
Article

Congress's Agency Coordination

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Introduction	1962
I. Statute-Based Coordination.....	1972
A. Political History & Current Legislative Intent	1974
B. Coordination Legislation & Interagency Control.....	1980
Table 1: Coordination by Issue & Importance.....	1984
Table 2: Hierarchy & Expansiveness in Interagency	
Coordination	1988
Table 3: Congressional Control in Interagency	
Coordination	1989
Table 4: Factors Engendering Interagency	
Control	1991
Table 5: Overall Categorization of Coordination	
Legislation	1992
C. Impact & Mitigation of Interagency Conflict	1993
II. Impact on Administrative Function.....	2000
A. Replicating the Benefits of Executive-Initiated	
Coordination	2002
1. Lead Agency as Mouthpiece.....	2002

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2.	Replicating the System of Executive Accountability	2004
3.	Harnessing Diverse Competencies	2005
4.	Enhancing the Use of Information	2007
B.	Goals Unique to the Legislature	2008
1.	Improving Agency Responsiveness to Congress.....	2008
2.	Encouraging Sensitivity to Pressure, Crisis & Legislative Compromise	2012
3.	Mimicking the Benefits of Overlapping Jurisdiction	2013
4.	Capitalizing on Interagency Conflict.....	2016
5.	Offsetting Political Influence	2018
III.	Effect on Executive Control.....	2022
A.	Unsettling Presidential Administration.....	2026
B.	Insulating Agency Interactions.....	2031
C.	Presidential Footholds for Oversight.....	2041
1.	In Coordination Legislation	2042
2.	Endogenous to the Executive	2048
3.	Responsiveness to Interagency Conflict	2053
	Conclusion	2057
	Appendix: Coordination Legislation & Interagency Control.....	2060
A.	Unilaterally Initiated & Expansive	2063
1.	Mandatory.....	2063
2.	Semi-Obligatory.....	2074
3.	Discretionary	2077
B.	Unilaterally Initiated & Limited	2082
1.	Mandatory.....	2083
2.	Semi-Obligatory.....	2086
3.	Discretionary	2089
C.	Jointly Initiated.....	2089
1.	Mandatory.....	2090
2.	Semi-Obligatory.....	2093
3.	Discretionary	2093

INTRODUCTION

“Whose bureaucracy is this anyway?”¹ This is the question that political scientist Francis E. Rourke asked in a speech discussing the President’s and Congress’s shared sovereignty over

1. Francis E. Rourke, *The 1993 John Gaus Lecture: Whose Bureaucracy Is This, Anyway?*, 26 POL. SCI. & POL. 687, 687 (1993).

the administrative state.² This Article expands the scope of this fundamental inquiry by considering it within a framework that governs the entire executive branch: interagency coordination. More specifically, this Article establishes that Congress authorizes interagency coordination across the executive branch, by producing and examining the largest compilation to date of coordination legislation and related legislative history.³

It is commonly understood that the President directs executive agencies. However, while the President may be likened to the chief executive officer of executive agencies⁴ or even the “administrator-in-chief,”⁵ Congress designs the structure of every

2. See generally *id.* (discussing “the struggle for control over bureaucracy between Congress and the president”). “This query has haunted the relationship between the president and Congress from the very beginning of their history together in the American political system. Which institution is to have real sovereignty over the activities and decisions of the agencies in the executive branch?” *Id.*

3. See *infra* notes 82–83 and accompanying text.

4. See Rourke, *supra* note 1, at 687 (suggesting that under the Constitution, the President “reign[s] in solitary splendor as the bureaucracy’s chief executive officer,” and that a plain reading of Article II establishes “with luminous clarity” that the President has control over the bureaucracy); see also *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 513–14 (2015) (suggesting that the Constitution requires that the “buck stops” with the President); *Morrison v. Olson*, 487 U.S. 654, 689–90 (1988) (noting that Congress cannot interfere with the President’s constitutionally appointed duty to “take care that laws be faithfully executed” under Article II); Steven G. Calabresi & Kevin H. Rhodes, *The Structural Constitution: Unitary Executive, Plural Judiciary*, 105 HARV. L. REV. 1153, 1165–68 (1992) (arguing that the Take Care Clause contemplates more than a housekeeping role for the President); John Yoo, *Unitary, Executive, or Both?*, 76 U. CHI. L. REV. 1935, 1947 (2009) (stating that because the Constitution makes the President responsible for executing laws, the President also has the ability to control inferior executive officers).

5. The term “administrator-in-chief” recognizes the President as a central figure directing agencies’ implementation of statutes. See Steven G. Calabresi & Saikrishna B. Prakash, *The President’s Power to Execute the Laws*, 104 YALE L.J. 541, 603–15 (1994) (discussing this concept of President as administrator-in-chief); Rourke, *supra* note 1, at 688 (noting the President’s constitutional title as chief executive officer, and the President’s power in the bureaucratic sphere); see also *Morrison*, 487 U.S. at 689–90 (noting the power of the President as administrator-in-chief); *Bowsher v. Synar*, 478 U.S. 714, 761–63 (1986) (White, J., dissenting) (suggesting the plausibility of the President as the administrator-in-chief); *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915) (establishing the President as administrator-in-chief); Ming H. Chen, *Administrator-in-Chief: The President and Executive Action in Immigration Law*, 69 ADMIN. L. REV. 347, 362 (2017) (noting that “executive action can be legally binding presidential directives or sub-delegations to agencies”); Nina A. Mendelson, *Another Word on the President’s Statutory Authority Over Agency Action*,

agency and administrative subcomponent⁶ (although its role in this regard is not exclusive).⁷ Logically, the idea that Congress might also direct federal agencies to coordinate with one another flows from this general understanding.⁸ However, the relevant literature has focused only on the ways in which interagency coordination has served as an *executive* tool for regulatory reform, to improve administrative adjudication, or to reconcile shared jurisdiction among agencies.⁹ Since the President and agencies

79 FORDHAM L. REV. 2455, 2455–56 (2011) (outlining options for directive presidential authority); Henry P. Monaghan, *The Protective Power of the Presidency*, 93 COLUM. L. REV. 1, 46–47 (1993) (discussing how *Midwest Oil* established the President as administrator-in-chief); Neomi Rao, *Removal: Necessary and Sufficient for Presidential Control*, 65 ALA. L. REV. 1205, 1210 (2014) (arguing that “the executive power includes directive authority over all federal agencies”). See generally Saikrishna Bangalore Prakash, Note, *Hail to the Chief Administrator: The Framers and the President’s Administrative Powers*, 102 YALE L.J. 991 (1993) (suggesting the constitutional foundations of the President’s authority to act as administrator-in-chief).

6. See Daniel A. Farber & Anne Joseph O’Connell, *Agencies As Adversaries*, 105 CALIF. L. REV. 1375, 1416–32 (2017) (discussing design choices by both political branches underlying instances of interagency conflict); Jacob Gersen, *Designing Agencies*, in RESEARCH HANDBOOK ON PUBLIC CHOICE AND PUBLIC LAW 333 (Daniel A. Farber & Anne Joseph O’Connell eds., 2010); Rourke, *supra* note 1, at 687 (noting that the Constitution “authorized Congress to establish and empower all the agencies that might thereafter lie within the domain of the White House”).

7. Brian D. Feinstein, *Designing Executive Agencies for Congressional Influence*, 69 ADMIN. L. REV. 259, 271 n.48 (2017) (“Although most agencies are established via statute, a nontrivial number are created via executive order, reorganization plan, or departmental order.”); see also DAVID E. LEWIS, ADMINISTRATIVE AGENCY INSULATION DATA SET CODE BOOK (2007) (analyzing the creation of administrative agencies by political actors between 1946 and 1947), <https://my.vanderbilt.edu/davidlewis/files/2011/12/Codebook.pdf>.

8. See Peter L. Strauss, *Overseer, or “The Decider”? The President in Administrative Law*, 75 GEO. WASH. L. REV. 696, 717 (2007) (suggesting briefly that Congress “has provided for coordination by the President or agencies reporting directly to him across a wide range of governmental activities,” including “budget proposals, property and acquisitions management, paperwork requirements, analyses of the environmental and economic impacts of government actions [and] litigation”).

9. See, e.g., Kate Andrias, *The President’s Enforcement Power*, 88 N.Y.U. L. REV. 1031, 1037 (2013) (arguing for additional and more systematic agency coordination from the President on enforcement, and not just in rulemaking); Keith Bradley, *The Design of Agency Interactions*, 111 COLUM. L. REV. 745 (2011) (arguing that interagency coordination is “a deliberately designed mechanism for presidential control of the administration”); Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131, 1174 (2012) [hereinafter Freeman & Rossi, *Agency Coordination*] (arguing

themselves are the paradigmatic initiators of agency coordination, widespread legislative implementation of agency coordination challenges the understanding that coordination is primarily an executive tool for administrative management.

