

A policy history provides an overview of important and recent policy actions taken to address a particular problem in a short memo (usually 2–3 pages). In contrast to an issue brief, which largely focuses on the particulars of the problem itself (how many homeless people? why are they homeless?), a policy history focuses on how the government has addressed the problem (what laws were passed regarding the homeless? what policies do the police use in dealing with the homeless?). *A successful policy history gives the decision maker enough context to understand what policies have been proposed and/or enacted.*

Policy histories are written for a wide variety of decision makers because new decision makers enter every policy arena each year. They arrive needing to learn what policies have been considered in the past and which ones have passed. Newly elected legislators arrive in the capitol having campaigned on the issues but needing a detailed understanding of the specific bills that have been considered before their arrival. Staffers on a governor's policy team frame the background of the new bills introduced by the hundreds of legislators in their statehouse each year. Advocacy groups engaged in new policy problems need to come up to speed quickly. All of them depend on policy histories.

Distinctive Aspects of Policy Histories

Policy histories are usually produced for a specific decision maker and focus on bills and regulations addressing a particular policy problem. With a wide range of decision makers requesting policy histories, the documents vary widely in terms of both scope and format. Any given policy history might focus entirely on one level of government, or span multiple levels. It might focus on legislative initiatives (bills and laws), agency actions (rules and regulations), or feature both. It might focus on one jurisdiction or detail how several jurisdictions have handled a particular issue differently. It all depends on the problem on which you are focusing and what your decision maker needs to know.

Despite this variety, there are some core steps at the heart of any policy history that will help you move forward as you write. The first step is

deciding whether or not you need to focus on actions by the legislature, the executive, or both. Let's look at the steps necessary to produce a policy history focused on bills and laws first.

Legislative History

A legislative history focuses on explaining to your decision maker the bills considered and passed by a legislative body.¹ Legislative histories, by definition, focus on the efforts of legislators to address a particular policy challenge. During every session legislators submit bills, often having them heard in committee, and sometimes even get them passed into law. As new policy makers enter an issue area, it is crucially important to understand both what progress has been made in the legislature and what the legislature has been unwilling to do.

Finding the Bills

Compared to the other policy-writing genres in this book, the most unique aspect of a policy history is the research required to produce it. How hard could it be to research the laws that are introduced, considered, and passed around your problem? The issue is the peculiarities of the particular legislative institution you are researching. The first time you wade through its system can be excruciating.

The issue is that every legislative body is unique. The U.S. House of Representatives functions differently than the U.S. Senate. The New York State Assembly in Albany is only 150 miles from Concord, but the New Hampshire General Court couldn't be a more different legislative chamber.² School boards, city councils, and county governments all record their deliberations and decisions differently. Your ability to find what you need depends as much on their technological sophistication and commitment to transparency as it does on your research savvy. These systems aren't impenetrable, but it does take a lot of effort to learn them the first time.

¹ In the legal field, a legislative history has a different meaning than what is described in this section (Smith, 2015, chap. 5). In that field, legislative histories document and convey the intent of a specific law. They sometimes include testimony before the committee, records of discussions by committee members, and other primary documents. Because of their prominence, multiple subscriptions services provide access to legislative histories (HeinOnline, ProQuest, Westlaw). These may be available through a university library and are almost always available through a law school library.

² For a fascinating portrait of the 400-member-strong New Hampshire House of Representatives, take 20 minutes to listen to Part III of the *This American Life* episode, "Red State Blue State," by Glass (2012).

How should you begin researching a legislative history? I suggest a multipronged approach. The first prong is to find the relevant bill tracking system online and learn how to use it. Every state has its own bill tracking software (see Morgan [2001] for a list), as does Congress.³ These have standard search features that allow you to enter search terms, limit dates, and search by bill sponsors.

The second prong is to talk to a librarian. Most legislative bodies have their own legislative libraries, and the librarians who work there are experts at understanding how the search systems work. They can also point you to resources that might not be immediately obvious. For example, many committees have their own websites where they post testimony, presentations, and reports that they considered when creating their bills. These resources can be enormously helpful. Additionally, many universities employ a government documents (or gov docs) librarian. This librarian (or team of librarians) specializes in navigating these complicated systems and can be a helpful resource for getting oriented in your research.

The third prong is to look for media coverage of the issue produced by traditional outlets or by advocacy groups. Use the search functions of the relevant newspaper websites to look for specific bill references. Check the Twitter feeds of reporters or advocates. Look for press releases from politicians hawking their latest bill. By checking these sources, you'll ensure your original search didn't fail because you searched for "driverless cars" instead of "autonomous vehicles." It's good to double-check!

Understanding the Bills

Once you've found the bills, then you will face the surprisingly difficult task of understanding them. Remember: Bills are meant to amend or create laws. They are written by lawyers and are almost always in legalese. Unless you have taken a course in law, the language can be difficult to understand. Thankfully, most legislatures have staff that write bill summaries to accompany the legislation. These basic overviews translate the legal wording into everyday language that an educated reader can understand.⁴

³ There are also a wide variety of subscription services like FiscalNote that scrape data from the state and federal websites and compile it into more user-friendly versions. Check with your university library (or the law library, if there is a law school) to see if you have access to one of them.

