Among other matters that are not fleshed out in the proposal are the competing goals of plugging “hard-to-fill” health workforce gaps and responding to emergencies. For example, it is proposed that a Reserve Corps could backfill the “hard-to-fill” roles when officers in those roles deployed for emergency response, but the specific nature of many of these roles may preclude easy substitution. In addition, the proposal to require employing agencies to pay officer benefits does not articulate an implementation approach for what could be a considerable administrative reorganization.

## Observations

In its FY2019 HHS departmental budget request, the Administration stated that it would subsequently offer a plan to modernize the Corps, but did not offer details at that time.<sup>216</sup>

The proposal states that Corps officers are more costly employees than are their civilian counterparts. This is based on an audit published in 1996,<sup>217</sup> which has been criticized for, among other things, failing to account for overtime (especially during emergency deployment), to which Corps officers are not entitled, and certain “intangibles” such as the merit of having a uniformed health workforce that can be involuntarily deployed during emergencies and wartime.<sup>218</sup> Sound evidence appears to be lacking to inform policymakers of the relative advantages of uniformed versus civilian federal health workers, and the possible effects of changes to the current system on cost, recruitment, retention, and other matters.

---

<sup>216</sup> HHS, “Justification of Estimates for Appropriations Committees, Fiscal Year 2019: General Departmental Management,” p. 58, <https://www.hhs.gov/sites/default/files/fy19-departmental-management-cj-4-10-18.pdf>.

<sup>217</sup> GAO, *Federal Personnel: Issues on the Need for the Public Health Service's Commissioned Corps*, GAO/GGD-96-55, May 1996, <https://www.gao.gov/assets/230/222611.pdf>.

<sup>218</sup> Muhiuddin Haider, *Study on the USPHS Commissioned Corps' Value to DHHS Mission to National and Global Health Priorities and Initiatives*, PHS Commissioned Officers Foundation, May 8, 2013, at <https://www.phscof.org/reports.html>. See also Lena H. Sun, “White House Wants to Cut this Public Health Service Corps by Nearly 40 Percent,” *Washington Post*, June 27, 2018.



## Proposal #19: “Improving NASA’s Agility through Increased Use of Federally Funded Research and Development Centers”<sup>219</sup>

### Brief Proposal Summary

This proposal would establish an accelerated process for determining whether one or more of the nine National Aeronautics and Space Administration (NASA) centers should be converted to, or host, a federally funded research and development center (FFRDC). FFRDCs are a special class of research institution, defined under and governed by the Federal Acquisition Regulation (FAR), that are owned by the federal government but operated by contractors.<sup>220</sup> The reform plan states that FFRDCs “can potentially allow the agency to be more agile in rapidly responding to changing needs and in recruiting and retaining scientific and technical expertise.” Under the proposal, NASA would provide an analysis with recommendations “to the White House” by August 2018 “so that the outcome can be reflected in future budget and policy plans and proposals.”

### Affected Departments, Agencies, or Programs

NASA currently operates nine government-owned centers that conduct a variety of programs, ranging from scientific and aeronautical research to the operation of rocket launch and mission control facilities:

- Ames Research Center, Moffett Field, CA
- Armstrong Flight Research Center, Edwards AFB, CA
- Glenn Research Center, Cleveland, OH
- Goddard Space Flight Center, Greenbelt, MD
- Johnson Space Center, Houston, TX
- Kennedy Space Center, Merritt Island, FL
- Langley Research Center, Hampton, VA
- Marshall Space Flight Center, Huntsville, AL
- Stennis Space Center, Hancock County, MS

All nine currently operate with a mix of civil service employees and on-site contractors.

In addition, NASA has the Jet Propulsion Laboratory, an existing FFRDC in Pasadena, CA, operated by the California Institute of Technology.

### Statutes

NASA was created in 1958 by the National Aeronautics and Space Act (P.L. 85-568) to conduct civilian space and aeronautics activities. It has broad authority “to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its work and on such terms as it may deem appropriate.”<sup>221</sup> The NASA centers are not specifically established in statute, although they are mentioned in statute in a variety of places.<sup>222</sup>

---

<sup>219</sup> This section was prepared by Daniel Morgan, Specialist in Science and Technology Policy, dmorgan@crs.loc.gov, 7-5849.

<sup>220</sup> For more information on FFRDCs, see CRS Report R44629, *Federally Funded Research and Development Centers (FFRDCs): Background and Issues for Congress*, by Marcy E. Gallo.

<sup>221</sup> 51 U.S.C. §20113(e).

<sup>222</sup> For example, 5 U.S.C. §20149 allows NASA to provide for medical monitoring, diagnosis, and treatment of former astronauts

Conducting the proposed analysis would not appear to require any statutory changes.

If a decision were ultimately made to convert an existing center to an FFRDC, the establishment of the new FFRDC might not require a statutory change, because the establishment of an FFRDC is generally a contracting process under the FAR. However, CRS has not identified any past example of a government-operated laboratory being converted to an FFRDC that could serve as a precedent for this process.<sup>223</sup>

## Administrative Actions

Conducting the proposed analysis could be undertaken through administrative action.

## Uncertainties

Other than directing NASA to draw on past studies and provide an analysis with recommendations, the reform plan does not specify how the analysis would be conducted.

## Observations

The reform plan cites the 2004 report of the Aldridge Commission, which stated as follows:<sup>224</sup>

The Commission proposes a new model for the NASA Centers. We feel that NASA should transition its Centers through an open, competitive process, to become Federally Funded Research and Development Centers (FFRDCs).

FFRDCs provide a tested, proven management structure in which many of the federal government's most successful and innovative research, laboratory, technical support, and engineering institutions thrive. NASA's Jet Propulsion Lab is currently so configured, as are the Department of Energy's flagship national laboratories. Typically, an FFRDC is managed under long-term federal contract by a university, a non-profit, or for-profit organization selected through open competition.

FFRDCs provide compensation and personnel benefits for their employees that are competitive with the private sector and have personnel flexibility similar to the private sector. They are entrepreneurial in their culture, yet they are prohibited from competing with the private sector to manage production programs. The value of FFRDCs is rooted in their technical competence, flexibility, independence, and objectivity in support of a given federal agency's technical projects. FFRDCs can perform work for non-government organizations so long as this work does not detract from their independence, objectivity, or create a conflict of interest.

This model would work well for NASA Centers, with the exception that some specific governmental functions (such as contracting, launch operations, and flight operations) should remain under direct federal management within given Centers.

---

through local health care providers if travel to the Johnson Space Center is unadvisable for health reasons; 51 U.S.C. §30103 directs NASA to provide annual budget information on each center's funding and workforce; and 51 U.S.C. §31502 directs NASA to ensure that adequate maintenance and upgrading is performed at the centers.

<sup>223</sup> There is, however, legislative precedent for statutory prohibitions *against* converting a government-owned laboratory to an FFRDC. For example, the House-passed versions of the Energy and Water Development and Related Agencies Appropriations Acts for FY2015 and FY2016 (H.R. 4923, 113<sup>th</sup> Congress, and H.R. 2028, 114<sup>th</sup> Congress) would have prohibited the use of funds to "transform the National Energy Technology Laboratory into a government-owned, contractor-operated laboratory." This provision was inserted by a floor amendment; it was not included in the enacted version of either bill.

<sup>224</sup> President's Commission on Implementation of United States Space Exploration Policy, *A Journey to Inspire, Innovate, and Discover*, June 2004, [https://www.nasa.gov/pdf/60736main\\_M2M\\_report\\_small.pdf](https://www.nasa.gov/pdf/60736main_M2M_report_small.pdf), pp. 23-24.

---

The Aldridge Commission had also considered the option of closing one or more of the NASA centers, but rejected that option as politically infeasible, whereas converting the centers to private-sector management would “get rid of waste and redundancy itself.”<sup>225</sup>

The NASA Authorization Act of 2005 directed NASA to conduct a study “to determine whether any of NASA’s centers should be operated by or with the private sector by converting a center to a Federally Funded Research and Development Center or through any other mechanism.”<sup>226</sup> No center was ultimately converted, however.

## **Proposal #20: “Management Consolidation of Federal Graduate Research Fellowships”<sup>227</sup>**

### **Brief Proposal Summary**

As described in the reform plan, this proposal would consolidate administration of smaller federal graduate research fellowships at multiple federal agencies under the National Science Foundation (NSF) with a goal of reducing the total cost to administer such fellowships.<sup>228</sup> The proposal states that NSF would coordinate the application, selection, and award processes for other agencies and be reimbursed by those agencies for the work.

### **Affected Departments, Agencies, or Programs**

- NSF would be tasked with (1) evaluating which types of programs and associated tasks would benefit from using the agency’s expertise and grants management infrastructure and (2) coordinating the fellowship application, selection, and award processes for other agencies. NSF’s own Graduate Research Fellowship Program (GRFP) might be impacted, if NSF personnel assume the responsibility for coordinating fellowship programs from other agencies.
- Other agencies and programs that administer graduate research fellowships might be impacted, pending the results of the inventory of existing federal graduate fellowship programs that the proposal describes as an initial step towards implementing the consolidation plan.

### **Statutes**

NSF currently has broad statutory authority to receive transfers of funds from other federal departments and agencies for scientific or engineering research or education, per 42 U.S.C. §1873(f), which states:

Funds available to any department or agency of the Government for scientific or engineering research or education, or the provision of facilities therefor, shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Foundation for such use as is consistent with the purposes for which such funds were provided, and funds so transferred shall be expendable by the Foundation for the purposes for which the transfer was made.

---

<sup>225</sup> See Patty Reinert, “Panel Dropped Idea of Closing NASA Field Centers,” *Houston Chronicle*, June 18, 2004, <https://www.chron.com/news/article/Panel-dropped-idea-of-closing-NASA-field-centers-1504887.php>.

<sup>226</sup> P.L. 109-155, Section 101(g).

<sup>227</sup> This section was prepared by Laurie Harris, Analyst in Science and Technology Policy, lharris@crs.loc.gov, 7-0504.

<sup>228</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], pp. 85-86.

For any agency that coordinates with NSF to conduct the application, selection, and award processes of the agency's fellowship program, an assessment of administrative and budgetary authorities, and potential restrictions of such authorities, would likely need to be conducted. If an agency has statutory restrictions on contracting with another agency to administer its fellowship program, a change in law might be needed in order to resolve any conflicts with current statute. In cases where an agency has authority to contract with other agencies to administer programs, and no agency-wide or program-specific restrictions exist in law, administrative actions might be sufficient to implement this proposal.

## Administrative Actions

NSF has a history of partnering with other agencies on science and education efforts. In cases where no statutory conflict is found, administrative actions to allow interagency coordination of fellowship program components might include memoranda of understanding, interagency agreements, or contracts. In determining whether such consolidation of administrative activities for fellowship programs will achieve the proposal's goals of reducing duplicative federal efforts and reducing costs, current uncertainties would likely need to be addressed, as discussed in the following section.

## Uncertainties

- **Which agencies are included in the plan?** The proposal states that “some [fellowship programs] are similar enough that their management could be consolidated at one agency, potentially resulting in lower costs.” However, no additional description for “similar enough” is provided. The proposal further states:

An initial step to implement this proposal would be to take a thorough inventory of existing graduate fellowship programs across the Federal Government. At the same time, NSF would evaluate which types of programs and associated tasks would benefit from using NSF's expertise and grants management infrastructure.

Because the agencies that might coordinate with NSF to administer graduate research fellowship programs are unspecified in the reform plan, CRS is unable to provide more definitive information as to whether such coordination would require changes in law or could be implemented solely by exercising existing authorities with administrative actions.

- **Would NSF processes work broadly across agencies?** A March 2018 report from GAO noted that many federal STEM education programs overlap in some way (service provided, group served, STEM field, program objective), but that “despite these similarities, overlapping programs may differ in meaningful ways.”<sup>229</sup> It remains an open question as to whether the processes and evaluation criteria used at NSF, which provides the majority of its support for non-biomedical basic science research and training, would translate well for other agencies, particularly those that are more focused on funding support for scientists and engineers working on later-stage research development and demonstration projects.

