

U.S. Department of Education: Background and Statutorily Established Officers, Positions, and Offices

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U.S. Department of Education: Background and Statutorily Established Officers, Positions, and Offices

The U.S. Department of Education (ED) was established by the Department of Education Organization Act (DEOA, P.L. 96-88) on October 17, 1979, to “ensure that education issues receive proper treatment at the Federal level” and to “enable the Federal Government to coordinate its education activities more effectively.” ED operations began in May 1980. Prior to the establishment of ED as a Cabinet-level agency in 1979, an Office of Education was housed at the Department of Health, Education, and Welfare (HEW). Although ED has had ongoing support from Congress through appropriations and regular review of, and amendments to, the authorizing statutes for its components, the department’s first 45 years have also seen efforts to reorganize ED and, in some cases, to abolish or diminish the agency. Similarly, successive Administrations have sometimes sought to alter ED through administrative actions and legislative initiatives, including, for example, by changing the office structure at the agency.

The DEOA establishes officers, positions, and offices at ED. For example, these statutory provisions establish the Secretary of Education (hereinafter referred to as the Secretary), Deputy Secretary of Education, and several Assistant Secretary positions (e.g., Assistant Secretary for Elementary and Secondary Education, Assistant Secretary for Postsecondary Education). All of these officers are appointed by the President by and with the advice and consent of the Senate. In addition, the DEOA establishes other positions at ED, such as a director of the Office of Indian Education and a director of the Office of Educational Technology. The DEOA also establishes specified offices including, for example, the Office of Civil Rights (OCR), Office of Elementary and Secondary Education (OESE), Office of Postsecondary Education (OPE), and Office of Special Education and Rehabilitative Services (OSERS).

Section 413(a) of the DEOA authorizes the Secretary to reallocate functions among ED’s officers and “establish, consolidate, alter, or discontinue” offices within ED. Exceptions to the reorganization authority granted to the Secretary by Section 413(a) include any office transferred to ED and established by statute or any function of such an office vested in it by statute. Additionally, the Secretary may not use the authority provided under Section 413(a) to abolish any of the offices established by the DEOA or alter the “delegation of functions to any specific organizational entity required by” the DEOA except as permitted by Section 413(b). Section 413(b) provides the Secretary with explicit authority to “consolidate, alter, or discontinue ... or reallocate any functions vested by statute” in the listed statutory entities. For example, these entities include the Office of Indian Education; the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students; and the Office of Non-Public Education. Administrative reorganization under Section 413(a) may also be affected by transfer and reprogramming provisions included in annual appropriations acts.

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Introduction

The U.S. Department of Education (ED) was established by the Department of Education Organization Act (DEOA, P.L. 96-88), enacted on October 17, 1979. ED operations began in May 1980. Prior to the establishment of ED as a Cabinet-level department in 1979, an Office of Education was housed at the Department of Health, Education, and Welfare (HEW). Although ED has had ongoing support from Congress through appropriations and regular review of and amendments to the authorizing statutes for its components, the department's first 45 years have also seen efforts to reorganize the structure of ED and, in some cases, to abolish or diminish the agency.¹ Similarly, successive Administrations have sometimes sought to alter it through administrative actions and legislative initiatives, including, for example, by changing the office structure at the agency.

This report provides information about the officers, positions, and offices that are established by the DEOA, as amended, and other statutory requirements regarding the structure of ED. The report begins with background information on the establishment of ED. This section is followed by a discussion of ED's statutorily established officers and other leadership positions established by the DEOA and other statutory provisions. The next section of the report lists ED's statutorily established subunits. This is followed by a discussion of the Secretary's administrative reorganization authority under the DEOA. The final section of the report discusses an initiative housed at ED that was created by executive order. All references to statutory authority included in this report are to the DEOA unless otherwise noted.

Background

This section provides a brief discussion of legislative actions that led to ED's statutory establishment. This discussion identifies key actions taken by then-President Jimmy Carter and the 95th and 96th Congresses that led to DEOA's enactment. As an overview, this section is not comprehensive; it does not include all of the related bills that might have become part of the final legislation, and it is not a complete recounting of the sometimes complex interactions among Congress, the President, and stakeholders in creating ED. The section concludes with excerpted statutory language included in the DEOA regarding the purposes of the act and the department it established.