⁴ If you have questions about the bill that aren't addressed in the summary, consider talking to the legislative staff who helped to assemble the bill. Bill-drafting attorneys, committee staff, and research analysts can all be surprisingly accessible to the public, especially if the legislature is not in session.

Follow the Money

When creating a legislative history, it's important not just to look at the bills making something legal or illegal but also at the budget bills that fund the programs that enforce them. Increasing the fines for polluters will make little difference if the legislature cuts the staff who issue the fines. Similarly, it might be wonderful news that the legislature created a special fund to help your cause, but if it didn't put any money into that fund, that's unlikely to create change on the ground. Looking through the budget bill over the course of a couple of years can provide helpful context about how funding levels have changed for a program and how many positions have been added or cut. With any luck, you can find a report that has already pulled these figures for you. If not, you might be consigned to reading budget documents for a while!

Understand the Players

As you learn about the legislation around your issue it's worth keeping an eye on who is introducing the legislation. Think about what interests they might represent: regional, religious, racial, and others. What party are they from? Was the bill jointly sponsored with legislators from other backgrounds? As you identify patterns about which it would be helpful for your decision maker to know, make sure to include them in your legislative history. Knowing that rural Republicans and Democrats are united against a bill is a helpful context for your decision maker as they navigate the politics of the situation.

Regulatory History

While a legislative history focuses on actions taken by the legislative branch, a regulatory history focuses on actions taken by the executive branch. It looks at the rules and regulations produced by executive branch agencies to address a problem.⁵ Because these rules are so specific, they can have a tremendous impact on a policy problem, and it is often worth taking the time to research and write about them for interested decision makers. Your legislative history research might tell you that Congress passed a law regulating air pollution, but only by reading the regulations produced by the Environmental Protection Agency will you learn just how much pollution a power plant is allowed to produce each year.

⁵ For our purposes, rules and regulations can be viewed as the same thing. Both are terms used to refer to the binding directions produced and enforced by government agencies that have the force of law.

A Quick Primer on Rules and Regulations

When the legislature passes a law, it often has written a law that creates policy in very broad sweeps. For example, Congress might pass a law instructing the U.S. Centers for Disease Control and Prevention (CDC) to protect the United States from highly contagious diseases that exist outside our borders. But it might give very little direction on how to do this.

By being vague, Congress enables the CDC to create rules based on its expertise and the demands of the moment. Congress may give the CDC the power to quarantine people but not specify who should be quarantined (exposed or infected people) or how long they should be quarantined. The CDC creates rules and regulations through a process known as rulemaking, and its rules reflect its expert knowledge.⁶ This is one of the reasons why the CDC was so effective in keeping the 2014–2016 Ebola outbreak in West Africa from spreading inside our borders.

Finding the Regulations

When looking for recent regulatory actions on your problem, use a similar, multipronged search process like you would for a legislative history. Use regulatory websites like the *Federal Register*,⁷ make use of gov docs librarians and commission staff to understand the ins and outs of the particular website you are trying to use, and employ media sources to make sure you've found all the regulations you need for your regulatory history.

Understanding the Regulations

Thankfully, regulations contain a lot less legalese than bills do. Because proposed regulations are meant to solicit public feedback, they should be written in accessible language. But even with those aspirations, they can still be difficult to understand because of the technical language. For example, a 2018 rule, "Air Quality Designations for the 2010 Sulfur Dioxide (SO₂)," has this gem in the executive summary:

⁶ See Shambaugh and Weinstein (2016, chap. 4) for more details of regulation at the federal level.

⁷ All states and many major localities have similar websites where you can see proposed and engaged regulatory actions. These may be centralized, like they are at the federal level, or they may be broken up into issue areas, with a separate process for environmental rules and regulations, workplace rules and regulations, etc.

The Clean Air Act (CAA or Act) directs areas designated Nonattainment by this rule to undertake certain planning and pollution control activities to attain the SO₂NAAQS as expeditiously as practicable. (*Federal Register*, 2018)

Not exactly a paradigm of clear writing! Make sure you leave yourself enough time to understand the technical language in the rules and regulations once you find them.

Understanding the Players

Finally, regulatory policy is the result of input from many different stakeholders. It can be helpful to understand and delineate who they are as you write your regulatory history. Which agencies are involved? What is their mission, and what legislation authorizes them to take action on this policy?

It can also be helpful to think about the agendas of the individuals involved. The old saying “personnel are policy” is often true. The people in power have the ability to shape policy within the discretion of the law. Understanding their interests and communicating them to your audience will help your decision maker navigate the bureaucratic politics surrounding the problem.

How to Organize a Policy History

The structure depends on the particular needs of the decision maker for whom you are writing. You will need to make a myriad of decisions: Will you focus on bills, regulations, or both? If bills, which bills are most important? How will you make trade-offs between discussing significant legislation that occurred decades ago and how current legislation impacts your problem but just makes slight changes? How much should you focus on the individuals and organizations behind the legislation versus the content of the bills themselves?