Analysis of an original legislative dataset indicates that Congress uses statute-based coordination to influence agencies to implement both its substantive and political priorities in a variety of regulatory areas,¹⁰ often in a manner that is neither directed nor overseen by (and perhaps not even apparent to) the Executive. In this way, statute-based coordination serves as another potent organizational tool by which Congress supervises the execution of the law. Indeed, legislation directing agencies to coordinate may be conceived of as “congressional administration,”¹¹ analogous to the well-known model of presidential administration¹² within which most coordination scholars have operated.

that overlapping and fragmented delegations of responsibility provide an opportunity for the President to influence policy by imposing coordination on both executive and independent agencies, primarily because shared agency delegations cumulatively add to the President's total discretion); *see also* Gillian E. Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1239, 1248 (2017) (“Nor is internal administrative law limited to measures that exist within an agency. Transagency measures, in particular centralized White House oversight and coordination mechanisms, also qualify.”); Bijal Shah, *Interagency Transfers of Adjudication Authority*, 34 YALE J. ON REG. 279 (2017) [hereinafter Shah, *Interagency Transfers*] (documenting agencies' efforts to endogenously transfer their final authority to adjudicate administrative cases to one another); Bijal Shah, *Uncovering Coordinated Interagency Adjudication*, 128 HARV. L. REV. 805 (2015) [hereinafter Shah, *Uncovering*] (examining coordination initiated by agencies to manage shared jurisdiction over administrative adjudication).

10. *See infra* note 88 and accompanying text; *infra* Table 1 (illustrating that coordination legislation has been enacted in regulatory areas, including law enforcement, national security, disaster management, military expansion, social services, healthcare, education, land use, and others).

11. This term has been used to describe congressional oversight. *See generally* Jack M. Beermann, *Congressional Administration*, 43 SAN DIEGO L. REV. 61, 107–08 (2006) (noting in particular that Congress exercises control over the execution of the law through the creation and abolition of agencies). This differs from my use of this term to refer to congressionally-led administrative design, including the legislative direction or supervision of agencies.

12. *See generally* Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245 (2001) (describing presidential administration, by which the President seeks to direct agencies).

To put it another way, a principal function of interagency coordination has been overlooked: its use as a directive instrument that both allows Congress to articulate, with precision, relationships among executive agencies. Perhaps unexpectedly, this legislation enables agencies themselves to wield autonomous control over other agencies in order to further legislative priorities. Consider the following examples, each of which is based in a statutory directive:

- The Federal Bureau of Investigation (FBI), which is part of the Department of Justice, is empowered by Congress to reach into any other agency to augment its own resources to pursue fraud cases.¹³
- The Consumer Product Safety Commission may gather any data from any agency it chooses, as long as it deems this information “necessary” to “protect public health and safety.”¹⁴
- The Department of Defense, a cabinet agency, is authorized by the legislature to independently require the National Aeronautics and Space Administration, an independent agency, to contribute expertise and resources to military initiatives.¹⁵
- The Coast Guard, a subcomponent of the Department of Homeland Security, may enable the Department of Homeland Security, Environmental Protection Agency (EPA), and several other agencies to either combine or subvert one another’s resources in pursuit of their own interests (for instance, national security, environmental protection, and others) in regard to the Arctic.¹⁶

Despite their diversity of subject matter and participating agencies,¹⁷ these statutory schemes—and many others analyzed for this project—share important characteristics indicating that Congress authorizes coordination primarily to expand the reach of agencies so that they may more effectively pursue Congress’s

13. See *infra* notes 487–92 and accompanying text.

14. See *infra* notes 556–62 and accompanying text.

15. See *infra* notes 589–95 and accompanying text.

16. See *infra* notes 496–500 and accompanying text.

17. See *infra* note 88 and accompanying text; *infra* Table 1.

aims. Congress accomplishes this most often by delegating a single agency to control other agencies' exercises of policymaking and enforcement authority, without designating a supervisory (or any) role for the President. This is the case even if the coordination involves cabinet agencies, as it often does. For this reason, the paradigm of coordination legislation is a prime illustration of J.R. DeShazo's and Jody Freeman's assertion that Congress has an important "mechanism at its disposal in its quest to control delegated power: other agencies."¹⁸ By highlighting how the legislature enables agencies to interact on the basis of their own discretion, this Article also challenges the assertion that "Congress has shown little appetite or capacity for protecting spheres of agency autonomy."¹⁹

As an initial matter, legislative history confirms that Congress delegates the authority to coordinate in order to empower preferred agencies.²⁰ In addition, the text of the vast majority of coordination statutes delegates the power to structure the coordination process to one dominant agency, which then becomes the de facto leader in a network of coordinating agencies. Further, these statutes usually authorize the head agency to determine the breadth of coordination, by allowing it to work with just about any other federal agency (and in some cases, state and private entities as well). In this way, Congress accords favored

18. J.R. DeShazo & Jody Freeman, *Public Agencies as Lobbyists*, 105 COLUM. L. REV. 2217, 2261 (2005) (suggesting that agency "policing" of other agencies serves as a form of legislative oversight, in addition to more well-known means for legislative control of the administrative state such as "structural and procedural requirements built into legislation," "ex post oversight," and equipping "third parties to police agency action and to alert Congress so that it can intervene to correct agency misbehavior").

19. Metzger & Stack, *supra* note 9, at 1307 ("As Congress has shown little appetite or capacity for protecting spheres of agency autonomy, the key actors in creating a space for internal administrative law will be the president and the courts, whose tendencies towards greater centralization or expansions of judicial review exact significant costs to administrative legality and accountability."); see STEVEN P. CROLEY, REGULATION AND PUBLIC INTERESTS: THE POSSIBILITY OF GOOD REGULATORY GOVERNMENT 41 (2007) (noting that public choice theory assumes that legislatures are not interested in fostering agency autonomy); Norman W. Spaulding, *Independence and Experimentalism in the Department of Justice*, 63 STAN. L. REV. 409, 438-39 (2011) (arguing that the executive branch has become increasingly centralized).

20. See *infra* notes 65-74 and accompanying text.

agencies significant discretion to structure interagency coordination as expansively as they wish.²¹ However, legislation authorizing coordination is also mostly mandatory,²² in that the named agency is usually required to coordinate to further the legislature's aims.²³ Therefore, this legislation maintains overarching congressional control over the initiation and general execution of administrative coordination.

These common characteristics of coordination statutes maximize the likelihood that agencies with competencies of particular importance to Congress will draw on other agencies to further both the legislature's and their own goals, notwithstanding the mitigating effects of interagency resistance and conflict.²⁴ Potential motivations underlying the issuance of coordination legislation may include many that are similar to the President's reasons for initiating coordination, such as the desire to use a prominent agency to further certain substantive goals, combine diverse agency competencies, bridge ideological divides, increase the availability and application of expertise, and ensure accountability in policymaking.²⁵ However, coordination legislation may also be driven by aims that are unique to the legislature, including some that benefit from the incubation of agency autonomy vis-à-vis the President. These include encouraging agencies to be more responsive to Congress (particularly to the pressures and crises it faces), replicating the benefits of shared jurisdiction while avoiding its drawbacks, and enabling agencies to maintain their core mandates in the face of disruptive political pressure from the White House.²⁶

Notably, these statutes serve the legislature's goals by allowing agencies to coordinate without prescribed involvement from the President. Therefore, they also have the potential to unsettle the President's ability to direct the executive branch.²⁷ More specifically, coordination statutes infuse networks of executive agencies with independence both in the sense that they orient agencies collectively towards legislative concerns (as opposed

21. See *infra* Part I.A.

22. Cf. Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1158 (providing an example of "mandatory consultation").

23. See *infra* Part I.B.

24. See *infra* Part I.C.

25. See *infra* Part II.A.

26. See *infra* Part II.B.

27. See *infra* Part III.

to executive priorities) and in that they mandate agency interactions that foster insulation from the President.

