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GEORGE E. SHAMBAUGH IV
PAUL J. WEINSTEIN JR.

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POLICYMAKING

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BRIEF CONTENTS

LIST OF BOXES xiii

ACRONYMS xv

PREFACE xviii

ABOUT THE AUTHORS xxii

CHAPTER 1: WHY THE POLICYMAKING PROCESS MATTERS 1

PART I. THE POLICYMAKERS

CHAPTER 2: THE WHITE HOUSE POLICY COUNCILS 23

CHAPTER 3: THE WHITE HOUSE STAFF 48

CHAPTER 4: AGENCIES AND POLICY IMPLEMENTATION 64

CHAPTER 5: POLICY MANAGEMENT 82

PART II. TOOLS OF THE TRADE 92

CHAPTER 6: POLICYMAKING MEMORANDA 109

CHAPTER 7: THE STATE OF THE UNION AND THE BUDGET PROCESS 115

CHAPTER 8: POLICY IMPLEMENTATION TOOLS 125

CHAPTER 9: LEGISLATIVE CLEARANCE AND COORDINATION: SAPS, LRMS, AND OTHER POLICY ACRONYMS 137

CHAPTER 10: POLLING AND THE POLICYMAKING PROCESS 160

CHAPTER 11: COMMUNICATING AND MARKETING POLICY

PART III. CASE STUDIES

CHAPTER 12: SOCIAL POLICYMAKING: WELFARE REFORM DURING THE CLINTON ADMINISTRATION 175

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CHAPTER

4

AGENCIES AND POLICY IMPLEMENTATION

EXECUTIVE AGENCIES AND DEPARTMENTS
AND EXECUTIVE BRANCH POLICYMAKING

Even though the policymaking process since the presidency of Franklin Roosevelt has been increasingly centralized in the White House, federal agencies continue to play an important and dynamic role in the policymaking process. Because of the sheer number of government programs and decisions that need to be made, a large portion of the policymaking process remains outside the White House in executive branch agencies. The term *agency* refers to organizations with "Agency," "Department," or "Bureau" in their titles, like the Environmental Protection Agency or Central Intelligence Agency, the Department of State or Department of Defense, and the Federal Bureau of Investigation. All of these agencies control the programs that implement the policies decided by the president; they have the programmatic knowledge and expertise that are essential components of an effective decision-making process.¹ In addition, agencies control the budget, regulatory, and rule-making processes that make policy implementation a reality.

In this chapter, we will identify the roles and responsibilities of agencies in the policymaking process and analyze how they help to form and implement policy decisions. We will also discuss the role of agencies and the White House in the implementation of policy decisions. Once policy decisions are made by the president or his subordinates, agencies become the chief implementers of

1. For an overview of the problems and issues that the president faces when attempting to implement policy, see George Edwards and Stephen Wayne, *Presidential Leadership: Politics and Policy Making* (New York, NY: St. Martin's/Worth, 1998), pp. 283–322.

those policies. Agencies draft regulations, fill in the details on legislation submitted by the president to Congress, and are often designated to carry out presidential decisions presented in executive orders. The four primary means of implementing policy decisions are (1) legislation; (2) executive actions, including issuing executive orders; (3) regulatory rule making; and (4) use of the presidential bully pulpit. In this chapter, we will analyze these implementation mechanisms and specify the conditions under which each is likely to be used.

THE ROLE OF AGENCIES

There are fifteen cabinet agencies and scores of agencies, commissions, and other government entities in the executive branch of government. These include cabinet-level agencies; non-cabinet-level agencies; and independent agencies, departments, and bureaus. The most prominent of these are cabinet-level agencies.

Cabinet-Level Agencies

Cabinet-level agencies are those whose programs and responsibilities have been determined by the Congress to be vital to the national interest and should serve as preeminent advisors to the president. The president can include the heads of particular agencies in his cabinet, but only Congress can grant the whole agency cabinet status. For example, President Clinton made the administrator of the Environmental Protection Agency (EPA) a member of his cabinet, but Congress failed to enact legislation that would provide the agency with cabinet rank. Box 4-1 provides a list of all the cabinet-level agencies.

BOX 4-1

Cabinet-Level Agencies

Department of Agriculture	Department of the Interior
Department of Commerce	Department of Justice
Department of Defense	Department of Labor
Department of Education	Department of State
Department of Energy	Department of Transportation
Department of Health and Human Services	Department of the Treasury
Department of Housing and Urban Development	Department of Veterans Affairs
	Department of Homeland Security

Most agencies are organized into program offices and non-program offices. Program offices run the specific programs that Congress has established by statute, such as Head Start, Pell Grants, and food stamps. Non-program offices include an agency's budget office, the office of the general counsel, the office of the chief of staff, and an agency's policy and research office. Policy development in most federal agencies is coordinated by the office of the chief of staff and the policy development office. The budget process is directed by the budget office, while rule implementation (regulations) is controlled by an agency's general counsel office.

Like the White House office, cabinet agencies follow a specific set of internal processes and guidelines when developing policy. If a cabinet secretary wants an agency to prepare an options memorandum in a specific policy area, he or she will assign someone in the chief of staff's office or policy development office the task of setting up an intra-agency working group. The working group will usually include someone from the general counsel's office, the agency's budget office, and its relevant program office(s). In a fashion that mirrors the White House policy process, the intra-agency group will continue to meet until a memorandum is readied. Before the memo is submitted, however, a formal concurrence/nonconcurrence sheet is circulated to the agency senior staff. Each member of the senior staff *must* express his or her opinion before the memorandum is submitted to the Secretary.²

Non-Cabinet-Level Executive Agencies

The difference between cabinet agencies and agencies whose director is a member of a particular president's cabinet can seem confusing and arcane. The EPA, for example, has a larger budget than several other cabinet agencies. The Congress conducts regular oversight of the EPA, just as it does with cabinet departments. Furthermore, President Obama appointed the administrator of the EPA to his cabinet. Yet, Congress has never granted the EPA cabinet-level status. As a result, although the head of the EPA attends cabinet meetings, the EPA remains a non-cabinet-level agency. Consequently, for practical purposes, the difference between some cabinet departments and large non-cabinet agencies like the EPA is often nonexistent.