Once you make decisions about what to cover, there are some standard ways to organize your policy history. I’ve listed them below and discuss some of their trade-offs:

- **Chronologically.** Some policy histories are organized as simple timelines of policy made on the issue. For straightforward issues with uncomplicated policy histories, this structure can work well. Create an overview and then walk your reader through each bill, explaining how it built on the bill before it.
- **Issue-based.** Organizing around a theme is a classic way of organizing a policy history. For complicated problems like homelessness, a policy history might helpfully be broken into sections on housing affordability, mental health, and domestic violence. Or it might be

helpfully organized by subpopulation, with bills focusing on families in one section, adults in another, and veterans in a third.

- **Bill/regulation-based.** Some policy histories are focused around a single major piece of legislation or regulatory action. This might be because there is only one major piece of legislation or because a recent rule reshaped the regulatory landscape, wiping out all the rules before it. In these cases, it may be most helpful to dig into one bill over the course of the memo rather than bringing in less important pieces of legislation.
- **Organized around cross-jurisdiction comparisons.** When novel issues appear, it can often be helpful to policy makers to see what policies other jurisdictions have used to address it. For example, if you are writing why your city has never wrestled with Uber before, it can be helpful to understand how other cities have addressed the issue in the past.

Remember, the mark of a successful policy history is whether or not the decision maker gets enough context to understand what policy has been proposed and/or enacted on the problem. Do your research, use one of the structures above, and start early enough to make revisions and ask others for their feedback.

Example Policy Histories

Now let’s take a look at several sample policy histories. Each is written in memo style and addressed to a particular person. The memo format means they include “To,” “From,” “Date,” and “Subject” lines.

Just like with issue briefs, it’s important to read these not just as examples of how to format a policy history but also with an eye toward *thinking* and *communicating*. Ask yourself, *Does the structure work? Do the headings allow for a quick overview? Are the sentences and paragraphs effective in helping the decision maker read and learn quickly?* These points determine the effectiveness of the policy history as much as the research and analysis of the policies themselves.

Example 1: Cyber Security Efforts by the Legislature and Commissions

The first example is a straightforward policy history that was produced for an incoming gubernatorial administration in Virginia. Cyber security is a crucial issue for state governments. They must protect the privacy of the citizens of the state and be able to provide IT services as a part of doing

business. Failing to provide high-quality cyber security can be a quick pass out of office for a politician; worse, it can mean that police can't do their jobs. The new administration wanted to know what bills had been passed by the legislature and what actions had been taken by the previous administration to protect the state information technology and data from outside threats.

Take a few minutes to read over this and mark up what stands out to you. As you go through it, keep goals and norms of a policy history laid out earlier in the chapter in mind. Think about where the writer followed them and where she deviated. Consider if these choices made her more effective in educating her decision maker about the recent policies surrounding the issue in Virginia.⁸

To: The Gubernatorial Transition Team

From: Lindsay Jefferson, Gubernatorial Transition Clinic Analyst

Date: November 4, 2017

Subject: Cyber Security Bills and Executive Actions

Overview

The exponential growth of technology over the last few decades has given rise to the development of newer and more threatening cyber security attacks. The Commonwealth of Virginia has responded to these threats with continuous adaptation and support of the security of state agencies and operations. Specifically, over the last decade the Virginia General Assembly and Executive Branch have reviewed and enacted an array of legislation requiring state agencies or businesses to implement specific types of security practices, increasing penalties for computer crimes, addressing threats to critical infrastructure, adjusting funding for improved security measures, and more.

Legislative History

Much of the earlier legislation around cyber security focuses on adapting legislation, policies and definitions to accommodate for the growth of new technology and methods of cyber attacks. In 2005, the General Assembly passed H.B. 2215 and S.B. 1163. These laws modernized the Virginia Computer Crimes Act by updating definitions to comport with changing technology, such as changing the definition of "computer" and also by adding new methods of cyber attacks

⁸It will help to know that H.B. stands for House Bill and S.B. stands for Senate Bill. H.B. 2215 is the standard shorthand for referring to House Bill 2215.

like phishing. In addition, H.B. 2353 was passed in 2007, adding keyboard loggers, bots and zombies, and the unauthorized installation of malicious software (malware and spyware) to the list of computer trespass crimes (LIS: Virginia's Legislative Information System, "H.B.2215," 2005, "S.B. 1163," 2005, "H.B. 2353," 2007).

The General Assembly also began adapting penalties for cyber crimes in 2004 as S.B. 1147 was passed to make it a Class 6 Felony to fraudulently obtain or access from a computer identifying information (phishing) including social security numbers, driver's license numbers, bank account numbers, and more. The most recent update to cyber crime penalties came with the passage of H.B. 1815 in 2017, which increased the Class 1 misdemeanor computer trespass crimes to a Class 6 felony if the target computer is one that is exclusively for the use of, or used by, the Commonwealth, a local government within the Commonwealth, or certain public utilities (LIS: Virginia's Legislative Information System, "S.B.1147," 2004, "H.B. 1815," 2017).

