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Compiled by Storm & Sara Russell

Executive Power: An Overview

Legal Information Institute, https://www.law.cornell.edu/wex/executive_power

In its first three articles, the U.S. Constitution outlines the branches of the U.S. Government, the powers that they contain and the limitations to which they must adhere. Article II outlines the duties of the Executive Branch.

The President of the United States is elected to a four-year term by electors from every state and the District of Columbia. The electors make up the Electoral College, which is comprised of 538 electors, equal to the number of Representatives and Senators that currently make up Congress. The citizens of each state vote for slates of electors (which are created by the presidential candidates) who then vote for the president on a particular day chosen by Congress.

There are only three requirements to become president:

- 1) They must be a “natural born” citizen of the United States. Naturalized citizens are not eligible.
- 2) They must be at 35 years old.
- 3) They have to have lived within the United States for at least 14 years.

If the president becomes unable to perform his or her duties, the vice-president becomes the president. Amendment XXII placed a two-term limit on the presidential office.

The president:

- is the Commander in Chief of the armed forces. He or she has the power to call into service the state units of the National Guard, and in times of emergency may be given the power by Congress to manage national security or the economy.
- has the power make treaties with Senate approval. He or she can also receive ambassadors and work with leaders of other nations.
- is responsible for nominating the heads of governmental departments, which the Senate must then approve. In addition, the president nominates judges to federal courts and justices to the United States Supreme Court.
- can issue executive orders, which have the force of law but do not have to be approved by congress.
- can issue pardons for federal offenses.
- can convene Congress for special sessions.
- can veto legislation approved by Congress. However, the veto is limited. It is not a line-item veto, meaning that he or she cannot veto only specific parts of legislation, and the president’s veto can be overridden by a two-thirds vote in both the House and the Senate.

- delivers a State of the Union address annually to a joint session of Congress.

War Powers

Only Congress can declare war however, as the Commander in Chief of the armed forces, many presidents have sent troops to battle without an official war declaration (ex. Vietnam, Iraq, and Afghanistan). The 1973 War Powers Act attempted to define when and how the president can send troops to battle by adding strict time frames for reporting to Congress after sending troops to war. The president can be limited to sending troops for 90 days, but this has never fully been tested by in the courts.

Nominations

The president is responsible for nominating candidates for the head positions of government offices. A president will nominate cabinet officials and secretaries at the beginning of his or her presidency and will fill vacancies as necessary. In addition, the president is responsible for nominating Federal Circuit Court judges and Supreme Court justices and choosing the Chief Justice. These nominations must be confirmed by a majority vote of the Senate.

Executive Orders

In times of emergency, the president can override congress and issue executive orders with almost limitless power. Abraham Lincoln used an executive order in order to fight the Civil War, Woodrow Wilson issued one in order to arm the United States just before it entered World War I, and Franklin Roosevelt approved Japanese internment camps during World War II with an executive order. Many other executive orders are on file and could be enacted at any time.

Pardons

The U.S. Constitution gives the president almost limitless power to grant pardons to those convicted of federal crimes. While the president cannot pardon someone impeached by Congress, he or she can pardon anyone else without any Congressional involvement.

Executive Orders

USGOVINFO at About.Com

<http://usgovinfo.about.com/od/thepresidentandcabinet/a/Presidential-Executive-Orders.htm>

By [Robert Longley](#)

A presidential executive order (EO) is a directive issued to federal agencies, department heads, or other federal employees by the [President of the United States](#) under his [statutory or constitutional powers](#).

In many ways, presidential executive orders are similar to written orders, or instructions issued by the president of a corporation to its department heads or directors.

Thirty days after being published in the Federal Register, executive orders take effect. While they do bypass the [U.S. Congress](#) and the standard [legislative law making process](#), no part of an executive order may direct the agencies to conduct illegal or unconstitutional activities.

Reasons for Issuing Executive Orders

Presidents typically issue executive orders for one of these purposes:

1. Operational management of the [executive branch](#)
2. Operational management of federal agencies or officials
3. To carry out statutory or constitutional presidential responsibilities

Can Executive Orders be Overridden or Withdrawn?

The president can amend or retract his or her own executive at any time. The president may also issue an executive order superseding or nullifying executive orders issued by former presidents. New incoming presidents may choose to retain the executive orders issued by their predecessors, replace them with new ones of their own, or revoke the old ones completely. In extreme cases, Congress may pass a law that alters an executive order, and they can be declared unconstitutional and vacated by the [Supreme Court](#).

Executive Orders vs. Proclamations

[Presidential proclamations](#) differ from executive orders in that they are either ceremonial in nature or deal with issues of trade and may or may not carry legal effect. Executive orders have the legal effect of a law.

Constitutional Authority for Executive Orders

[Article II, section 1](#) of the [U.S. Constitution](#) reads, in part, "The executive power shall be vested in a president of the United States of America." And, [Article II](#), section 3 asserts that "The President shall take care that the laws be faithfully executed..." Since the Constitution does not specifically define [executive power](#), critics of executive orders argue that these two passages do not imply constitutional authority. But, Presidents of the [United States](#) since [George Washington](#) have argued that they do, and have used them accordingly.

Presidential Directives and Memorandums Same as Executive Orders

Occasionally, presidents [issue orders](#) to [executive branch](#) agencies through "presidential directives" or "presidential memorandums," instead of executive orders. In January 2009, the U.S. Department of Justice issued a statement declaring presidential directives (memorandums) to have exactly the same

effect as executive orders.

"A presidential directive has the same substantive legal effect as an executive order. It is the substance of the presidential action that is determinative, not the form of the document conveying that action," wrote acting U.S. Assistant Attorney General Randolph D. Moss. "Both an executive order and a presidential directive remain effective upon a change in administration, unless otherwise specified in the document, and both continue to be effective until subsequent presidential action is taken."

Related

- [Purposes and Legality of Presidential Bill Signing Statements](#)
- [What is a Presidential Executive Order?](#)
- [What are the Legislative Powers of the President of the United States?](#)
- [Quick Study Guide to the Executive Branch of US Government](#)