

The Bureaucracy

“Are you laboring under the impression that I read these memoranda of yours? I can’t even lift them.”

—attributed to President Franklin Delano Roosevelt to an appointed bureaucrat

Essential Question: How does the bureaucracy carry out laws, implement policy, and interact with the executive, legislative, and judicial branches?

The federal government provides many services, such as maintaining interstate highways, coordinating air traffic at airports, protecting borders, enforcing laws, and delivering mail. For each of these services, Congress has passed a law and created one or more executive branch departments or agencies to carry out the responsibilities of government. The federal bureaucracy is the vast, hierarchical organization of executive branch employees—close to 3 million people ranging from members of the president’s Cabinet to accountants at the Internal Revenue Service—that takes care of the federal government’s business. Within the bureaucracy are the men and women who serve the U.S. military, the largest group in the executive branch. Currently, the *Federal Register*—the federal government’s official journal of regulations, proposed regulations, and public notices—lists 441 total executive branch entities that carry out the nation’s business.

Sometimes referred to as the “fourth branch of government,” the bureaucracy is composed of experts with specialized roles and some with unique authority. These include soldiers, tax collectors, and letter carriers. Others are regulators and policymakers with unique authority but with questionable accountability. Additional personnel support the federal system from the private sector or as employees of state and local governments who are paid with federal funds and guided by federal directives.

The bureaucracy has grown from a four-man council and a few hundred employees at the nation’s founding to a massive administration of expansive programs. (See page 162.) George Washington established the first Cabinet by appointing an attorney general and secretaries of state, treasury, and war. Congress created a military, a coast guard, and a postal system, thereby creating many quality federal jobs for President Washington to fill. As the nation has grown, so have its responsibilities. The bureaucracy has transitioned from an old-boy network system of political patronage to a professionalized institution with traits of specialization and some political neutrality.

Makeup and Tasks of the Bureaucracy

Today's bureaucracy is a product of 200 years of increased public expectation and increased federal responsibilities. The professionals who head the departments and agencies, and their many subordinates, carry out the tasks and responsibilities of government. They assure the executive agenda and congressional mandates are implemented or followed. These bureaucrats and their government structures touch every issue involving the nation and provide countless services to U.S. citizens. Like all bureaucracies, such as those in large corporations and financial institutions, the federal bureaucracy is characterized by hierarchies, a distinct division of labor or specialization, and highly tailored rules.

A Hierarchy of Bureaucrats

Federal bureaucrats include anyone in the executive branch carrying out some decision or applying some law. Bureaucrats sit on the president's Cabinet, and they work in regional offices throughout the country. In fact, only 10 percent of federal workers are employed in Washington, D.C. Some bureaucrats are upper-level problem solvers and administrators. Others are lawyers, doctors, and educators. Still others are plumbers, carpenters, and drivers. Many lower-level bureaucrats must follow heavily scripted routines to assure consistency in government's application of the law.

Cabinet Secretaries and Deputies Although employment in the federal bureaucracy uses a merit system (see page 168), presidents still name friends and campaign managers to upper-level White House jobs as well as to Cabinet and subcabinet positions that require Senate confirmation. President John F. Kennedy named his brother, Robert, as the nation's attorney general. Barack Obama brought with him from Chicago the city superintendent of schools to serve as his secretary of education. President Donald Trump named fellow New York financiers and Wall Street moguls to direct economic agencies.

Most presidents appoint more than 2,000 upper-level management positions, deputy secretaries, and bureau chiefs who are the leaders and spokespeople for the executive branch. Many of these people tend to be in the president's party and have experience in a relevant field of government or the private sector.

The Cabinet historically has been a place for political appointees. Former senators, governors, and other elected officials accepted Cabinet posts when they lost re-election. Since the mid 1900s, the Cabinet has become a place for academics, university presidents, and other experts. For example, President John Kennedy appointed Ford Motor Company CEO Robert McNamara as his secretary of defense.

An "old boy" network of federal officers, mostly white males, dominates these upper level posts. They tend to go in and out of government depending on which party controls the White House.

President Nixon's administration had sizable numbers of African-American appointees, especially in the more liberal agencies in which Nixon allowed directors to select subcabinet appointees. However, only three percent of Nixon appointees were women. Nearly 20 years later, roughly 27 percent of the appointees of George H. W. Bush (1989–1993) were women.

The upper-level executives tend to come from privileged backgrounds. It is no mystery, then, that top-level appointees come from prestigious universities. Most fathers of presidential appointees had worked in managerial or professional jobs. Roughly 72 percent of appointees have some postgraduate training and advanced degrees.

Comparisons of top-appointed federal officials with those in the top ranks of the private sector reveal that officials in government earn considerably lower salaries. Private sector leaders earned 15 to 16 times as much as their government counterparts. Department and agency leaders are 50 percent more likely to have attended graduate school than top corporate executives, and they are three times as likely to have a Ph.D.

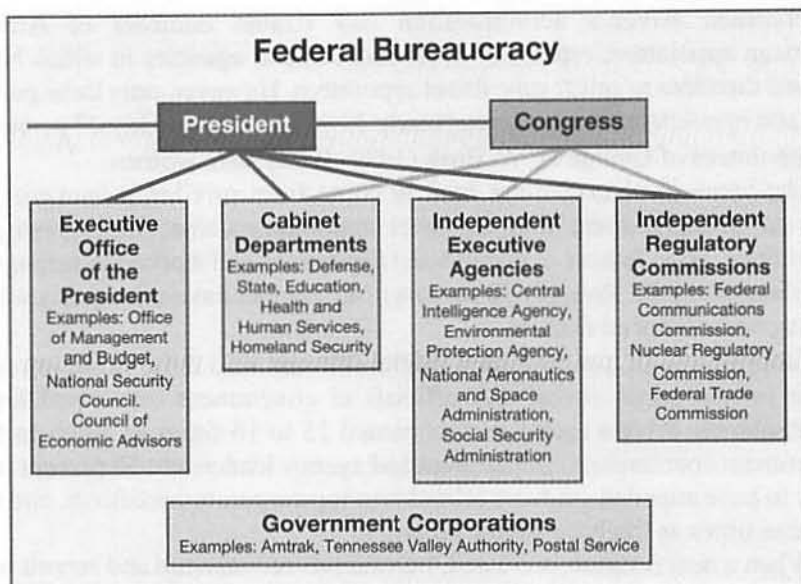
When a new position is created, bureaucrats recommend and recruit some of their own people who have experience in that area. This is called a name-request job, a job for which those doing the hiring already have someone in mind. Additionally, members of Congress will contribute to this process by recommending a colleague who can fit this position.

According to the U.S. **Office of Personnel Management (OPM)**, "The federal workforce is diverse, and the demographics are similar to that of the overall labor force." However, as of 2014, there were about 14 percent more men than women. About a third of federal employees were minorities, with African-Americans making up the largest portion (18 percent) of these minority workers. And nearly 9 percent of federal workers have a disability.

Competitive Service The **competitive service** includes those merit-based jobs that require some type of exam or competitive hiring process. Foreign Service officers, the State Department workers who represent the United States abroad, for example, must pass a challenging and competitive test. The **excepted service** includes the non-tested jobs, providing hiring options when the competitive service is not practical. The ratio of competitive versus excepted positions in the civilian bureaucracy has fluctuated with different laws and different presidents. In recent years, the two groups have been about even.