In the last decade, the legislative branch has also focused on cyber security requirements for state agencies and other enterprises around the Commonwealth to ensure top rated cyber safety.

Some of the first steps toward these requirement updates began in 2004 with the passage of H.B. 1330. This law requires the director of every department in the executive branch of state government to report to the Chief Information Officer (CIO) all known incidents that threaten the security of the Commonwealth's databases and data communications resulting in exposure of data protected by federal or state laws within 24 hours of the discovery of the incident (LIS: Virginia's Legislative Information System, "H.B.1330," 2004).

More recently and most notably was the passage of H.B. 2360 in 2017. This law requires the CIO of the Virginia Information Technologies Agency (VITA) to develop policies, standards, and guidelines that require any contract for information technology with the Commonwealth's executive, legislative, and judicial branches and independent agencies to be in compliance with applicable federal laws and regulations pertaining to information security and privacy. The passage of this law made Virginia one of the first states to require federal level security standards at the state level (LIS: Virginia's Legislative Information System, "H.B. 2360," 2017). Although this law requires the development of policies, standards and guidelines by VITA, no laws have been passed that require that these standards be adhered to by every state and independent agency.

History of Executive Actions

In addition to action from the legislative branch, there has also been action from the executive branch, especially during the current McAuliffe administration. In 2015, Governor McAuliffe enacted Executive Order #39, which launched "Cyber Virginia" and established the Virginia Cyber Security Commission. Cyber Virginia details the Commonwealth's dedication to mitigate risks and safeguard the highest level of security for government infrastructure networks, foster cyber security education and awareness, incorporate innovative best practices, and also bolster business investment with public-private partnerships. Additionally, the Virginia Cyber Security Commission is responsible for:

"identifying high risk security issues; providing advice and recommendations related to securing state networks, systems, and data, including interoperability and standardization of plans and procedures; providing suggestions for the addition of cyber security to Virginia's Emergency Management and Disaster Response capabilities; promoting awareness of cyber hygiene among the Commonwealth's citizens, businesses and government entities; presenting recommendations for educational and training programs for all ages; offering strategies to advance cyber security economic development; providing suggestions for coordinating the review and assessment of opportunities for cyber security private sector growth as it relates to military and defense activities in the state" (Commonwealth of Virginia Office of the Governor, 2015).

The Virginia Cyber Security Commission concluded its activities on March 29, 2016 and released a final report. This report highlighted the activities and actions of the Commission in the areas of Commonwealth cyber infrastructure and network protection, education and workforce development, public awareness, economic development, and development of new legislation to modernize statutes to address cyber crime. The report also provides recommendations for areas of continued emphasis (Virginia Cyber Commission, 2016).

Focus on garnering a larger amount and more specified funding for cyber security initiatives around the Commonwealth was largely started during the McAuliffe administration. Governor McAuliffe's proposed biennial budget included \$22 million in planned investments in cyber security programs. The 2016–2018 budget signed into law only allotted \$6.2 million specifically

dedicated to these security programs outlined by the governor, leaving the funding for cyber initiatives around the state lacking (LIS: Virginia's Legislative Information System, "H.B. 1500, 2016").

Discussion of Example 1

What do you think? Classically organized, this example educates the reader about specific bills and executive actions related to cyber security in Virginia over the last 10–15 years. The author has clearly done her homework and focused the reader's attention on a few key bills and executive actions. She explains them well and connects them together. Overall, this is an effective document.

That said, it's worth noting some aspects of a policy history that the author does not include. She chooses to focus very little on the individuals involved on the legislative side. This may be because they are no longer in the legislature or because the bills were largely bipartisan. But without discussion, we're left to guess. This document also does not discuss the budgetary aspects of the problem. Yes, the legislature required VITA to develop policies, but did it provide any funding to implement those policies? That is an important question to answer.

Now think a bit about the *communicating* aspects of the memo. The writing was good enough that you likely got through it without much effort. But the author could have made a few changes to help you get through even more quickly. For example, subheadings would have helped you understand the structure more quickly.

Creating subheadings might have helped the author think about the organization of the legislative history section. It's a little disconcerting that the last paragraph starts with, "More recently and most notably." If that's really the most notable thing, then it should go first! Subheadings might have helped.

Finally, the sentences could be improved in several places. The sentence, "Focus on garnering a larger amount and more specified funding for cyber security initiatives around the Commonwealth was largely started during the McAuliffe administration," violates the actor-centered principles of good writing from Chapter 3. A little more polish here would have helped you read this policy history more quickly.

Example 2: Legislative History on American Indian Health and the ACA

Now let's take a look at a second example. Here, the author is writing to a U.S. senator who needs to learn more about how the Affordable Care Act (or Obamacare) impacted American Indian health care. Take a few minutes to read over this and mark up what stands out to you. As you go

through it, keep goals and norms of a policy history laid out earlier in the chapter in mind. Think about where the writer followed them and where she deviated. Consider if these choices made her more effective in educating her decision maker about the recent policies surrounding the issue.