First, the independent, hierarchical relationships created among agencies by coordination statutes may deteriorate the function, ease, and transparency of presidential administration, and could even interfere with the President's exercise of power under Article II of the Constitution.²⁸ Second, networks of inter-agency coordination share some characteristics of independent regulatory commissions, which contributes to these agencies' insulation from the Executive.²⁹ To resolve interagency conflicts, as well as minimize confusion and increase executive accountability, the President may assert legislatively-delineated, *ex ante* options for presidential involvement (to the extent they are available),³⁰ or endogenous, *ex post* mechanisms of executive oversight.³¹ From the legislature's perspective, designating a clear role for presidential involvement in statute-based coordination may benefit the goals of congressional administration, as this could reduce incentives for the President to exercise more extensive oversight *post hoc* and help the government avoid potential constitutional pitfalls.³²

Overall, by analyzing how the ubiquitous framework of statute-based coordination shapes agencies' relationships with one another and with Congress, this Article uses the lens of agency design to expand the scholarship on administrative coordination, which is focused on interagency relationships that originate in the executive branch itself.³³ And by considering the impact of new interagency relationships and increased agency autonomy on the President's role as administrator-in-chief, this project

28. See *infra* Part III.A.

29. See *infra* Part III.B.

30. See *infra* Part III.C.1.

31. See *infra* Part III.C.2.

32. See *infra* Part III.C.1.

33. See *supra* note 9 and accompanying text. By interrogating the nature and legitimacy of coordination statutes in this paper, I also investigate a critique of my own work on coordination originating in the executive branch, in which I argue that coordination statutes provide a legitimate basis for many interagency agreements. Shah, *Interagency Transfers*, *supra* note 9, at 331–33 (arguing in favor of sanction agencies' efforts to transfer their authority to adjudicate administrative cases to one another, but only if these agreements are based in legislative delegations of authority to coordinate). *But see* Farber & O'Connell, *supra* note 6, at 1448–49 (suggesting, in disagreement with Shah, that if "Congress delegates to one agency, then [an] agency cannot give that authority to a different agency").

adds to work exploring interagency conflicts,³⁴ accounts of the variations in the “executive” and “independent” qualities of all agencies,³⁵ and the literature debating the unitary executive paradigm.³⁶ Finally, this Article also contributes to popular discourse on executive power, which includes accounts of fraught relationships between the President and his cabinet³⁷ as well as

34. See, e.g., Farber & O’Connell, *supra* note 6 (presenting a comprehensive descriptive and normative account of interagency conflict); Jacob E. Gersen & Adrian Vermeule, *Delegating to Enemies*, 112 COLUM. L. REV. 2193, 2234–35 (2012) (arguing for the importance of delegating to regulatory “enemies,” or agencies who do not share “principal preferences”); see also Farber & O’Connell, *supra* note 6, at 1383 n.40 (citing the following additional examples: Jacob E. Gersen, *Overlapping and Underlapping Jurisdiction in Administrative Law*, 2006 SUP. CT. REV. 201 (2006); Neal Kumar Katyal, *Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within*, 115 YALE L.J. 2314 (2006); Anne Joseph O’Connell, *The Architecture of Smart Intelligence: Structuring and Overseeing Agencies in the Post-9/11 World*, 94 CALIF. L. REV. 1655 (2006)).

35. See, e.g., Kirti Datla & Richard L. Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 CORNELL L. REV. 769, 773–74 (2013) (arguing that the logic of *Humphrey’s Executor* is under-inclusive, that the binary conception of agencies as either “independent” or “executive” is incorrect, and that many executive agencies display “indicia of independence”); Jennifer Nou, *Agency Self-Insulation Under Presidential Review*, 126 HARV. L. REV. 1755, 1763 (2013) (describing Nou’s project as examining “the ways in which [executive] agencies can resist institutionalized forms of presidential influence”); Adrian Vermeule, *Conventions of Agency Independence*, 113 COLUM. L. REV. 1163 (2013) (arguing that agencies that lack for-cause tenure may enjoy operative independence because they are protected by unwritten conventions that constrain political actors from attempting to direct their exercise of discretion).

36. Unitary executive theory, which is grounded in the Vesting and the Take Care clauses of the U.S. Constitution, holds that all federal officers exercising executive power must be subject to the control of the President—in other words, that the President possesses the plenary power to control the entire executive branch. U.S. CONST. art. II, § 1 (“The executive Power shall be vested in a President”); U.S. CONST. art. II, § 3 (“[The President] shall take Care that the Laws be faithfully executed”); see also Calabresi & Rhodes, *supra* note 4, at 1158–67 (discussing the scholarly debate over the scope of Congress’s power to insulate executive officials from presidential control); Martin S. Flaherty, *The Most Dangerous Branch*, 105 YALE L.J. 1725, 1732 (1996) (“The dominant unitarian position conceives of the executive branch as a separate entity ordinarily accountable to the President alone.”); Gary Lawson, *The Rise and Rise of the Administrative State*, 107 HARV. L. REV. 1231, 1242 (1994) (arguing that the Vesting Clause “creates a unitary executive”); Yoo, *supra* note 4, at 1946–47 (stating that the constitutional argument for presidential control relies on the Vesting and Take Care Clauses).

37. See Rourke, *supra* note 1, at 691 (noting the FBI’s reduced autonomy from the President); Cyra Master, *Comey in 2014: FBI Must ‘Maintain Independence From Political Forces’*, THE HILL (May 14, 2017), <https://thehill.com/>

judicial messaging about the constitutionality of insulated forms of agency leadership.³⁸

This Article proceeds as follows. Part I begins by offering political and legislative history establishing that Congress issues coordination statutes to empower favored agencies to further key legislative mandates. Then, the bulk of this Part describes newly-gathered legislative history and statutes to establish the widespread existence of legislation authorizing interagency coordination. More specifically, this Part illustrates the generally hierarchical, expansive, and mandatory nature of coordination legislation. These factors suggest that the legislature authorizes agencies to influence the application of other agencies' resources and discretion, a phenomenon referred to in this Article as "interagency control," in order to further Congress's aims. This Part also notes that interagency control may be limited, however, by interagency conflict and resistance.

Part II presents a framework theorizing the legislature's motivations for structuring coordination legislation as it has. First, this Part argues that Congress may authorize interagency coordination for purposes that are similar to those that drive the President to initiate coordination. In addition, this Part proposes a number of incentives unique to the legislature that animate coordination legislation. By noting that the latter is bolstered by

homenews/administration/333372-what-comey-said-about-fbi-independence-in-2014 (noting Comey stated that "the Department of Justice answers to the President, but [i]t has to maintain a sense of independence from the political forces . . . in the executive branch"); Adam Serwer, *The Tragedy of James Comey*, THE ATLANTIC (May 11, 2017), <https://theatlantic.com/politics/archive/2017/05/the-tragedy-of-james-comey/526356> (discussing the FBI director's attempts to maintain a level of independence from the President); *Transcript: Jeff Sessions's Prepared Remarks at His Attorney General Hearing*, N.Y. TIMES (Jan. 10, 2017), <https://nytimes.com/2017/01/10/us/politics/sessions-remarks-transcript.html> (quoting Jeff Sessions as saying "[t]he office of the attorney general of the United States is not a political position, and . . . [the attorney general] must be committed to following the law. He or she must be willing to tell the president no if he overreaches. He or she cannot be a mere rubber stamp to any idea the president has").

38. See, e.g., *PHH Corp. v. CFPB*, 839 F.3d 1, 8 (D.C. Cir. 2016) (finding that it is unconstitutional for Congress to vest executive authority in an independent agency headed by a "single, unaccountable, unchecked Director"); Transcript of Oral Argument at 9, *PHH Corp. v. CFPB*, 839 F.3d 1 (2017) (No. 15-1177) (highlighting concerns about the functioning of the Consumer Financial Protection Bureau in the event that the current President were to gain more power over the independent agency).

administrative autonomy, this Part also offers an instrumental explanation for the claims furthered in Part III.

Part III argues that coordination legislation encourages administrative independence, and thus unsettles the President's function as "administrator-in-chief." First, this Part discusses how legislative establishment of interagency networks may impact traditional structures of executive supervision and hierarchy. Then, this Part highlights characteristics of interagency coordination that are similar to the qualities that insulate independent regulatory commissions from the President. Finally, this Part suggests that the President might reassert Article II authority by exercising involvement in reporting mechanisms established by a handful of coordination statutes, implementing tools of administrative oversight that originate in the executive branch and responding to interagency conflicts resulting from statute-based coordination. This Part ultimately proposes that a well-defined, *ex ante* presidential participation in statute-based coordination would balance the benefits of administrative autonomy and the President's function as overseer of the executive branch.