Organizations

The executive hierarchy is a vast structure of governing bodies headed by these professional bureaucrats. They include departments, agencies, commissions, and a handful of private-public organizations known as government corporations.



Congress creates the various elements within the federal bureaucracy, but they are administered through the executive branch. However, parts of the executive bureaucracy— independent executive agencies, independent regulatory commissions, and government corporations— are not directly supervised by the president.

Departments The president oversees the executive branch through a structured system of 15 departments. Newer departments include Energy, Veterans Affairs, and Homeland Security. Departments have been renamed and divided into multiple departments. The largest department is by far the Department of Defense.

Each Cabinet secretary directs a department. At formal Cabinet meetings, the secretaries sit in seats based on the age of their department, with the oldest departments seated closest to the president. Though different secretaries handle different issues, and surely have different pressures and workloads, they are all paid the same salary.

Agencies The departments contain agencies that divide the departments' goals and workload. In addition to the term *agency*, these subunits may be referred to as divisions, bureaus, offices, services, administrations, and boards. The Department of Homeland Security houses the Immigration and Customs Enforcement (ICE), the Coast Guard, and the Transportation Security Administration (TSA). These agencies deal with protecting the country and its citizens. There are hundreds of agencies, many of which have headquarters in Washington, D.C., and regional offices in large U.S. cities. The president appoints the head of each agency, typically referred to as the "director." Most directors serve under a president during a four or eight year term. Some serve longer terms as defined in the statute that creates the agency.

FEDERAL DEPARTMENTS	
Department	Established
Department of State	1789
Department of Treasury	1789
Department of Defense	1789
Department of Interior	1849
Department of Agriculture	1862
Department of Justice	1870
Department of Commerce	1903
Department of Labor	1913
Department of Veterans Affairs	1930
Department of Health, Education, and Welfare, later divided into Department of Education (1979) and Department of Health and Human Services (1980)	1953
Department of Housing and Urban Development	1965
Department of Transportation	1967
Department of Energy	1979
Department of Homeland Security	2002

One of the most notable agencies is the FBI—the **Federal Bureau of Investigation**. This Justice Department law enforcement agency first dealt with immigration violations, national banking, and antitrust violations. Then interstate crimes—transporting stolen property, bank robbery, and fraudulent schemes—became federal crimes. Today, the FBI also works with state and local law enforcement to find America’s most wanted criminals. The bureau also helps to track and uncover terrorist organizations that threaten the United States.

After Congress began to tax individual incomes, it then established an agency to collect the taxes. Originally named the Bureau of Internal Revenue, the Internal Revenue Service is the nation’s tax collector within the Treasury Department. Its mission is to help Americans understand and fulfill their tax responsibilities and to enforce the tax code fairly. With its Criminal Investigation Division, the IRS also prosecutes those who evade their taxes. The statutes that create these bodies require that they are staffed fairly with members of both major parties.

EXECUTIVE BRANCH ORGANIZATION

- **Cabinet-Level Departments:** 15 departments, plus others the president names to the Cabinet
- **Agencies Within Departments** (selected): Coast Guard in Homeland Security; FBI in the Justice Department
- **Independent Agencies** (selected): NASA and the Postal Service
- **Independent Agencies and Regulatory Commissions** (selected): EPA, FCC, FEC
- **Government Corporations** (selected): Amtrak and Federal Deposit Insurance Corporation (FDIC)

Independent Agencies and Commissions Cabinet agencies and purely executive agencies have one head. Independent agencies have a body (board or commission) that consists of five to seven members. Members of these boards and commissions have staggered terms to ensure that a president cannot completely replace them with his own cronies. Such an action would make the agencies and commissions political rather than neutral.

SELECTED INDEPENDENT REGULATORY AGENCIES AND COMMISSIONS

Organization	Established
Interstate Commerce Commission	1887
Federal Reserve System	1913
Federal Trade Commission	1914
Federal Communications Commission	1934
Securities and Exchange Commission	1934
Federal Aviation Administration	1948
Environmental Protection Agency	1970

Government corporations are a hybrid of a government agency and a private company. These started to appear in the 1930s, and they usually come into being when the government wants to overlap with the private sector. Some examples of these government corporations are listed on the next page.



Source: David Gubler

The California Zephyr, once run by private railroads, is an Amtrak train now. After President Dwight Eisenhower enacted the Interstate Highway System in 1956, travel by car became very popular and the railroad decline worsened.

EXAMPLES OF GOVERNMENT CORPORATIONS

- **Federal Deposit Insurance Corporation:** Commercial banks join by paying a fee to insure their bank account.
- **Amtrak:** Federally owned and operated rail system purchased by Congress when train travel plummeted and the rail system became unsustainable. The agency receives an annual appropriation from Congress, while private citizens—the passengers—purchase tickets.
- **Tennessee Valley Authority:** Federally owned corporation that provides electricity, flood control, and other measures to the Tennessee Valley; part of the New Deal of the 1930s.
- **Corporation for Public Broadcasting:** Finances NPR and PBS-TV. Member stations across the country raise funds and pay an annual fee to receive PBS and NPR programs.

Tasks

When Congress creates the departments and agencies in the executive branch, it defines the organization's mission and empowers it to carry out that mission. The legislature gives the departments broad goals, as they administer several agencies and a large number of bureaucrats within those departments. Agencies have more specific goals while the independent regulatory agencies have an even more unique responsibility in their law-enforcement mission and are protected by their bureaucratic structure and several notable Supreme Court decisions, including *Chevron v. Natural Resources Defense Council* (page 178).

Writing and Enforcing Regulations The legislation that creates and defines the departments and agencies often gives wide latitude as to how they administer the law. Though all executive branch organizations have a degree of discretion in how they carry out the law, the independent regulatory agencies and commissions have even greater leeway and power to shape and enforce national policies. The laws that create and define these agencies are often vague, and the directors of these agencies and the appointed officials who sit on their boards or commissions are more removed from political pressures than the heads of the departments and the agencies that fall within the departments.

Take, for example, the chief passage from the 1970 Clean Water Act that charged the Environmental Protection Agency (EPA) to enforce it:

“The nation's waters should be free of pollutants in order to protect the health of our citizens and preserve natural habitats. Individuals or companies shall not pollute the nation's water. If they do, they will be fined or jailed in accordance with the law. The EPA shall set pollution standards and shall have the authority to make rules necessary to carry out this Act.”

Few of the 535 legislators who helped pass this act are experts in the environmental sciences. So they delegated this authority to the EPA and keep in contact with the agency to assure that this mission is accomplished.

Many additional independent agencies have a regulatory capacity. Congress has vested regulatory authority in agencies, commissions, and boards to oversee or regulate certain industries or concerns. They can make narrow, industry-specific regulations, and they can adjudicate (process and punish) violators. In a sense, these executive branch bodies have powers normally held by the legislature and the judiciary.

Enforcement and Fines Like a court, the agencies, commission, and boards within the bureaucracy can impose fines or other punishments. This administrative adjudication targets industries or companies, not individual citizens. For example, the federal government collected civil penalties paid in connection with the 2010 Deepwater Horizon oil spill ranging from about \$400 million in fiscal year 2013 to about \$160 million in fiscal year 2016.