MEMORANDUM

TO: Sen. Udall (D-NM), Ranking Member, Senate Committee on Indian Affairs

FROM: Evelyn Immonen, Policy Analyst

DATE: October 4, 2017

RE: Legislative History on American Indian Health and the ACA

Overview

American Indians in the United States have consistently faced greater health problems than their non-Indian counterparts. The 2015 national average for American Indians in fair or poor health stands at 25%, compared to 14% for the rest of the population (Kaiser Family Foundation [KFF]). Currently, the U.S. Census estimates that 5.2 million American Indians live in the United States, of which 27% are enrolled in Medicaid, plus 50% of American Indian children (KFF). The Affordable Care Act (ACA) of 2010 brought about several important changes to the administration of health services to American Indian and Alaskan Natives by authorizing additional powers to the Indian Health Service and by expanding coverage and funding for American Indians under Medicaid.

Background

The Indian Health Service (IHS) began in 1955, after the transfer of health services from the Bureau of Indian Affairs to the Public Health Service (National Library of Medicine [NLM]). The basis of this relationship dates back to treaty provisions for health care services signed with many tribes, and the established trust responsibility between the United States and tribes. Because of this important precedent, legislation must come at the federal level out of respect to the government-to-government relationship with tribes. At first, IHS was mainly concerned with construction of clinics in remote reservation areas, but the 1970s saw an uptick in promotional material to increase awareness of the issues with American Indian health (NLM).

In 1976, the Indian Health Care Improvement Act (IHCIA) amended the Social Security Act to allow Medicaid and Medicare reimbursement for this

population. This amendment created a direct relationship between IHS and Centers for Medicaid Services (CMS). The Indian Health Care Improvement Act instituted a 100% Federal Medical Assistance Percentage (FMAP) for Medicaid services for IHS or tribal facilities. Reimbursement needs to go through more accessible IHS facilities, reducing the number of patients who would have to drive hundreds of miles to access a provider off-reservation (CMS).

Section 5006 of the American Recovery and Reinvestment Act (2009) expanded some protections for Indian health. It requires states consult with tribes on a government-to-government basis on Medicaid or CHIP policies, and include their consulting process in public documents. Section 5006 also precludes states from imposing Medicaid premiums on Indian enrollees.

1955	Indian Health Service created
1976	Indian Health Care Improvement Act (IHCIA)
2000	IHCIA authorization expires
2009	American Reinvestment and Recovery Act expands protection
2010	Affordable Care Act reauthorizes and expands IHCIA

IHS Funding Problems

Indian Health Services receives annual appropriations through Congress each year, limiting the supply of services. If there is a surplus of demand, services must be prioritized or patients turned away. In 2013, IHS per capita expenditures for patient health services were just \$2,849 compared to \$7,717 per capita nation-wide according to the National Congress of American Indians. This affects a population whose life expectancy is 4.2 years less than the national average due to the highest rates of death by alcoholism, diabetes, unintentional injuries, and suicide compared to other racial groups (NCAI). Medicaid makes up 13% of total allocations of IHS services (HHS).

Indian Health Care Improvement Act 2010

President Obama came into office in 2008 wanting to pass major health care legislation, and he had the Democratic majority in the House to make it happen. The Senate needed the filibuster-proof 60 votes in order to pass such major legislation, and they reached that in December of 2009 by including two independents and one Republican who changed parties (Forbes). The Democratic National Committee included tribal sovereignty on their agenda in the 2008 campaign:

"In exchange for millions of acres of land, our nation pledged to provide certain services in perpetuity; we will honor our nation's treaty and trust obligations by increasing resources for economic development, health care, Indian education, and other important services." (DNC)

Health care services were at stake: authorization for appropriations for IHCIA had expired in 2000 (IHS). Obama acted on his campaign promise and held a White House Tribal Nations Conference in 2009, providing an opportunity for public comment from tribal leaders on the Affordable Care Act. On March 23, 2010, President Obama signed IHCIA reauthorization into law permanently as part of the Patient Protection and Affordable Care Act. Unlike in previous years, there was no expiration date on IHCIA authorization, ensuring it would continue into subsequent administrations (IHS).

New Provisions in the Affordable Care Act

The Indian Health Care Improvement Act signed in 2010 included many changes from the original 1976 legislation to facilitate the delivery of health services (IHS).

- Increases authority for IHS Director, including to enhance tribal consultation within HHS
- Provides authorization for long-term, hospice, or community-based care
- Extends the ability to recover costs from third parties to tribally-owned facilities
- Updates laws on reimbursement of Medicaid, Medicare, and CHIP by IHS facilities
- Allows tribes to purchase health benefits for IHS beneficiaries
- Authorizes collaboration between IHS and VA or Defense to share facilities and services
- Extends health benefits to program employees in Indian education or urban Indian health
- Authorizes Community Health Representative program in urban Indian areas
- Directs IHS to develop a comprehensive behavioral health program

Impacts of the Affordable Care Act on Coverage for American Indians

The ACA offered an optional expansion for states to cover low-income adults up to 138% of the federal poverty line. Some states with a relatively high population of American Indians chose to expand (California, Arizona, New Mexico), while others have not as of 2017 (Oklahoma, Texas, South Dakota). The passage of the ACA has positively impacted insurance coverage for American Indians. The Kaiser Family Foundation found that from 2013 to 2015 the uninsured rate fell from 24% to 17% among American Indians. This impact was slightly higher than on the non-Indian population, who saw the uninsured rate fall 6% in the same time period (KFF).