Legislative Actions Leading to the Establishment of ED

As noted above, ED was established by DEOA enacted in 1979.² The new department comprised most of the education components and functions of the HEW and functions and offices transferred from the Department of Defense, Department of Labor, National Science Foundation, Department of Justice, and Department of Housing and Urban Development.³

During his first presidential campaign, candidate Jimmy Carter promised to create a Department of Education. Soon after his inauguration and the beginning of the 95th Congress, on March 14,

¹ For a brief summary of such efforts, see Tom Shoop, "That Time the Education Department Was Eliminated," *Government Executive*, November 28, 2022, <https://www.govexec.com/oversight/2022/11/time-education-department-was-eliminated/379808/>.

² P.L. 96-88, 93 Stat. 668; editorially classified in Title 20, chapter 48, of the *United States Code*.

³ *Ibid.*, Title III, 93 Stat. 677. P.L. 96-88 renamed the remaining portion of the HEW as the Department of Health and Human Services (§509, 93 Stat. 695).

1977, legislation to establish a Department of Education was introduced in the Senate.⁴ In a February 28, 1978, message to Congress, President Carter pledged that his Administration would work with Congress on legislation to establish a new department.⁵ The Senate Committee on Governmental Affairs⁶ reported the bill on August 9, 1978, and it passed the Senate on September 28.⁷ No further action was taken on this bill.

Related legislation was introduced in the House of Representatives on August 8, 1978.⁸ The House Committee on Government Operations⁹ reported the bill on August 25, but the bill was not taken up on the House floor during the remaining weeks of the 95th Congress.

At the outset of the 96th Congress, legislation to establish a new department was once again introduced in both chambers. In the Senate, the chair of the Committee on Governmental Affairs introduced S. 210 on January 24, 1979. President Carter conveyed the Administration's draft legislation in a February 13 message to Congress.¹⁰ On February 27, the chair of the House Committee on Government Operations introduced President Carter's draft as H.R. 2444.¹¹ The Senate Committee on Governmental Affairs held three days of hearings on S. 210, and the House Committee on Government Operations Subcommittee on Legislation and National Security held three days of hearings on H.R. 2444.¹²

On March 14, 1979, the Senate Governmental Affairs Committee voted 9-1 to report S. 210, as amended.¹³ It was debated and further amended by the full Senate over the course of five days in April. It passed the Senate 72-21 on April 30.¹⁴

⁴ S. 991 (95th Congress).

⁵ U.S. Congress, House Committee on Education and Labor, *Elementary and Secondary Education*, message from the President of the United States transmitting his proposals to strengthen the major elementary and secondary education programs, 95th Cong., 2nd sess., February 28, 1978, H.Doc. 95-296 (Washington: GPO, 1978).

⁶ This committee is currently known as the Senate Committee on Homeland Security and Governmental Affairs.

⁷ U.S. Congress, Senate Committee on Governmental Affairs, *Department of Education Organization Act of 1978*, report together with additional views to accompany S. 991, 95th Cong., 2nd sess., August 9, 1978, S.Rept. 95-1078 (Washington: GPO, 1978); "Department of Education Organization Act of 1978," Senate debate, *Congressional Record*, daily edition, vol. 124, part 154 (September 28, 1978), p. S16485.

⁸ H.R. 13778 (95th Congress).

⁹ This committee is currently known as the House Committee on Oversight and Government Reform.

¹⁰ U.S. Congress, House Committee on Government Operations, *Establishment of a Department of Education*, message from the President of the United States transmitting a draft of proposed legislation to establish a Department of Education, and for other purposes, 96th Cong., 1st sess., February 13, 1979, H.Doc. 96-52 (Washington: GPO, 1979).

¹¹ The draft was also introduced by the chair of the Senate Committee on Governmental Affairs as S. 510, but this bill did not become the vehicle for Senate consideration of the initiative.

¹² U.S. Congress, Senate Committee on Governmental Affairs, *Department of Education Organization Act of 1979*, hearings on S. 210 and S. 510, 96th Cong., 1st sess., February 6-8, 1979 (Washington: GPO, 1979); U.S. Congress, House Committee on Government Operations, Subcommittee on Legislation and National Security, *Department of Education Organization Act*, hearings on H.R. 2444, 96th Cong., 1st sess., March 26-27, and April 5, 1979 (Washington: GPO, 1979).