One key aspect of enforcement is **compliance monitoring**, making sure the firms and companies that are subject to industry regulations are following those standards and provisions. The Environmental Protection Agency monitors for compliance in several ways. It assesses and documents compliance, requiring permits for certain activities. It collects measurable scientific evidence by taking water or air samples near a factory to measure the amount of pollutants or emissions coming from the factory. After an EPA decision or ruling, the agency checks whether those subject to the ruling are following it. Officials and regulators of the EPA also go back to the rule writers about the successes or failures of the rules and procedures to either assure fairness in future rules or to tighten them up.

Testifying Before Congress Federal employees in the many departments, agencies, commissions, and boards within the bureaucracy are often experts in their field. For this reason, they frequently appear before congressional committees to provide expert testimony. For example, former FBI Director James Comey testified before the Senate Intelligence Committee in June of 2017 about matters related to his bureau's investigation into Russian interference in the presidential election of 2016. In September of 2017, Deputy Secretary of State John L. Sullivan testified before the House Committee on Foreign Affairs to discuss a redesign of the State Department. The Secretary of Veterans Affairs, the Honorable David J. Shulkin, M.D., testified before the Senate Veterans Affairs Committee in the same month to address the problem of suicide among veterans.

Iron Triangles and Issue Networks Over time, congressional committees and agencies become well acquainted. Lawmakers and leaders in the executive branch may have worked together in the past. At the same time, interest groups target agencies for pressing their agendas. Industry, especially, creates political action committees (PACs) to impact policy and its success. These special interests meet with and make donations to members of Congress as elections near. They also meet with bureaucrats during the rule-making process (see page 170) in an ongoing effort to shape rules that affect them.

The relationship among these three entities—an agency, a congressional committee, and an interest group—is called an **iron triangle** because the

three-way interdependent relationships are so strong. The three points of the triangle join forces to create policy. Iron triangles establish tight relationships that are collectively beneficial. Bureaucrats have an incentive to cooperate with congressional members who fund and direct them. Committee members have an incentive to pay attention to interest groups that reward them with PAC donations. Interest groups and agencies generally are out to advance similar goals from the start.

More recently, scholars have observed the power and influence of **issue networks**. Issue networks include committee staffers (often the experts and authors of legislation), academics, think tanks, advocates, interest groups, and/or members of the media. These experts and stakeholders—sometimes at odds with one another on matters unrelated to the issue they are addressing—collaborate to create specific policy on one issue. The policymaking web has grown because of so many overlapping issues, the proliferation of interest groups, and the influence of industry. **BIG IDEA:** Multiple actors and institutions interact to produce and implement possible policies.

From Spoils to Merit

For the bureaucracy to do its job well, federal employees need to be professional, specialized, and politically neutral. Reforms over the years have helped create an environment in which those goals can be achieved.

In the early days of the nation, the bureaucracy became a place to reward loyal party leaders with federal jobs, a practice known as **patronage**. When Jefferson took office in 1801 atop a developing party organization, for example, he filled every vacancy with a member of his party until achieving a balance of Federalists and Jeffersonians.

The growing impact of political parties caused a “rotation system” of appointments regardless of merit or performance. The outgoing president’s appointees left with him. On Andrew Jackson’s Inauguration Day in 1829, job-hungry mobs pushed into the White House, snatching refreshments as aggressively as they sought patronage jobs. Congressmen began recommending fellow party members, and senators—with advice and consent power—asserted their influence on the process.

The U.S. Post Office became the main agency for the president to run party machinery. Nearly every city had a branch office, creating an established organizational hierarchy across the United States. Presidents appointed regional and local postmasters based on their efforts to help elect the presidents and with an expectation of loyalty after the appointment. This patronage system became known as the **spoils system**.

The Civil War and its aftermath brought an even greater need for bureaucracy, an enlarged federal staff, and, ultimately, an opportunity for corruption in government. By the 1870s, the spoils system, including a high degree of nepotism, was thoroughly entrenched in state and federal politics.

Considering Merit

The desire for the best government rather than a government of friends and family became a chief concern among certain groups and associations. Moral-based movements such as emancipation, temperance, and women's suffrage also encouraged taming or dismantling the spoils system. Reformers called for candidate appointments based on merit, skill, and experience.

In 1870, Congress passed a law that authorized the president to create rules and regulations for a civil service. The system, the law said, would "best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability."

Reformers' efforts temporarily faded, however, until a murder of national consequence brought attention back to the issue. Soon after James Garfield was sworn in as president in 1881, an eccentric named Charles Guiteau began insisting Garfield appoint him to a political office. Garfield denied his requests. On July 2, only three months into the president's term, Guiteau shot Garfield twice as he was about to board a train. Garfield lay wounded for months before he finally died.

Garfield's assassination brought attention to the extreme cases of patronage and encouraged more comprehensive legislation. Congress passed the **Pendleton Civil Service Act** in 1883 to prevent the constant reward to loyal party members. The law ultimately created the **merit system**, which included competitive, written exams for many job applicants. The law also created a bipartisan **Civil Service Commission** to oversee the process and prevented officers from requiring federal employees to contribute to political campaigns.

The establishment of the civil service and an attempt by the U.S. government during the Industrial Era (1876–1900) to regulate the economy and care for the needy brought about the modern administrative state. The bureaucratic system became stocked with qualified experts dedicated to their federal jobs. These workers served across administrations to create continuity and expertise that professionalized the institution.

The federal government began more frequently to legislate on business and corporations. In 1887, the government created its first regulatory commission, the Interstate Commerce Commission, to enforce federal law regarding train travel and products traveling across state lines. As the Industrial Age became the Progressive Era (1890–1920), the departments of Commerce and Labor were developed, ostensibly at cross-purposes. The Pure Food and Drug Act (1906) brought attention to the meatpacking industry and other industries producing consumable goods, and thus agencies were created to address these concerns. The Sixteenth Amendment (1913), which gave Congress the power to collect taxes on income, put more money into Treasury coffers, which helped the federal bureaucracy expand.

Over the next several decades, the United States survived two world wars and an economic depression that resulted in an entirely new view of government's administrative role. New Deal programs of the 1930s gave the government more responsibility and worked to strengthen the Democratic Party in ways the Pendleton Act was meant to prevent. The Pendleton Act placed only a segment

of the federal civilian workforce under an examination system. Leading federal officeholders across the country were still wrapped up in politics. At the 1936 Democratic National Convention, a majority of the delegates were postmasters, U.S. marshals, revenue collectors, or close relatives.

Republicans joined reform-minded Democrats to create another regulation meant to curb the overlap of politics and profession. Congress passed statutes in 1939 and 1940 that are collectively referred to as the **Hatch Act**. Sponsored by Democratic Senator Carl Hatch of New Mexico, the law distanced federal employees, as well as state employees paid with federal funds, from politics. It prohibits federal workers from becoming directly involved in federal political campaigns. The law, however, interfered with the First Amendment rights of free speech and free association. The Hatch Act was criticized on these grounds and was eventually softened by the Federal Employees Political Activities Act of 1993. Today, federal employees cannot use their official position to influence or interfere in an election. They cannot engage in political activity while on duty, while using a government vehicle, or while in official uniform. They can, however, express opinions about candidates, contribute to a campaign fund, join political parties, and attend political functions after hours.

Movements and Modernizing

In the 1960s laws that ensured the equal rights of minorities and women brought on the need for new offices to guarantee them. The Justice Department established the Office of Civil Rights and later the Equal Employment Opportunity Commission. A push for consumer rights and product safety led Congress to create the Consumer Product Safety Commission. Concerns for clean air and water brought about the establishment of the Environmental Protection Agency.