On the other hand, there is a distinct difference in the political clout of cabinet level and non-cabinet-level agencies. For example, for reasons of continuity in government and clear lines of succession in the event of a catastrophe,

2. J. Quic Lawing (former Chief of Staff to the Secretary of Housing and Urban Development), interview with the author, May 7, 2001.

one cabinet officer always fails to attend the State of the Union address. The missing officer is always a congressionally designated cabinet agency.³ Thus, even though President Clinton treated the head of the EPA as a cabinet officer, and even though his own Office of Cabinet Affairs (OCAF) believed that the president has the authority to make an agency a cabinet department without congressional approval, the OCAF did not allow the head of the EPA to be the missing cabinet official. This recognition of political clout carries over into policy meetings, where there is often a subtle difference in the way cabinet agencies are treated by White House staff versus non-cabinet agencies.

Many non-cabinet-level agencies tend to have a narrow program area or issue focus. The Federal Emergency Management Agency (FEMA), the General Services Administration (GSA), and the Peace Corps are examples of programs with a specific focus. FEMA is the agency responsible for coordinating the federal government's response to emergencies, including natural disasters. GSA manages all the administrative services for the federal government. It negotiates the leases for office space and purchases all the office furniture and supplies for all federal government agencies. The Peace Corps was founded under President Kennedy. It is very well known, yet it has a very small budget of only about \$370 million. The Peace Corps logically could have been situated in the State Department, just as USAID is today. But there was concern that many developing countries would have balked at hosting Peace Corps volunteers if they thought they were really State Department diplomats or spies rather than engineers, teachers, and agricultural advisors. To minimize such misperceptions, the Peace Corps was developed as a new agency.

Box 4-2 lists most of the major non-cabinet-level agencies that report directly to the president. Some of the heads of these agencies serve on the president's cabinet, and others do not.

BOX 4-2 Major Non-Cabinet-Level Executive Agencies	
Central Intelligence Agency	Environmental Protection Agency
Corporation for Community and National Service	Federal Bureau of Investigation

(Continued)

3. Thurgood Marshall, Jr. (former Secretary to the Cabinet), interview with the author, April 3, 2001.

(Continued)

Federal Emergency Management Administration
 General Services Administration
 National Aeronautics and Space Administration (NASA)

Office of Personnel Management
 Peace Corps
 Small Business Administration
 Tennessee Valley Authority

Note: Some of the agencies on this list will assert they are independent because the statutes creating them describe them that way. But because they are not self-funded, they serve at the pleasure of the president (meaning they can be fired by the president), there are no terms of office, and political leadership is not limited by party, they are not truly independent in practice.

Some single-issue or program agencies have grown beyond their original mandates and could be cabinet agencies if Congress acquiesced. The EPA, for example, has become larger than several other cabinet departments and plays a much greater role in the policy process than originally envisioned. It is now involved in almost every interagency process regarding environmental policy—even when the discussion involves programs not run by the agency. This is unusual. Although cabinet agencies, such as Treasury, can participate in almost any discussion regardless of any direct responsibility for the programs being discussed, most single-issue or program agencies participate in policy processes only when the programs being discussed are ones run by their particular agencies.

Independent Agencies, Departments, and Bureaus

Independent agencies, departments, and bureaus exist within the executive branch, but their day-to-day operations are not overseen by the president and the White House staff. These agencies were created to ensure that they carried out their responsibilities without regular interference by the executive and legislative branches. They tend to be either regulatory enforcement agencies or government corporations that are chartered to provide a specific service to business or consumers (e.g., United States Postal Service). Independent regulatory agencies are also typically defined by term appointment rather than appointments at the pleasure of the presidency.⁴ Below are the key characteristics of independent agencies.⁵

4. Thurgood Marshall, Jr. interview with the author, April 3, 2001.

5. Not all independent agencies exhibit each characteristic listed below.

- Fully or partially self-financed through user fees from industries they regulate;
- Agency leadership is nominated by president and confirmed by Senate, but serves for a term rather than at the pleasure of the president;
- Terms of office not concurrent with president;
- Membership limits based on party affiliation.

The best-known and arguably most powerful independent agency is the Federal Reserve Board, which serves as the nation's central bank. Others include the Federal Communications Commission (FCC), which regulates the telecommunications industry, and the Federal Elections Commission (FEC), which oversees our country's election laws. The president's primary authority over these agencies is his ability to nominate the heads and board members of these departments and, in some cases, his authority to designate their chairpersons. Although the president can formally request these agencies to take certain actions, he or she cannot order or direct them to do so. Furthermore, unlike non-independent agencies, independent agencies can simply ignore the president's request. For example, in 1997, President Clinton asked the FCC to require broadcasters to provide free television ads to candidates for federal office as part of his overall campaign finance reform agenda. FCC Chairman Bill Kennard expressed some initial interest in the proposal, but the Commission soon found that Hill appropriators were not so warm to the idea. Consequently, the FCC chose not to act on the president's official request. Box 4-3 lists the independent government agencies.