¹³ U.S. Congress, Senate Committee on Governmental Affairs, *Department of Education Act of 1979*, report to accompany S. 210, 96th Cong., 1st sess., March 27, 1979, S.Rept. 96-49 (Washington: GPO, 1979).

¹⁴ "Department of Education," Senate debate, *Congressional Record*, daily edition, vol. 125, part 51 (April 30, 1979), p. S4897.

The House Government Operations Committee voted 20-19 to report H.R. 2444 on May 2, 1979.¹⁵ It was debated and amended by the House over the course of six days in June and July. It passed the House on July 11 by a vote of 210-206.¹⁶

Following passage of H.R. 2444, the House voted to amend the text of S. 210, as passed by the Senate, by replacing it with the text of H.R. 2444, as passed by the House, and to pass S. 210 as amended.¹⁷ The chambers subsequently appointed and convened a conference committee to resolve the differences between the two versions of S. 210. Five conferees from the Senate Committee on Governmental Affairs and nine conferees from the House Committee on Government Operations reported the result of their negotiations on September 20 and 21.¹⁸ The Senate adopted the conference report, 69-22, on September 24.¹⁹ The report was agreed to by a smaller margin, 215-201, in the House, where the creation of the new department had been more contentious.²⁰

President Carter signed the legislation on October 17, 1979.²¹ He nominated Shirley Hufstедler to be the first Secretary of Education on November 14, and the Senate confirmed the nomination, 81-2, on November 30.²² She was sworn into office on December 6.²³ The new department began its operations in May 1980.²⁴

¹⁵ U.S. Congress, House Committee on Government Operations, *Department of Education Organization Act*, report together with separate, additional, supplementary, and dissenting views to accompany H.R. 2444, 96th Cong., 1st sess., May 14, 1979, H.Rept. 96-143 (Washington: GPO, 1979).

¹⁶ “Department of Education Organization Act of 1979,” House debate, *Congressional Record*, daily edition, vol. 125, part 92 (July 11, 1979), p. H5718.

¹⁷ “Department of Education Organization Act of 1979,” House debate, *Congressional Record*, daily edition, vol. 125, part 92 (July 11, 1979), pp. H5718-H5726.

¹⁸ U.S. Congress, Senate Committee on Governmental Affairs, *Department of Education Organization Act Conference Report*, report to accompany S. 210, 96th Cong., 1st sess., September 20, 1979, S.Rept. 96-326 (Washington: GPO, 1979); U.S. Congress, House Committee on Government Operations, *Department of Education Organization Act Conference Report*, report to accompany S. 210, 96th Cong., 1st sess., September 21, 1979, H.Rept. 96-459 (Washington: GPO, 1979).

¹⁹ “Department of Education Organization Act—Conference Report,” Senate debate, *Congressional Record*, daily edition, vol. 125, part 124 (September 24, 1979), pp. S13263-S13264.

²⁰ “Conference Report on S. 210, Department of Education Organization Act,” House debate, *Congressional Record*, daily edition, vol. 125, part 127 (September 27, 1979), pp. H8607-H8608. According to press accounts, “[p]ersonal lobbying by Carter and the all-out exertions of a coalition of education interest groups, led by the powerful National Education Association (NEA), were crucial to the final victory for the bill. The department was a longtime goal of the NEA, which gave its first presidential endorsement to Carter in 1976 after he promised to push for the legislation.... The bill was opposed by an unusual coalition of liberals—backed by the NEA’s rival American Federation of Teachers (AFT) and the AFL-CIO—and conservatives, who feared the department would lead to greater federal control over education. A number of colleges and universities also opposed the legislation, fearing it would result in increased federal interference in education” (“Congress Creates Department of Education,” *CQ Almanac* 1979, 35th ed., pp. 465-474 [Washington, DC: Congressional Quarterly, 1980]).

²¹ U.S. President (Carter), “Department of Education Organization Act,” *Weekly Compilation of Presidential Documents*, vol. 15 (October 17, 1979), pp. 1955-1958.

