

## Chapter 5 - Powers and Functions of Administrative Agencies

### Introduction

- New agencies created
  - Financial Stability Oversight Council
  - Consumer Financial Protection Bureau
- Administrative agencies issue regulations that make up the body of administrative law.
- **Administrative law** is the body of law created by administrative agencies in order to carry out their duties and responsibilities.

### Practical significance

- An **administrative agency** is a federal or state agency established to perform a specific function.
- Administrative Agencies Exist at All Levels of Government
  - Executive agencies, e.g., Food and Drug Administration
  - Independent regulatory agencies, e.g., Federal Trade Commission
  - State and local administrative agencies

### Agency creation and powers

- Congress creates federal administrative agencies.
  - **Enabling legislation:** Statute that specifies the name, purposes, functions, and powers of administrative agency.
  - Federal administrative agencies may exercise only those powers Congress has delegated to them.
- Enabling Legislation—An Example
- Agency Powers and the Constitution
  - Executive controls
  - Legislative controls
  - Judicial controls
  - Administrative Procedure Act (APA)
    - Arbitrary and capricious test
    - Fair notice

### The Administrative Process

- Rulemaking
  - Formulation of new regulation.
  - Notice-and-comment rulemaking involves three steps:
    - Notice of the proposed rulemaking
    - Comment period
    - Final rule
- Enforcement Investigation
  - Agency enforces its rules by conducting investigations to monitor compliance
  - Investigation might begin when an agency receives a report of possible violation
    - Inspections and tests
    - Subpoenas
    - Search warrants

### **The Administrative Process**

- Adjudication
  - Resolution of dispute through a hearing by the agency.
  - Negotiated settlements
  - Formal complaints
  - Role of the administrative law judge
  - Hearing procedures
  - Agency orders

### **Judicial Deference to Agency Decisions**

- Agencies have great discretion to interpret their own agency rules
  - *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*: courts should defer to agencies in matters of fact and law
- The Holding of the *Chevron* Case
  - Did Congress directly address the issue in dispute in the statute? If so, the statutory language prevails.
  - If the statute is silent or ambiguous, is the agency's interpretation "reasonable"? If it is, a court should uphold the agency's interpretation, even if the court would have interpreted the law differently.
- When Courts Will Give *Chevron* Deference to Agency Interpretation
  - In order for agencies to receive Chevron deference, they must meet formal legal standards for notice-and-comment rulemaking.
- When Courts Will Give *Chevron* Deference to Agency Interpretation.
  - CASE 5.2 *Mayo Foundation for Medical Education and Research vs. United States* (2011). What was the Court's holding?

### **Public Accountability**

- Freedom of Information Act
  - Requires federal government to disclose certain records to any person on request, even if no reason is given for the request.
  - All federal government agencies are required to make their records available electronically.
- Government in the Sunshine Act
  - The legislation requires that "every portion of every meeting of an agency" be open to "public observation."
  - Adequate notice of meetings must be given to the public.
  - Closed meetings are authorized in a limited number of instances.
- Regulatory Flexibility Act
  - Concern over the effects of regulation on the efficiency of businesses.
  - In response, Congress passed the Regulatory Flexibility Act.
  - Requires an analysis of the cost a regulation will impose on small business and must consider less burdensome alternatives.
- Small Business Regulatory Enforcement Fairness Act (SBREFA)
  - Allows Congress to review new federal regulations for at least 60 days before they can take effect.
  - Authorizes courts to enforce Regulatory Flexibility Act