President Jimmy Carter ran for office in 1976 promising to change Washington and to reform the bureaucracy. With experience as an engineer and as a governor, he spent much time analyzing systems. He tinkered with the structure of the federal government as much as any other president. What became the **Civil Service Reform Act (1978)** altered how a bureaucrat is dismissed, limited preferences for veterans in hopes of balancing the genders in federal employment, and put upper-level appointments back into the president's hands.

The law also created the **Senior Executive Service**, a system that placed more emphasis on a bureaucrat's skills and experiences than on the job. The administration paid the recruited and incoming senior executives a standard salary, but the president had the right to move these officials laterally or put them in a lesser job with no loss of pay. Carter's reforms increased managerial flexibility and gave political leaders the tools to carve and mold the Senior Executive Service.

Office of Personnel Management The Civil Service Commission established by the Pendleton Act operated until the 1978 reforms replaced it with the **Office of Personnel Management (OPM)**. The OPM runs the merit system and coordinates the federal application process for jobs and hiring. The OPM's goals include promoting the ideals of public service, finding the best people for federal jobs, and preserving merit system principles. Many of the larger, more established agencies do their own hiring.

Delegated Discretionary Authority

Much as a local police chief might instruct her officers on how to enforce speed limits or jaywalking, federal executive branch officers can shape the enforcement of policy through instruction, directives, and personal interpretation of the laws. They have this power through the delegation of **discretionary authority**: Congress has granted departments, agencies, bureaus, and commissions—staffed with experts in their field—varying degrees of discretion in developing rules and interpreting legislation.

Rule Making

The constitutional basis for bureaucratic departments or agencies stems from Congress's power to create and empower them. Congress also guides and funds them. The legislative branch decides on the broad principles for law; the details emerge during debate over policies. However, Congress leaves the specific regulations for implementing the policy up to the members of the bureaucracy.

Depending on its discretionary authority, any executive branch agency may have the power or influence to make decisions and to take, or not take, courses of action. Congress has given the executive branch significant authority in three ways, by (1) creating agencies to pay subsidies to groups, such as farmers or Social Security recipients; (2) creating a system to distribute federal dollars going to the states, such as grant programs (page 51); and (3) giving many federal offices the ability to devise and enforce regulations for various industries or issues. This quasi-legislative power enables the Federal Communications Commission, for example, to determine what is indecent for televised broadcasts and enables the EPA to define factory emission standards.

As laws are made in a public manner, the agency rule making process and schedule must also be available to the public in advance to allow relevant players to participate in the process. Company representatives or concerned citizens can submit arguments or appear and testify before a commission, much as an expert might appear before a congressional committee.

EXAMPLES OF DISCRETIONARY AUTHORITY IN SELECT DEPARTMENTS	
Homeland Security	Allowing certain exemptions for immigrants
Transportation	Determining which highway projects get special grants
Veterans Affairs	Deciding how to administer a health program for veterans
Education	Cancelling or lowering student debt
Environmental Protection Agency	Intervening in state environmental issues
Securities and Exchange Commission	Determining if financial firms should be disqualified from raising money because of illegal conduct

Perhaps more familiar are the rules established by the Transportation Security Administration, the agency in the Department of Homeland Security that monitors passengers boarding airplanes. Who will be searched and how? These procedures change from time to time as the government finds new reasons to ban certain items from flights or to soften an overly strict list. The chief lawmaking body, Congress, with its complex lawmaking procedures and necessary debates, cannot keep up with the day-to-day changes in policies and procedures so it entrusts the TSA to monitor the airlines and empowers it to make rules to keep passengers safe.

Interpreting Policy

In addition to rule making, departments and agencies in the federal bureaucracy have latitude in interpreting policy. For example, Secretary of Homeland Security Janet Napolitano (2009–2013) issued a directive declaring that agencies in her department would neither arrest nor deport illegal immigrants who had come into the United States as children, those covered under the proposed (but not enacted) Development, Relief, and Education of Alien Minors (DREAM) Act. She issued the directive with the full support of her boss, President Obama, yet her declaration brought a firestorm of controversy. Was this in violation of basic law—aren't undocumented immigrants illegal regardless of how old they were upon entering the U.S.? Like the local police chief who suggested not ticketing motorists driving a mere two miles over the speed limit, the president and his departments can enforce the law with some discretion, as Napolitano and Obama demonstrated with the DREAMers.

In a similar way, in 2013, Attorney General Eric Holder announced the Obama administration's revised approach to enforcing marijuana violations. In doing so, he did not rewrite the law. Holder did, however, declare that the Justice Department would not use federal resources to crack down on selling or using the drug in states where voters had democratically deemed marijuana legal.

During the Trump Administration, the Department of Justice under Attorney General Jeff Sessions declared that local U.S. attorneys—those presidentially appointed prosecutors who bring federal crime cases to court in their districts across the country—shall be the local determiners of how federal marijuana policy is handled. In fact, the Justice Department attorneys and the FBI deal with a variety of federal crimes on a daily basis and decide whether to prosecute and which crimes are higher on their priority list. This inconsistency from administration to administration may be confusing and destabilizing to some, but it is an inevitable element of administrative discretion.

Holding the Bureaucracy Accountable

It is often difficult to determine who is ultimately responsible for any bureaucratic decision. Congress creates the big-picture laws and some of the regulations. The president shapes the departments and agencies when appointing Cabinet secretaries and agency directors, who have discretionary

authority. Challenges to department directives and agency rulings come in the courts, which may uphold or overrule the executive branch body while interest groups and industry try to influence regulations and their enforcement. With so many players interacting with these executive branch sub-units, it is difficult to tell to whom the bureaus, administrations, and offices are beholden.

Also, in trying to follow prescribed law, these executive branch bodies still face political constraints and challenges despite their discretionary latitude. Cabinet secretaries serve at the pleasure of the president but have to please many people, including, to some degree, their subordinates and staff in the field carrying out the law. These secretaries and their employees report to Congress and thus must please legislative members, especially for funds.

Congressional Oversight

The bureaucracy's discretion in rule-making authority raises many questions. Does it violate the separation of powers doctrine? How democratic is it for a handful of experts to create rules that entire industries must follow? Is due process followed when an agency fines an individual or company for violating a policy for which no elected representative voted and on which no American court ruled?

In part to address these questions, Congress passed the Administrative Procedures Act (APA) in 1946 to better guide agencies in developing their policies. The APA assures that those who will be governed by a policy can have input into shaping it. There must be a notice-and-comment opportunity for citizens to voice concerns about proposed regulations.

Committee Hearings Congress also has a responsibility to assure that the agencies and departments charged with carrying out the ideas in the law are in fact doing so, and doing so fairly. Congressional oversight is essentially a check and balance on the agencies themselves and over the president's influence of them. With some regularity, House and Senate committees hold oversight hearings to address agency action, inaction, or their relationship with the agency.