I. STATUTE-BASED COORDINATION

Scholars assume that administrative coordination is primarily an executive mechanism for governing the administrative state.³⁹ Accordingly, the handful of studies gathering inter-

39. See Metzger & Stack, *supra* note 9, at 1254-55 (stating "a distinctive feature of [interagency coordination] agreements is that they do not involve action by Congress, the courts, or other parties external to the executive branch"); see also *supra* note 9 and accompanying text.

agency coordination data have focused on arrangements initiated by the President⁴⁰ or agreements fostered by agencies themselves,⁴¹ and not on legislation establishing coordination. Furthermore, to the extent scholars have examined legislation

40. The President relies on both horizontal and vertical forms of interagency coordination to further her policymaking goals. *See, e.g.*, Jason Marisam, *Interagency Administration*, 45 ARIZ. ST. L.J., 183, 207 (2013) [hereinafter Marisam, *Interagency Administration*] (discussing an example in which the President relied “on a lead agency—a single agency put in charge of coordinating federal action and to which all other agencies should defer” in order to implement legislation on the basis of his own priorities); Jason Marisam, *The President’s Agency Selection Powers*, 65 ADMIN. L. REV. 821, 835 (2013) [hereinafter Marisam, *Selection Powers*] (noting that “interagency hierarchies” allow “a single agency or agency head to speak for the President and act as the President’s chief adviser for a particular regulatory problem”); *id.* at 835 (suggesting that fostering hierarchy allows the President more control over the interagency process and its outcomes); Daphna Renan, *Pooling Powers*, 115 COLUM. L. REV. 211, 213 (2015) (arguing that “the executive augments capacity by mixing and matching resources dispersed across the bureaucracy . . . [which thus] enables the executive to combine one agency’s expertise with legal authority allocated to another”).

41. For instance, Jody Freeman and Jim Rossi declare that most interagency coordination is “negotiated by agencies voluntarily, in furtherance of their statutory duties, though Congress could explicitly require them, and the President presumably could request or direct that executive agencies sign such agreements if he wished.” Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1161. *See also id.* (characterizing memoranda of understandings (MOUs) created by agencies as “the most pervasive instrument of coordination in the federal government”). Other work building on this assertion has detailed administrative networks and subdelegatory relationships created by interagency agreements like memoranda of understanding. *See Metzger & Stack, supra* note 9, at 1254–55 (“[T]he scope of internal administrative law . . . includes the processes and policies governing interagency interactions, which similarly represent agency-generated efforts aimed at agency actors that seek to control how the agencies at issue function. Sometimes these processes and policies are jointly constructed, as when different agencies enter into memoranda of understanding (MOUs) that govern their interactions.”); Shah, *Uncovering, supra* note 9, at 831, 840–50 (discussing and presenting MOUs created by agencies themselves in order to enter into coordinated interagency adjudication). *See generally* Shah, *Interagency Transfers, supra* note 9, at 327 (discussing endogenously-generated interagency arrangements created by MOUs and regulations by which agencies transfer their full jurisdiction to adjudicate administrative claims to other agencies). These arrangements can also be horizontal or vertical. *See, e.g.*, Shah, *Uncovering, supra* note 9, at 846–50 (illustrating how agencies choose to coordinate in a relatively horizontal, collaborative manner when they have shared jurisdiction over an adjudication process); *id.* at 831–40 (illustrating how agencies engage in hierarchical coordination when they have jurisdiction over different parts of the same adjudicatory process—particularly when one agency has jurisdiction over an appeals process in which it may reverse the

engendering coordination in some way, they have considered only coordination incidental to the statutory delegation of shared or “overlapping” jurisdiction. Overlapping jurisdiction is the express legislative assignment of the same regulatory authority to multiple agencies.⁴² However, while shared jurisdiction may stimulate the need for coordination among agencies, it does not itself mandate agencies to coordinate.⁴³

This Part shows that Congress often directly and explicitly legislates coordination, for purposes and with intention beyond the reconciliation of overlapping jurisdiction. First, it offers a snapshot of political history situating the origin of coordination legislation in the tension between Congress and the President concerning the proper management of the administrative state in the wake of the New Deal. Then, the majority of this Part is devoted to establishing that coordination legislation enhances Congress’s ability to direct agencies’ implementation of the law—and in particular, that it does so by fostering administrative autonomy and interagency control. This Part concludes by considering how the effectiveness of interagency control may be altered or frustrated by interagency conflict or resistance.

A. POLITICAL HISTORY & CURRENT LEGISLATIVE INTENT

This Section begins by theorizing that the tension between Congress and the Executive for primary control over agencies instigated the advent of legislation authorizing administrative coordination. Throughout the twentieth century, there was a legislative backlash against sustained presidential efforts to gather

decision of another agency).

42. See, e.g., Eric Biber, *The More the Merrier: Multiple Agencies and the Future of Administrative Law Scholarship*, 125 HARV. L. REV. F. 78, 81 (2012) (discussing agency overlap); Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1134 (describing overlapping delegation); Jody Freeman & Jim Rossi, *Improving Interagency Coordination in Shared Regulatory Space*, 38 ADMIN. & REG. L. NEWS 11, 11 (2013) [hereinafter Freeman & Rossi, *Improving Interagency Coordination*] (“Congress bears primary responsibility for creating these overlapping functions [across agencies.]”); see also Gersen & Vermeule, *supra* note 34, at 2234–35 (discussing the difficulty courts face in determining which agency they ought to defer to “[w]hen multiple agencies must interpret a given statute”).

43. See Jason Marisam, *Duplicative Delegations*, 63 ADMIN. L. REV. 181, 189 (2011) [hereinafter Marisam, *Duplicative Delegations*] (noting that “duplicative delegations are distinct from jurisdictional arrangements in which Congress directs one agency to consult with another agency before acting”).

agencies more squarely within the Executive's power.⁴⁴ However, Congress seems to have sought targeted control of agency interactions specifically in response to Presidents' efforts to corral the extensive, rapid, and often uncoordinated growth of the federal government resulting from the New Deal.⁴⁵ Moreover, this Section asserts, there is proof that Congress continues to legislate interagency coordination to more precisely implement its lawmaking agenda.

Governmental expansion stemming from the New Deal required the establishment of new departments and agencies, as well as the broadening of existing agencies.⁴⁶ This led to duplication, waste, and conflicts within and between bureaucratic entities that hindered the efficiency and efficacy of the federal government⁴⁷—including when agencies tried to work together to achieve shared goals. As noted in the Senate in 1934, “[v]oluntary coordination is inefficient, wasteful, and frequently fails through lack of information and understanding.”⁴⁸ Indeed, senators used this justification to issue one of the first statutes mandating interagency coordination for legislative purposes.⁴⁹ This

44. See Richard H. Pildes & Cass R. Sunstein, *Reinventing the Regulatory State*, 62 U. CHI. L. REV. 1, 11 (1995) (“The history of the presidency in the twentieth century has been the history of presidents’ attempts to gain control of the sprawling federal bureaucracy’ [and t]ypically, these attempts have generated sharp congressional resistance.” (quoting FORREST MCDONALD, *THE AMERICAN PRESIDENCY: AN INTELLECTUAL HISTORY* 329 (1994))); Rourke, *supra* note 1, at 688 (“Throughout the twentieth century, therefore, administrative reform has sought to breathe new life into the president’s constitutional title as the nation’s chief executive officer. There was continuing resistance in Congress to this development, especially since the growing authority of presidents in the bureaucratic sphere went hand and glove with the increasingly dominant position of the White House in American politics and policymaking.”).

45. See COMM’N ON ORG. OF THE EXEC. BRANCH OF THE GOV’T, *THE HOOVER COMMISSION REPORT* xiii–xvi (1949) [hereinafter *HOOVER COMMISSION REPORT*]; HERBERT EMMERICH, *FEDERAL ORGANIZATION AND ADMINISTRATIVE MANAGEMENT* 47–48 (1971); BARRY D. KARL, *THE UNEASY STATE: THE UNITED STATES FROM 1915 TO 1945*, at 156–57 (1983).

46. See *HOOVER COMMISSION REPORT*, *supra* note 45, at xiii–xvi; EMMERICH *supra* note 45, at 47–48; KARL, *supra* note 45, at 156–57.

47. *HOOVER COMMISSION REPORT*, *supra* note 45, at xiv.

48. FREDERIC COLLIN WALCOTT, *SPECIAL COMM. ON CONSERVATION OF WILD LIFE RES., TO PROMOTE THE CONSERVATION OF WILD LIFE, FISH, AND GAME, AND FOR OTHER PURPOSES*, S. REP. NO. 73-244, at 1 (1934).