## Observations

As part of the FY2014 budget request, the Obama Administration proposed reorganizing STEM education programs in four key areas, including graduate fellowships, in its wider efforts to reorganize, consolidate,

---

<sup>229</sup> GAO, *Science, Technology, Engineering, and Mathematics Education: Actions Needed to Better Assess the Federal Investment*, GAO-18-290, March 23, 2018, <https://www.gao.gov/products/GAO-18-290>.

and streamline government. At NSF, the request proposed “consolidating an array of graduate fellowship programs, streamlining the application and award process, and reducing administrative costs.”<sup>230</sup> This was part of a larger reorganization plan for federal STEM education programs released one month after the FY2014 budget request.<sup>231</sup> Congressional reaction to these STEM education reorganization efforts was mixed, with generally broad conceptual support but also relatively wide criticism of the lack of detailed implementation plans.

## **Proposal #21: “Rationalize the Federal Real Property Approach”<sup>232</sup>**

### **Brief Proposal Summary**

This proposal would provide resources for assessing the benefits of relocating federal offices; establish a revolving fund for capital projects; streamline and incentivize the disposal of unnecessary assets; and revise leasing practices.

### **Affected Departments, Agencies, or Programs**

- Federal agencies subject to Title 40 of the United States Code: this proposal would alter the disposal authorities codified in Title 40, thereby affecting agencies that are required to disposal of excess and surplus property through the General Services Administration (GSA) and those who choose to do so even if they have their own disposal authority.
- Federal civilian agencies: this proposal would establish a revolving fund for large construction and renovation projects at federal civilian agencies. An appropriation of \$10 billion has been included in GSA’s FY2019 budget proposal.<sup>233</sup>
- All federal agencies: this proposal would direct GSA to collaborate with federal agencies in assessing the potential benefits of relocating offices, including the possible relocation of offices outside of the National Capitol Region.
- Federal agencies that acquire leases through GSA: this proposal would change GSA leasing practices, thereby affecting agencies that are required to obtain leases through GSA and those who choose to do so even if they have their own leasing authority.

### **Statutes**

This proposal, if implemented as discussed above, might necessitate changes to certain statutes, including the following:

- 40 U.S.C. §550: this proposal would eliminate public conveyance authorities, which currently require federal agencies to offer surplus federal property to state and local governments, and qualified non-profits for approved purposes prior to selling them.
- 40 U.S.C. §571: this proposal would permit agencies to retain net proceeds resulting from the sale of surplus property and use them for real property activities without further

---

<sup>230</sup> See *Budget of the U.S. Government*, Fiscal Year 2014, April 10, 2013, p. 161, at <https://www.gpo.gov/fdsys/pkg/BUDGET-2014-BUD/pdf/BUDGET-2014-BUD.pdf>.

<sup>231</sup> Committee on STEM Education, National Science and Technology Council, “Federal Science, Technology, Engineering, and Mathematics (STEM) Education: 5-Year Strategic Plan,” May 2013.

<sup>232</sup> This section was prepared by Garrett Hatch, Specialist in American National Government, [ghatch@crs.loc.gov](mailto:ghatch@crs.loc.gov), 7-7822.

<sup>233</sup> U.S. General Services Administration, *FY2019 Congressional Justification*, February 2018, at <https://www.gsa.gov/cdnstatic/GSA%20FY%202019%20CJ.pdf>.

appropriation. Currently, net proceeds must be deposited in the Treasury as miscellaneous receipts.

- 40 U.S.C. §592: this proposal would establish a new subaccount, called the Federal Capital Revolving Fund, within the Federal Buildings Fund. The revolving fund would provide a capital budget for major construction and renovation projects at civilian federal agencies.

### **Administrative Actions**<sup>234</sup>

- Revised Leasing Practices: this proposal may not necessarily alter GSA’s leasing authorities but would require the agency to (1) execute longer, non-cancelable lease terms to secure lower rates, and (2) perform a more rigorous cost analysis before taking actions to reduce unneeded space.
- Relocation Analytics: this proposal would require GSA to provide agencies with the tools and data necessary to enhance relocation assessments.

### **Uncertainties**

It is unclear whether the Administration intends to mandate that GSA provide a “rigorous cost analysis” as part of the prospectus it submits to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works for construction, acquisition and lease projects that exceed a certain threshold. If so, the Administration might propose amending GSA’s prospectus requirements at 40 U.S.C. §3307.

### **Observations**

The elimination of all conveyance requirements might be opposed by state and local governments and non-profits, which have had the opportunity to obtain surplus federal properties at no-cost for decades through conveyances.

## **Proposal #22: “Consolidate and Streamline Financial Literacy Efforts”<sup>235</sup>**

### **Brief Proposal Summary**

The proposal directs the Department of the Treasury (Treasury) to “develop recommendations for Federal financial literacy and education activities that will be shared with the Office of Management and Budget before October 1, 2018.”<sup>236</sup> The proposal also reports that the Financial Literacy and Education Commission (FLEC)—established by the Fair and Accurate Credit Transactions Act (P.L. 108–159)—is

---

<sup>234</sup> The Federal Property and Administrative Services Act of 1949, as amended, provided General Services Administration with certain authorities related to the procurement, utilization, and disposal of federal real and personal property.

<sup>235</sup> This section was coordinated by David Perkins, Analyst in Macroeconomic Policy, [dperkins@crs.loc.gov](mailto:dperkins@crs.loc.gov), 7-6626; and includes discussion of: (1) Department of Labor programs, authored by David Bradley, Specialist in Labor Economics, [dbradley@crs.loc.gov](mailto:dbradley@crs.loc.gov), 7-7352; (2) Department of Health and Human Services programs, authored by Kirsten Colello, Specialist in Health and Aging Policy, [kcoello@crs.loc.gov](mailto:kcoello@crs.loc.gov), 7-7839, and Jessica Tollestrup, Specialist in Social Policy, [jtollestrup@crs.loc.gov](mailto:jtollestrup@crs.loc.gov), 7-0941; (3) Department of Housing and Urban Development programs, authored by Katie Jones, Analyst in Housing Policy, [kmjones@crs.loc.gov](mailto:kmjones@crs.loc.gov), 7-4162; and (4) programs for military members authored by Kristy Kamarck, Analyst in Military Manpower, [kkamarck@crs.loc.gov](mailto:kkamarck@crs.loc.gov), 7-7783.

<sup>236</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, June 21, 2018, p. 90.

currently reviewing financial literacy and education activities with a number of goals including determining the appropriate federal role in supporting financial literacy efforts; consolidating federal programs to streamline overlapping and duplicative efforts; and identifying best practices and eliminating ineffective programs.<sup>237</sup>

### **Affected Departments, Agencies, or Programs**

The Financial Literacy and Education Commission (FLEC) comprises the heads of 22 agencies and the White House Domestic Policy Council and is currently reviewing programs that are the subject of the proposal. Many—but not necessarily all—of the member agencies have financial literacy and education programs potentially subject to evaluation and possible consolidation.<sup>238</sup> CRS identified illustrative programs at these agencies, or offices within agencies, that administer programs.<sup>239</sup> The programs and offices listed below, which should not be considered exhaustive, include the:<sup>240</sup>

- Treasury Department, which administers programs through the Office of Consumer Policy;
- Consumer Financial Protection Bureau (CFPB), which administers programs through the Office of Financial Education;
- Board of Governors of the Federal Reserve System (“Federal Reserve”), which operates programs through the Division of Consumer and Community Affairs and the Office of Public Affairs;
- Federal Deposit Insurance Corporation (FDIC) and the Small Business Administration (SBA), which jointly administer the Money Smart Financial Education Program;
- Securities and Exchange Commission (SEC), which administers programs through the Office of Investor Education and Advocacy;
- Department of Agriculture (USDA), which administers Family and Consumer Economics programs;
- Department of Defense (DOD), which administers personal financial management programs;
- Department of Health and Human Services (HHS), which administers the National Education and Resource Center on Women and Retirement Planning;
- Department of Housing and Urban Development (HUD), which administers the Housing Counseling Assistance Program;
- Department of Labor (DOL), which administers the Savings Matters Retirement Savings Campaign; and

---

<sup>237</sup> Ibid., pp. 90-92.

<sup>238</sup> Financial Literacy and Education Commission (FLEC), *Promoting Financial Success in the United States: National Strategy for Financial Literacy 2016 Update*, at <https://www.treasury.gov/resource-center/financial-education/Pages/commission-index.aspx>.

<sup>239</sup> For more information about a number of these programs, see GAO, *Financial Literacy: Overlap of Programs Suggests There May be Opportunities for Consolidation*, GAO-12-588, July 2012, at <https://www.gao.gov/products/GAO-12-588>; and GAO, *Financial Literacy: Overview of Federal Activities, Programs, and Challenges*, GAO-14-556T, April 30, 2014, at <https://www.gao.gov/products/GAO-14-556T>.

<sup>240</sup> The FLEC agencies not included in this list, because CRS did not identify a specific program for them, are the Office of the Comptroller of the Currency; National Credit Union Administration; Federal Emergency Management Agency; Office of Personnel Management; Department of Education; Department of the Interior; Department of Veterans Affairs; General Services Administration; Social Security Administration; and Commodity Futures Trading Commission.

---

- Federal Trade Commission (FTC), which administers programs through the Division of Consumer Business Education.

## Statutes

Under the proposal, Treasury and FLEC have discretion over the scope of recommendations on how to achieve consolidation. Absent a detailed plan from Treasury or FLEC, it is unknown what statutory changes may be required. Listed below is an illustrative selection of laws that may be relevant to considerations of consolidating programs.

- 20 U.S.C. §9703 establishes a number of statutory duties for FLEC related to improving financial literacy and education, including maintaining a website and a toll-free hotline.
- 20 U.S.C. §9709 directs the Secretaries of the Treasury, Education, Agriculture, and any other appropriate FLEC member to seek to enhance financial literacy among students at certain educational institutions.
- 12 U.S.C. §5493(d), (e), and (f) establish the Office of Financial Education, an Office of Service Member Affairs, and an Office of Financial Protection for Older Americans within the CFPB, and enumerate a number of responsibilities for those offices related to improving financial literacy or providing education and counseling.
- 12 U.S.C. §1701x directs the Secretary of HUD to make financial assistance available to HUD-approved housing counseling agencies and state housing finance agencies and also authorizes or requires HUD to carry out certain other activities related to its housing counseling program. In addition, 42 U.S.C. §3533(g) establishes the Office of Housing Counseling within HUD and enumerates specific functions of that office and its director.
- 10 U.S.C. §992 directs the Secretaries of the Army, Navy, Air Force, and of Homeland Security to carry out “a program to provide comprehensive financial literacy training to members of the armed forces.” In addition, 10 U.S.C. §1142 requires the Secretaries to provide financial counseling for military members transitioning out of the service.
- 42 U.S.C. §3020e-1 requires the Assistant Secretary for Aging within the HHS to award grants to provide outreach, information, counseling, referral, and other assistance regarding pension and other retirement benefits.
- 29 U.S.C. §1146 directs the Secretary of Labor to maintain an ongoing outreach program to effectively promote retirement savings by the public and to “establish a permanent site on the Internet concerning retirement income savings.”

## Administrative Actions

CRS was not able to identify any current administrative actions directing a department or agency to alter or eliminate a specific financial literacy or education program or activity.

CRS identified certain programs undertaken at the discretion of a department or agency.<sup>241</sup> As such, the Trump Administration may be able to eliminate or alter these programs to some degree.<sup>242</sup>

---

<sup>241</sup> For example, the National Education and Resource Center on Women and Retirement Planning offered by HHS and the Family and Economics Consumer programs offered by the USDA were established under general authorities. Other agencies—including FTC, SEC, and HHS—conduct financial literacy programs and research as part of their mission.

<sup>242</sup> The degree to which the Administration can unilaterally impose such change may vary, especially in regards to independent regulatory agencies.



## Uncertainties

The Administration’s proposal instructs the Treasury to develop recommendations and notes that FLEC is currently examining the issue. The possibilities of what form a consolidation and streamlining of programs across 22 agencies may take are myriad.

## Observations

Consolidating financial literacy programs has recently been an area of congressional interest. In July 2012, GAO published a report *Financial Literacy: Overlap of Programs Suggests There May be Opportunities for Consolidation*, which was updated in April 2014.<sup>243</sup> However, a CRS search of legislation from the past four Congresses did not identify any bills that would have required consolidation of financial literacy programs.