The list of standing House and Senate committees parallels a list of notable agencies. For example, the House Committee on Homeland Security has jurisdiction over the department of the same name. The Senate Committee on Agriculture, Nutrition, and Forestry oversees the National Parks Service, which is part of the Department of the Interior. Committees and subcommittees receive reports from directors and call the directors to testify. Cabinet secretaries, agency directors, and other ranking bureaucrats testify before the relevant committee. Sometimes these are routine and collegial encounters that allow for the agency or department to update Congress on how it is doing, what goals it has accomplished, or what plans it may have. At other times, the committee with authority will call a hearing to get to the bottom of a thorny issue. A few years ago, for example, the Veterans Affairs Department showed some serious mismanagement and failures in its quest to serve U.S. military



Source: *Wikimedia Commons*

Nuclear Regulatory Commission (NRC) Chair Allison Macfarlane, far left, and (left to right) Commissioners Kristine Svinicki, William Magwood and William Ostendorf appear before the joint House Energy and Commerce subcommittees on July 24, 2012, to answer questions ranging from commission voting procedures to various aspects of safe disposal of nuclear waste.

veterans. Primary among the allegations were long wait times at VA hospitals to get medical attention and bureaucrats falsifying records. One report alleged that the average wait time for an appointment was 115 days. The poorly organized operation resulted in a congressional investigation of the department and the resignation of the Veterans Affairs secretary.

Power of the Purse In addition to general oversight, Congress determines how much funding these organizations receive, asks top-level bureaucrats how they can improve their goals, and sometimes tries to constrain agencies. With the power of the purse, Congress can determine the financial state of an agency and its success when it allocates money. The agency cannot spend public funds until a committee or subcommittee first passes **authorization of spending** measures. These measures state the maximum amount the agency can spend on certain programs. The distribution of money defined in such an authorization may be a one-time allotment of funds, or it could be a recurring annual allotment. The agency will not receive the actual funds until each house's appropriations committee and the full chamber also approve the spending. These **appropriations** are typically made annually as part of the federal budget.

A few agencies do not require a congressional appropriation. The Federal Reserve Board actually makes money through its system of charging interest to commercial banks. The Postal Service is also self-sufficient. Others charge fees and fines that supplement their operating costs. These agencies are a little less beholden to Congress, at least when it comes to asking for money.

The Final Say Congress and agencies share a good deal of authority. This sharing has created an unclear area of jurisdiction. One procedure that has developed to sort out any overlap is *committee clearance*. Some congressional committees have secured the authority to review and approve certain agency actions in advance. Few executive branch leaders will ignore the actions the congressional committee requests, knowing the same committee determines its funding.

Congress established the legislative veto in the 1930s to control executive agencies. The **legislative veto** is a requirement that certain agency decisions must wait for a defined period of either 30 or 90 days. During the conflict in Vietnam, Congress used the legislative veto to put some limits on the deployment of military activity. But the public interest groups that had fought to create regulatory agencies in the 1960s watched agencies' lawful decisions being stopped by one or the other house of Congress.

So when the opportunity arose for a case challenging the constitutionality of the legislative veto, Public Citizen, a group advocating for citizen protections and the separation of powers, used its litigation services to eventually bring it before the Supreme Court. The case centered on Jagdish Chadha, born in British-controlled Kenya, who immigrated to the United States in the 1960s to study. When his U.S. visa expired, neither Britain nor Kenya, which had gained independence from Britain in 1963, would accept him, so he applied for permanent residency in the United States. The Immigration and Naturalization Service (INS) approved his application. Two years later, the House rejected it through a legislative veto.

Chadha sued to retain his U.S. residency. Chadha's fight to remain in the United States became a power play between the president and Congress over the constitutionality of the legislative veto. In *INS v. Chadha* (1983), the Supreme Court sided with Chadha and against Congress's use of this procedure. The veto was intended only for the president, not the legislative branch. The Court stated that when the House rejected Chadha's application, it exercised a judicial function by expressing its opinion on the application of a law, something reserved for the courts. The Court ruled against Congress's use of the legislative veto as a violation of separation of powers. Since then, informal compromises between agencies and congressional committees have proven successful in working out differences.

The President and the Bureaucracy

Departments and agencies must compete with others for funding and for the president's ear. Similar departments and agencies have overlapping goals. They all contend that with more money they could better complete their missions.

At the same time, the president exerts authority and influence to make sure the executive ideology is carried out in policy. Through the regulatory review process, administered through the **Office of Information and Regulatory**

Affairs (OIRA), all regulations that have a significant effect on the economy, public health, and other major aspects of policy undergo close review. Any regulations that conflict with the president's agenda may be questioned, revised, and even eliminated.

In 2017, during the Trump administration, the Federal Communications Commission rolled back the regulations covering oversight of Internet providers, often referred to as "net neutrality." This rollback lifted regulations from the Obama Administration that required cable and telecommunications companies to treat all web traffic equally. The deregulation was part of President Trump's ideology—as in other areas, he called for the government to reduce regulation on business so that businesses could grow and prosper in a freer marketplace.

Competition The different beliefs or approaches of executive departments can create friction between them when the United States must state a position or make a decision. The departments of State and Defense, for example, have had differences on foreign policy. The Department of State is the diplomatic wing of the government; the Department of Defense trains the military and prepares the country for armed conflict. These differing perspectives can make the development of coherent goals challenging.

Law enforcement agencies sometimes cooperate to find criminals, but they are also protective of their methods and desire credit in a way that breeds dissension. The lack of information sharing among the government's many intelligence agencies before September 11 likely increased the terrorists' chances of a successful and unexpected attack.

Sometimes upper-level bureaucrats get caught between their boss and the many people who work for them. The president's policy goals may not take into account some of the practical constraints of the bureaucracy and as a result may be too difficult to achieve. An appointed bureaucrat may therefore "go native" by siding with his or her own department or agency instead of with the president. Going native is a risky proposition, and many who have publicly disagreed with the president have been replaced. Presidents have at times rotated appointees from agency to agency to assure loyalty to the administration.

Federal employees sometimes see corruption or inefficiency in their offices but are tempted to keep quiet. Exposing illegal or improper government activities can lead to reprisals from those in the organization or retaliation that can lead to their termination. However, citizens in a democracy want transparency in government and often encourage such exposure. That is why Congress passed the **Whistleblower Protection Act** in 1989, which prohibits a federal agency from retaliating or threatening an employee for disclosing acts that he or she believes were illegal or dishonest.

Presidential Goals and Streamlining The bureaucracy can be either an impediment or a vehicle for fulfilling presidential goals. When the bureaucracy works against or impedes the administration's ideas and goals, presidents are

encouraged to shake up or restructure the system. Presidents have used both their formal powers, such as the power to appoint officials, and their informal powers, such as persuasion and leadership, to make the bureaucracy work for their executive agenda.

Presidents have also tried to curb bureaucratic waste. President Ronald Reagan, who arrived in Washington in 1981, stated in his inaugural address, "Government is not the solution to our problem; government is the problem." To gain greater control over departments and agencies, he put people who agreed with the Reagan agenda into top positions. He sought officials who would show loyalty to the White House and reduce administrative personnel.

President Clinton promised early in his administration to address government inefficiency. However, he used a more careful tone than his predecessors did, conveying that problems in a large administration came not from bureaucrats but rather from the outdated systems and inefficient institutions. His vice president, Al Gore, headed the effort to investigate and revamp the administration. The Clinton-Gore team signaled that the administration was doing something to make government work better and cost less. The president ultimately promised to "reinvent" rather than dismantle the bureaucracy system.

In 1993, Clinton announced a six-month review of the federal government. The **National Performance Review (NPR)** became Clinton's key document in assessing the federal bureaucracy. The review was organized to identify problems and offer solutions and ideas for government savings. The group focused on diminishing the paperwork burden and placing more discretionary responsibility with the agencies. The report made almost 400 recommendations designed to cut red tape, put customers first, empower employees, and produce better and less-expensive government. One report, "From Red Tape to Results," characterized the federal government as an industrial-era structure operating in an information age. The bureaucracy had become so inundated with rules and procedures, so constrained by red tape, that it could not perform the way Congress had intended.