BOX 4-3

Independent Agencies

Commission on Civil Rights	Federal Deposit Insurance Corporation
Commodity Futures Trading Commission	Federal Election Commission
Consumer Product Safety Commission	Federal Maritime Commission
Defense Nuclear Facilities Safety Board	Federal Mediation and Conciliation Service
Federal Communications Commission	Federal Reserve System Board of Governors
	Federal Retirement Thrift Investment Board

(Continued)

(Continued)

Federal Trade Commission	Office of Government Ethics
Merit Systems Protection Board	Pension Benefit Guaranty Corporation
National Archives and Records Administration	Railroad Retirement Board
National Credit Union Administration	Securities and Exchange Commission
National Labor Relations Board	Selective Service System Trade and Development Agency
National Railroad Passenger Corporation	United States International Trade Commission
National Transportation Safety Board	United States Postal Service
Nuclear Regulatory Commission	

IMPLEMENTING POLICY DECISIONS

Once a policy decision has been made, the implementation process begins. A decision-making memorandum generally contains both policy recommendations and policy implementation recommendations. For example, in 1993, President Clinton was given a decision-making memorandum that recommended he reform the Community Reinvestment Act (CRA). Under the CRA, commercial banks and savings and loans are required to reinvest in the communities in which they charter and take deposits. The purpose of the law is to ensure that all communities have access to basic banking services. Yet throughout the 1980s, the CRA was criticized for being overly bureaucratic and focused more on paperwork than performance. President Clinton's advisers suggested that the CRA be streamlined and that the regulations be based on performance—tied to actual lending and investment benchmarks—instead of based on highly subjective criteria such as the number of meetings with community groups. In their decision-making memorandum to the president, his advisers suggested he send a presidential directive to the four banking regulators asking them to revise CRA regulations. Thus, the president's advisers provided him with not only a proposed policy change but a tool to implement those recommended changes. In the case of CRA reform, the tool of choice was a presidential directive. On other occasions it could be legislation, regulatory change, or simply the use of the presidential bully pulpit. Sometimes the choice of the tool is driven by the policies chosen and sometimes by the political climate. For example, presidents often rely on executive orders when they lack political support in Congress. In the remaining

sections of this chapter, we will discuss the policy implementation process and the role of the White House offices and the agencies in this system.

Executive Orders and Other Executive Actions

The president is the chief executive of the executive branch of the federal government. As chief executive, he has ultimate supervision over the various administrative agencies. In addition, he has wide, if vague, authority to further the public interest (as an example, in the secession crisis of 1861, President Lincoln suspended, by proclamation, the writ of habeas corpus). Under the Constitution, the president is also the military commander-in-chief and head of state responsible for the directing of foreign relations. He also has considerable decision-making authority in matters regarding foreign trade. The primary means by which the president exercises his authority in these areas is through the issuance of proclamations and executive orders.

Proclamations and executive orders have much the same legal effect, but they are usually used for different purposes: proclamations for ceremonial or broad policy statements, executive orders for routine determinations under statutory authority. Proclamations are usually used for ceremonial statements of general interest (e.g., declaring National Flag Day), but occasionally they are used for substantive statements of general policy (e.g., Lincoln's Emancipation Proclamation) or for announcements of certain presidential decisions, especially in the fields of foreign relations and trade.

The first executive order was issued in 1789, but none were numbered or issued uniformly until 1907, when the State Department began a numbering system and designated an 1862 order as Executive Order #1. Orders issued between 1789 and 1862 are referred to as "unnumbered executive orders."⁶ Executive orders are essentially presidential directives with the force of law and do not require the approval of Congress to take effect. The Constitution is silent on the subject of executive orders, but the courts have upheld them in principle, based on the implied powers inherent in the grant of "executive power" to the president in Article II, section 1 and in the constitutional language in Article II, section 3, that says presidents are "to take care that the laws be faithfully executed." In addition to this general constitutional authority, some executive orders are issued under direct statutory authority delegated specifically to the president by Congress in limited policy areas.⁷

6. University of Florida Levin College of Law web site, <http://www.law.ufl.edu>.

7. Ilona Nickels, Executive Orders, http://www.ilonainickels.com/CC_executiveorders.html

Congress often leaves considerable leeway to the executive branch to carry out its legislation. Details are often left out of statutory language, either because of a desire to give the federal agencies involved some flexibility in implementing a bill, or simply because Congress feels unable or unwilling to spell out every detail for a bill's execution. If members of Congress feel that an executive order contradicts the original legislative intent of the law or has no underlying statutory authority, they can file a lawsuit to change or rescind the order. Congress can also pass a bill repealing or modifying a specific executive order. Congress would, however, be subject to a presidential veto and a need to override.

Like the legislative drafting process, the process for preparing executive orders and other executive directives is generally controlled by the policy councils as long as the orders are policy related. On the other hand, when it comes to implementing policy, executive orders share all the same advantages as regulations. The process for issuing an executive order is not as long as it is for issuing a regulation, and there is no public comment period (see Box 4-4). At the same time, executive orders have the disadvantage of being restricted by statutory and constitutional limitations.

Submitting Legislation

When a president signs into law legislation he or she submitted to Congress, it is often considered a milestone event from a policy, political, and

communications perspective. Bill signings are big events, and legislative achievements are given high consideration by political commentators and historians. Using legislation to authorize policy has several advantages over executive orders and executive directives. First, legislation is generally broader in scope than executive orders or regulations. Executive orders and regulations are limited by statutes, but legislation can be as far reaching as its authors desire. It is limited only by the degree of political consensus in Congress and the White House and by constraints imposed by the Constitution. Second, legislation that is enacted into law carries an aura of legitimacy derived from the legislative process. Specifically, any legislation that becomes law has the support of majorities in the House and Senate and at least the acquiescence of the president. Executive actions and regulations, which are implemented solely by the executive branch, do not carry the same political weight because they lack the legitimacy that comes from wider participation in the policymaking process.

Despite the benefits of using legislation to implement policy, there are several drawbacks that make it inappropriate under certain circumstances. First, no legislation passes without compromise. Although a president can control executive actions, legislation must go through the congressional process. In some cases, what comes out at the end of the process may look very different from what the president proposed. Second, the legislative process is usually long and arduous. Sometimes bills take years to pass, and other times Congress just ignores them. In contrast, policy can be implemented very quickly using executive orders. For example, within twelve hours of being informed that Iraq had invaded Kuwait, President Bush had signed executive orders freezing Iraqi and Kuwaiti assets in the United States (see Chapter 15). Third, the president must spend political capital to get legislation enacted. Many presidents have wasted a great deal of political influence on legislation that never gets out of Congress. Despite these drawbacks, presidents continue to submit legislation to Congress because it offers them the best chance to achieve real, substantial changes in policies, programs, and systems.