Finally, the ACA also impacted revenues for IHS and tribally-operated facilities. Nationwide, IHS program funding from Medicaid revenue increased from \$720 million in 2013 to \$810 million in 2017 (IHS). Transferring funds from the annually-appropriated IHS budget to the nondiscretionary Medicaid budget increases the proportion of guaranteed funds for IHS clinics, more proportional to expenses of the population they serve.

Discussion of Example 2

What do you think? This policy history does a nice job on several counts. First, it provides enough context for the reader to understand how the ACA fits into the broader history of Native American health care policy. This sweeping history cites legislation passed in the 1950s and alludes to a long history of Native American and U.S. government relationships before that. It sets up the new issues. Second, the frequent and informative headings help the reader move quickly across the memo to get a sense of the sweep, and they are detailed enough to get an idea of what is in each section.

From a structural perspective, I can't help wondering what would have happened if the author had flipped the memo, placing the last paragraph just under the overview section and rewriting the memo from there. In this structure, there would have been a clear focus on the ACA and she could have filled in details about the IHCIA as needed. If the point of the history was to focus on how the ACA affected Indian health, then that change would have been worth considering.

Whether or not she had flipped it, this policy history would have benefited from several additional revisions focused on the communication aspects of it. For example, the sentence, "The basis of this relationship dates back to treaty provisions for health care services signed with many

tribes, and the established trust responsibility between the United States and tribes,” is difficult to follow because it violates several of the principles from Chapter 3.

Example 3: Regulatory Actions by the United States’ Office of Foreign Assets Control (OFAC)

For our final example, let’s take a look at a policy history focused on regulatory actions. This memo is drawn from the international arena, but the frameworks remain the same. Take a few minutes to read over this and mark up what stands out to you. As you go through it, keep goals and norms of a policy history laid out earlier in the chapter in mind. Think about where the writer followed them and where she deviated. Consider if these choices made her more effective in educating her decision maker about the recent policies surrounding the issue.

To: Stephen O’Brien, Under-Secretary General and Emergency Relief Coordinator, United Nations Office for the Coordination of Humanitarian Affairs (UN-OCHA)

From: Anna Troutman, Policy Analyst

Date: November 4, 2017

Subject: Regulatory Actions by the United States’ Office of Foreign Assets Control (OFAC)

Executive Summary

The Office of Foreign Assets Control (OFAC) is the Department of the Treasury division responsible for crafting and implementing U.S. sanctions policy. Headed by a political appointee, the Department’s policy is entirely aligned with and driven by the Executive’s foreign policy and national security agendas. Recent exceptions allowing U.S.-based activities in Hamas-controlled Gaza Strip/Occupied Palestinian Territory (OPT) created unprecedented license for humanitarian response. While future regulation allowing humanitarian response in terror-related crises is dependent on Executive policy, these updates have increased the possibility of similar sanctions exceptions across the board.

Agency Profile

The Office of Foreign Assets Control (OFAC) is the division in the Department of the Treasury responsible for determining, governing, and applying economic

and trade sanctions based on U.S. foreign policy and national security goals. Operating under presidential national emergency authority and the International Emergency Economic Powers Act (IEEPA), OFAC executes executive mandates freezing foreign assets through regulations on financial institutions and their holdings. Though OFAC receives general regional and conflict-based targets from Presidential executive orders, its Office of Global Targeting (OGT) is responsible for generating and designating final individual targets for sanction. OFAC has the power to levy significant financial penalties against U.S. individuals or groups violating regulations, including imposing fines, freezing assets, and even barring violators from operating in the U.S. (Department of the Treasury, 2017). The department generates the regulations blocking humanitarian aid in designated conflict zones, and regularly penalizes U.S.-based organizations who choose to operate in contested areas.

OFAC has existed in some form since the War of 1812, when the U.S. levied its first sanctions as a nation against Great Britain. The most modern agency, the Division of Foreign Assets Control, was established in 1950 following the People’s Republic of China’s entry into the Korean War. The Division grew into OFAC in 1962 by Treasury Department order. Located in the Treasury Department headquarters in Washington, D.C., OFAC currently employs 200 lawyers and intelligence analysts with an annual operating budget of 30.9 million dollars (Department of the Treasury, 2017). John E. Smith serves as the Director of OFAC, a politically appointed position that does not require congressional approval. The directorate is the only politically appointed position within OFAC (House of Representatives, 2017).