49. “This bill will secure an efficient coordination of national effort and will produce a more economical administration.” *Id.* (discussing mandating coordination for wildlife preservation). This mandated coordination was eventually included as part of “An Act to Promote the Conservation of Wild Life, Fish, and

statute was part of Congress's efforts to foster agency independence⁵⁰ in response to President Roosevelt's calls for "the establishment of a responsible and effective chief executive as the *center* of energy, direction, and administrative management."⁵¹

In 1949, the Commission on Organization of the Executive Branch of the Government (headed by former President Hoover, who was appointed to the post by President Truman), also identified weaknesses in agencies' structures and operation and issued a report calling for more executive-initiated coordination at all levels of government.⁵² In this way, it reiterated Roosevelt's contention that the President be accorded more concentrated power to manage agencies.⁵³ Although the Hoover Commission Report was only partially adopted by Congress at the time, it influenced the views of future administrations regarding the federal bureaucracy.⁵⁴ Indeed, subsequent presidents continued to seek greater control over the expansion and decentralization of the federal government.⁵⁵

Game, and for Other Purposes." Pub. L. No. 73-121, 48 Stat. 401 (1934); 16 U.S.C. § 661 (2012) ("Declaration of purpose; cooperation of agencies; surveys and investigations; donations."); *see also infra* notes 569–73 and accompanying text (discussing a similarly broad coordination statute issued around the same time).

50. *See* Lisa Schultz Bressman & Robert B. Thompson, *The Future of Agency Independence*, 63 VAND. L. REV. 599, 616 (2010) (discussing how Congress favored the use of independent agencies in Roosevelt's time). Bressman and Thompson further discuss that the Supreme Court "supported the broad authority of the independent agencies," which suggests that Congress may have felt emboldened to seek continued administrative control and response. *Id.* at 617–18.

51. PRESIDENT'S COMM. ON ADMIN. MGMT., REPORT OF THE COMMITTEE WITH STUDIES OF ADMINISTRATIVE MANAGEMENT IN THE FEDERAL GOVERNMENT 2 (1937) (often referred to as the "Brownlow Report") (emphasis added). "Roosevelt embraced the Brownlow Committee's recommendations for executive reorganization. But the legislation he proposed incorporating these recommendations faced a hostile response from Congress." Metzger & Stack, *supra* note 9, at 1270–71.

52. *See generally* Yishai Blank & Issi Rosen-Zvi, *Reviving Federal Regions*, 70 STAN. L. REV. 1895, 1895–96 (2018) (arguing that regional offices of federal agencies serve as coordinators between "central headquarters" and state and local governments).

53. *See* HOOVER COMMISSION REPORT, *supra* note 45, at 3; Metzger & Stack, *supra* note 9, at 1271.

54. Blank & Rosen-Zvi, *supra* note 52, at 1930.

55. *See id.* For instance, under President Eisenhower in the 1950s, the countermovement against the autonomous expansion of the federal government gained momentum. *Id.*

Nonetheless, the legislature rebuffed presidents' persistent attempts to wrangle federal agencies by implementing its own mechanisms to control agency interactions. First, Congress rejected⁵⁶ Eisenhower's efforts to consolidate and coordinate regulatory programs.⁵⁷ President Kennedy also advocated for greater presidential control of agencies, both independent and executive, by drawing Congress's awareness to problems associated with a lack of administrative coordination.⁵⁸ However, this effort was discouraged by the legislature as well.

In 1961, Kennedy sent a message to Congress on "Regulatory Agencies," lamenting "that too little attention has been given to the overall operation of these agencies by the President."⁵⁹ This communication was sent after a report commissioned by the Kennedy Administration concluded that a lack of interagency coordination was inhibiting the development of regulatory policy; greater executive control over agencies, the report argued, would rectify the problem.⁶⁰ Instead of sanctioning additional executive control of agency interactions, however, Congress had itself begun authorizing agencies to coordinate. For instance, around that time, the House gave the Small Business Administration expansive power to coordinate⁶¹ to further the goals of the Small Business Act.⁶² In addition, the legislature passed this Act while explicitly disavowing the need for the presidential management of interagency activity.⁶³

56. See JAMES M. STRINE, *THE OFFICE OF LEGAL COUNSEL: LEGAL PROFESSIONALS IN A POLITICAL SYSTEM* 71 (1992); Devins, *infra* note 64, at 265.

57. See COMM'N ON ORG. OF THE EXEC. BRANCH OF THE GOV'T, *TASK FORCE REPORT ON LEGAL SERVICES AND PROCEDURES 1-3* (1955); see also EMMERICH, *supra* note 45, at 101-28.

58. 107 CONG. REC. 5704, 5813-14 (1961).

59. *Id.*

60. See JAMES M. LANDIS, *U.S. SENATE SUBCOMM. ON ADMIN. PRACTICE & PROCEDURE, 86TH CONG., REP. ON REGULATORY AGENCIES TO THE PRESIDENT-ELECT 24-31* (Comm. Print 1960).

61. 15 U.S.C. § 639(f) (2006) ("To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration . . . [except in situations affecting] the national interest in an emergency.") (originally passed in 1958).

62. An Act to Amend the Small Business Act of 1953, Pub. L. No. 85-536, 72 Stat. 384 (1958).

63. More specifically, the House Committee on Banking and Currency

The confrontation between Kennedy and the legislature marked the beginning of a legislative interest in nurturing administrative autonomy. This took the form of a budding reliance on agency coordination legislation and a growing interest in creating independent agencies, which also bolsters congressional influence and limit the president's impact on administrative decisionmaking.⁶⁴ Perhaps, then, it is no coincidence that this period is also part of the narrative of unitary executive theory.⁶⁵

Congress began issuing coordination legislation in earnest in the 1960s, and has continued to do so until the present day.

stated, in regards to coordination furthering the interests of the Small Business Act, that "such consultation and cooperation should be a normal part of the operations of the Government; there is no reason to require a special direction from the President." H.R. REP. NO. 85-555, at 16 (1957).

64. See, e.g., DAVID E. LEWIS, PRESIDENTS AND THE POLITICS OF AGENCY DESIGN 30 (2003) (describing how congressional Democrats opted to delegate broad consumer protection powers to a newly created independent agency, the Consumer Product Safety Commission, and how it created create seven-year terms for members of this agency, in order to insulate these powers from President Nixon's antiregulatory influence); see also Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 20 (2010) ("The idea is that an agency could be created that would be insulated from short-term political pressures so that it could adopt public policies based on expertise that would yield better public policy over the long term."); Bressman & Thompson, *supra* note 50, at 612 ("Independence was traditionally justified, particularly during the New Deal era, as promoting expertise."); Neal Devins & David E. Lewis, *Not-So Independent Agencies: Party Polarization and the Limits of Institutional Design*, 88 B.U. L. REV. 459, 463 (2008) ("Some combination of concerns about expertise, due process, and the likely administrative actions of Presidents explains Congress's decision to constrain the President this way."); Neal Devins, *Unitariness and Independence: Solicitor General Control over Independent Agency Litigation*, 82 CALIF. L. REV. 255, 260 (1994) ("For better or for worse, independent agencies are empowered to make policy at odds with White House priorities."); Emily Hammond Meazell, *Presidential Control, Expertise, and the Deference Dilemma*, 61 DUKE L.J. 1763, 1778 (2012) ("Thus, independent agencies—which burgeoned during the New Deal—were designed with the purpose of shielding expert decisionmakers from the shifting winds of politics.").

65. See Abner S. Greene, *Checks and Balances in an Era of Presidential Lawmaking*, 61 U. CHI. L. REV. 123, 153–79 (1994) (detailing the demise of the non-delegation doctrine during this time); Christopher S. Yoo, Steven G. Calabresi, & Anthony J. Colangelo, *The Unitary Executive in the Modern Era, 1945–2004*, 90 IOWA L. REV. 601, 645 (2005) (discussing Kennedy's actions regarding independent agencies); see also STEVEN G. CALABRESI & CHRISTOPHER S. YOO, *THE UNITARY EXECUTIVE: PRESIDENTIAL POWER FROM WASHINGTON TO BUSH 4* (2008) (arguing that "all of our nation's presidents have believed in the theory of the unitary executive").

In general, the legislative history underlying coordination statutes showcases congressional intent to manage administrative activity in a manner consistent with legislative priorities. Like its efforts to support legislative priorities through the creation of independent agencies,⁶⁶ Congress often does this by expanding the reach of agencies with competency in areas that it prioritizes. Generally speaking, the lead agencies in statutes authorizing coordination have substantive knowledge and the capacity to further policymaking in regulatory matters of interest to Congress, as well as political stances that are sympathetic to the policies Congress wishes to implement.⁶⁷

Coordination statutes have expanded the autonomy and jurisdiction of several agencies in their core areas of regulatory expertise, including: the FBI;⁶⁸ the Department of Veterans Affairs;⁶⁹ the Department of Energy;⁷⁰ the Consumer Product Safety Commission;⁷¹ the Army and the Department of Defense as a whole;⁷² the Department of Transportation;⁷³ and the Agency for Healthcare Research and Quality, a subcomponent of the Department of Health and Human Services.⁷⁴ For instance, the Emergency Economic Stabilization Act allows the FBI to

66. See *supra* note 64 and accompanying text.

67. These qualities are also found in lead agencies in interagency coordination initiated by the President. See *infra* notes 178–82 and accompanying text.