## Proposal #23: “Streamline Small Business Programs”<sup>244</sup>

### Brief Proposal Summary

This proposal would consolidate federal programs in select agencies “that assist small business owners secure access to capital and federal contracts into the Small Business Administration (SBA). In instances where a federal lending or contracting certificate program is highly specialized or industry-specific, SBA’s duplicative authority would be eliminated.”<sup>245</sup>

### Affected Departments, Agencies, or Programs

The proposal specifically identifies four agencies that would be involved in the small business consolidation efforts: the Departments of Agriculture (USDA), Transportation (DOT), the Treasury, and Veterans Affairs (VA).

USDA has several programs that provide loans or loan guarantees to small businesses, such as Business & Industry (B&I) Loan Guarantee Program and the Rural Economic Development Loan Program.<sup>246</sup>

Treasury does not directly guarantee loans to small businesses, but does provide financial awards or other funding to institutions that directly support small business lending. For example, the Community Development Financial Institutions (or CDFI) Fund, an office within Treasury, makes financial awards to certified community development financial institutions (CDFIs). CDFIs include community banks, credit unions, or loan funds that primarily serve economically-distressed communities, and some CDFIs make loans to small businesses as part of their investment portfolios.<sup>247</sup> As mentioned above, the proposal does

---

<sup>243</sup> GAO, *Financial Literacy: Overlap of Programs Suggests There May be Opportunities for Consolidation*, GAO-12-588, July 2012, pp. 5-7, 38-39, at <https://www.gao.gov/products/GAO-12-588>; and GAO, *Financial Literacy: Overview of Federal Activities, Programs, and Challenges*, GAO-14-556T, April 30, 2014, <https://www.gao.gov/products/GAO-14-556T>.

<sup>244</sup> This section was prepared by Robert Jay Dilger, Senior Specialist in American National Government, [rdilger@crs.loc.gov](mailto:rdilger@crs.loc.gov), 7-3110; and Sean Lowry, Analyst in Public Finance, [slowry@crs.loc.gov](mailto:slowry@crs.loc.gov), 7-9154.

<sup>245</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 93, at <https://whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>.

<sup>246</sup> See USDA, “Programs & Services for Businesses,” at <https://rd.usda.gov/programs-services/programs-services-businesses>; and CRS Report RL31837, *An Overview of USDA Rural Development Programs*, by Tadlock Cowan. Some of the loan guarantee programs posted on USDA’s website are also discussed in GAO, *Entrepreneurial Assistance: Opportunities Exist to Improve Programs’ Collaboration, Data-Tracking, and Performance Management*, GAO-12-819, August 2012, p. 67, at <https://gao.gov/assets/650/647267.pdf>.

<sup>247</sup> See CDFI Fund, “CDFI Program,” at <https://cdfifund.gov/programs-training/Programs/cdfi-program/Pages/default.aspx>; and CRS Report R42770, *Community Development Financial Institutions (CDFI) Fund: Programs and Policy Issues*, by Sean

not specify that these programs would be subject to consolidation, but these programs conduct the types of loan guarantee program functions that the proposal identifies should be consolidated within SBA. The proposal does not mention whether small business lending programs outside of USDA or Treasury (e.g., those under the Department of Commerce’s Minority Business Development Agency or the Export-Import Bank) would also be subject to consolidation.

SBA currently provides certifications for several small business contracting programs, including the Minority Small Business and Capital Ownership Development Program (commonly known as the 8(a) Program) and the HUBZone program.<sup>248</sup> In addition, state and local transportation agencies certify the eligibility of small businesses for the Department of Transportation’s Disadvantaged Business Enterprise (DBE) program.<sup>249</sup> Also, VA certifies the eligibility of service-disabled veteran-owned small businesses (SDVOSBs) for contracting preferences with VA.<sup>250</sup>

## Statutes

Assuming that the proposal were to be implemented as discussed above, legislation might be necessary to consolidate the aforementioned programs into SBA wherever the authority for these non-SBA programs at the select agencies are statutorily vested in the respective departments.<sup>251</sup> These statutes would have to be changed to reassign authority for administering the programs from the non-SBA agency to SBA, or to modify an existing SBA program to approximately meet the policy goals of the non-SBA program (e.g., modifying SBA’s 7(a) loan guarantee program to include a set-aside for rural businesses that could have previously been eligible for a USDA B&I loan guarantee).

## Administrative Actions

P.L. 114-328, the National Defense Authorization Act of 2017 (section 1832), amended section 3(q) of the Small Business Act (15 U.S.C. §632(q)) and section 8127 of title 38, United States Code, to standardize

---

Lowry.

<sup>248</sup> For further information and analysis, see CRS Report R44844, *SBA’s “8(a) Program”: Overview, History, and Current Issues*, by Robert Jay Dilger, and CRS Report R41268, *Small Business Administration HUBZone Program*, by Robert Jay Dilger.

<sup>249</sup> “The DBE program has been reauthorized by Congress several times since its inception; most recently in the “Fixing America’s Surface Transportation Act” or the “FAST-ACT,” (P.L. 114-94, December 4, 2015). Section 1101(b) of the Act describes Congress’s findings regarding the continued need for the DBE program due to the discrimination and related barriers that pose significant obstacles for minority and women-owned businesses seeking federally-assisted surface transportation work. The Act further provides, that, except to the extent the Secretary of Transportation determines otherwise, not less than 10% of the amounts made available for any program under Titles I, II, III and VI of the Act and 23 U.S. Code 403, shall be expended with DBEs.” See U.S. Department of Transportation, “Disadvantaged Business Enterprise (DBE) Program,” at <https://cms.dot.gov/civil-rights/disadvantaged-business-enterprise>.

<sup>250</sup> “The Veterans Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461) provides the U.S. Department of Veterans Affairs (VA) with unique authority for Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) set-aside and sole source contracts. This procurement authority, and its subsequent implementation, is a logical extension of VA’s mission to care for our Nation’s Veterans. VA refers to this program as the Veterans First Contracting Program. The Vets First Verification Program affords verified firms owned and controlled by Veterans and Service-disabled Veterans the opportunity to compete for VA set asides. During Verification, the Center for Verification and Evaluation (CVE) verifies SDVOSBs/VOSBs according to the tenets found in Title 38 Code of Federal Regulations (CFR) Part 74 that address Veteran eligibility, ownership, and control. In order to qualify for participation in the Veterans First Contracting Program, eligible SDVOSBs/VOSBs must first be verified.” See U.S. Department of Veterans Affairs, Office of Small & Disadvantaged Business Utilization, “Vets First Verification Program,” at <https://www.va.gov/osdbu/verification/index.asp>.

<sup>251</sup> For example, the statutory authority for the USDA’s Business & Industry (B&I) Loan Guarantee Program is provided by 7 U.S.C. §1932 (Consolidated Farm and Rural Development Act of 1972); and the statutory authority for the USDA’s Rural Economic Development Loan Program is provided by 7 U.S.C. §§930-940(c) (Rural Electrification Act of 1936) and 7 U.S.C. §1932.

definitions for veteran owned small businesses (VOSBs) and SDVOSBs for federal contracting purposes. This section also requires VA's Secretary to use regulations established by SBA for establishing ownership and control of VOSBs and SDVOSBs. On January 29, 2018, SBA issued a proposed rule to create a single definition of ownership and control for VOSBs and SDVOSBs.<sup>252</sup> A final rule has not been issued.

Although VA's Secretary remains responsible for the verification of VOSBs and SDVOSBs seeking federal contracts with VA, the required standardization of VOSB and SDVOSB definitions may prove useful should the responsibility for certifying SDVOSBs shift from VA to SBA.

## Uncertainties

The proposal does not specify which federal programs would be consolidated. It does indicate that “where appropriate, ... small business loan and loan guarantee programs would be folded into the SBA's Office of Capital Access” and “this proposal would create a ‘one-stop shop’ within SBA for all federal contracting certifications for both the participating small businesses and the federal agencies seeking to meet their contracting requirements.”<sup>253</sup> The proposal does not provide any details on whether SBA should receive additional budget authority or appropriations to offset additional program activity from consolidation efforts.

## Observations

The Trump Administration's FY2019 budget proposed the elimination of some of the aforementioned non-SBA programs that directly or indirectly support lending to small businesses. For example, the FY2019 budget outline proposed elimination of the USDA B&I Loan Guarantee and Rural Economic Development Loan programs, as well as the CDFI Fund's core CDFI Program assistance.<sup>254</sup>

## Proposal #24: “Consolidation of Certain Protective Details”<sup>255</sup>

### Brief Proposal Summary

According to the Trump Administration reorganization plan's synopsis, this proposal would “Consolidate protective details at certain civilian Executive Branch agencies under the U.S. Marshals Service in order to more effectively and efficiently monitor and respond to potential threats. Threat assessments would be conducted with support from the U.S. Secret Service.”<sup>256</sup> More specifically, the Administration proposes that the U.S. Marshals Service (USMS) be given the authority to manage protective security details of specified executive branch agencies. Threat assessments determining the need for or scope of the protective security detail would be conducted by the USMS with support from the U.S. Secret Service (USSS) and the affected agencies upon request of the USMS. This proposal would not affect any law

---

<sup>252</sup> See SBA, “Ownership and Control of Service-Disabled Veteran-Owned Small Business Concerns,” 83 *Federal Register* 4005-4011, January 29, 2018.

<sup>253</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 94, at <https://whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>.

<sup>254</sup> OMB, *Budget of the U.S. Government FY2019 - Appendix*, pp. 133, 136, (USDA) and 925 (CDFI Fund), at <https://whitehouse.gov/omb/appendix/>.

<sup>255</sup> This section was prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, [sreese@crs.loc.gov](mailto:sreese@crs.loc.gov), 7-0635.

<sup>256</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 18.

enforcement or military agencies with explicit statutory authority to protect executive branch officials, such as the USSS or the Department of State's Diplomatic Security Service. If implemented, it appears this proposal would attempt to standardize executive branch official protection in agencies that currently have USMS security details or that have their own employees deputized by the USMS.<sup>257</sup>

### **Affected Departments, Agencies, or Programs**

Currently, the USMS provides Deputy U.S. Marshals for the Secretary of Education's and the Deputy Attorney General's protective details. In addition, the USMS deputizes government employees, such as Inspector General law enforcement agents, of the following departments and agencies:

- Department of Labor;
- Department of Energy;
- Department of Commerce;
- Department of Veterans Affairs;
- Department of Agriculture;
- Department of Transportation;
- Department of Housing and Urban Development;
- Department of the Interior; and
- Environmental Protection Agency.<sup>258</sup>

These U.S. Marshals and other government law enforcement officers assist in the protection of these agencies' cabinet- and sub-cabinet officials.<sup>259</sup>

### **Statutes**

The USSS and the State Department are the only two agencies that have specific statutory authority to protect executive branch officials. The USSS is authorized to protect specific individuals under 18 U.S.C. §3056(a), and the State Department's Diplomatic Security Service special agents are authorized to protect specific individuals under 22 U.S.C. §2709(3).

In 2000, GAO reported that other agencies' provision of protective security details to executive branch officials were cited by agencies as being based on various legal authorities,<sup>260</sup> including:

- the Inspector General Act of 1978 (5 U.S.C., App. 3);
- the general authority of agency heads to issue regulations (5 U.S.C. §301);
- a 1970 memorandum from the White House Counsel to a cabinet department;
- a 1972 letter from then-Secretary of the Treasury George Schultz to all cabinet secretaries that offered to have the USSS provide training for all the departments' protective personnel;
- a specific deputation from USMS, and according to a USMS policy directive, Special Deputy Marshals are sworn and appointed to perform specific law enforcement duties

---

<sup>257</sup> Ibid., 96.

<sup>258</sup> Ibid.

<sup>259</sup> Ibid.

<sup>260</sup> GAO, *Security Protection: Standardization Issues Regarding Protection of Executive Branch Officials*, GAO/GGD/OSI-00-139, July 2000, pp. 10-11.

such as “carry firearms for ... the protection of persons covered under the federal assault statutes”;<sup>261</sup> and

- a specific delegation of authority set forth in the *Code of Federal Regulations* (7 C.F.R. §2.33(a)(2)) that the Secretary of Agriculture delegate authority to protect the Secretary and Deputy Secretary to the Department of Agriculture’s Office of Inspector General.