²² U.S. President (Carter), “Nominations,” *Weekly Compilation of Presidential Documents*, vol. 15 (November 14, 1979), p. 2138; and “Unanimous-Consent Agreement—Nomination of Shirley M. Hufstедler,” Senate debate in executive session, *Congressional Record*, vol. 125, part 26 (November 30, 1979), p. 34248.

²³ U.S. President (Carter), “Department of Education,” *Weekly Compilation of Presidential Documents*, vol. 15 (December 6, 1979), pp. 2199-2201.

²⁴ Executive Order 12212 established the effective date for the DEOA. The executive order was included in the *Federal Register* on May 2, 1980 (45 *Federal Register* 29557). It established May 4, 1980, as the date on which the provisions of the DEOA would take effect. See “An Overview of the U.S. Department of Education: The Department’s History,” <https://www2.ed.gov/about/overview/focus/what.html#whatis>.

Purpose of ED and DEOA

Since the establishment of ED by the DEOA in October 1979, Congress has amended the act on multiple occasions.²⁵ Section 102 describes the broad purpose of the DEOA as the following:

Congress declares that the establishment of a Department of Education is in the public interest, will promote the general welfare of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal Government to coordinate its education activities more effectively.

Section 102 further identifies the specific purposes of the DEOA as follows:

1. to strengthen the Federal commitment to ensuring access to equal educational opportunity for every individual;
2. to supplement and complement the efforts of States, the local school systems and other instrumentalities of the States, the private sector, public and private educational institutions, public and private nonprofit educational research institutions, community-based organizations, parents, and students to improve the quality of education;
3. to encourage the increased involvement of the public, parents, and students in Federal education programs;
4. to promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information;
5. to improve the coordination of Federal education programs;
6. to improve the management and efficiency of Federal education activities, especially with respect to the process, procedures, and administrative structures for the dispersal of Federal funds, as well as the reduction of unnecessary and duplicative burdens and constraints, including unnecessary paper-work, on the recipients of Federal funds; and
7. to increase the accountability of Federal education programs to the President, the Congress, and the public.

Officers and Positions Established by the DEOA and Other Laws

The DEOA provides for leadership of ED by a Secretary (Section 201) and Deputy Secretary (Section 202(a)(1)).²⁶ Both posts are to be filled through appointment by the President by and with the advice and consent of the Senate.

The DEOA also establishes the following posts, all of which are also advice and consent positions:

- Assistant Secretary for Elementary and Secondary Education (Section 202(b)(1)(A));

²⁵ DEOA citations within this report refer to the act as amended. The statute has been classified to chapter 48 of Title 20 of the *U.S. Code* (§§3401-3510).

²⁶ The provisions establishing these positions, as well as many of the positions below, specify that there “shall be” such a position within ED. Another section of the DEOA provides that there “may be” an Under Secretary (Section 202(d)). If the President decides to establish such a position, the Under Secretary “shall be appointed by the President, by and with the advice and consent of the Senate.” As of February 4, 2025, ED’s leadership included an Under Secretary who was overseeing the Office of Postsecondary Education; Office of Career, Technical, and Adult Education; Office of the Chief Economist; and Office of Federal Student Aid.

- Assistant Secretary for Postsecondary Education (Section 202(b)(1)(B));
- Assistant Secretary for Career, Technical, and Adult Education (Section 202(b)(1)(C));
- Assistant Secretary for Special Education and Rehabilitative Services (Section 202(b)(1)(D));
- Assistant Secretary for Civil Rights (Section 202(b)(1)(E)); and
- General counsel (Section 202(b)(1)(F)).

In addition, there “shall be ... a Director of the Institute of Education Sciences” (Section 202(b)(4)), also an advice and consent position.²⁷ The DEOA also establishes within ED an inspector general who is appointed through the advice and consent process in accordance with Title 5, Chapter 4 (Section 202(c)), of the *U.S. Code*.²⁸

Section 202(e) of the DEOA authorizes four additional officers without naming their positions. These four additional officers “shall perform such functions as the Secretary shall prescribe,” including the following six functions:

1. congressional relations;
2. communications;
3. monitoring parental and public participation in programs where such participation is required by law;
4. management and budget;²⁹
5. planning, evaluation, and policy development; and
6. promoting the study of foreign languages and cultures.