Box 4-5 outlines the process by which legislation is drafted and then submitted to the Congress. Like the policymaking process discussed in earlier chapters, the Policy Councils lead an interagency process to develop the bill. A lead agency is designated to draft the language of the bill and a series of meetings is held to review, edit, and redraft the legislation until a consensus is reached.

BOX 4-4

Executive Actions

1. The president agrees to issue executive order or directive.
2. The relevant policy council identifies a lead entity to draft the executive order or directive. Potential lead entities include a policy council or an agency, the White House Counsel, or the OMB.
3. A draft executive order or directive is completed and sent back to the relevant policy council for editing and review.
4. A final draft is submitted to the White House staff secretary.
5. The White House staff secretary circulates to all White House and Executive Office of the President offices and, if appropriate, to the relevant agencies for concurrence or nonconcurrence recommendation.
6. The final executive order or directive is sent to the president with an information memorandum.
7. The president signs the executive order or directive.

Once the interagency group has completed its work, the bill is moved through the OMB LRM process for review by any interested party of government. If a disagreement cannot be resolved, a decision-memorandum is drafted and the president is presented with the recommendations of the group. However, several different groups of advisers meet in the hopes of resolving any differences before the president is required to engage. If a consensus is reached, the president receives an information memorandum that the bill is ready and a timetable for when it will be sent up.

BOX 4-5 Preparing Legislation

1. The president directs the appropriate White House policy council to implement his decision to draft legislation.
2. The White House Policy Office establishes a working group to write a draft of the legislation.
3. The chair of the White House working group chooses a lead agency to provide a first draft of the legislation.
4. The lead agency divides up drafting responsibilities between the general counsel's office, the relevant program office, and the relevant policy office.
5. An interagency working group meets to review first draft of the legislation. The policy council coordinates the revisions and recommendations received from other agencies in the working group. The policy council resolves any disagreements.
6. The lead agency incorporates the revisions.
7. The redrafted bill is submitted to the OMB legislative referral management process.
8. The OMB circulates the draft bill to the relevant agencies.
9. The OMB incorporates the revisions and recommendations it receives from the agencies. Unresolved issues go to policy councils. If major disagreement exists, the issue is bumped up to a principals-level meeting (agency heads). If disagreement still exists, the policy council drafts a decision-making memorandum for the president.
10. The final legislation is prepared by the lead agency. The lead agency identifies the members of Congress who will submit the legislation on behalf of the president.
11. The legislation is submitted. The congressional review process begins.

Regulations and the Rule-Making Process

Issuing regulations is one of the key means by which policies are implemented. Agencies can issue and revise regulations using existing statutory authority. They generally do so either when Congress has enacted legislation, when the president has asked for a new rule, or when the agency itself determines that a regulation should be reviewed and/or revised.

The advantages to the executive branch of using the regulatory process as a means of implementing policy are that the process is under the control of the rule-making agency and the impact can be immediate once the rule is completed. The limitations are that the impact of regulations is limited by the statutes on which they are based; the regulatory process can be long and arduous and is subject to public comment, which can often create political problems for the executive branch; and new regulations often create new requirements and paperwork burdens, which are generally politically unpopular (see Box 4-6).

BOX 4-6 The Rule-Making Process

1. An agency begins the rule-making process.
2. The appropriate agency program office and general counsel's office write a draft of the regulation.
3. The first draft of the regulation circulates within the agency.
4. Revisions and recommendations are sent back to the appropriate agency program office and general counsel's office.
5. The draft regulation is circulated through the agency again, along with a concur/not concur sheet. All senior agency staff personnel must reply before the process continues.
6. A final "drop dead" meeting takes place in which all final comments are made and reviewed.
7. The Secretary's or agency head's office clears the final rule.
8. The Office of Information and Regulatory Review (OIRA) coordinates the review of the regulation by the OMB and White House, though only economically significant regulations require OMB review.
9. OIRA establishes a regulatory working group to review the regulation that includes the White House policy councils and the Office of the Vice President.

(Continued)

(Continued)

10. OIRA assembles the revisions and sends them back to the agency that originated the regulation. If there is no disagreement, OIRA will provide the agency with a regulation number, which allows the regulation to be published in the Federal Register.⁸ If there are disagreements over the revised regulation, the vice president's working group convenes and resolves the differences. In unique circumstances, a decision-making memorandum can be presented to the president.
11. The regulation is sent to the relevant congressional committees (authorizing committees) for a short waiting period.
12. The regulation is published in the Federal Register for public comment. On occasion, public hearings are held on proposed rules. Comment periods are at least sixty days.
13. The regulations are revised to incorporate public comments.
14. Steps 5 through 11 are repeated.
15. The final regulation is printed in the Federal Register. If parts of a regulation are set aside for further consideration, an interim final rule is published instead. Rules take effect no earlier than thirty days after publication.

Federal agencies are authorized to issue regulations by their enabling statutes, by statutes establishing new programs, and by statutes amending and extending the duties and responsibilities of those agencies. Most regulations are issued informally, under the notice-and-comment procedure established by the Administrative Procedure Act (APA). Less frequently, certain agencies are required to add elements of adjudicatory proceedings, such as cross-examination and rebuttal witnesses, to the notice-and-comment requirements. These agencies include the Federal Trade Commission, the Consumer Product Safety Commission, and the Occupational Safety and Health Administration. Very rarely, some agencies must conduct their rule-making exercises in a formal adjudicatory proceeding.⁹

More than 100 federal agencies and units within agencies issue regulations. Depending on their relationship to the president, the agencies may be divided into two categories: those subject to the president's direction and control (executive departments and independent agencies) and those relatively independent of such direction and control (independent regulatory agencies). The Consumer

8. Jacque Lawing, interview with the author, May 7, 2001.

9. Rogelio Garcia, "Federal Regulatory Reform: An Overview," *The Semiannual Regulatory Agenda*, 1895035. (Washington, DC: Congressional Research Service Government and Finance Division, 2000).