These legal authorities do not specifically address each identified agency’s authority for protective security details. Instead, GAO identified these authorities as the basis cited by agencies for providing protective security details for some executive branch officials. The Administration’s proposal states that when USMS deputizes government employees of other agencies, the other agencies “have full autonomy in determining the size and scope of their details’ activities.”<sup>262</sup>

Under this Administration proposal, which is broadly described, the USMS would be granted authority over designated protective details<sup>263</sup> and would provide its own personnel for the purposes of threat assessment and protection. The Administration’s proposal indicates that “[t]he Administration will consult with the Congress regarding any need for additional legislative authority,”<sup>264</sup> suggesting that the Administration may contemplate specific domains in which statutory changes would be necessary. Congress could also choose to broadly authorize the proposed authority through new legislation.

## Administrative Actions

It appears that the Administration and USMS could attempt to implement some aspects of this proposal without change to current law, insofar as the aspects may relate to USMS itself providing Deputy U.S. Marshals (subject to availability of appropriations) or deputizing other government employees under current authorities. However, this proposal also points out that the Administration will consult with Congress regarding any need for additional legislative authority, leaving unclear how much, if any, discretion is available to grant USMS authority over designated protective details and otherwise fully implement the proposal across a considerable variety of agencies and circumstances.

## Uncertainties

Even though the USMS implements or oversees the protection of certain executive branch officials, there appears to be no current study or research to assess the number of additional U.S. Marshals that would be needed to expand protective details to identified executive branch officials under this proposal. This proposal appears to envision authorizing the USMS to staff all protective details of executive branch officials (excluding the USSS, and the Departments of State and Defense) that are deemed to need security, including protective security details that are presently staffed by agencies’ employees. The

---

<sup>261</sup> Ibid. As discussed by GAO, USMS, through its Deputy U.S. Marshals, is authorized by statute to provide personal protection for federal judges and government witnesses. GAO also notes how USMS has cited a Supreme Court decision as “supporting [USMS’s] inherent authority to provide personal protection to persons as directed by the Attorney General to assure the faithful execution of the federal law, even in the absence of a specific federal authorizing statute,” as well as a Justice Department memorandum “as further supporting its authority to protect agency officials.”

<sup>262</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 96.

<sup>263</sup> These “designated protective details” would include any protective detail that was not specified under authorities given to the USSS or the State Department’s Diplomatic Security Service.

<sup>264</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 97.

---

proposal, however, does state that OMB will coordinate with the Department of Justice and affected agencies on the budgetary implications.<sup>265</sup>

## Observations

CRS is unaware of any recent or historical legislation, or proposed legislation, that addresses this issue.

## Proposal #25: “Small Grants Consolidation”<sup>266</sup>

### Brief Proposal Summary

This proposal would consolidate the Inter-American Foundation (IAF) and U.S. African Development Foundation (ADF) into USAID for the purposes of reducing the “proliferation” of international affairs agencies as well as “elevating” small grants as a development and diplomacy tool.

### Affected Departments, Agencies, or Programs

The proposal would impact the IAF and the ADF, both independent agencies, as well as USAID’s Latin America and Caribbean Bureau and Africa Bureau, into which IAF and ADF activities would be merged.

### Statutes

The IAF was established as an independent agency in the Foreign Assistance Act of 1969 (22 U.S.C. §290f). The ADF was similarly established in Title V of the International Security and Development Cooperation Act of 1980 (22 U.S.C. §290h). If the proposed reforms were to be implemented as discussed above, it appears that congressional action would be necessary to amend the authorizing statutes of both agencies.

### Administrative Actions

The Administration’s FY2019 budget request called for only enough IAF and ADF funding to enable an orderly closeout and for additional USAID resources to support the absorption of select IAF and ADF staff and programs. The Administration appears to have taken no further action to implement this proposal.

### Uncertainties

The proposal calls for “select personnel” at IAF and ADF to be transferred to USAID, but does not provide further details. It also says that IAF and ADF functions would initially be implemented from stand-alone offices within USAID, but integrated into the corresponding regional bureaus “over time,” with no proposed timeline.

### Observations

The Administration’s FY2018 budget request called for the elimination of the IAF and ADF, in contrast to the consolidation into USAID proposed for FY2019. Congress did not support the proposed elimination, continuing appropriations for both agencies in FY2018 at FY2017 levels. In response to the FY2019 request, repeated in reform Proposal #25, both the House and Senate committee-approved appropriations

---

<sup>265</sup> Ibid.

<sup>266</sup> This section was prepared by Marian Lawson, Specialist in Foreign Assistance Policy, mlawson @crs.loc.gov, 7-4475.

bills include language explicitly rejecting the proposed consolidation, and would continue funding for both IAF and ADF at the FY2018 funding levels.

## Proposal #26: “Transition to Electronic Government”<sup>267</sup>

### Brief Proposal Summary

The Trump Administration’s proposal would require federal agencies to conduct business processes and recordkeeping activities in a fully electronic environment.<sup>268</sup> To encourage this shift, the Administration would end the National Archives and Records Administration’s (NARA’s) acceptance of paper records by December 31, 2022. The proposal suggests this shift would improve agencies’ efficiency, effectiveness, and responsiveness to citizens. The proposal also suggests that federal agencies would be able to expand online services and better manage government records if they were digitized.

### Affected Departments, Agencies, or Programs

Under the proposal, NARA would use its authority to promulgate guidance on federal recordkeeping practices to encourage electronic recordkeeping.<sup>269</sup> The proposal suggests that NARA would end its acceptance of paper records. Additionally, the General Services Administration (GSA) “would play a supporting role by connecting agencies with commercial digitization services available in the private sector.”<sup>270</sup> The Federal Records Act, as amended, and codified in 44 U.S.C. Chapters 21, 29, 31, and 33, requires executive branch departments and agencies to collect, retain, and preserve federal records, which provide the agencies, the President, Congress, and the public with a history of public-policy execution and its results. As a result, this proposal would apply to the whole executive branch and would affect each agency’s records management program.

### Statutes

The proposal does not mention a need for legislation. Under 44 U.S.C. §2904, the Archivist (i.e., the head of NARA) is required to provide guidance and assistance to federal agencies regarding proper records disposition and records management, and furthermore has the responsibility to “promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies.”<sup>271</sup> Current law requires that the “head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.”<sup>272</sup> An agency’s program, among other things, must provide for

- effective controls over the creation, maintenance, and use of records in the conduct of current business;

---

<sup>267</sup> This section was prepared by Meghan M. Stuessy, Analyst in Government Organization and Management, [mstuessy@crs.loc.gov](mailto:mstuessy@crs.loc.gov), 7-1281.

<sup>268</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], pp. 100-102.

<sup>269</sup> 44 U.S.C. §2904.

<sup>270</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], p. 101.

<sup>271</sup> 44 U.S.C. §2904.

<sup>272</sup> 44 U.S.C. §3102.

- procedures for identifying records of general interest that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format; and
- cooperation with the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value.<sup>273</sup>

In 2014, the Federal Records Act was amended to define records as “all recorded information, *regardless of form or characteristics*, made or received by a Federal agency under Federal law or in connection with the transaction of public business...”<sup>274</sup> (emphasis added), clarifying that information created electronically may be considered records in their electronic form.<sup>275</sup>

## Administrative Actions

Current law provides that the Archivist shall promulgate standards, procedures, and guidelines for records management and shall conduct inspections of federal agency management programs. The Administration’s proposal appears to incorporate large components of NARA’s goals in its strategic plan, and appears to be an expansion of current agency goals. Specifically, under *NARA’s Strategic Goal 3: Maximize NARA’s Value to the Nation*, NARA said that “by December 31, 2022, NARA will, to the fullest extent possible, no longer accept transfers of permanent or temporary records in analog formats and will accept records only in electronic format and with appropriate metadata.”<sup>276</sup> Unlike the Administration’s proposal, NARA’s strategic goal language appears to indicate that there may still be instances where NARA would accept paper records for preservation.

To effect this change, NARA has outlined the following strategies:

- establish appraisal, scheduling, and pre-accessioning processes that reflect modern electronic records management;
- redesign records management training to assist agencies in building a records management workforce that is skilled in electronic records and data management;
- establish clear policy on digitizing permanent records and the appropriate disposition of analog originals; and
- work with agencies and the private sector to build capacity for mass digitization of analog records and transition storage of temporary analog records to the private sector.<sup>277</sup>

The *Federal Agency Records Management: 2016 Annual Report* provides information and data on the progress of implementing the enumerated strategies.<sup>278</sup> In particular, the *2016 Annual Report* described an increase in the number of agencies reporting incorporation of controls to ensure the reliability and integrity of electronic records (76% in 2015 to 81% in 2016); a slight decrease of agencies having documented and approved procedures to enable the migration of records to electronic information systems (64% in 2015 to 61% in 2016); and finally, a slight

---

<sup>273</sup> Ibid.

<sup>274</sup> 44 U.S.C. §3301; see Presidential and Federal Records Act Amendments of 2014 (P.L. 113-187; 128 Stat. 2003).

<sup>275</sup> P.L. 113-187.

<sup>276</sup> U.S. National Archives and Records Administration (NARA), *2018-2022 Strategic Plan*, Washington, DC, February 2018, p. 12, at <https://www.archives.gov/files/about/plans-reports/strategic-plan/2018/strategic-plan-2018-2022.pdf>.

<sup>277</sup> Ibid., pp. 12-13.

<sup>278</sup> NARA, *Federal Agency Records Management: 2016 Annual Report*, Washington, DC, October 2, 2017, at <https://www.archives.gov/files/records-mgmt/resources/2016-federal-agency-records-management-annual-report.pdf>.



increase in the number of agencies having records management staff involved in developing procedures to migrate records from retired systems (69% in 2015 to 71% in 2016).<sup>279</sup>

## Uncertainties

- Although NARA is measuring agency progress in implementing electronic records management strategies, it is unclear what percentage of agencies meeting these requirements would be deemed sufficiently successful by the Administration under the proposal.
- The proposal does not specify whether agencies are to digitize information created in an analog format, or whether the Administration expects all records to be created at the outset in an electronic format (also known as “born electronic”).<sup>280</sup> For example, the proposal notes efforts by U.S. Citizenship and Immigration Services and the Social Security Administration to move to electronic recordkeeping. However, it is unclear if the Administration will require the individual applicant to file his or her forms in solely an electronic format, or if written forms will still be accepted.
- Although NARA currently may accept for deposit permanent federal records and temporary federal records after consultation with the head of the originating federal agency, it is unclear whether this proposal for a fully electronic records environment would extend to the agency records program level, or whether the proposal is only aimed at records deemed appropriate for transfer to NARA.<sup>281</sup>

## Observations

Congress has been consistently interested in legislation to encourage federal agency adoption of electronic recordkeeping practices. In addition to the 2014 amendment to the Federal Records Act to expand the definition of *federal records* to include electronic media, Congress has considered a number of bills related to electronic records in the 115<sup>th</sup> Congress.

Two such bills are

- H.R. 1376, the Electronic Message Preservation Act of 2017, which would require the Archivist to promulgate regulations governing preservation of electronic messages that are federal records; and
- H.R. 745, the Federal Records Modernization Act of 2017, which would create a process for the suspension and removal of federal employees if an agency inspector general determines that they have: (1) willfully and unlawfully concealed, removed, mutilated, obliterated, falsified, or destroyed any record, proceeding, or other thing in their custody;

---

<sup>279</sup> Ibid., p. 21.

<sup>280</sup> NARA, *2018-2022 Strategic Plan*, Washington, DC, February 2018, p. 12, at <https://www.archives.gov/files/about/plans-reports/strategic-plan/2018/strategic-plan-2018-2022.pdf>.

<sup>281</sup> 44 U.S.C. §2107. NARA appraises federal records and determines the final disposition of the record, be it a temporary record, or a permanent record. Under 36 C.F.R. §1220.18, NARA defines *permanent records* as “any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives of the United States, even while it remains in agency custody.... The term also includes all records accessioned by NARA into the National Archives of the United States.” 36 C.F.R. §1220.18 defines *temporary records* as “any Federal record that has been determined by the Archivist of the United States to have insufficient value (on the basis of current standards) to warrant its preservation by the National Archives and Records Administration.” Under this guidance, NARA does not preserve all federal records, but rather accessions permanent records, leaving most temporary records under the care of the originating agency.

or (2) violated prohibitions against creating or sending records using nonofficial electronic messaging accounts.