Section 202(e) provides that these four additional officers³⁰ are to be appointed by the President by and with the advice and consent of the Senate.³¹ In contrast, it further provides that appointees

²⁷ The appointment requirements for this position are provided for in Section 114(a) of the Education Sciences Reform Act (P.L. 107-279, Title I, §114; 20 U.S.C. §9514).

²⁸ The Inspector General Act of 1978 (P.L. 95-452), as amended, establishes inspectors general in executive branch departments and major agencies, including ED. The act provides that the inspector “shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation,” among other requirements (5 U.S.C. Chap. 4).

²⁹ Effective January 6, 2019, the ED Reform Restructuring Initiative consolidated the Office of the Chief Financial Officer (CFO) and the Office of Management. The Chief Financial Officers Act of 1990 (P.L. 101-576), as amended, establishes CFOs in executive branch departments and major agencies, including ED. The act does not specify where the office will be located organizationally. It does provide, however, that the CFO “shall ... report directly to the head of the agency regarding financial management matters [and] oversee all financial management activities relating to the programs and operations of the agency,” among other requirements (31 U.S.C. §902). ED’s CFO, like those of other departments, is to “be appointed by the President, with the advice and consent of the Senate” or “designated by the President, in consultation with the head of the agency, from among officials of the agency who are required by law to be so appointed” (31 U.S.C. §901(a)).

³⁰ For example, ED currently has an Assistant Secretary for Planning, Evaluation, and Policy Development; an Assistant Secretary for Legislation and Congressional Affairs; and an Assistant Secretary for Communications and Outreach.

³¹ This authority is subject to Section 202(f), which requires that “[w]henver the President submits the name of an individual to the Senate for confirmation as an officer of the Department under this section, the President shall state the particular functions of the Department such individual will exercise upon taking office.”

to the position of Assistant Secretary for Management “shall not be subject to the advice and consent of the Senate.”

Below is a list of additional statutorily established positions at ED, some of which are specified in laws other than the DEOA. These positions are filled through appointment by the Secretary unless otherwise specified.

- Special Assistant for Gender Equity (Section 202(b)(3)).
- Liaison for Community and Junior Colleges (Section 202(i)(1)).
- Director of the Office of English Language Acquisition, Language Enhancements, and Academic Achievement for Limited English Proficient Students (Section 209 and Section 216(b)(1)).
- Director of the Office of Indian Education (Section 215(b)(1)).
- Director of the Office of Educational Technology.³²
- Liaison for Proprietary Institutions of Higher Education (Section 219(a)).
- The Assistant Secretary of Postsecondary Education “shall appoint a Deputy Assistant Secretary for International and Foreign Language Education” (Section 205(b)).
- The head of the office that is designated by the Secretary to coordinate the activities of ED as they relate to the outlying areas “shall appoint a coordinator for the outlying areas” (Section 220(b)).
- Under Title 44, Section 3506, of the *U.S. Code*, agency heads, including the Secretary of Education, “shall designate a Chief Information Officer” to carry out specified duties.³³ The chief information officer is to report directly to the agency head.
- Section 141(d) of the Higher Education Act authorizes the position of chief operating officer of federal student aid to be filled through appointment by the Secretary.

Offices Established by the DEOA and Other Laws

The DEOA and other laws that have addressed the structure of ED establish the following subunits:

- Office for Civil Rights (Section 203(a)).
- Office of Elementary and Secondary Education (OESE, Section 204). Section 204 also establishes an Office of Migrant Education within the OESE.
- Office of Postsecondary Education (Section 205).
- Office of Career, Technical, and Adult Education (OCTAE, Section 206).
- Office of Special Education and Rehabilitative Services (OSERS, Section 207). Section 603 of the Individuals with Disabilities Education Act establishes an

³² The DEOA does not specify how this position is appointed. As statutory language does not specify that the position is appointed by the President by and with the advice and consent of the Senate, it appears that this position is appointed by the Secretary.

³³ Additional examples of responsibilities for this position are provided for at Title 40, Section 11315. The role of Chief Information Officer was established by Section 5125 of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104-106).