Product Safety Commission, the Federal Energy Regulatory Commission, the Federal Reserve System, the Federal Trade Commission, and Securities and Exchange Commission are all examples of independent regulatory agencies.¹⁰

Approximately 90 percent of all regulations issued by agencies are subject to Executive Order 12866, which gives the president considerable oversight capability. Most of these agencies are involved with issuing the more costly social regulations. They include the EPA, the Occupational Safety and Health Administration and the Mine Safety and Health Administration (both in the Department of Labor), the Food and Drug Administration (Department of Health and Human Services), the Department of Energy, Department of the Interior, Department of Agriculture, and Department of Transportation (especially the National Highway Safety Administration).

Once the rule-making process starts, however, the White House cannot comment to the drafting agency on the proposed regulation until it has been sent to OIRA for review.¹¹ However, although OIRA controls the editing process for regulations, the White House offices and the policy councils in particular have tremendous influence over the process and the final outcome once the regulation is circulated by OIRA.¹² The knowledge that the policy councils are senior policy advisers to the president and can submit any dispute to him gives the councils a great deal of leverage in any negotiation over disagreements.¹³ If there are disagreements between the drafting agency and a White House policy council, OIRA generally brings the parties together to negotiate a compromise rather than impose its will on them.

Presidents Nixon, Ford, and Carter directed agencies to consider costs and various regulatory alternatives to reduce those costs when developing regulations. But it was E.O. 12291 that dramatically changed the procedure under

10. Garcia, "Federal Regulatory Reform."

11. However, OIRA only reviews rules that are significant. A significant regulation is defined as one that may have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or public health or safety, or state, local, or tribal governments or communities (regulations in this category are considered economically significant, requiring detailed cost-benefit analyses and OMB review); interfere with an action taken or planned by another agency; or may materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles for regulatory planning and review specified in the order.

12. Cynthia Rice (former special assistant to the president for domestic policy), interview with the author, May 1, 2001.

13. Cynthia Rice, interview with the author, May 1, 2001.

which agencies develop and issue regulations. E.O. 12291 directed agencies to employ cost-benefit analysis when developing regulations and established centralized review of rule making. It also directed agencies, to the extent permitted by law, to issue only those regulations for which benefits outweigh costs and to prepare cost-benefit analyses when developing major regulations. To assure compliance, agencies were required to submit their proposed and final regulations to the OMB for review and clearance. When President Clinton assumed office in 1993, he continued the reform process by issuing Executive Order 12866 and revoking E.O. 12291. The new order maintained, with minor revisions, the cost-benefit analysis requirements as well as the requirement that regulations be reviewed and cleared by the OMB. Independent regulatory boards and commissions again were exempted from the order. In 2011, the Obama administration issued Executive Order 13563 that amended 12866 moderately. The Congressional Review Act, Subtitle E (110 Stat. 868), requires agencies to submit new regulations to the Congress and the General Accounting Office (GAO) before they can take effect. The GAO is to prepare a report on each major rule, which it sends to Congress, to assure that the agency has complied with procedural requirements regarding cost-benefit analysis, regulatory flexibility analysis, and specified sections of the Unfunded Mandates Reform Act. Congress has sixty session days in which to block the regulation by passing a joint resolution of disapproval, which must be signed by the president. The regulation goes into effect if the president vetoes the joint resolution and the veto is not overridden.¹⁴

Box 4-7 provides a copy of relevant sections of Executive Orders 13563 and 12866, which set forth the procedures for regulatory review in the executive branch of government.

BOX 4-7

The Regulatory Review Process

Executive Order 13563 of January 18, 2011—Improving Regulation and Regulatory Review

By the authority vested in me as president by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. General Principles of Regulation. (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting

economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements. (b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that executive order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. (c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. Public Participation. (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole. (b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with

(Continued)

14. García, "Federal Regulatory Reform."

(Continued)

a comment period that should generally be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on [regulations.gov](http://www.regulations.gov), including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings. (c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

THE WHITE HOUSE

January 18, 2011.

Sources: Executive Order 13563 of January 18, 2011, "Improving Regulation and Regulatory Review," Government Printing Office, January 21, 2011, <http://www.gpo.gov/fdsys/pkg/DCPD-201100031/pdf/DCPD-201100031.pdf>.

CONCLUSION

Even though the policymaking process has been increasingly centralized in the White House, federal agencies continue to play an important and dynamic role in the policymaking process. In this chapter, we have underscored their programmatic expertise, their control of budgets, and their regulatory and rule-making processes. Given these functions, agencies are essential players in the making and implementation of policy in the executive branch.

Key Terms

Cabinet-level status

Concurrence/nonconcurrence sheet

Congressional Review Act

Decision-making memorandum

Independent agencies, departments, and bureaus

Non-program offices

Proclamations

Program offices

Review Questions

1. How many executive branch agencies are cabinet-level agencies? What difference does that designation make?
2. What is a "single-issue" or "program" agency?
3. What is an independent regulatory agency?
4. When was the first executive order issued? How can executive orders be challenged?
5. What are the advantages and disadvantages of issuing executive orders?
6. Describe the eleven steps taken by the federal government in preparing legislation to be submitted to Congress.
7. What are some of the advantages to utilizing the rule-making process as a means of implementing policy?

Review Questions

1. What is the difference between policy authorization and policy implementation tools?
2. What is a weakness of the effectiveness measurement criterion for evaluating policy tools and proposals?
3. What are the advantages of legislation versus executive orders as a policy authorization tool?
4. What are some of the reasons for the rise in the number of targeted tax incentives?

LEGISLATIVE CLEARANCE AND COORDINATION

SAPs, LRMs, and Other Policy Acronyms

LEGISLATIVE CLEARANCE AND COORDINATION

You are a new employee in federal agency trying to find your way through a bureaucracy of almost two million. How do you make an impact early? Get yourself on the Office of Management and Budget's (OMB) Legislative Referral Distribution List, and soon every official statement, testimony, and other documents will come across your desk. Getting your name on the OMB distribution list is like getting on the "A" party list. Now you can get past the bouncer at the door. What you do at the party is a whole other story.