## Proposal #27: “Customer Experience (CX) Improvement Capability”<sup>282</sup>

### Brief Proposal Summary

The Trump Administration’s proposal would establish a “capability” focused on improving the customer experience (CX) of entities and individuals who interact with federal agencies.<sup>283</sup> As described in the proposal, federal agencies would improve the experience of those using their services by: (1) developing a better understanding of customer needs, and (2) redesigning business processes and digital services to better meet those needs. The redesign is expected to span agency and programmatic boundaries. This capability would have several components:

- OMB would lead and establish the overall, executive-branch-wide “CX improvement capability.”
- The CX improvement capability would “partner with” agencies to improve how various customers (e.g., agencies, businesses, and individual citizens) interact with the federal government, particularly through the use of digital tools and services.
- “As needed,” agencies would “partner with” the U.S. Digital Service (USDS, a component of OMB) and the General Services Administration (GSA) Technology Transformation Service (TTS) to enhance their digital services.
- The capability also would serve as a “central resource to better manage organizational change” across organizations and work with agency leadership to support “interagency change management,” through such means as project planning, facilitating collaboration, and sharing best practices.

### Affected Departments, Agencies, or Programs

The proposal, if implemented, *would* affect OMB, including USDS, as well as GSA, including TTS and potentially TTS’s Office of 18F.<sup>284</sup> The proposal explicitly mentions these entities as having conducted this type of work. In addition, the proposal *might* affect a variety of “relevant” or “involved” executive agencies that aim to improve the experience of their customers. The proposal explicitly mentions projects undertaken at the U.S. Small Business Administration (SBA), Department of Veterans’ Affairs (VA), and Department of Agriculture (USDA).

---

<sup>282</sup> This section was prepared by Katie Francis, Analyst in Government Organization and Management, [kfrancis@crs.loc.gov](mailto:kfrancis@crs.loc.gov), 7-2351, and Clint Brass, Specialist in Government Organization and Management, [cbrass@crs.loc.gov](mailto:cbrass@crs.loc.gov), 7-4536.

<sup>283</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], pp. 103-105.

<sup>284</sup> 18F is a digital government unit whose mission is to improve interactions between the federal government and the public through user-centric digital products. Specifically, 18F experts partner with agencies to help build or acquire digital products—such as websites or electronic databases—that aim to enhance citizens’ ability to access and utilize government services. 18F was administratively established by the former GSA Administrator, Dan Tangherlini, in March 2014. For more information on 18F and examples of its projects, see GSA, “18F,” at <https://18f.gsa.gov/>; and GAO, *Digital Service Programs: Assessing Results and Coordinating with Chief Human Capital Officers Can Improve Delivery of Federal Projects*, GAO-16-602, August 15, 2016, at <https://www.gao.gov/products/GAO-16-602>.

## Statutes

As mentioned previously, the proposal envisions establishing a CX improvement capability that would involve, at a minimum, OMB's USDS and GSA's TTS. This capability would partner with agencies to enhance user-centric digital services and otherwise improve citizens' interactions with the federal government through the use of information technology (IT). Under current authorities, USDS<sup>285</sup> and TTS<sup>286</sup> have been engaging in these types of activities since their inception.<sup>287</sup>

The proposal does not mention a need for legislation. If OMB and GSA implement the proposal as written within the contours of current statutory authorities and any related uses of discretion, the proposal would not appear to require changes in law. Nevertheless, the ability of USDS and TTS to engage in this type of work may be contingent upon the availability of funds.

## Administrative Actions

To the extent the proposal envisions activities similar to those that OMB and GSA have exercised administratively in the past under existing statutory authorities, and to the extent funds are available, it appears that this proposal could be implemented administratively. Some observations appear to be relevant.

- The proposed capability's activities appear to be similar to those that OMB and GSA have previously exercised administratively under existing statutory authorities. The Obama Administration (acting through OMB) and GSA administratively established USDS and 18F, respectively, in 2014, as part of a broader effort to improve government digital services.<sup>288</sup> As mentioned above, USDS and 18F have partnered with agencies to develop and implement user-centric digital products and services to improve citizens' interactions with the federal government.
- Funds have been made available to implement those types of activities. In addition to funds that may be available within the budgets of USDS, GSA, and participating agencies, OMB might be able to use the statute commonly referred to as the Modernizing Government Technology (MGT) Act to fund projects.<sup>289</sup> The MGT Act established a

---

<sup>285</sup> USDS is funded through OMB's Information Technology Oversight and Reform (ITOR) budget account, which is included in the annual Financial Services and General Government appropriations act. See U.S. Executive Office of the President, *FY2019 Congressional Budget Submission*, [2018], pp. OMB-5 and ITOR-3; and OMB, *Budget of the U.S. Government, FY2019, Appendix* (Washington: GPO, 2018), p. 1166. Many of OMB's statutory responsibilities for IT management are located in Subtitle III, Chapter 113 of Title 40, *U.S. Code*.

<sup>286</sup> Chapter 3 of Title 40, *U.S. Code*, establishes GSA and its Federal Acquisition Service (FAS), under which TTS (including 18F) operates. FAS is funded by the Acquisition Services Fund (ASF), a full-cost recovery revolving fund that finances nearly all operations of FAS, and by the Federal Citizen Services Fund (FCSF), an annual appropriation that finances the salaries and expenses of TTS's Office of Products and Programs, which focuses on delivery of user-centric shared services, solutions, and platforms across the executive branch. ASF is authorized by 40 U.S.C. §321, and FCSF is authorized by 40 U.S.C. §323. See OMB, *Budget of the U.S. Government, FY2019, Appendix* (Washington: GPO, 2018), pp. 1069-1070; and GSA, *FY2019 Congressional Justification*, February 12, 2018, at <https://www.gsa.gov/reference/reports/budget-performance/annual-budget-requests>.

<sup>287</sup> See, for example, OMB, USDS, *Report to Congress*, July 2017, at <https://www.usds.gov/resources/USDS-July-2017-Report-to-Congress.pdf>; and GSA, 18F, "Services," at <https://18f.gsa.gov/what-we-deliver/>.

<sup>288</sup> U.S. Executive Office of the President, "FACT SHEET: Improving and Simplifying Digital Services," August 11, 2014, at <https://obamawhitehouse.archives.gov/the-press-office/2014/08/11/fact-sheet-improving-and-simplifying-digital-services>; U.S. General Services Administration, "GSA Tech Initiative Delivers Public Service for the 21<sup>st</sup> Century," March 19, 2014, at <https://www.gsa.gov/node/78729>.

<sup>289</sup> The MGT Act was included within the National Defense Authorization Act for FY2018 (P.L. 115-91; Title X, Subtitle G; 131 Stat. 1586; 40 U.S.C. §11301 note). OMB issued implementation guidance regarding the MGT Act, which is accessible at

Technology Modernization Fund (TMF) and authorized large executive branch agencies to establish working capital funds to help modernize the federal government's legacy IT systems. Congress provided \$100 million in no-year funding for the TMF in the Consolidated Appropriations Act, 2018.<sup>290</sup> In June 2018, TMF funds were awarded to three IT modernization projects, including the Farmers.gov Citizen Experience Portal.<sup>291</sup>

## Uncertainties

- The organizational placement and structure of the proposed CX capability is unclear. The proposal does not specify, for example: (1) which agency would house the improvement capability (e.g., OMB or GSA); (2) whether the capability would be stood up as a new agency *organizational unit* or a new *program/function* within an existing agency unit; or (3) the extent to which functions of the capability might be outsourced to contractors.
- The proposal does not specify which agencies are considered “relevant” or “involved,” thereby creating uncertainty regarding which agencies OMB and GSA might consult with when developing the proposed CX improvement capability.
- USDS and portions of GSA's TTS—namely 18F—have been funded by Congress, but are not separately and specifically statutorily authorized. Consequently, their ability to contribute to developing the proposed CX improvement capability may diminish if the units are disbanded, defunded, or otherwise reorganized.

## Observations

- Legislation introduced in the 114<sup>th</sup> Congress proposed the continued operation of USDS from FY2017-FY2026.<sup>292</sup>
- As part of the FY2019 budget submission, the Trump Administration proposed \$210 million in no-year funding for the TMF.<sup>293</sup> According to the President's budget submission, “Agencies that receive funds from the TMF will work with the General Services Administration (GSA) and the Office of Management and Budget (OMB) to ensure that projects make maximum use of commercial products and services in their planning and execution and have a high likelihood of success.”<sup>294</sup>
- The Trump Administration included “Improving Customer Experience with Federal Services” as one of its cross-agency priority goals in the President's Management Agenda.<sup>295</sup> In addition, in June 2018 OMB issued detailed “guidance to agencies on establishing the Federal Government's customer experience framework and information for agencies on how to effectively manage customer experience improvement efforts.”<sup>296</sup>

---

<https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-12.pdf>.

<sup>290</sup> P.L. 115-141, Division E, Title V.

<sup>291</sup> U.S. General Services Administration, “The Technology Modernization Fund, Awarded Projects,” June 12, 2018, at <https://tmf.cio.gov/projects/>.

<sup>292</sup> The United States Digital Service Act (H.R.5372, 114<sup>th</sup> Congress).

<sup>293</sup> OMB, *Budget of the U.S. Government, FY2019, Appendix* (Washington: GPO, 2018), p. 1070.

<sup>294</sup> OMB, *Budget of the U.S. Government, FY2019, Analytical Perspectives* (Washington: GPO, 2018), p. 224, at [https://www.whitehouse.gov/wp-content/uploads/2018/02/ap\\_16\\_it-fy2019.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/02/ap_16_it-fy2019.pdf).

<sup>295</sup> OMB, “Improving Customer Experience with Federal Services,” at [https://www.performance.gov/CAP/CAP\\_goal\\_4.html](https://www.performance.gov/CAP/CAP_goal_4.html); OMB, *President's Management Agenda*, [March 20, 2018], p. 28, at <https://www.whitehouse.gov/omb/management/pma/>.

<sup>296</sup> OMB, *Circular No. A-11, Preparation, Submission, and Execution of the Budget*, June 2018, p. xxx, directing readers to Part 280 of the same circular (see <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf#page=729>).

---

## Proposal #28: “Next Generation Federal Student Aid Processing & Servicing Environment”<sup>297</sup>

### Brief Proposal Summary

The Administration proposes to redesign the Department of Education (ED), Office of Federal Student Aid’s (FSA’s) current systems for administering Higher Education Act (HEA; P.L. 89-329, as amended), Title IV student financial aid. The Administration aims to modernize many of the multiple processes in the student aid lifecycle, from an individual’s initial completion of the Free Application for Federal Student Aid (FAFSA) through loan servicing and repayment. In doing so, the Administration seeks to ensure an improved customer experience for more than 42 million FSA customers (e.g., federal student loan borrowers and Pell Grant recipients), while creating a more streamlined operating model.

### Affected Departments, Agencies, or Programs

- Department of Education, Office of Federal Student Aid, HEA Title IV federal student aid programs. All Title IV aid programs would be affected by this proposal in that FAFSA filing capabilities would be incorporated into the Next Generation Federal Student Aid Processing and Service Environment (Next Gen) and all Title IV aid recipients must file a FAFSA. However, because the Next Gen proposal seems to encompass all aspects of student loan servicing, it seems the William D. Ford Federal Direct Loan program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant program, ED-held Perkins Loans, and ED-held Federal Family Education Loans are the types of Title IV aid most likely to be affected to the greatest extent by this proposal.

### Statutes

The Secretary of Education has general legal authority to award contracts for servicing federal student loans and carrying out other tasks related to administration of these loans.<sup>298</sup> The Secretary also has general authority to award contracts for a variety of other Title IV student financial aid administrative functions.<sup>299</sup> Although the reform plan does not specify that these authorities would be relied upon to carry out this initiative, it appears, as discussed below, that the Administration is working toward administrative implementation of the proposal.<sup>300</sup>

### Administrative Actions

FSA has already started working toward implementing the Next Gen proposal.

- In February, 2018, FSA began Phase I of a two-phase source selection process by issuing a solicitation for proposals from potential vendors who would be tasked with developing the various infrastructure systems to support Next Gen and in providing various other

---

<sup>297</sup> This section was prepared by Alexandra Hegji, Analyst in Social Policy, [adhegji@crs.loc.gov](mailto:adhegji@crs.loc.gov), 7-8384.