Office of Special Education Programs within OSERS.³⁴ Section 3 of the Rehabilitation Services Act of 1973 establishes a Rehabilitation Services Administration within ED, and this unit is also part of OSERS.³⁵

- Institute of Education Sciences (IES, Section 208). Section 208 further stipulates that IES “shall be administered in accordance with the Education Sciences Reform Act of 2002 [ESRA] by the Director appointed under Section 114(a) of that Act.”³⁶ ESRA also requires that IES include several component offices.³⁷ These include the Office of the Director, the National Board for Education Sciences, and the National Education Centers, which include the National Center for Education Research, the National Center for Education Statistics, the National Center for Education Evaluation and Regional Assistance, and the National Center for Special Education Research.
- Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students (Section 209 and 216(a)). Section 216 provides more requirements regarding the functions and operation of the office than are included in Section 209.
- Office of General Counsel (Section 210).
- Office of Inspector General (Section 211).
- Office of Correctional Education (Section 212).³⁸ The DEOA does not specify where this office is to be housed at ED. It is currently housed in the OCTAE.
- Office of Non-Public Education (Section 214).³⁹ The DEOA does not specify where this office is to be housed at ED. It is currently housed in the Office of the Deputy Secretary.
- Office of Indian Education (Section 214). The DEOA does not specify where this office is to be housed at ED. It is currently housed in the OESE.
- Office of Educational Technology (Section 218). The DEOA does not specify where this office is to be housed at ED. It is currently housed in the Office of Planning, Evaluation, and Policy Development.
- The Federal Student Aid Office was established under the Higher Education Amendments of 1998, P.L. 105-244.⁴⁰

While not an office, per se, the Federal Interagency Committee on Education was also established by Section 217(a) of the DEOA. Also, as previously noted, the head of each covered agency,

³⁴ P.L. 91-230, §603, as amended.

³⁵ The statute provides, “There is established in the Office of the Secretary in the Department of Education a Rehabilitation Services Administration.... In the performance of the functions of the office, the Commissioner shall be directly responsible to the Secretary of Education or to the Under Secretary or an appropriate Assistant Secretary of such Department, as designated by the Secretary” (P.L. 93-112, §3, as amended).

³⁶ The appointment requirements for this position are provided for in Section 114(a) of ESRA (P.L. 107-279, Title I, §114; 20 U.S.C. §9514).

³⁷ P.L. 107-279, Title I; 20 U.S.C. Chapter 76, Subchapter I. See also footnote 22.

³⁸ The DEOA does not specify a particular individual who is in charge of this office.

³⁹ The DEOA does not specify a particular individual who is in charge of this office.

⁴⁰ P.L. 105-244, Section 141, established a performance-based organization at ED responsible for managing the operational functions that support the programs authorized under Title IV of the Higher Education Act of 1965. The statute also granted the office “independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions” (Higher Education Act, §141). For more information, see CRS Report R46143, *The Office of Federal Student Aid as a Performance-Based Organization*.

including ED, “shall designate a Chief Information Officer.” ED has elected to create the Office of the Chief Information Officer.⁴¹

ED has also opted to create offices associated with the unnamed positions in Section 202(e) to carry out specific functions, including the Office of Planning, Evaluation, and Policy Development; Office of Legislation and Congressional Affairs; Office of Communications and Outreach; and Office of Finance and Operations—even though the DEOA does not establish these offices. In addition, while they are not specifically established by the DEOA, ED has created the Office of the Secretary, Office of the Deputy Secretary, and Office of the Under Secretary.

Secretarial Reorganization Authority Under DEOA⁴²

Section 413(a) of the DEOA authorizes the Secretary to allocate or reallocate functions among ED’s officers and “establish, consolidate, alter, or discontinue” offices within ED.⁴³ Exceptions to the authority granted to the Secretary by Section 413(a) include any offices or other entities transferred to ED and established by statute or any function of such offices or officers specified in statute. Additionally, the Secretary may not use the authority provided under Section 413(a) to abolish any of the offices established by the DEOA or alter the “delegation of functions to any specific organizational entity required by” the DEOA, except as permitted by Section 413(b) (discussed below).