68. See *infra* note 489 (citing H.R. REP. 110-374(l) (2007), which indicates that coordination was implemented to expand the reach of the FBI).

69. See *infra* notes 222, 509 (citing S. REP. NO. 105-123, at 17 (1997) and H.R. REP. NO. 105-293, at 11 (1997), both of which discuss coordination intended to expand the power of the Department of Veterans Affairs).

70. See *infra* notes 547–52 (citing S. REP. NO. 96-1006 (1980), which suggests that Congress intended coordination to increase the power of the Department of Energy).

71. See *infra* note 557 (citing H.R. REP. NO. 110-501 (2007), which suggests that coordination was authorized to expand the power to the Consumer Product Safety Commission).

72. See *infra* note 581 (citing S. REP. NO. 91-1422, at 108 (1970), which suggests that coordination was authorized to expand the “authority currently available to the Department of the Army”); *infra* note 590 (citing H.R. REP. NO. 85-1770, at 7 (1958), which noted that coordination was authorized to expand the power of the Department of Defense over NASA).

73. See *infra* note 620 (citing S. REP. NO. 94-1048, at 19 (1976) (Conf. Rep.), which suggests that coordination was intended to bolster the Department of Transportation).

74. See *infra* note 508 (citing S. REP. NO. 106-82, at 5 (1999) and H.R. REP. NO. 106-305 (1999), both of which discuss coordination as intended to expand the role and influence of the Agency for Healthcare Research and Quality, a subcomponent of the Department of Health and Human Services).

draw from just about any agency to amplify its resources and reach—an interpretation of the statute that is supported by legislative history.⁷⁵ This gives the FBI particular sway over the coordinated implementation of anti-fraud policy enforcement.⁷⁶ Similarly, the Attorney General appears to have significant influence in the furtherance of the Federal Witness Security Program,⁷⁷ the Agency for Healthcare Research and Quality in regards to health services research and quality assurance,⁷⁸ and the Department of Veteran's Affairs as concerns assistance to homeless veterans.⁷⁹ Also, in environmental protection and related mandates, agencies with clear expertise in these areas tend to be empowered to initiate coordination to further relevant aims.⁸⁰

B. COORDINATION LEGISLATION & INTERAGENCY CONTROL

This Section offers a holistic analysis of all statutes that authorize coordination, cooperation or collaboration between or among federal agencies and agency subcomponents.⁸¹ By presenting the most extensive collection of statutes to date authorizing agencies to coordinate with one another,⁸² this Section establishes that Congress seeks to initiate interagency coordination across a broad swath of the administrative state.

Due to time and resource limitations, this exploration does not capture every instance in which legislation includes a seemingly throwaway reference to the word “coordinate,” “cooperate”

75. *See supra* note 68.

76. *See infra* notes 487–92 and accompanying text.

77. *See infra* notes 493–98 and accompanying text.

78. *See infra* notes 507–11 and accompanying text.

79. *See infra* note 509 and accompanying text.

80. *See infra* notes 517–36 and accompanying text.

81. The raw data from Westlaw shows 141 results for U.S. Code sections as of 2018 that contain both (collaborat! or coordinat! or cooperat!) and (agenc! or department) within the section title. Further curation of these results led to the identification of eighty-one statutes that authorize federal interagency coordination. While the conclusions drawn in this Part are based on an overarching analysis of this dataset, most of these eighty-one statutes are referenced directly throughout this Article and in the Appendix. For additional information about the dataset, please contact the author.

82. I would like to thank Cary Coglianese for this observation; *see also* Bijal Shah, *Coordination as Resistance (to the President)* (Nov. 28, 2017) (unpublished manuscript) (on file with author) (discussing the implication that interagency coordination has for the constitutional and administrative separation of powers).

or “collaborate.”⁸³ that appears to have been included without much legislative deliberation. Instead, this dataset includes all statutes that have standalone sections authorizing agencies to engage in these ways. This analysis focuses on legislation with section headings that reference these forms of agency interaction, because headings suggest that portion of legislation was drafted with intention, and thus is relatively important to the enabling statute.⁸⁴

Certainly, Congress is not necessarily, or perhaps even often, intentional when it builds duplication and overlap into the administrative state.⁸⁵ However, the instances of coordination presented here involve concise and explicit references to multiple-agency interactions within a single, relevantly-titled section of legislation. Therefore, they are unlike statutory language that leads to accidental agency fragmentation, such as the assignment of overlapping jurisdiction via duplicative legislation created by different congressional committees or at different points in time.⁸⁶ Moreover, legislative history associated with the statutes analyzed in this Article bears this out. By providing insight into why Congress empowered agencies to coordinate in any given instance, it indicates, at the very least, that Congress did

83. For instance, a Westlaw search for the term “in coordination with” yields upwards of 700 statutes. The term “in consultation with” results in over 200 statutes. “In partnership with” captures 141 statutes as of 2018.

84. Many of the excluded results also pertain to interactions between federal agencies and state entities, tribes, or private entities, such as schools and hospitals, etc.—dynamics worth studying, but that are not the focus of this project.

85. “One might be tempted to think that because lawmakers ultimately authorize these delegations by statute, they are intentional, but this assumption places too much faith in lawmakers’ prescience in legislating.” Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1143 (citations omitted); *see also* JONATHAN B. BENDOR, *PARALLEL SYSTEMS: REDUNDANCY IN GOVERNMENT* 41 (1985) (“[T]he intentional creation of redundancy is quantitatively of small importance when compared with the less dramatic causes.”); LEWIS, *supra* note 64, at 7 (“[M]ost of the duplication, fragmentation, and overlap in the administrative state is not purposefully chosen to take auxiliary precautions or improve effectiveness via competition.”). *But see* Cornelius P. Cotter & J. Malcolm Smith, *Administrative Responsibility: Congressional Prescription of Interagency Relationships*, 10 W. POL. Q. 765 (1957) (discussing in depth various interagency relationships that Congress created intentionally).

86. Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1143 (“In many cases, the creation of shared regulatory space is not the result of a single Congress but develops over time, on a piecemeal basis, as enacting majorities engraft new powers and responsibilities onto existing assignments of authority.”) (citations omitted).

so on purpose.⁸⁷

Coordination requirements are often framed in mandatory language, which also suggests that they are important to the enabling statute. If a coordination scheme is presented as optional,

87. See, e.g., *infra* note 513 (citing H.R. REP. NO. 93-43 at 13 (1973), which showed an intent to bolster the power of the Administration on Aging through coordination); *infra* note 532 (citing H.R. REP. NO. 97-825, at 11 (1982), which discusses the issuance of coordination to protect a national park); *infra* note 522 (referencing H.R. REP. NO. 94-1491, at 8 (1976), which shows that coordination was implemented specifically to “achiev[e] the purposes of th[e] Resource Conservation and Recovery Act”); *infra* note 553 (citing H.R. REP. NO. 94-1298 (1976) (Conf. Rep.), which discusses coordination authorized to further national energy policy); *infra* note 561 (citing S. REP. NO. 93-311, at 107 (1973), which notes that coordination furthers certain aims of the Economic Opportunity Act of 1964); *infra* note 576 (citing S. REP. NO. 81-2094, at 2, 6 (1950), which notes that cooperation was intended to further the international coordination of tuna research); *infra* note 578 (citing S. REP. NO. 97-413 (1982), which notes that coordination was implemented to ensure that wildlife conservation did not interfere with military priorities); *infra* note 581 (citing H.R. REP. NO. 91-1665, at 66 (1970), which notes that coordination was authorized to further the development of water resources in the western United States); *infra* note 588 (citing H.R. REP. NO. 97-388 at 48 (1982), which notes that coordination was authorized to improve medical services to civilians); *infra* note 590 (citing H.R. REP. NO. 85-1770, at 7 (1958), which states that coordination was authorized to achieve improved research and development by military and civilian organizations on war-time matters); *infra* note 615 (citing H.R. REP. NO. 108-397(l) (2003) and S. REP. NO. 108-252 (2004), which note that coordination was authorized to “facilitate the transfer of interdisciplinary knowledge” for ecological restoration and wildlife management purposes); *infra* note 594 (citing S. REP. NO. 93-980, at 51 (1974), which notes that coordination was authorized to bolster research related to environmental protection); *infra* note 598 (citing H.R. REP. NO. 91-1307, at 12 (1970), which deemed coordination provision “most important” and necessary to the success of the migratory waterfowl conservation program established by the statute); *infra* notes 626–30 (citing H.R. REP. NO. 102-199, at 76–78 (1991), which notes that coordination was authorized to improve community services for the elderly); *infra* note 629 (citing S. REP. NO. 100-128, at 29–30 (1987), which discusses authorizing coordination to improve employment-related services for veterans); *infra* note 632 (citing S. REP. NO. 105-332, at 5 (1998), which suggests that Congress provided for interagency coordination to better achieve the Public Works and Economic Development Act’s purpose of providing economic assistance to less developed parts of the United States); *infra* note 635 (citing H.R. REP. NO. 81-2514, at 5 (1950), which suggests that coordination was authorized to improve whaling regulations); *infra* note 640 (citing S. REP. NO. 104-91 (1995), which suggests that coordination was issued to improve agency management of shared fishing regions); *infra* note 621 (citing S. REP. NO. 94-830, at 46 (1976), which suggests that Congress authorized coordination to support the Department of Energy’s electric car project); *infra* note 592 (citing H.R. REP. NO. 1770, at 16 (1958)), *infra* note 612 (citing H.R. REP. NO. 97-295 (1981)).