<sup>298</sup> 20 U.S.C. §1087f.

<sup>299</sup> See, for example, 20 USC §1090(a) and 20 USC §3475.

<sup>300</sup> This analysis is presented independent of Proposal #1, which would merge the Department of Education and the Department of Labor into a single cabinet agency. Should a Department of Education and the Workforce be created, certain technical amendments might be required with regard to provisions in the HEA sections applicable to student aid administration.

services, such as a customer service call center. Vendors were required to submit proposals by April 18, 2018.<sup>301</sup>

- Of those vendors submitting proposals in Phase I, FSA plans to select vendors for consideration in Phase II. In Phase II, FSA plans to issue another solicitation for proposals with more detailed requirements than those in Phase I. It appears FSA has not yet selected vendors for consideration in Phase II.
- Of those vendors submitting proposals in Phase II, FSA plans to select one or more vendors with which to contract for Next Gen services.
- Following selection of the vendor(s), the vendor(s) are expected to implement the contract and Next Gen. FSA anticipates having significant elements of Next Gen in place prior to the expiration of current contracts with loan servicers (who are responsible for many current federal student aid administrative tasks) in 2019.

## Uncertainties

While the Phase I solicitation provides some detail into how FSA envisions Next Gen will operate, many aspects of the implementation of Next Gen are unclear. Uncertainties include the total number of vendors that will support Next Gen, the total cost to the federal government of implementing and maintaining Next Gen, and how certain aspects of the customer experience may change from the current model to Next Gen.

## Observations

FSA is tasked with administering the federal student aid programs authorized under Title IV of the HEA.<sup>302</sup> These programs include the Federal Pell Grant and the Federal Direct Loan program. The office operates multiple platforms and contracts with numerous vendors to ensure the functionality of the Title IV programs. Administrative tasks for which FSA is responsible include developing and maintaining the FAFSA; contracting with and providing oversight of loan servicers, which perform myriad loan servicing functions such as collecting payments on Direct Loans, processing applications for Direct Loan deferments or forbearance, and performing default prevention activities; and contracting with and providing oversight of private collection agencies, which perform tasks to recover payment on outstanding loans from borrowers who have defaulted. At present, FSA customers may interact with multiple players in this system at various points in the student aid lifecycle, many of which may not be readily identifiable as being associated with ED. In addition, in many instances, there may be no standard operating procedures across ED vendors performing the same tasks (e.g., loan servicers), and there have been multiple recent reports identifying customer complaints and inefficiencies relating to the student aid lifecycle.<sup>303</sup>

The Administration proposes to redesign this current system using best-in-business technologies to improve customer experience and to streamline the current operating model. To do so, the Administration is currently designing Next Gen to employ a comprehensive ED-branded customer engagement platform through which customers would receive consistent information and have readily accessible self-service options at each stage of the student aid lifecycle. Next Gen is intended to enable and encourage customers

---

<sup>301</sup> FedBizOpps, “FSA Next Generation Processing and Servicing Environment,” [https://www.fbo.gov/index?s=opportunity&mode=form&id=84418d54a49f5c1e4f186001bfb35a52&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=84418d54a49f5c1e4f186001bfb35a52&tab=core&_cview=1).

<sup>302</sup> For additional information on the administration of the Direct Loan program, the primary federal student loan program, see CRS Report R44845, *Administration of the William D. Ford Federal Direct Loan Program*, by Alexandra Hegji.

<sup>303</sup> See, e.g., GAO, *Federal Student Loans: Could Improve Direct Loan Program Customer Service and Oversight*, GAO-16-523, May 16, 2016, and GAO, *Federal Student Loans: Key Weaknesses Limit Education’s Management of Contractors*, GAO-16-196T, November 18, 2015.

to use mobile devices to utilize the platform. The platform would be complemented by web, phone, chat, and in-person customer service capabilities. In addition, the Administration proposes that Next Gen would “leverage the latest in middleware, processing, data storage, and security to create a more efficient, cost-effective, and secure technical infrastructure” to support aid administration.

In light of the upcoming 2019 expiration of the current FSA loan servicing contracts, the Obama Administration had begun planning for a similar redesign of the current student aid administration model that would have created a single platform with which customers would have interacted but with multiple vendors performing back-end operations.<sup>304</sup> Upon entering office, the Trump Administration announced it planned to select a single loan servicer that customers would interact with on a single platform.<sup>305</sup> Subsequently, the Trump Administration cancelled the single servicer plan and began a new procurement process for Next Gen.<sup>306</sup>

ED specifically included the Next Gen proposal in its FY2019 budget request. In its request, ED noted that of the approximately \$1 billion it was requesting for loan servicing costs in general, that \$50 million would be for “Next Generation Processing and Servicing costs.”<sup>307</sup> It is unclear what precise aspects of Next Gen this may include.

## **Proposal #29: “Solving the Federal Cybersecurity Workforce Shortage”<sup>308</sup>**

### **Brief Proposal Summary**

The reorganization proposal would direct OMB and the Department of Homeland Security (DHS), in coordination with other federal departments and agencies, to complete several assessments, evaluations, reviews, or work plans (hereinafter assessments and work plans) related to the federal cybersecurity workforce. The assessments and work plans would broadly cover (1) the identification and evaluation of critical cybersecurity vacancies in executive branch entities; (2) the performance of the DHS Cyber Talent Management System and feasibility of scaling it across federal agencies; (3) security clearance requirements and processes; (4) enhancement of cybersecurity workforce mobility between and within agencies; (5) feasibility of establishing a cybersecurity reservist program; (6) reskilling federal employees to fill critical cyber positions; and (7) the size and scope of federal cybersecurity education programs. The proposal would also require the creation of standardized training and an “enterprise-wide” training process for federal cybersecurity employees.

### **Affected Departments, Agencies, or Programs**

If implemented, the proposal *would* affect four agencies: OMB, DHS, the Office of Personnel Management (OPM), and the Department of Defense (DOD). The proposal would direct OMB and/or

---

<sup>304</sup> See FedBizOpps, “Federal Aid Servicing Solution,” Solicitation and Statement of Objectives, April 4, 2016, <https://www.fbo.gov/index.php?tab=documents&tabmode=form&subtab=core&tabid=c12f67ba47b3da99e10ee279845e97ca>.

<sup>305</sup> Andrew Kreighbaum, “Education Department Alters Loan Servicing,” *Inside Higher Ed*, May 22, 2017.

<sup>306</sup> Andrew Kreighbaum, “DeVos Shifts Course Again on Loan Servicing,” *Inside Higher Ed*, August 2, 2017.

<sup>307</sup> U.S. Department of Education, *President’s FY2019 Budget Request for the U.S. Department of Education, Congressional Budget Justification*, “Student Aid Administration”, Y-14, <https://www2.ed.gov/about/overview/budget/budget19/justifications/y-saa.pdf>.

<sup>308</sup> This section was prepared by Katie Francis, Analyst in Government Organization and Management, [kfrancis@crs.loc.gov](mailto:kfrancis@crs.loc.gov), 7-2351, and Boris Granovskiy, Analyst in Education Policy, [bgranovskiy@crs.loc.gov](mailto:bgranovskiy@crs.loc.gov), 7-7759.

DHS—in some cases, in partnership with DOD or OPM—to complete all of the aforementioned assessments or work plans.<sup>309</sup>

The proposal *might* affect the following agencies:

- **Department of Commerce, National Initiative for Cybersecurity Education (NICE).** NICE might be involved in developing and assessing critical cybersecurity vacancies across departments and agencies. The proposal refers to the NICE Cybersecurity Workforce Framework and its potential use to “determine which workforce gaps are most critical to address the current cybersecurity threat landscape.”<sup>310</sup>
- **Other federal departments and agencies.** Other federal departments and agencies might be involved in some of the proposed assessments and work plans, to the extent that they have participants in the federal cybersecurity workforce, and DHS and OMB choose to coordinate with them.

## Statutes

The proposal envisions OMB and DHS, in coordination with other federal departments and agencies, completing assessments and work plans related to several aspects of the federal cybersecurity workforce. Under the proposal, it appears that OMB would lead—or co-lead with DHS and other agencies—the completion of government-wide assessments and plans, and DHS would lead the completion of DHS-specific assessments and plans. Both OMB and DHS possess broad statutory responsibilities related to federal cybersecurity. OMB is responsible for overseeing the Federal Information Security Modernization Act (FISMA).<sup>311</sup> DHS is responsible for administering the protection of federal civilian systems, and for coordinating with the private sector to protect critical cyber infrastructure assets.<sup>312</sup> DHS also possesses certain statutory authorities related to assessing and improving the cybersecurity workforces for the department<sup>313</sup> and other agencies.<sup>314</sup> More broadly, the President is directed by statute to “make a study of each agency” and is authorized to send recommendations on changes regarding the organization, activities, and business methods of agencies, among other things.<sup>315</sup> OMB also possesses broad authority to, among other things, establish “general management policies” for executive branch agencies and perform certain “general management functions.”<sup>316</sup> Agencies including DHS have broad authorities to assess their respective operations and activities, both generally and in relation to information technology (IT).<sup>317</sup>

---

<sup>309</sup> In addition to the broad responsibilities to complete cybersecurity workforce assessments and work plans, the proposal would task OMB’s Office of Information and Regulatory Affairs to “work with DHS to promulgate the necessary regulatory notices” to implement DHS’s Cyber Talent Management System.

<sup>310</sup> For more information on the NICE Cybersecurity Workforce Framework, see <https://www.nist.gov/itl/applied-cybersecurity/nice/resources/nice-cybersecurity-workforce-framework>.

<sup>311</sup> 44 U.S.C. §3553. For more information on agency roles in cybersecurity, including OMB, see CRS In Focus IF10602, *Cybersecurity: Federal Agency Roles*, by Eric A. Fischer.

<sup>312</sup> See, for example, P.L. 113-283, P.L. 107-296, and P.L. 113-282. For more information on DHS’s cybersecurity mission, see CRS In Focus IF10683, *DHS’s Cybersecurity Mission—An Overview*, by Chris Jaikaran.

<sup>313</sup> See, for example, P.L. 114-113, Division N, Title III, 129 Stat. 2975, codified at 5 U.S.C. §301 note; P.L. 113-277, Sections 3 and 4, codified at 6 U.S.C. §147 and 6 U.S.C. §146 note; and P.L. 113-246, Section 3, codified at 6 U.S.C. §146.

<sup>314</sup> See, for example, P.L. 114-113, Division N, Title III; 129 Stat. 2977; codified at 5 U.S.C. §301 note.

<sup>315</sup> See 31 U.S.C. §1111. In practice, the President may delegate duties like these to OMB.

<sup>316</sup> See, for example, 31 U.S.C. §503.

<sup>317</sup> See, for example, 5 U.S.C. §305; 44 U.S.C. §3506; 40 U.S.C. §11314; and 6 U.S.C. §349.



If OMB and DHS implement the proposal as written within the contours of current statutory authorities and any related uses of discretion, the proposal would not require changes in law.

## Administrative Actions

The assessments and work plans included in the proposal could be completed through activities that OMB and DHS have previously exercised administratively under current statutory authorities.

In recent years, OMB has pursued initiatives to improve the federal cybersecurity workforce through the issuance of various government-wide policies and plans.<sup>318</sup> Some of these policies and plans have required the completion of government-wide and agency-specific actions related to the cybersecurity workforce, some of which are similar to those in the Trump Administration proposal. For example, OMB issued the Cybersecurity Strategy and Implementation Plan that, among other things, directed OPM, DHS, and OMB to identify “cyber talent gaps” across all agencies and further directed OPM and OMB to compile a list of hiring authorities that could be used for cybersecurity and IT positions.<sup>319</sup>

In addition to issuing statutorily required cybersecurity workforce assessments and plans, DHS has also issued evaluations related to its cybersecurity workforce administratively. For example, former DHS Secretary Janet Napolitano convened a CyberSkills Task Force in 2012 that issued a report assessing recruitment and retention issues within DHS’s cybersecurity workforce.<sup>320</sup>

## Uncertainties

Some uncertainties regarding the proposal include the following:

- The proposal does not specify the “departments” and “agencies” that OMB and DHS would coordinate with to complete the proposed cybersecurity workforce assessments and work plans.
- The extent to which certain implementation deadlines in the proposal could be met remains unclear, as some are contingent on the completion of ongoing activities. For example, the proposal directs DHS to assess the performance of its Cyber Talent Management System by the end of FY2019 to determine how the system might be scaled to other departments and agencies. However, the personnel system is still under development and is not subject to any statutory implementation deadlines.
- While no statutory changes appear to be needed to *develop* the proposed assessments and work plans, it is unclear whether statutory changes would be needed to *implement* any recommendations or action items generated from those assessments and plans. For example, reforms to certain federal cybersecurity education programs—such as the National Science Foundation’s CyberCorps Scholarship for Service program—might require changes to the Cybersecurity Enhancement Act of 2014 (P.L. 113-274).