Though it is a Treasury Department division, OFAC’s foreign policy orientation requires regular collaboration with the Department of State, the National Security Council, and other foreign affairs agencies. The Executive’s foreign policy strategy drives the designation of organizations and individuals subject to sanctions. As such, regulations put forth by OFAC directly reflect developments in international affairs and U.S. foreign policy. OFAC maintains and enforces its regulations through two vehicles: national sanctions programs, and a list of specially designated nationals and groups. While national sanctions programs block transactions with entire states, the specially designated nationals list prohibits U.S. citizens from transacting with specific foreign nationals and organizations. Both vehicles further Executive counterterrorism policy, with three sanctions programs specifically addressing terrorists and terrorist organizations: the Terrorism Sanctions Regulations (31 CFR Part 595), Global Terrorism Sanctions Regulations (31 CFR Part 594), and Foreign Terrorist Organization Sanctions

Regulations (FTOSR) (31 CFR Part 597) (Department of the Treasury, 2017). Establishing and updating these regulations is an entirely federal operation. OFAC waives the usual public consultation portion of regulatory procedure due to the foreign affairs function of these rules.

Though it is not possible for the public to weigh in on OFAC regulations, U.S. citizens and organizations can obtain exceptions to sanctions through OFAC's tightly regulated "licensing" process. OFAC has the power to grant exceptions to large sections of its sanctions regimes through "general licenses," allowing all U.S. citizens and organizations to continue work in sanctioned nations. Additionally, OFAC may grant "specific licenses" allowing certain U.S. citizens and organizations to continue work with OFAC-designated entities (Department of the Treasury, 2017).

Recent Key Regulations

Recent OFAC-generated updates to the Code of Federal Regulations (CFR) have primarily established new sanctions regimes and incorporated new licenses to existing sanctions. The CFR was updated in 2017 to block transactions with all ISIL affiliates, and updates have reaffirmed blocks to aid-giving in the ongoing humanitarian crises in Somalia and South Sudan. However, revisions to the FTOSR (31 CFR Part 597) have had the most impact on blocking or enabling humanitarian aid in terror-related crises (Government Publishing Office, 2017; Government Publishing Office, 2010; Government Publishing Office, 2006).

One update and two general licenses have been added to the FTOSR in the past decade with significant impacts to humanitarian intervention, particularly in the Gaza Strip/OPT. In 2006, the OFAC-designated terrorist organization Hamas gained a majority in the Palestinian Legislative Council and took control of the Prime Ministry. In response to this international affairs development, OFAC determined that Hamas now held significant sway over the Palestinian Authority (PA) government of Gaza/OPT. In light of existing sanctions prohibiting U.S. citizens from dealing with Hamas, OFAC updated the FTOSR and specially designated nationals list accordingly. The PA, previously a partner for many U.S. organizations and operations, was designated a "blocked" organization and all transactions with the PA (including providing aid through local government channels) were made illegal (Government Publishing Office, 2006).

Due to the entrenched nature of many U.S. organizations' work in Gaza/OPT, however, OFAC granted a general license softening the sanctions regime against the PA. Recognizing the split nature of foreign policy at the time, OFAC

authorized U.S. persons to engage in transactions in Gaza/OPT in which the PA had an interest. These transactions included all licensed United Nations (UN) business and government transactions, provided they did not debit blocked accounts affiliated with the PA. The language of 31 CFR Part 597 was written liberally to include the International Monetary Fund, the World Bank, the World Food Programme, and the World Health Organization under the UN umbrella of exempted humanitarian organizations operating in the region. Additionally, OFAC granted license for in-kind donations of medical aid to areas under PA jurisdiction, widening the historically allowed fields for humanitarian engagement (Government Publishing Office, 2006).

The second general license and most recent update to the FTOSR granted permission in 2010 for use of funds in blocked accounts to pay for legal representation and related expenses. This created a significant exception to not only FTOSR sanctions, but also to the IEEPA and U.S. criminal statutes prohibiting U.S. citizens from contributing services to designated terrorists and terrorist organizations. Under this general license, U.S. actors may provide legal assistance to holders of blocked accounts seeking to contest their designation (Government Publishing Office, 2010). This upends previous interpretations of codes governing counterterrorism, which viewed services as a form of material support to terrorist organizations.

Anticipated Future Regulation and Recommended Action

Future regulatory action taken by OFAC will likely be in response to developing international affairs, and will be determined by the Executive's response agenda. Barring a massive international incident, OFAC regulatory policy developments affecting humanitarian response will be limited to new sanctions on international crises and the addition or removal of individuals and groups on the specially designated actors list. Counterterrorism-related updates will likely focus on the evolving situation in Syria, ISIL operations, radicalization in Bangladeshi Rohingya camps, and ongoing terror-related crises.

Previous updates to the CFR have set a new precedent for humanitarian operations in terror-related crises, and serve as the groundwork for a more nuanced policy on aid. However, any further policy updates will likely come as the result of a top-down Executive policy shift, similar to the shift excepting transactions with the Hamas-majority PA in 2006. As current Executive foreign and national security policy is highly focused on domestic security and does not prioritize foreign aid of any kind, it is unlikely that this shift will occur within the Trump presidency.