The review differed from prior ones that had sought to increase efficiency, accountability, and consistency. The NPR review pushed for greater customer satisfaction and a more businesslike manner of running government. Clinton, by way of executive order, also told heads of executive agencies to expand flex options so federal workers could better balance the demands of job and family.

CONGRESSIONAL ACTS AND THE BUREAUCRACY

- **Freedom of Information Act** (1966): Gives the public the right to request access to records or information
- **Sunshine Act** (1976): Requires most federal agencies to hold their meetings in publicly accessible places
- **Whistleblower Protection Act** (1989): Protects federal workers who report or disclose evidence of illegal or improper government action

The Courts and the Bureaucracy

Bureaucratic agencies interact with courts in a variety of ways. The implementation of some rules can result in a prosecution of an offender in a criminal trial. Agency fines and punishments can be appealed in federal court. And the U.S. Supreme Court has shaped how Congress can interact with agencies and has generally empowered the agencies with wider latitude to enact their missions—some would say at the expense of democratically developed policy and the rights of industry.

Courts and Accountability The courts are involved when citizens challenge federal bureaucratic decisions. Because agency actions are not always constitutional, fair, or practical, individuals have the right of due process and review of the law. This judicial review, writes one scholar, serves as a “check on lawlessness, a check on administrative agents making choices based on convenient personal or political preferences without substantial concern for matters of inconvenient principle.”

Before an individual may claim harm by a departmental action, or a company claim adverse effects by a regulatory agency, the complainants must first go through a required, multi-step review process. The Administrative Procedures Act defines the procedure, but it differs by agency across the federal hierarchy, including the relevant review boards and adjudication processes.

Once the appeals process is fully exhausted, a court might consider a challenge by the allegedly injured party. A detailed record of the agency action and the review process up to this point will reveal the substance of the policy and most relevant facts. The court uses this record to determine whether the law has been followed and whether the agency acted within reason.

U.S. Circuit Courts of Appeals Most judicial hearings challenging agency decisions and regulatory punishments are looking for a complicated interpretation of a law, its application, or its constitutionality. These are concerns for appeals courts. When Justin Timberlake accidentally exposed Janet Jackson’s breast during the 2004 Super Bowl halftime show on a live CBS television broadcast, the Federal Communications Commission got involved because of concerns that broadcast decency rules had been violated. The FCC punished Viacom, the CBS parent company, the standard indecency

fine of this type, \$27,500, times the number of affiliates that broadcast the show. It added up to \$550,000. The network's lawyers challenged the ruling in the Third Circuit Court of Appeals. The federal court overruled the FCC and sided with CBS-Viacom.

However, over the last few decades, although these appeals courts have had the power to hold bureaucratic agencies accountable, they have acted as less as a check on executive authority and more as an enabler of it. U.S. Courts of Appeals have increased the number of cases they take, as the bureaucracy has generally grown in size and authority. The Supreme Court simply doesn't take many cases when appealed from the circuit courts, so the Courts of Appeals have largely become the final arbiter of agency decisions. These court decisions, and most of the rare cases the Supreme Court hears, tend to uphold the idea that unless agency discretion is blatantly unlawful or abusive, deference should go to the agency.

Two principles, the substantial evidence doctrine and the arbitrary and capricious test, have governed their rulings. That is, unless the appealing party can provide substantial evidence that the agency has gone far afield of the law or damaged the party outside of this law, the agency should be permitted to govern under its enabling statute. And, if the agency is applying the law equally and consistently, it should be allowed to do so. The fundamental support for this approach is that the people's branch—Congress—has enabled the agency and that the bureaucrats making the decisions are experts in the field. And when federal courts examine these disputes, they focus more on the decision-making procedures than the substance of the rules or decisions.

When the Third Circuit Court overruled the FCC in the Super Bowl controversy, it did so in part by following standards of consistency. The FCC had ruled that "fleeting indecency," that is, accidental and unintentional indecency, usually in the form of verbal slips, had not been punished in the past. How could the FCC now instate an *ex post facto* policy that, when compared with prior decisions, went the other way?

Trends Appeals courts are more likely to protect and uphold independent regulatory agency decisions than general executive branch department and agency decisions. One study found that lower federal courts uphold the agencies' decisions and punishments about 76 percent of the time. Another found the Supreme Court upheld challenges to these executive branch decisions 91 percent of the time.

The Standard The Supreme Court has yielded to bureaucratic authority when the language in the statute that defines their authority is vague. In other words, when Congress bestows power on an entity it creates but has perhaps failed to explicitly define scenarios or rulings that the agency might make, the Court recommends erring on the side of the bureaucracy. The preeminent case that governs this approach is *Chevron v. National Resources Defense Council* (NRDC), decided in 1984. The case pitted Chevron Oil against an environmental protection group. But the real question was to what degree

an agency can set industry standards when the law governing that power is incomplete or vague.

The Clean Air Act of 1970 required states to create permit programs for any new or modified plants that might affect air pollution. The EPA passed a regulation that grouped these plants into a geographic bubble-area for pollution measurement, creating the possibility that some plants would not need a permit if the modification would not affect their overall impact on the defined bubble. The NRDC challenged the EPA procedure in order to protect the air. The District of Columbia Circuit Court of Appeals set aside the EPA regulation, and Chevron appealed.

The Supreme Court overruled the D.C. Circuit Court and established the Chevron doctrine under which courts are supposed to defer to agencies when laws defining their responsibilities are vague or ambiguous. Under the *Chevron* concept, agencies can not only determine what the law is, they can also change that interpretation at any time.

Inefficiency

“The only thing that saves us from the bureaucracy is inefficiency,” said Eugene McCarthy, a Minnesota Democrat who served in the House and Senate from 1949 to 1971. Indeed, the structures, rules, and overlapping jurisdictions seem an inevitable by-product of government. These qualities of bureaucracy have led to some cumbersome challenges for citizens, policymakers, and bureaucrats themselves.

Duplication

Congress has a tough time establishing clear laws and clear goals; as a result, it creates multiple entities to manage or oversee important activities with only marginal differences. It is a rare agency that has exclusive authority over a particular responsibility. For example, both the FBI and the Drug Enforcement Administration seek to apprehend drug dealers. Both the Army and the Navy provide military protection while the CIA and the National Security Agency seek foreign intelligence. This kind of duplication creates competition among agencies and causes jurisdictional issues. This also creates redundancy that expands government cost and frustrates taxpayers because two or more agencies that overlap responsibilities might handle matters differently. The very specific rules of dealing with government can slow things down.

Red Tape

The most common complaint among U.S. citizens about government is **red tape**. Red tape is the vast amount of paperwork, procedures, forms, and formal steps citizens must take to accomplish a government-mandated task. Any driver who has stood in a long line at the local state bureau of motor vehicles with proof of insurance, an emissions check, and other paperwork to receive a driver's license can understand red tape.



IT'S THE LATEST GOVERNMENT GUIDANCE ON 'MANAGING PAPERWORK FOR SMALL BUSINESSES'

Source: *Cartoonstock*

Explain the artist's attitude toward the bureaucracy and an assumption on which that attitude is based.