In this chapter, we will discuss how administration policy is cleared through the executive branch. In particular, we will highlight the influential role that OMB plays by overseeing policy and legislative proposals to be adopted as administration policy. OMB provides accountability to the executive branch by routinely monitoring day-to-day activities of the entire government. It has the power to clear legislation and major regulations. It also has the authority to issue administration positions on policy matters. In this chapter, we will explain and evaluate how the formal oversight process run by OMB—called the legislative referral memorandum (LRM) process—and OMB's preparation of statements of administration policy (SAP) affect the policy-making process.

Like decision memoranda, IRMs and SAPs enable everyone to engage in the policymaking process in a more fair, coordinated, and centralized manner than would otherwise be the case. Specifically, they provide a means for OMB to communicate executive policy positions and solicit input from all agencies and departments on every policy proposal being considered by executive branch. The appropriate use of these tools thus provides a conduit for the exchange of ideas with the chief decision maker. As a result, it enhances the perceived legitimacy of the system. This, in turn, tends to increase the commitment among policymakers to support the resulting policy. It also makes the policy outcomes better, to the extent that they tend to reflect a wider range of inputs than they would if these channels did not exist.

LEGISLATIVE RESPONSIBILITY IN THE EXECUTIVE BRANCH

The president's legislative responsibilities are founded in his or her constitutional duties and powers to perform the following:

- Require the opinion, in writing, of the principal officer in each of the executive departments;
- Take care that the laws are faithfully executed;
- Give the Congress information on the State of the Union;
- Recommend to the Congress such measures as he judges necessary;
- Approve or disapprove bills passed by the Congress;
- Convene either or both Houses of the Congress.

In order to fulfill these duties, the president presides as the chief executive officer in charge of a vast policymaking and coordinating body called the Executive Office of the President (EOP). The EOP consists of approximately 2,000 employees who work in congressionally mandated (established by statute) executive agencies with specific programmatic responsibilities or who are members of the president's personal staff. Congressionally mandated agencies include organizations like OMB, the U.S. Trade Representative, the Council of Economic Advisers, and the Council on Environmental Quality. The president's personal staff, in turn, includes both people who maintain the White House residence (taking care of the First Family meals, cleaning, laundry, etc.) and the people who serve on executive policy councils such as the Domestic Policy Council, the National Economic Council, and the National Security Council, which are charged with managing policy decisions for the president.

BOX 9-1

The White House Office and the Executive Office of the President

Executive Office of the President

Council of Economic Advisers
 Council on Environmental Quality
 Executive Residence
 National Security Staff
 Office of Administration
 Office of Management and Budget
 Office of National Drug Control Policy
 Office of Science and Technology Policy
 Office of the United States Trade Representative
 Office of the Vice President
 White House Office

The White House Office

Domestic Policy Council
 Office of National AIDS Policy
 Office of Faith-Based and Neighborhood Partnerships
 Office of Social Innovation and Civic Participation
 White House Rural Council
 National Security Advisor
 National Economic Council
 Office of Cabinet Affairs
 Office of the Chief of Staff
 Office of Communications
 Office of the Press Secretary
 Media Affairs
 Research
 Speechwriting
 Office of Digital Strategy
 Office of the First Lady
 Office of the Social Secretary
 Office of Legislative Affairs

(Continued)

(Continued)

Office of Management and Administration
 White House Personnel
 White House Operations
 Telephone Office
 Visitors Office
 Oval Office Operations
 Office of Presidential Personnel
 Office of Public Engagement and Intergovernmental Affairs
 Office of Public Engagement
 Council on Women and Girls
 Office of Intergovernmental Affairs
 Office of Urban Affairs
 Office of Scheduling and Advance
 Office of the Staff Secretary
 Presidential Correspondence
 Executive Clerk
 Records Management
 Office of the White House Counsel

Given the large cadre of employees within the EOP, the task of coordinating policy and responding to legislation between the EOP and the executive branch of government—cabinet departments and smaller agencies—can be very complicated. Coordination of the policymaking and legislative processes within the EOP takes place at two levels. At the highest level, major policy decisions and major legislation are controlled by the White House policy councils, which develop and implement major policy decisions using the decision-making memoranda we discussed in Chapter 6. The resulting decisions are then run through a formal clearance process conducted by OMB called the LRM process.

Most legislative issues and other policy matters, such as executive orders and presidential decrees, however, do not necessitate presidential involvement. These issues, such as clearing congressional testimony or providing the views of the administration on a particular legislative bill, are handled primarily by OMB itself through the LRM clearance process and do not necessarily involve the White House policy councils directly. When the White House policy councils

are not involved, OMB plays the lead role in resolving policy conflicts and guaranteeing that resulting legislation or actions are consistent with the policies and objectives of the president.

This power is one that is closely guarded by OMB and is often a point of contention between the various agencies in the executive branch, which often believe OMB does not always act as an honest broker and forces decisions based solely on budgetary concerns (how much will it cost) and not on the broader policy goals of the administration. OMB counters by arguing that budgetary concerns should have a high priority regarding any policy decision and that discussions over the cost of proposals lead to more precise and well-thought-out policy proposals. As we discussed in Chapter 3, the debate over OMB's role has in part led to the ever-growing role of the White House policy councils. Despite the growing role of the policy councils, the sheer number of decisions that must be reviewed necessitates that OMB, with its larger bureaucracy, runs the day-to-day clearance process.

THE CLEARANCE PROCESS

OMB's LRM clearance process is intended to do the following:¹

- Permit the coordinated development, review, and approval of legislative proposals needed to carry out the president's agenda;
- Help the agencies develop draft bills that are consistent with and that carry out the president's policy objectives;
- Clearly identify for Congress those bills that are part of the president's program and the relationship of other bills to that program;
- Assure that Congress receives coordinated and informative agency views on legislation that it has under consideration;
- Assure that bills and position statements submitted to Congress by one agency properly take into account the interests and concerns of all affected agencies;
- Provide a means whereby divergent agency views can be reconciled.