---

<sup>318</sup> See, for example, OMB, “Cybersecurity Strategy and Implementation Plan (CSIP) for the Federal Civilian Government,” October 30, 2015, M-16-04, pp. 18-19, at <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m-16-04.pdf>; and OMB, “Federal Cybersecurity Workforce Strategy,” July 12, 2016, M-16-15, at <https://chcoc.gov/sites/default/files/m-16-15.pdf>.

<sup>319</sup> OMB, “Cybersecurity Strategy and Implementation Plan (CSIP) for the Federal Civilian Government,” October 30, 2015, M-16-04, pp. 18-19, at <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m-16-04.pdf>.

<sup>320</sup> U.S. Department of Homeland Security, Homeland Security Advisory Council, *CyberSkills Task Force Report*, Fall 2012, at <https://www.dhs.gov/sites/default/files/publications/HSAC%20CyberSkills%20Report%20-%20Final.pdf>.

## Observations

Below are illustrative examples of actions taken by Congress and past administrations related to the federal cybersecurity workforce, which may help to contextualize the proposal.

- Legislation introduced in the 115<sup>th</sup> Congress addresses issues that are directly or indirectly related to the proposal, such as the establishment of a rotational civilian cyber personnel program, creation of a cyber defense National Guard or reserve component cyber civil support team, and modifications to federal cybersecurity workforce development plans.<sup>321</sup>
- Past congressional hearings have addressed some of the cybersecurity workforce issues discussed in the proposal, such as cyber workforce skills gaps, workforce mobility, a cyber reservist program, and DHS's Cyber Talent Management System.<sup>322</sup>

## Proposal #30: "The GEAR Center"<sup>323</sup>

### Brief Proposal Summary

This proposal would establish a center at a university, think tank, or other prominent research institution to help the federal government employ innovative technologies, business practices, and research findings to improve mission delivery, services to citizens, and stewardship of public resources. The Government Effectiveness Advanced Research (GEAR) Center would be a non-governmental public-private partnership that would engage researchers, academics, non-profits, and private industry from disciplines such as behavioral economics, computer science, and design thinking to develop creative, data-driven, and interdisciplinary approaches to re-imagine and realize new possibilities in how citizens and the federal government interact.

### Affected Departments, Agencies, or Programs

The GEAR Center proposal could involve funding, personnel, authorities, facilities, equipment, and other resources of multiple federal agencies; no agency is assigned a mandatory role, but the proposal does suggest possible roles for the U.S. General Services Administration (GSA). The work to be pursued at the GEAR Center—using technology and new management approaches to improve mission delivery, services to citizens, and stewardship of public resources—could have government-wide implications.

The proposal identifies GSA as an agency that could issue a prize competition or challenge under prize authority that was granted to all agencies under the America COMPETES Reauthorization Act of 2010 (P.L. 111-358). It also notes that GSA could issue a Request for Information (RFI) to obtain input from the public, universities, and industry. The proposal states that the RFI would not be intended to lead to a

---

<sup>321</sup> See, for example, the Cyber Joint Duty Program Act of 2018 (S. 2620), the Cyber Defense National Guard Act (H.R. 955), the Major General Tim Lowenberg National Guard Cyber Defenders Act (S. 2887/H.R. 3712), and the New Collar Jobs Act of 2017 (H.R. 3393).

<sup>322</sup> See, for example, U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Information Technology, *Closing The Talent Gap In Federal IT*, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 22, 2016 (Washington, DC: GPO, 2016); and U.S. Congress, House Committee on Homeland Security, Subcommittee on Cybersecurity and Infrastructure Protection, *Examining DHS' Efforts to Strengthen Its Cybersecurity Workforce*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 7, 2018 (Washington, DC: GPO, 2018).

<sup>323</sup> This section was prepared by John F. Sargent, Specialist in Science and Technology Policy, jsargent@crs.loc.gov, 7-9147, and Marcy E. Gallo, Analyst in Science and Technology Policy, mgallo@crs.loc.gov, 7-0518.

“traditional contract,” but rather to “get more information on the art of the possible,” presumably with respect to the role and structure of the GEAR Center.

## Statutes

Assuming that the proposal, as implemented, is similar to certain past initiatives, the Administration might seek to establish the GEAR Center by relying on the existing statutory authorities of a federal agency or office rather than pursuing statutory changes. For example, the Department of Defense and Department of Energy established manufacturing institutes as part of the National Network for Manufacturing Innovation initiative using the broad statutory authorities of each agency.<sup>324</sup> However, Congress could choose to provide a statutory foundation for the GEAR Center detailing the goals, structure, and functions of the proposed public-private partnership.

## Administrative Actions

- **Conduct Prize Competition.** The proposal states that GSA could be tasked with conducting a prize competition or challenge to spur innovation and obtain ideas and input on how to “re-imagine and realize new possibilities in how citizens and Government interact.”<sup>325</sup> GSA has the authority to conduct prize competitions under the America COMPETES Reauthorization Act of 2010 (P.L. 111-358) which provides the head of any federal agency with the authority to carry out prize competitions “to stimulate innovation that has the potential to advance the mission of the respective agency.”<sup>326</sup>
- **Issue Request for Information.** The proposal states that GSA could be tasked with issuing an RFI to obtain input on “the art of the possible” in the use of technology and creating “a more efficient and effective Government that provides a level of service that citizens deserve.”
- **Establish the GEAR Center.** The proposal envisions establishing the GEAR Center as a public-private partnership within a university, think tank, or other research institution. It appears that this could be done through administrative actions.

## Uncertainties

- **What mechanism will be used to establish the GEAR Center?** The proposal did not specify the mechanism that would be used to create the GEAR Center. Approaches the Administration might take include the use of existing authorities of a federal agency, the issuance of an Executive Order of the President, establishment as a Federally Funded Research and Development Centers (FFRDC),<sup>327</sup> or by another manner.
- **How can prize authority be used to facilitate the establishment and function of the GEAR Center?** The proposal references using the results of a prize competition or challenge to inform the establishment of the GEAR Center. While prize competitions are often used to generate new ideas or concepts, they are generally most successful when

---

<sup>324</sup> For a discussion of these developments, see CRS Report R44371, *The National Network for Manufacturing Innovation*, by John F. Sargent Jr.

<sup>325</sup> OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, Washington, DC, June 2018, p. 112.

<sup>326</sup> 15 U.S.C. §3719.

<sup>327</sup> For additional information on FFRDCs, see CRS Report R44629, *Federally Funded Research and Development Centers (FFRDCs): Background and Issues for Congress*, by Marcy E. Gallo.

---

they address a clearly defined problem.<sup>328</sup> Prize competitions may be a more suitable tool for spurring innovation to solve specific problems that are identified after the formation of the center. For example, in 2014, GSA offered a prize competition to spur innovation in the visualization and use of federal travel data to increase transparency and accountability with the goal of increased cost savings when federal employees travel.

- **What public-private partnership model might be used for the GEAR Center?** While the proposal anticipates using a public-private partnership (PPP) approach, there is no official definition of a public-private partnership. Many federal agencies have engaged in PPPs for decades, using a variety of models to achieve a variety of policy objectives (e.g., public health, environmental protection, highway infrastructure, development of fuel-efficient vehicles, emergency response and recovery). In general, PPPs are collaborative endeavors that combine public and private resources (e.g., monetary, land, facilities, personnel, information) to work toward mutual objectives. PPPs can include contractual arrangements, but are generally broader and more complex than a typical agency-contractor relationship.
- **How is the GEAR Center different from the Center for Enterprise Modernization (CEM)?** The CEM is a Treasury Department- and Internal Revenue Service-sponsored FFRDC operated by the MITRE Corporation. According to the CEM website:

The Center for Enterprise Modernization focuses on addressing a particular challenge: how to transform a large enterprise.... By applying analysis and research-based exploration, agencies can better prepare to plan, manage, and make critical decisions. The result is greater frequency of success with reduced risk, predictable cost, and fewer integration, scalability, security and privacy, and data-sharing challenges. MITRE's investments in research and innovation allow CEM to readily bring forward new ideas, evaluate feasibility of new technologies, and transfer methods and technical capabilities to government sponsors and industry.<sup>329</sup>

Consideration might be given to whether the CEM could perform the work envisioned for the GEAR Center, or how the work of the GEAR Center could be coordinated with CEM.

- **How will the GEAR Center's activities be coordinated with those of the National Academy of Public Administration (NAPA)?** NAPA is "an independent, non-profit, and non-partisan organization established to assist government leaders in building more effective, efficient, accountable, and transparent organizations."<sup>330</sup> NAPA was congressionally chartered in 1967 to, among other things:
  - Evaluate the structure, administration, operation, and program performance of Federal and other governments and government agencies, anticipating, identifying, and analyzing significant problems and suggesting timely corrective action;
  - Foresee and examine critical emerging issues in governance, formulating practical approaches to their resolution; and
  - Assess the effectiveness, structure, administration, and implications for governance of present or proposed public programs, policies, and processes, recommending specific changes.

---

<sup>328</sup> Luciano Kay, *Managing Innovation Prizes in Government*, IBM Center for the Business of Government, Washington, DC, 2011.

<sup>329</sup> Center for Enterprise Modernization, MITRE Corporation, "Where We Focus," <https://www.mitre.org/centers/center-for-enterprise-modernization/where-we-focus>.

<sup>330</sup> NAPA, "Overview," <https://www.napawash.org/about-us/overview/>.

Consideration might be given to how the work of the GEAR Center would be coordinated with that of NAPA's.

- **What federal statutes will apply to the GEAR Center?** It is unclear which federal statutes—for example, the Federal Advisory Committee Act (P.L. 92-463), Freedom of Information Act (P.L. 95-619), and Government in the Sunshine Act (P.L. 94-409)—will apply to the GEAR Center due to the ambiguity in the proposal related to the model that will be used for its establishment.

## Observations

As expressed in the proposal, the objectives of the GEAR Center are similar to those of the National Performance Review (NPR)—later the National Partnership for Reinventing Government, a federal interagency task force—established at the beginning of the Clinton Administration. In launching the NPR, President Clinton said:

Our goal is to make the entire federal government less expensive and more efficient, and to change the culture of our national bureaucracy away from complacency and entitlement toward initiative and empowerment. We intend to redesign, to reinvent, to reinvigorate the entire National Government.... We'll enlist citizens and Government workers and leaders from the private sector in a search not only for ways to cut wasteful spending but also for ways to improve services to our citizens and to make our Government work better.<sup>331</sup>

Reviews of the NPR by academia, government agencies, and think-tanks may provide useful insights and lessons-learned that might inform the establishment and operation of the GEAR Center.

## Proposal #31: “Transfer of Background Investigations from the Office of Personnel Management to the Department of Defense”<sup>332</sup>

### Brief Proposal Summary

This proposal would transfer the entirety of the National Background Investigation Bureau (NBIB) from the Office of Personnel Management (OPM) to the Department of Defense (DOD).

### Affected Departments, Agencies, or Programs

- Office of Personnel Management: OPM would no longer perform any background checks.
- Department of Defense: DOD would become the single, consolidated provider of executive branch background checks.
- National Background Investigation Bureau: NBIB would be located entirely within DOD.

### Statutes

This proposal, if implemented as discussed above, might necessitate changes to certain statutes, including the following:

- National Defense Authorization Act for Fiscal Year 2018 (P.L. 115-91): This proposal might result in changes to Section 925 of P.L. 115-91, which mandated the phased

---

<sup>331</sup> President William J. Clinton, “Remarks Announcing the National Performance Review,” March 3, 1993, <http://www.presidency.ucsb.edu/ws/?pid=46291>.