Governmental restrictions on agency decisions and purchases contribute to slowing down bureaucratic decision making. In many cases, agencies must meet contingencies before they can move ahead with projects. For example, Congress mandates that government contracts must be with American firms. The federal government institutes targets and guidelines to encourage companies to work with minority-owned businesses. Agreements dictate that the federal government hire firms supporting unions and pay prevailing wages. Major construction firms require environmental and economic impact studies to determine the project's effect on the location.

Accountability Another concern for the operation of the bureaucracy is accountability. Presidents and their subordinates have ordered performance reviews and assessments for decades. Trying to enhance responsiveness and effectiveness while also seeking to boost efficiency can be counterproductive. A government of laws is one that avoids arbitrary or capricious rule, but the more an agency is held accountable, the more forms, guidelines, and systems are required. Accountability, therefore, increases red tape and decreases responsiveness.

For example, the Paperwork Reduction Act of 1979, one of President Jimmy Carter's reforms, sounded like a good idea when it was proposed. To enforce it, Congress created the Office of Internal Regulatory Affairs, which created numerous obstacles for agencies issuing regulations. It decreased the flow of paper by increasing regulations on the federal bureaucracy itself.

Public Impression

Bashing bureaucrats has been fashionable for decades. Outspoken Alabama Governor George Wallace, who served in the 1960s, 1970s, and 1980s, was known for attacking the “pointy-headed bureaucrats.” Presidents Nixon, Carter, and Reagan taught the American populace to distrust them. The bureaucracy has become a favorite scapegoat of politicians promising to reform government, largely because so many people have had negative experiences with red tape. Politicians and commentators have primed citizens to focus their resentments on this amorphous, faceless entity, despite the fact that most citizens desire the government services that agencies offer and tend to speak positively about individual bureaucrats they have encountered.

REFLECT ON THE ESSENTIAL QUESTION

Essential Question: *How does the bureaucracy carry out laws, implement policy, and interact with the executive, legislative, and judicial branches?*

On separate paper, complete a chart like the one below to gather details to answer that question.

Functions of the Bureaucracy	
Interactions with Executive Branch	
Interactions with Legislative Branch	
Interactions with Judicial Branch	

KEY TERMS AND NAMES

appropriations/173	Federal Bureau of Investigation/163	Office of Personnel Management (OPM)/161
authorization of spending/173	Freedom of Information Act (1966)/177	patronage/167
Civil Service Commission/168	Hatch Act (1939)/169	Pendleton Civil Service Act (1883)/168
Civil Service Reform Act (1978)/169	iron triangle/166	red tape/179
competitive service/161	issue networks/167	Senior Executive Service/169
compliance monitoring/166	legislative veto/174	spoils system/167
discretionary authority/170	merit system/168	Sunshine Act (1976)/177
excepted service/161	National Performance Review (NPR)/176	Whistleblower Protection Act (1989)/175
	Office of Information and Regulatory Affairs (OIRA)/174	

MULTIPLE-CHOICE QUESTIONS

Questions 1 and 2 refer to the passage below.

First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

—Justice John Paul Stevens, Majority Opinion, *Chevron v. Natural Resources Defense Council* (1984)

1. Which of the following statements in relation to the bureaucracy would Stevens most likely support?
 - (A) A strict construction of the Constitution and the laws that govern bureaucratic agencies is necessary.
 - (B) A degree of discretion is necessary when bureaucratic agencies must apply laws that are imperfectly written.
 - (C) More congressional oversight of bureaucratic agencies is needed to prevent any misapplication of vague laws.
 - (D) The courts need to exert more strength to stop the bureaucratic agencies from implementing vague law.
2. Those who disagree with the above Supreme Court's opinion would likely point to which facts?
 - (A) Experts in the bureaucracy have the knowledge to make the best clarifications.
 - (B) Bureaucratic agencies need to be more diligent in doing their jobs.
 - (C) The courts have no say in interpreting this kind of executive branch law.
 - (D) The lawmaking process becomes less democratic when bureaucratic agencies can regulate beyond their defined jurisdiction.

3. A federal agency has been accused of not enforcing laws it is charged with enforcing. Which is the most likely action the relevant House committee will first take?
- (A) Fire and replace the director of the agency
 - (B) Repeal the law that creates and governs the agency
 - (C) Call for an oversight hearing to understand the problem
 - (D) Increase the federal appropriation for the agency

Questions 4 and 5 refer to the table below.

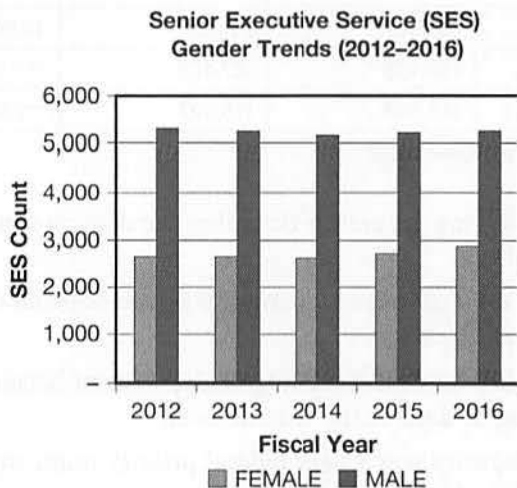
FEDERAL EXECUTIVE BRANCH EMPLOYMENT BY DEPARTMENT (Selected Departments)			
Department	FY 2012	FY 2014	FY 2016
Education	3,899	3,815	3,973
State	9,761	10,068	10,500
Commerce	35,013	34,857	35,661
Homeland Security	169,166	167,422	169,547
Justice	113,358	110,427	112,900

Source: Office of Personnel Management

4. Which of the following accurately describes the data presented in the table?
- (A) The number of employees increased in all the selected departments during the period shown.
 - (B) The Justice Department is the largest department because most crime fighting is done at the federal level.
 - (C) Homeland Security was a high federal priority requiring many workers during these years.
 - (D) The number of employees in each of the selected departments usually declined from 2012 to 2016.
5. What conclusion can you draw from the patterns of change represented in the table?
- (A) Retiring bureaucrats are not being replaced with new hires.
 - (B) The size of the federal bureaucracy is fairly stable.
 - (C) An economic downturn reduced employment levels in 2014.
 - (D) The Education Department employs the largest number of workers.

6. Which of the following is an accurate comparison of Cabinet-level departments and regulatory agencies?

	CABINET-LEVEL DEPARTMENTS	REGULATORY AGENCIES
(A)	Fifteen Cabinet departments, each with a secretary or head that serves on the president's Cabinet	Created and empowered by Congress to monitor particular industries and enforce unique laws
(B)	Cabinet Secretaries can run their department in their own way and cannot be removed without Senate approval.	Regulatory agencies are usually larger than departments in both employees and funding.
(C)	Include the Federal Election Commission and the Securities and Exchange Commission	Senior level agency directors get an automatic seat on the president's Cabinet.
(D)	Nine federal organizations that carry out the nation's business	Are usually within a department and work under the direction of a White House staff member



7. Which of the following statements can be determined from the data in the chart?

- (A) The contemporary imbalance between men and women results from a ban on women in the Army or Navy.
- (B) Fewer women than men apply for senior executive positions.
- (C) The change reflected in the chart is a result of the women's movement in the 1970s.
- (D) The ratio of men to women working in the Senior Executive Service has stayed similar over the years depicted in the chart.