OMB Circular A-19 sets forth the basic guidelines and procedures for carrying out its clearance process. The LRM clearance function covers agency

1. Memorandum from Acting OMB Director Jeff Zients to Department and Agency Heads, April 15, 2013, "Legislative Coordination and Clearance," <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-12.pdf>.

legislative proposals, agency reports and testimony on pending legislation, SAPs, and enrolled bills. These procedures have been substantially the same for more than fifty years. An example of a LRM is included in Box 9-2.

BOX 9-2**Legislative Referral Memorandum**

LRM ID: JAB342

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, September 17, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer—See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: REVISED TRANSPORTATION Final Version, Draft Bill on to revise, codify, and enact certain maritime laws as part of title 46, United States Code, "Shipping"

DEADLINE: 10:00 A.M. Tuesday, October 1, 2002

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the president. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This draft recodification has been circulated to you twice before, via LRMs JAB1 (January 17, 2001) and JAB1-48 (January 23, 2002). We are circulating this to you now for final review and signoff. Personnel or units with which DOT has worked in resolving issues identified in previous versions include: Defense;

Dwight Moore (Transcom); Justice; Debra Kossow (Torts); INS (definitions of "U.S. citizen" and "consular officer"); Federal Maritime Commission; Amy Larson; Commerce, Bernard Cody (NOAA). **IF WE DO NOT HEAR FROM**

YOU BY THE DEADLINE (EITHER IN THE FORM OF A COMMENT OR NOTIFICATION THAT A COMMENT WILL BE FORTHCOMING SHORTLY). WE WILL ASSUME THAT YOU HAVE NO OBJECTION TO CLEARANCE OF THIS FINAL VERSION.

DISTRIBUTION LIST**AGENCIES:**

114-STATE—Nicole Petrosino—(202) 647-1794
 044-Federal Maritime Commission—Amy W. Larson—(202) 523-5740
 061-JUSTICE—Daniel Bryant—(202) 514-2141
 118-TREASURY—Thomas M. McGivern—(202) 622-2317
 117 & 340-TRANSPORTATION—Tom Hertlby—(202) 366-4687
 025-COMMERCE—Michael A. Levitt—(202) 482-3151
 029-DEFENSE—Samuel T. Brick, Jr.—(703) 697-1305

EO:

Jennifer S. Kron

LRM ID: JAB342 **SUBJECT:** REVISED TRANSPORTATION Draft Bill on to revise, codify, and enact certain maritime laws as part of title 46, United States Code, "Shipping"

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant. You may also respond by:

- (1) Calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) Sending us a memo or letter. Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

Branch-Wide Line (to reach legislative assistant): 395-3454

(Continued)

program," if it implements a presidential proposal. This "advice" is conveyed then by the submitting agency to the Congress in its transmittal letter. Major legislation is sometimes transmitted personally by the president. On the other hand, if OMB decides that the proposed bill conflicts with an important administration objective, or it is not in accordance with the president's program, it can stop the bill from being transmitted to the Congress. In such cases, disagreements between OMB and executive agencies must be resolved before the bill can be transmitted.

CLEARANCE OF AGENCY TESTIMONY AND REPORTS ON PENDING LEGISLATION

If a congressional committee asks an agency in the EOP to report or testify on pending legislation, or if an EOP agency wishes to volunteer a report on an issue being considered by a congressional committee, similar clearance procedures are followed. Congressional testimony is a useful means for an EOP agency to convey the administration's views on legislation or other congressional matters without directly involving the president. Indeed, the White House often prefers that an EOP agency takes the lead on noncritical or controversial issues or legislation. The strategy of allowing agency-owned issues enables the president to stay above the fray, and it protects him or her from potentially contentious debates on issues or legislative proposals that are not of major importance to the country as a whole. In such instances, the LRM process allows the White House staff to oversee and coordinate these "agency-owned" issues without direct presidential involvement and without expending a scarce resource known as "presidential prestige."

Statement of Administration Policy (SAP)

OMB also prepares a SAP for major bills scheduled for House or Senate floor action as well as those to be considered by major congressional committees such as the House Rules Committee. SAPs are also prepared for so-called non-controversial bills considered in the House under suspension of the rules—bills that are voted on without the opportunity to offer amendments.

The SAP process coordinates, systematizes, and rationalizes the administration and formulation of the president's policy. SAPs are important because they provide a direct and authoritative way for the administration to let the Congress and, via the press, the American people know the views of the president on a particular bill or legislative issue. The SAP may be used to indicate support for

(Continued)
FROM: _____ (Date)
_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet
LRM ID REF#2

Source: Legislative Referral Memorandum, September 17, 2002, <http://www.milus.org/download/619a.ttt>.

Legislative Proposals

All legislative proposals that agencies in the EOP wish to transmit to the Congress must be sent to OMB for clearance. OMB circulates the bills to other affected agencies and appropriate EOP staff. The EOP agencies or staff may favor it or have no objection. They may also propose substantive or technical amendments or perhaps a complete substitute. Divergent views can be reconciled via telephone, letters, or interagency meetings called by OMB.

After review, analysis, resolution of issues, and obtaining policy guidance from the relevant EOP agencies, OMB may offer the proposing agency positive feedback by advising it that (1) there is "no objection" from the standpoint of the administration's program to the submission of the proposed draft bill to the Congress, or (2) the proposed bill is "in accord with the president's

legislation by the administration and the president. It may also be used to clarify the president's position in support of the whole bill or specific components of the legislation. Alternatively, the SAP may be used to indicate the administration and the president's disapproval of all or part of a particular bill. When the disapproval is strong enough, the SAP may contain a veto threat from the president. There are three levels of veto threats used in SAPs. These are, in order of strength, "The president will veto"; "Senior advisers will recommend to the president that he should veto this legislation"; and "The secretary of treasury (or the relevant agency) will recommend to the president that he should veto this legislation."