Advocates will best achieve initial reforms to regulations on humanitarian aid by applying for general licenses allowing operations in terror-related crises. The absence of a public review period on any OFAC updates to the CFR limits direct external stakeholder involvement to this channel. Additionally, U.S.-based aid organizations should continue to lobby Congress to shape foreign and national security policy such that it prioritizes access for humanitarian organizations in terror-related crises. Ideal OFAC regulatory policy would include a standard general license for designated humanitarian actors to continue monitored operations under all future counterterrorist sanctions regimes. Given the proper Executive policy conditions, this step from the current PA-specific license under FTOSR to standardized OFAC regulatory practice would be eminently achievable.

Discussion of Example 3

What do you think? While this example focuses almost exclusively on executive branch actions, it still reads similarly to the other two. It is most impressive for educating the reader about a complex and important issue—in this case, how the government regulates business dealings of U.S. citizens with actors in areas with terrorist bases. One reason why you can take in such complicated information is that the author *communicates* well. The sentences and paragraphs are well constructed, allowing you to get through the information quickly.

The *thinking* is also done well. The author has a clear purpose. The information she chooses to include and the way she has assembled it work, which means that even in a content-heavy document, you can get through it in a straightforward manner, without a lot of head scratching. Of course, the document isn't perfect. Subheadings would have helped, and another round of edits would have shortened it a bit; but overall, it educates the decision maker effectively in terms of content and style, and that is what makes it effective.

Conclusion

The three examples above have given you a flavor of the policy history genre. You've seen a policy history focused on legislative actions, one focused on executive actions, and one splitting the difference. Each one comes from its own context and was created for a specific decision maker. Now that you have seen a few examples and know the basic principles of policy histories, you are ready to research and communicate the policy history surrounding your issue.

As you begin to write your own policy history, make sure to keep the *thinking* front and center by employing your audience-centered writing principles. Always be thinking, *Why is it that I am writing this? What does my decision maker need to know? How can I best use this particular format and its particular rules to communicate with them?*

Once you have the *thinking* down, then enjoy *communicating* in this unique policy genre. Writing a policy history will not just provide value for your decision maker, it can also give you a new perspective on your problem. You'll have a better sense of the government actors who are engaged in addressing it. You'll know more about what they have and haven't tried. This knowledge will aid you as you move forward in helping people address your problem.

CHECKLIST

Content and Analysis

- Demonstrates thorough understanding of the topic and its implications.
- Includes background, legislative issues, public concerns, and other aspects of the topic.
- Correctly identifies every important issue.
- Virtually all included information is relevant.
- Provides correct amount of information.

Writing

- Is directed to an intelligent reader unfamiliar with specifics of topic.
- Short, precise, readable sentences that are actor centered.
- Paragraphs are cohesive, coherent, and properly emphasize important ideas.
- Discussion flows logically.
- No grammar or spelling errors.
- No jargon.
- Passes *Washington Post* test.

Document Formatting and Presentation

- Header provides date, contact information, and organization name.
- Helpfully titled.
- Well formatted to enhance clarity by breaking content into sections with clear foci.
- Section headings preview text that follows.
- Appropriate emphasis added.
- Visual cues help draw the reader's eye to the relevant points quickly.

EXERCISES

1. What is the purpose of your policy history? Why are you creating it?
2. Who is your audience for the policy history? What do they need to know about your problem?
3. Think about the content of your policy history: Should you focus on legislative actions, executive branch actions, or both?
4. Write a sentence outline of your policy history: Why did you organize it the way that you did?
5. Create an effective, 1–2 page policy history targeted to a specific decision maker that gives them enough details about the relevant policies that have been proposed and/or enacted and provides the context to understand them.

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Decision-forcing memos, commonly called *decision memos*, are documents that focus decision makers on a pressing problem on which they need to take action and persuade them to take a particular action using evidence and logic.¹ Emergencies, actions by opponents, or new information about how a situation is changing may call for new action by decision makers.

If decision makers recognize these decision points in advance, they may request a decision memo to trigger the careful consideration of the problem by subordinates. Other times, subordinates may see the problem first and write these 1–2 page memos to force decision makers to make a decision. Because decision memos are focused around action, they have a highly standardized format. Decision memos frame the problem, discuss options for action, and make a recommendation about what to do.²

Like any policy genre, *thinking* is key to success. To succeed, you must decide what the core problem is, create multiple options that address the problem, determine the criteria you will use to decide between them, discuss the trade-offs, and make a recommendation, all in 1–2 pages. The format forces concision, and concision forces clear thinking. These page constraints demand your best *thinking* and *communicating*.

Distinctive Aspects of Decision Memos

The audience for a decision memo has a pressing need to make a good decision about the issue you are presenting to them. That's good news because they are more likely to give your memo sustained attention than many of the other policy-writing genres. The bad news is they are still in a hurry and, with enormous pressures of the decision weighing on them, they are just as demanding readers as in any of the other genres.

¹ Depending on the setting, decision memos may be referred to by different names. For example, the White House refers to them as decision-forcing memos (Shambaugh & Weinstein, 2016, chap. 6), while the Veterans Administration refers to them as executive decision memos (EDMs).

² Garfinkle (2012, chap. 6) provides strategic advice about when and how to use decision memos to shape policy.