Questions 8–10 refer to the passage below.

[W]e find that the licensees of the CBS Network Stations . . . aired program material . . . during the halftime entertainment show of the National Football League's Super Bowl XXXVIII, that apparently violates the federal restrictions regarding the broadcast of indecent material. Based upon our review of the facts and circumstances of this case, Viacom Inc. ("Viacom"), as the licensee or ultimate parent of the licensees of the Viacom Stations, is apparently liable for a monetary forfeiture in the aggregate amount of Five Hundred Fifty Thousand Dollars (\$550,000.00), which represents the statutory maximum of \$27,500 for each Viacom Station that broadcast the material.

—Federal Communications Commission, Notice of Apparent Liability, 2004

8. Which of the following statements best reflects the role of the Federal Communications Commission in this instance?
- (A) The FCC is acting to uphold the First Amendment and endorse what was broadcast during the Super Bowl.
 - (B) The FCC is fining Viacom for the actions of one of its companies that violated broadcast regulations.
 - (C) The FCC is punishing Viacom and CBS, but the courts determine the amount of the fines.
 - (D) The FCC does not require television broadcasters to be responsible for what performers might do on their broadcasts.
9. Which bureaucratic authority is illustrated with this allegation?
- (A) Enforcement
 - (B) Logrolling
 - (C) Legislative veto
 - (D) Red tape
10. If Viacom disagrees with this notice, what is the most likely step it will take?
- (A) Appeal the ruling to the appropriate Circuit Court of Appeals
 - (B) Make campaign contributions to congressional candidates that will strike down the ruling
 - (C) Convince its viewers to ask their Congress members to overrule the decision
 - (D) Pressure the president to fire the chair of the FCC

FREE-RESPONSE QUESTIONS

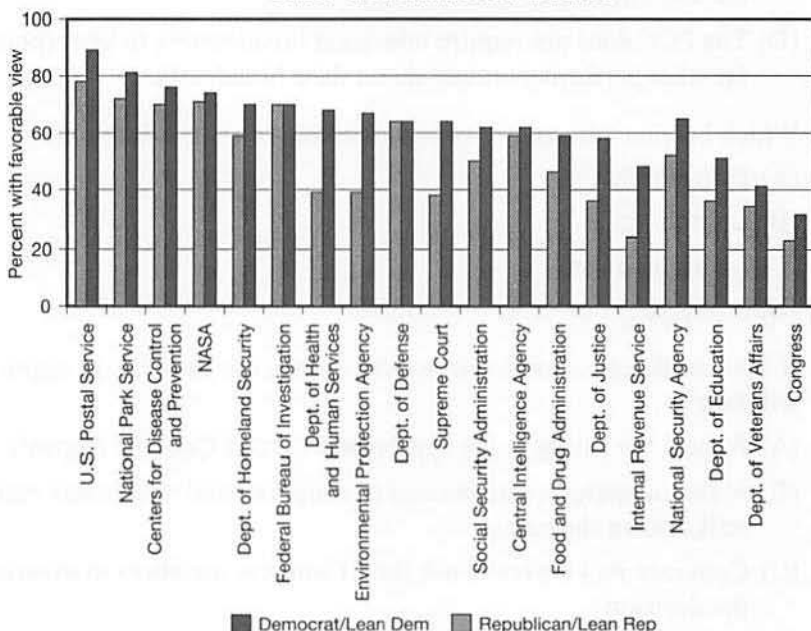
1. “Under *Chevron* the people . . . are required to guess whether the statute will be declared ‘ambiguous’ (courts often disagree on what qualifies); and required to guess (again) whether an agency’s interpretation will be deemed ‘reasonable’ . . . Even if the people somehow manage to make it through this far unscathed, they must always remain alert to the possibility that the agency will reverse its current view 180 degrees anytime based merely on the shift of political winds and *still* prevail.”

—U.S. Circuit Court Judge Neal Gorsuch,
Gutierrez-Brizuela v. Lynch, 2016

Based on the above scenario, respond to A, B, and C below.

- (A) Describe the power the circuit court asserted in the *Chevron* case.
 (B) In the context of this scenario, explain how the *Chevron* decision to which Judge Gorsuch refers affected the federal bureaucracy.
 (C) In the context of this scenario, explain how federal bureaucracy rule making relates to the separation of powers.

Partisan Attitudes toward Bureaucratic and Other Governmental Bodies



Source: Pew Research Center

2. Use the information graphic above to answer the questions on the next page.

- (A) Identify a body within the bureaucracy that has lower than 50 percent unfavorable ratings from both parties.
- (B) Describe the difference between Republican/Lean Republican and Democrat/Lean Democrat respondents in their rating of the Environmental Protection Agency, and draw a conclusion about the cause of this disparity.
- (C) Explain how areas of agreement as shown in the graphic demonstrate values common to both parties.

3. In 2005, the Supreme Court heard the case of *National Cable & Telecommunications Association v. Brand X Internet Services*. The case centered on how the Telecommunications Act, interpreted and enforced by the FCC, defined “information service” and “telecommunication service.” The difference in designation mattered because if cable Internet were classified as a telecommunication service, cable companies would be considered “common carriers” like phone companies and would have to make their cable networks available for competitors to use as well. Brand X, a small Internet provider, argued that cable Internet was a telecommunication service, not an information service, and Brand X should have access to the cables to be able to deliver faster Internet service. The Court found the designation in the Telecommunications Act vague, and by a 6:3 margin ruled that the FCC, as a congressionally enabled commission, had the authority to determine the designation of cable Internet as an information service.

- (A) Identify the constitutional principle at issue in *National Cable & Telecommunications Association v. Brand X Internet Services* (2005) and in *Marbury v. Madison* (1803). (See page 199.)
- (B) Based on the constitutional principle identified in part A, explain why the facts of *Marbury v. Madison* (1803) led to a different holding than the holding in *National Cable & Telecommunications Association v. Brand X Internet Services*.
- (C) Describe an action that members of the public who disagree with the holding in *National Cable & Telecommunications Association v. Brand X Internet Services* could take to limit its impact.

4. Develop an argument that explains whether the federal bureaucracy operates with sufficient checks and balances or whether it has too much discretionary authority to be a fully democratic element of government.

In your essay, you must:

- Articulate a defensible claim or thesis that responds to the prompt and establishes a line of reasoning
- Support your claim with at least TWO pieces of accurate and relevant information:
 - ♦ At least ONE piece of evidence must be from one of the following foundational documents:
 - *Federalist No. 51*
 - *Federalist No. 70*
 - Article I of the Constitution
 - Article II of the Constitution
 - ♦ Use a second piece of evidence from another foundational document from the list above or from your study of the federal bureaucracy
- Use reasoning to explain why your evidence supports your claim/thesis
- Respond to an opposing or alternative perspective using refutation, concession, or rebuttal



WRITING: RESPOND TO ALTERNATIVE PERSPECTIVES

As you plan your argumentative essay, be aware of alternative perspectives from the beginning. Use them to help you choose the position you believe you are best able to defend with your evidence. You may even incorporate one of the stronger alternative perspectives into your claim, so your readers will know to anticipate your rebuttal to it later. For example, your claim might read:

Although there are some good reasons why discretionary authority is necessary in the federal bureaucracy, in more cases than not that authority goes too far and the bureaucracy operates with insufficient accountability.

Readers will expect you to address the “good reasons” and to show why, despite them, you argue for a different position.