on the other hand, this implies that Congress does not believe coordination to be essential to the broader legislative directive. In addition, Congress's issuance of primarily mandatory coordination directives indicates the legislature's desire not to leave it to agencies to decide, at their own discretion, whether to initiate coordination. Furthermore, mandatoriness indicates that the coordination provision was intentional even if the enacting legislature did not know how best to align agencies' incentives or to structure the coordination hierarchy or process. This is further suggested by coordination statutes that are both mandatory and expansive or open-ended, and that therefore require coordination, but leave the work of shaping it to the lead agency. And in any case, once multiple congressional committees possess authority to oversee an administrative function as a result of coordination legislation, each can be expected to yield it only reluctantly. This, in turn, may allot the coordination provision a long enough lifespan to impact administrative activity even if it was not passed with clear intention.

As to substantive focus, these statutes often pertain to matters of environmental protection and energy management.⁸⁸ However, coordination legislation has also been enacted within and across several other public law areas, including law enforcement, national security, disaster management, military expansion, social services, education, small businesses, and federalism/land use. A researcher studying a particular regulatory area might be interested in this representation of coordination statutes by subject matter and programmatic breadth:

88. This makes sense, given that a significant portion of the interagency coordination literature focuses on this regulatory area. Shah, *Uncovering*, *supra* note 9, at 807 n.2 ("In general, the agency coordination literature has focused abundantly on agencies participating in environmental regulation.") (citations omitted).

Table 1: Coordination by Issue & Importance

Law Enforcement / Disaster Relief	Environmental Protection	Energy Policy
Emergency Economic Stabilization Act (law enforcement), Market Reform Act (market risk regulation), Coast Guard and Maritime Transportation Act (security and other policies concerning in the Arctic), Coast Guard Authorization Act (environmental disasters), An Act to Regulate Commerce with Foreign Countries (furtherance of general statute), National Flood Insurance Act (preventing flooding), National Drug Control Policy (drug abuse prevention), Anti-Drug and Controlled Substances Act (drug policing in national forests), Omnibus Diplomatic Security and Antiterrorism Act (security of diplomatic missions), Joint Resolution Making Continuing Appropriations for the Fiscal Year 1985, and for Other Purposes (Federal Witness Protection Program)	Endangered Species Act (protect endangered species), Marine Mammal Protection Act (marine mammal research and protection), Energy Reorganization Act (expansive environmental protection), Southwest Forest Health and Wildfire Prevention Act (ecological restoration and wildlife management), Water Bank Act (wetlands program), Fish and Wildlife Coordination Act (protect wildlife), Act to Amend the Commercial Fisheries Research and Development Act (management of commercial fishing regulations), National Fishing Enhancement Act (sustain research of Antarctic marine ecosystem), Energy Policy Act (protect ecosystems of the North Slope of Alaska), Conservation of Antarctic Fauna and Flora (furtherance of general statute), Whaling Convention (furtherance of general statute), Resource Conservation and Recovery Act (waste management), Tuna Conventions Act (furtherance of general statute)	Marine Resources and Engineering Development Act (coastal zone management and national energy policy), Electric and Hybrid Vehicle Research, Development, and Demonstration Act (Electric and Hybrid Vehicle Research, Development, and Demonstration Project), Methane Transportation Research, Development, and Demonstration Act (methane vehicle development)
Military	Social Services / Education / Small Business	Land Use
National Aeronautics and Space Act (military technology), Coordination of Wildlife, Fish, and Game Conservation and Rehabilitation in Military Reservations (sustain natural resources for military benefit), An Act Authorizing the Construction, Repair, and Preservation of Certain Public Works on Rivers and Harbors for Navigation, Flood Control, and for Other Purposes (military development of water resources of Western U.S. under Colorado River Basin Project)	Employee Retirement Income Security Act (avoid duplication of functions), Consumer Product Safety Act (furtherance of general statute), Veterans' Benefits Act (housing for veterans), Older Americans Act Amendments (support services for health, education and training of the elderly), Indian Financing Act (improve conditions of reservations), Healthcare Research and Quality Act (health services research and quality), Higher Education Act (STEM education programs), Vietnam Era Veterans' Readjustment Assistance Act (employment for veterans), Small Business Act (furtherance of general statute)	Demonstration Cities and Metropolitan Development Act (areawide development), Reforestation Act (support preservation of public and private land), An Act to Provide for the Protection of Land Resources Against Soil Erosion (soil erosion), An Act to Revise, Codify, and Enact into Law, Title 23 of the United States Code, Entitled "Highways" (maintain federal, state and foreign highways), Resource Conservation and Recovery Act (waste management), An Act to Stop Injury to the Public Grazing Lands (range administration), Housing and Community Development Act (manufactured housing development), Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs (mobile homes safety), Housing and Community Development Act (control lead paint), Establishing the Sawtooth National Recreation Area (furtherance of general statutes), Wolf Trap Park Act (furtherance of general statute)

The majority of statutes authorizing coordination with intention can be described by a handful of qualities. Moreover, these characteristics square with legislative history indicating that Congress often authorizes coordination legislation to empower a dominant agency to shape administrative implementation of the law according to legislative interests. Almost all statute-based interagency coordination tends to be vertical and hierarchical, with one preferred, named agency in control of implementation. This structure privileges the interests of the lead agency and by extension, emphasize the legislature's own goals.

In most of this subset of statutes, the lead agency is authorized to initiate coordination expansively—that is, with several other agencies or an unspecified set of agencies—and as shaped by its own discretion. In this way, the favored agency's reach is not cabined. Finally, almost the entirety of coordination legislation uses language that specifies or suggests that coordination is mandatory, thus preserving Congress's overarching control over the process.⁸⁹ The rest of this Section discusses the parameters of coordination legislation in detail, and suggests, ultimately, that the combination of these factors spurs favored agencies to exercise control over other agencies, or “interagency control,” in order to better implement the legislature's lawmaking priorities.⁹⁰

As noted, coordination statutes issued intentionally are more likely than not to authorize coordination that is unilaterally-initiated—in other words, initiated by one, leading, named agency.⁹¹ All but one⁹² of the statutes mandating unilaterally-initiated coordination authorize just one particular agency or agency head to initiate and lead the coordination. Further, only eleven of all the statutes analyzed for this project limit the authorized lead agency to coordinate with only one or two named agencies. The rest allow the lead agency to coordinate with several or an uncapped number of other agencies. Put another way, interagency coordination established by legislation is primarily *hierarchical* and *expansive*.

In many instances, the head of the lead agency is directly designated in charge of the coordination. For example, under the Marine Resources and Engineering Development Act,⁹³ the Secretary of Commerce is assigned to coordinate to improve coastal

89. “When Congress legislates with precision, the President and other administrative officials may have little discretion in the execution of the law, especially if there are effective tools for enforcing Congress's expressed intent If Congress is less than precise, or if enforcement is not very strong, Congress may be unable to exert much direct control over the administration of the law.” Beermann, *supra* note 11, at 71–72.

90. For in-depth discussion and substantiation of the coordination legislation on which the following analysis is based, including citations to and excerpts from relevant legislative history and statutory language, please consult the Appendix.