<sup>332</sup> This section was prepared by Garrett Hatch, Specialist in American National Government, [ghatch@crs.loc.gov](mailto:ghatch@crs.loc.gov), 7-7822.

transition of background checks for DOD personnel from NBIB to the Defense Security Service within DOD. The law might be amended so that all NBIB investigations are transferred to DOD. In addition, under this proposal, appropriations for NBIB would be provided through DOD appropriations bills rather than Financial Services and General Government (FSGG) bills. The NBIB received \$1.4 billion in appropriations in FY2018.<sup>333</sup>

### Administrative Actions

- Executive Order: The NBIB was established by executive order,<sup>334</sup> so it is possible that the Administration might seek to transfer NBIB's responsibilities through similar administrative action.

### Uncertainties

The proposal is specific and limited to the transfer of the NBIB to DOD.

### Observations

The Administration stated that this proposal, by consolidating background investigations in a single organization, would reduce duplicative functions and make the process more efficient. These objectives are consistent with the Securely Expediting Clearances through Reporting Transparency Act of 2018 (P.L. 115-173), which required additional reporting on the backlog of personnel security clearance investigations and the costs associated with maintaining a bifurcated system wherein NBIB and DOD function separately.

## Proposal #32: "Strengthening Federal Evaluation"<sup>335</sup>

### Brief Proposal Summary

The Trump Administration's proposal outlines some of OMB's plans related to evaluation of federal programs and activities.<sup>336</sup> Specifically, the proposal articulates four actions that OMB "intends to" or "will" do in its interactions with agencies.<sup>337</sup> The first two actions are associated with the Administration's

---

<sup>333</sup> U.S. Office of Personnel Management, *Congressional Budget Justification and Annual Performance Plan: FY2019, February 2018*, p. 9, at <https://www.opm.gov/about-us/budget-performance/budgets/congressional-budget-justification-fy2019.pdf>.

<sup>334</sup> Executive Order 13741, "Amending Executive Order to Establish the Roles and Responsibilities of the National Background Investigation Bureau and Related Matters," 81 *Federal Register* 192, September 29, 2016.

<sup>335</sup> This section was prepared by Clinton T. Brass, Specialist in Government Organization and Management, [cbrass@crs.loc.gov](mailto:cbrass@crs.loc.gov), 7-4536.

<sup>336</sup> Evaluation is a multidisciplinary field that applies systematic inquiry through a variety of methods to help understand and improve organizations, programs, policies, and activities. These methods typically focus on understanding and assessing needs and problems to be addressed, as well as process and results. For related discussion, see GAO, *Designing Evaluations: 2012 Revision*, GAO-12-208G, January 2012, p. 3, at <https://www.gao.gov/products/GAO-12-208G>; and American Evaluation Association, "AEA Evaluation Policy Statements: Policy Briefs," at <https://www.eval.org/p/cm/ld/fid=129>. See also the statutory definition for *program evaluation* at 31 U.S.C. §1115(h), which is associated with implementation by executive agencies of the Government Performance and Results Act (GPRA) and its later amendments; and for *evaluation* in Section 2 of the Foreign Aid Transparency and Accountability Act of 2016 (FATAA, P.L. 114-191; 22 U.S.C. 2394c note), which provides for establishment of evaluation guidelines for executive agencies that administer foreign assistance.

<sup>337</sup> OMB, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, [June 21, 2018], pp. 118-120.

stated objectives to “strengthen the role” of program evaluation and better understand how related resources are used. According to the proposal, OMB intends to “ask” each agency to

- designate a senior official to be responsible for coordinating the agency’s evaluation activities, “learning agenda,”<sup>338</sup> and information reported to OMB about “evidence,”<sup>339</sup> and
- document the resources dedicated to program evaluation.

The proposal associates two further actions with the stated objective to “strengthen the Government’s ability to build and use a portfolio of evidence,” including from evaluations, to inform decision-making. The proposal says that OMB will “provide direction and set expectations” that “encourage” agencies to

- “strengthen” the quality of information that agencies provide to OMB on evidence-building activities, including evaluation, as part of the annual budget process; and
- establish and utilize multi-year learning agendas.

### Affected Departments, Agencies, or Programs

The proposal most directly relates to OMB, its statutory duties, and any additional duties associated with OMB’s stated objective to “plan and implement [the President’s] priorities across the Executive Branch.”<sup>340</sup> OMB may attempt to influence the actions of executive agencies directly and indirectly through existing statutory authorities, guidance documents, and processes related to the budget, regulatory affairs, and legislative coordination, among others.

### Statutes

The proposal envisions OMB asking and encouraging agencies to undertake certain activities and to provide more information to OMB. If OMB implements the proposal as written within the contours of current statutory authorities, delegations from the President, and any related uses of discretion,<sup>341</sup> the proposal would not require changes in law.

---

<sup>338</sup> OMB has described the development of an agency’s *learning agenda* as a collaborative process that identifies the most important questions—from the perspectives of multiple stakeholders inside and outside the federal government—that need to be answered to improve program implementation and performance. In the presence of scarce analytical resources, the questions are prioritized, and the most appropriate tools and methods are identified to address the questions. Studies, evaluations, and analyses are conducted using methods that are feasible and appropriate, and findings are disseminated for potential use in furthering learning, making continuous improvements, and informing decisions. See OMB, *Budget of the U.S. Government, FY2018, Analytical Perspectives* (Washington: GPO, 2017), pp. 55-56.

<sup>339</sup> OMB currently describes *evidence* as “the available body of facts or information indicating whether a belief or proposition is true or valid. Evidence can be quantitative or qualitative and may come from a variety of sources, including performance measurement, evaluations, statistical series, retrospective reviews, data analytics, and other research. Evidence has varying degrees of credibility, and the strongest evidence generally comes from a portfolio of high-quality, credible evidence rather than a single study.” OMB, *Circular No. A-11, Preparation, Submission, and Execution of the Budget*, June 2018, Section 200, pp. 15-16, at <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf#page=625>. At times, usage of the term *evidence* has been controversial in light of debates regarding (1) what constitutes evidence for certain purposes and, conversely, what does not constitute evidence; (2) how to assess the relevance, quality, and utility of evidence for certain purposes; (3) what mix of methods should be used to generate useful information; and (4) who may be authorized or empowered to decide on relevance, quality, and utility for those purposes. See CRS Congressional Distribution Memorandum, *Obama Administration Agenda for Government Performance: Evolution and Related Issues for Congress*, January 19, 2011, pp. 33-35, by Clinton T. Brass (under the heading “Making a Connection Between Evidence and Policy Making”) (available from CRS upon request).

<sup>340</sup> See <https://www.whitehouse.gov/omb/>.

<sup>341</sup> See, for example, Chapter 11 of Title 31, *U.S. Code* (specifying aspects of the executive budget process and authorizing the President to prescribe regulations for agencies to provide information to the President); Executive Orders 12866, 13563, 13771,

## Administrative Actions

This proposal could be implemented through activities that OMB has exercised administratively in the past. In recent years, OMB has pursued evaluation-related initiatives through existing processes of developing the President’s annual budget submission (e.g., gathering information from agencies and prioritizing certain evaluation activities), providing guidance to agencies on management and mission-support issues (e.g., issuing circulars and memoranda),<sup>342</sup> and formulating legislative proposals (e.g., developing draft legislation).

## Uncertainties

The proposal describes its action items in general terms. Uncertainties include but are not limited to the following.

- It remains to be seen what venues OMB may use to promote its evaluation agenda, how much influence OMB will attempt to exert on agencies, and the extent to which agencies consult with Congress and nonfederal stakeholders when responding to the action items.
- OMB has elected to disclose only limited information about its framework for agency learning agendas and any related priorities for research questions to be addressed and evidence to be sought.<sup>343</sup> At times, OMB has emphasized certain research questions and associated methods above others,<sup>344</sup> but it is not clear if OMB’s current and prospective priorities are consonant with the ongoing analytical needs and priorities of executive agencies, congressional committees, and nonfederal stakeholders.
- Many items associated with this proposal appear to relate, in part, to agencies providing information to OMB. In so doing, it is unclear whether and how OMB and agencies will consult or share related information with Congress and nonfederal stakeholders.
- When implementing action items, it remains to be seen how OMB may define activities and resources that are associated with evaluation—itsself a diverse confederation of sub-fields associated with many methods and disciplinary approaches—in relation to activities associated with other fields or sub-fields that overlap with evaluation in terms of mission-support roles, methods used, personnel, and associated employee skills.<sup>345</sup>

## Observations

- In 1998, GAO released results from a survey of federal government agencies regarding a limited portion of their evaluation activities, *including* results-related studies but

---

and other executive orders (providing for OMB review and other requirements in the regulatory process); and OMB Circular A-19 (providing for OMB’s legislative coordination and clearance process).

<sup>342</sup> See OMB, “Circulars,” at <https://www.whitehouse.gov/omb/circulars/>; and OMB, “Memoranda,” at <https://www.whitehouse.gov/omb/memoranda/>.

<sup>343</sup> For example, see OMB, “2018 Strategic Review Guidance,” memorandum M-18-15, April 24, 2018, Appendix 5 (p. 11 of PDF file), at <https://www.whitehouse.gov/omb/memoranda/>. The memorandum refers to a template on OMB’s MAX Web portal, but the contents of the MAX Web portal are not generally available to Congress and the public. See <https://max.gov/maxportal/>.

<sup>344</sup> CRS Congressional Distribution Memorandum, *Obama Administration Agenda for Government Performance: Evolution and Related Issues for Congress*, January 19, 2011, by Clinton T. Brass.

<sup>345</sup> Other, substantially overlapping fields may include policy analysis, data analysis, measurement, operations research, statistical analysis (i.e., analyzing agency operations and programs), benefit-cost analysis, econometrics, data science, continuous process improvement, policy planning, risk assessment and analysis, applied research, and other forms of analytical mission support.

---



*excluding* evaluations of, among other things, program operations and implementation, efficiency, and client needs.<sup>346</sup>

- Within the last two decades, OMB has given some attention to evaluation-related matters in the George W. Bush,<sup>347</sup> Barack Obama,<sup>348</sup> and Donald Trump Administrations, albeit with varying initiatives and emphases. In its FY2018 and FY2019 budget submissions, the Trump Administration expressed support for developing agencies' mission-support capacities, learning agendas, and broad portfolios of evidence to support ongoing learning and to inform policymaking.<sup>349</sup>
- In the 115<sup>th</sup> Congress, the House passed H.R. 4174, the Foundations for Evidence-Based Policymaking Act of 2017. Title I of the bill would establish Chief Evaluation Officers in large executive agencies and require agencies to develop “evidence-building” plans, albeit with definitions of *evaluation* and *evidence* that are narrower than those being used by OMB currently and cited above from GAO, the American Evaluation Association, and certain statutes.

---

<sup>346</sup> GAO, *Program Evaluation: Agencies Challenged by New Demand for Information on Program Results*, GAO/GGD-98-53, April 1998, pp. 28-29, at <https://www.gao.gov/products/GGD-98-53>.

<sup>347</sup> See, for example, CRS Report RL32663, *The Bush Administration's Program Assessment Rating Tool (PART)*, by Clinton T. Brass; and CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by Clinton T. Brass, Erin D. Williams, and Blas Nuñez-Neto.

<sup>348</sup> See CRS Congressional Distribution Memorandum, *Obama Administration Agenda for Government Performance: Evolution and Related Issues for Congress*, January 19, 2011, by Clinton T. Brass.

<sup>349</sup> See OMB, *Budget of the U.S. Government, FY2018, Analytical Perspectives* (Washington: GPO, 2017), pp. 55-58, at [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/ap\\_6\\_evidence.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/ap_6_evidence.pdf); and OMB, *Budget of the U.S. Government, FY2019, Analytical Perspectives* (Washington: GPO, 2018), pp. 59-64, at [https://www.whitehouse.gov/wp-content/uploads/2018/02/ap\\_6\\_evidence-fy2019.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/02/ap_6_evidence-fy2019.pdf). See also OMB, *President's Management Agenda*, [March 20, 2018], pp. 16-17, at <https://www.whitehouse.gov/omb/management/pma/>.

---