Section 413(b) provides the Secretary with explicit authority to “consolidate, alter, or discontinue any of the following statutory entities, or reallocate any functions vested by statute” in the:

- Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students;
- Teacher Corps;
- Community College unit;
- National Center for Education Statistics;⁴⁴
- National Institute of Education;
- Office of Environmental Education;
- Office of Consumers’ Education;
- Office of Indian Education;
- Office of Career Education;

⁴¹ Offices currently operating at ED were identified based on a review of ED’s staff organization web page, which ED describes as having “links to every office’s homepage and overview.” The page is available at <https://www.ed.gov/about/ed-offices/ed-staff-organization>, and a description is available at <https://www.ed.gov/about/ed-offices>. This CRS report does not include information on sub-offices at ED unless they are established in statute. For example, the Office of Indian Education is required by the DEOA and is housed within OESE. The Office of the Chief Economist is not established in statute but is housed in the Office of the Under Secretary.

⁴² For a summary of Secretaries’ general administrative reorganization authority, see CRS Report R44909, *Executive Branch Reorganization*.

⁴³ This authority is subject to Section 202(f), which requires that “[w]henver the President submits the name of an individual to the Senate for confirmation as an officer of the Department under this section, the President shall state the particular functions of the Department such individual will exercise upon taking office.”

⁴⁴ The National Center for Education Statistics is also mandated by Part C of the ESRA (P.L. 107-279), as amended. The question of whether the primary statutory authority for the center lies with the DEOA or the ESRA is beyond the scope of this report.

- Office of Non-Public Education;
- bureau for the education and training for the handicapped; and
- administrative units for guidance and counseling programs, the veterans' cost of instruction program, and the program for gifted and talented children.

Section 413(b) also specifies that actions may be taken under this subsection only

upon the expiration of a period of ninety days after the receipt by the Committee on Labor and Human Resources of the Senate⁴⁵ and the Committee on Education and Labor of the House of Representatives⁴⁶ of notice given by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this subsection and the facts and circumstances relied upon in support of such proposed action.

Three recurring general provisions included in the annual Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act might affect a reorganization of ED. First, a recurring general provision prohibits the obligation or expenditure of appropriated funds through a reprogramming (a reallocation within an appropriated amount, such as from one program, project, or activity to another) that:

- creates new programs;
- eliminates a program, project, or activity;
- increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;
- relocates an office or employees;
- reorganizes or renames offices;
- reorganizes programs or activities; or
- contracts out or privatizes any functions or activities presently performed by federal employees.

The provision specifies that the prohibition is in effect unless the appropriations committees of the House and Senate are consulted and notified in writing in advance of such reprogramming.⁴⁷

Second, a recurring general provision states that no funds made available by the act may “be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.”⁴⁸ A “transfer” is the act of moving funds from one appropriations account to another appropriations account.⁴⁹ An agency may not transfer funds between appropriations accounts unless authorized by law.⁵⁰

⁴⁵ This committee is currently known as the Senate Committee on Health, Education, Labor, and Pensions.

⁴⁶ This committee is currently known as the House Committee on Education and Workforce.

⁴⁷ See, for example, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2024; P.L. 118-47, Div. D, Title V, §514; 138 Stat. 704-705.

⁴⁸ *Ibid.*, §512; 138 Stat. 704.

⁴⁹ Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 95-96.

⁵⁰ 31 U.S.C. §1532.

Third, a recurring general provision provides transfer authority up to stated amounts.⁵¹ However ED may not use the transfer authority to “create a new program” or “fund any project or activity for which no funds are provided” in the act.⁵² The House and Senate appropriations committees are to be notified in advance of any such transfer.⁵³

Another statutory provision, Title 31, Section 1531, of the *U.S. Code*, authorizes the transfer of appropriation balances in connection with the transfer of functions or activities that those balances are available to fund:

The balance of an appropriation available and necessary to finance or discharge a function or activity transferred or assigned under law within an executive agency or from one executive agency to another may be transferred to and used (1) by the organizational unit or agency to which the function or activity was transferred or assigned; and (2) for a purpose for which the appropriation was originally available.

The degree to which each of the three transfer provisions above might impact a given reorganization might be a function of legal interpretation and the specific facts in the given context.

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⁵¹ Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2024; P.L. 118-47, Div. D, Title III, §302; 138 Stat. 691. For more information about transfers, see CRS Report R47600, *Transfer and Reprogramming of Appropriations: An Overview*.

⁵² *Ibid.*, Title III, §302; 138 Stat. 691.

⁵³ *Ibid.*