

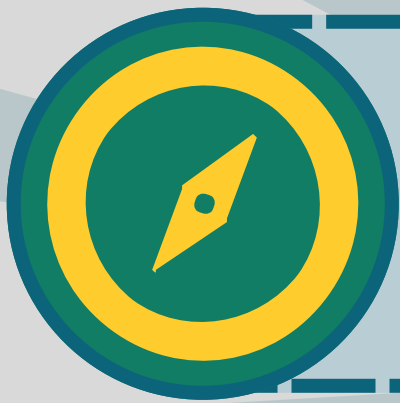
EXECUTIVE ORDERS 101



BACKGROUND



Article II grants the President executive powers to “take care that the laws be faithfully executed”



Executive orders can be used to shape policy by administrating guidance and issuing directives to federal agencies



Executive orders do not require approval from Congress; but, orders are not permanent and can be overturned



The Office of Budget Management (OMB) coordinates the executive order process



PROCESS FOR ISSUING



**OMB receives
draft**



**OMB Director
approves of order**



**Attorney General
approves of order**



**Order is published
in the Federal
Register**



**President signs
order**



**Director of
Federal Register
reviews order**



IMPORTANT NOTES



Orders **must**
be published
in the Federal
Register to
take effect



Orders **must**
be based on
Article II
authority or
congressional
delegation



EXECUTIVE ORDERS:

ABLE TO DO

Direct law and implementation allocation of agencies

Create committees, agencies and task forces

Change the administrative structures

Activate emergency power

Address military operations & foreign affairs

NOT ABLE TO DO

Alter the Constitution

Direct federal spending outside of Congress

Overturn SCOTUS rulings

Nullify existing legislation

Alter the balance of power between Congress and the Judiciary

Bypass the legislative process

JUDICIAL REVIEW

Courts can call into question whether an executive order is accurately based on constitutional powers or congressional delegation

The Court can challenge executive orders based on statutory, constitutional, or “reasonableness review” from the Due Process Clause

COURTS CAN DETERMINE:



Whether a President has the power to act



Whether the order exceeds the scope of Congress’s Delegation



The underlying scope and impact of the order



CONGRESSIONAL ACTION

If the President uses a congressional delegation to issue an order, Congress can repeal or modify it through legislation, but the President's veto power makes this rare

Congress can additionally codify a previously issued order; once codified, future presidents cannot revoke the directive

CONGRESS COULD LIMIT EXECUTIVE ACTION BY:



Use its appropriations authority to limit or deny federal funding



Imposing regulations, such as the National Emergencies Act, in order to roll back presidential power