An example of a SAP is included in Box 9-3.

BOX 9-3

Statement of Administration Policy

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

December 11, 2014

(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 83—Consolidated and Further Continuing Appropriations Act, 2015
(Rep. Rogers, R-KY)

The administration supports House passage of H.R. 83, making appropriations for fiscal year (FY) 2015, and for other purposes. The administration appreciates the bipartisan effort to include full-year appropriations legislation for most Government functions that allows for planning and provides certainty, while making progress toward appropriately investing in economic growth and opportunity, and adequately funding national security requirements. The administration also appreciates the authorities and funding provided to enhance the U.S. Government's response to the Ebola epidemic, and to implement the administration's strategy to counter the Islamic State of Iraq and the Levant, as well as investments for the president's early education agenda, Pell Grants, the bipartisan, Manufacturing Institutes initiative, and extension of the Trade Adjustment Assistance program. However, the administration objects to the inclusion of ideological and special interest riders in the House bill. In particular, the administration is opposed to

the inclusion of a rider that would amend the Dodd-Frank Wall Street Reform and Consumer Protection Act and weaken a critical component of financial system reform aimed at reducing taxpayer risk. Additionally, the administration is opposed to inclusion of a rider that would amend the Federal Election Campaign Act to allow individual donors to contribute to national political party committees accounts for conventions, buildings and recounts in amounts that are dramatically higher than what the law currently permits.

Furthermore, the administration is disappointed that the bill would fund the Department of Homeland Security through February 27, 2015, at last year's levels. Short-term continuing resolution funding measures are disruptive, create uncertainty, and impede efficient resource planning and execution. The administration urges the Congress to enact comprehensive full-year appropriations legislation for all Government functions free of provisions that have no place in annual appropriations bills.

Source: Executive Office of the president, Office of Management and Budget, https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/11/14/sap83h_20141211.pdf.

OMB prepares SAPs in coordination with the agency or agencies principally concerned and other relevant EOP units. Once the SAP has passed through the clearance process, it is sent to Congress by OMB's Legislative Affairs.

Enrolled Bills

At the end of the legislative process, after Congress has voted and passed a particular bill, it is enrolled (i.e., sent to the president for his approval or disapproval). The Constitution provides that the president shall take action within ten days after receipt of the bill, not including Sundays.

To assist the president in deciding his course of action on a bill, a review process, which is similar to the LRM process for bills submitted to Congress by the president, is set into motion in which OMB requests that each interested agency submit its analysis and recommendation to OMB within 48 hours. These views letters are signed by the head of the agency or a presidential appointee. OMB prepares a memorandum to the president on the enrolled bill, which transmits these views letters and summarizes the bill, significant issues, and various agency and OMB recommendations. If an agency recommends disapproval or a signing statement, it is responsible for preparing a draft of an appropriate statement for the president's consideration.

CONCLUSION

In this chapter, we discussed how administration policy is cleared through the executive branch. We highlighted the influential role that OMB plays by overseeing and clearing policy and legislative proposals. Through the LRM process and the preparation of SAPs, OMB provides accountability to governmental actions, guarantees that positions taken by the EOP are consistent with the president's policies and agenda, and provides Congress and the American public with a direct and authoritative statement about the president's position on important policies and legislation. These tools enable everyone to engage in the policymaking process in a more fair, coordinated, and centralized manner than would otherwise be the case. As a result, when used effectively, they can enhance the perceived legitimacy of the system. This, in turn, tends to increase the commitment among policymakers to support the resulting policy. To the extent that the resulting policy outcome reflects a wider range of inputs, it is also likely to be better balanced and satisfy more concerns than would otherwise be the case.

Key Terms

Administration policy

Agency-owned issues

Legislative referral memorandum (LRM)

Statement of administration policy (SAP)

Views letters

Review Questions

1. When does a policy become "administration policy?"
2. What are the executive branch's legislative responsibilities?
3. What is the purpose of the LRM clearance process?
4. Describe the three levels of veto threats in a SAP.
5. What is the role of OMB in the legislative clearance process?
6. Under what circumstances does the White House encourage or approve of agency-owned issues?

POLLING AND THE POLICYMAKING PROCESS

POLLING AND POLICYMAKING: MYTHS AND REALITIES

Political pundits, editorial pages, and politicians looking for a campaign issue have publicly debated the use of polling by policymakers in the executive branch. Some critics of polling argue that truly great leaders should ignore polls, that polls are untrustworthy, and that polling is somehow undemocratic. Others suggest that the use of polling indicates that the executive branch is permanently campaigning and avoiding tough or unpopular decisions.¹ National politicians have inadvertently fanned the public's anxieties about polling by deriding its use. President George W. Bush denounced polling and prided himself on making decisions that went against public opinion. To separate himself from polling, he required his principal pollster, Jan van Lohuizen, to report to his Deputy Chief of Staff and Senior Adviser Karl Rove rather than to him.² President Obama asserted that he, too, would lead, "not by polls, but by principle."³ Echoing President Bush, President

1. Shoon K. Murray and P. Howard, "Variation in White House Polling Operations: Carter to Clinton," *Public Opinion Quarterly* 66 (2002), pp. 537-558; Kathryn D. Tempas and James A. McCann, "Testing the Permanence of the Permanent Campaign: An Analysis of Presidential Polling Expenditures, 1977-2002," *Public Opinion Quarterly* 71, 3 (2007), pp. 349-366.

2. Tempas and McCann, "Testing the Permanence," p. 256; Kathryn D. Tempas, "Words vs. Deeds: President George W. Bush and Polling," *Brookings Review* 21, 3 (2003), pp. 32-35.

3. Ben Smith, "Meet Obama's Pollster," *POLITICO* (April 3, 2009), <http://www.politico.com/news/stories/04/09/20852.html>.