91. See App., Part A.

92. In one example, the statute empowers a Commission of two agencies to lead the coordination effort. See *infra* notes 541–42.

93. See *infra* note 551 and accompanying text.

zone management and national energy policy.⁹⁴ And per the Methane Transportation Research, Development, and Demonstration Act,⁹⁵ the Secretary of Energy is tasked with leading the coordination.⁹⁶ The Secretary of Energy is also named to lead coordination in other instances.⁹⁷ And perhaps unsurprisingly, the Secretary of State is often empowered to coordinate broadly.⁹⁸

In many cases, statutes delegate to agency heads the authority to coordinate with an unspecified set of other agencies. Examples include delegations of open-ended coordination authority to the Secretary of Commerce⁹⁹ and the Secretary of Labor.¹⁰⁰ Other statutes grant broad coordination authority to several department heads. This legislation includes the Veterans Benefits Act, which grants joint authority to the Secretary of Veterans Affairs¹⁰¹ and the Secretary of Housing and Urban Development,¹⁰² and the Small Business Act, which names all cabinet heads, the Administrators of the Small Business Administration,¹⁰³ and the EPA as parties with authority to coordinate.¹⁰⁴ By contrast, few statutes mandate the heads of agencies to coordinate with a particular other agency head or agency. Examples include the Secretary of Agriculture's mandate to coordinate with the Secretary of the Interior,¹⁰⁵ and the

94. See *infra* note 552–56 and accompanying text.

95. See *infra* notes 547–52 and accompanying text.

96. See *infra* note 550 and accompanying text.

97. See also *infra* notes 547–53 (allowing the Secretary of Energy to coordinate with “any other federal department or agency”); *infra* notes 618–24 and accompanying text (allowing the Secretary of Energy to coordinate with the Secretary of Transportation).

98. See, e.g., *infra* notes 155, 545–49, 609–13, 633–40 and accompanying text (authorizing the Secretary of State to work with “agencies of the United States,” among others).

99. See *supra* notes 93–94 and accompanying text; *infra* notes 514–19 (authorizing the Secretary of the Interior “to cooperate with the Small Business Administration and the Corporation for National and Community Service and other Federal agencies”); *infra* notes 597–602.

100. See *infra* notes 263, 510, 629 and accompanying text.

101. See *infra* note 509 and accompanying text.

102. See *infra* notes 258–61 and accompanying text.

103. See *supra* notes 61–63 and accompanying text.

104. See *infra* notes 263, 520–25, 593–99 and accompanying text.

105. See *infra* notes 614–19 and accompanying text.

Secretary of Interior's authority to coordinate with the Federal Aviation Administration.¹⁰⁶

Sometimes, several heads of agencies may be tasked with a meeting of the minds to further a legislative initiative, such as in coordination led by the Commandant of the Coast Guard¹⁰⁷ or the Administrator of the National Aeronautics and Space Administration (NASA),¹⁰⁸ or conducted together by the Secretary of Homeland Security, the Administrator of the Federal Emergency Management Agency, and the Director of the Office of Management and Budget.¹⁰⁹ Fewer statutes still allow heads of agencies to coordinate jointly with other entities, like the authority of the Secretaries of the Interior and Commerce to initiate coordination with other federal agencies.¹¹⁰ And occasionally, the head of an agency will be explicitly authorized to work with its own subcomponent to coordinate with other federal agencies—like the Secretary of Health and Human Services and the Director of the Agency for Healthcare Research and Quality¹¹¹ or the Commissioner on Aging,¹¹² the Secretary of Agriculture and the Forest Service,¹¹³ or the Secretary of the Army and her Chief of Engineers.¹¹⁴ This shows that Congress may (re)direct not only inter-, but also intra-agency relationships via legislation. Overall, hierarchy and expansiveness in interagency coordination encourages lead agencies to structure coordination autonomously.

106. See *infra* notes 530–33 and accompanying text.

107. See *infra* notes, 352, 366, 461–67, 496–500 and accompanying text.

108. See *infra* note 562 and accompanying text.

109. See *infra* notes 638–42 and accompanying text.

110. See *infra* notes 517–22 and accompanying text.

111. See *infra* notes 506–11 and accompanying text.

112. See *infra* notes 624–31 and accompanying text.

113. See *infra* notes 535–43 and accompanying text.

114. See *infra* notes 579–85 and accompanying text.

Table 2: Hierarchy & Expansiveness in Interagency Coordination

<i>Most</i>		<i>Unilaterally -initiated coordi- nation with un- specified (or un- named) federal agencies</i>
Hierarchy & Expansiveness in Authority to Coordinate		<i>Unilaterally-initi- ated coordina- tion with speci- fied (or named) agenc[ies]</i>
<i>Least</i>		<i>Jointly-initiated coordination (with two named agen- cies)</i>

In addition, the majority of coordination statutes in this dataset require the lead agency to initiate coordination, even if the agency has some freedom to shape the coordination process. Put another way, this data suggests that statute-based coordination is often *mandatory*, either for the lead agency, other agencies in the statute—named or unnamed—or both. Most of the statutes in this dataset mandate coordination by use of terms such as “shall” and “must.”¹¹⁵ Some others require coordination to the “maximum extent possible” or the “maximum extent practicable,” which falls short of establishing a strict requirement but renders the coordination semi-obligatory.¹¹⁶ And relatively few others offer agencies the option to coordinate solely, and transparently, on the basis of their own discretion.¹¹⁷

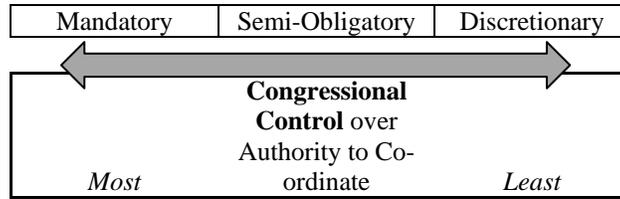
In addition, once the named agency has initiated coordination, other agencies are generally directed by Congress to respond (although, as the next subsection discusses, conflict and resistance may complicate or erode responsiveness). Nonetheless, because coordination is authorized explicitly in service of an enabling statute, the policymaking goals furthered by interagency coordination are always determined, albeit broadly, by Congress. As a result, mandating agency coordination intensifies the legislature’s ability to direct agencies.

115. See App., Part A.1, Part B.1, Part C.1.

116. See App., Part A.2, Part B.2, Part C.2.

117. See App., Part A.3, Part B.3, Part C.3.

Table 3: Congressional Control in Interagency Coordination



Because coordination legislation is generally hierarchical, expansive and mandatory, it is a potent mechanism of agency control over other agencies. In general, agencies “seek to influence other agencies’ actions to advance and protect their own interests,”¹¹⁸ either to positive or negative effects.¹¹⁹ As Eric Biber and others have suggested, processes by which agencies direct other agencies to specific policymaking outcomes include “lobbying,” for instance, via the submission of comments on other agencies’ proposals; a plea to a political leader, like the elevation of decisionmaking to an upper-level official; and the exercise of express authority, like the use of coercive statutory powers to veto another agency’s proposals.¹²⁰ In addition, there is a burgeoning

118. Eric Biber, *Too Many Things to Do: How to Deal with the Dysfunctions of Multiple-Goal Agencies*, 33 HARV. ENVTL. L. REV. 1, 41 (2009) [hereinafter Biber, *Too Many Things to Do*] (suggesting that agencies can cope with the challenge of achieving success in the multiple goals laid out for them by Congress and the President by interacting with other agencies); see also Marisam, *Interagency Administration*, *supra* note 40, at 186 (“Interagency administration reorients the conception of power in the administrative state by turning agencies from competitors for power into secondary sources of power for each other (after the primary sources of Congress and the White House).”); *id.* at 191 (“By contributing resources and expertise to another agency’s regulatory problem, an agency can shape an executive action over which it otherwise would have no influence.”).

119. See Marisam, *Interagency Administration*, *supra* note 40, at 188–200 (suggesting that agencies can act rationally by manipulating other agencies in order to augment their own expertise or may fail to fulfill their responsibilities as a result).

120. See generally Biber, *Too Many Things to Do*, *supra* note 118 (exploring two main models of agency interactions: the monitoring agency as a “lobbyist,” and the monitoring agency as a “regulator”); DeShazo & Freeman, *supra* note 18, at 2221 (arguing that Congress can control delegated power by using agencies as “lobbyists” against other agencies on its own behalf); see also Bradley, *supra* note 9, at 754–56; Marisam, *Interagency Administration*, *supra* note 40, at 200.

literature that focuses on the allocation of power among agencies,¹²¹ although this work has not amply considered the ways in which agencies might encroach on one another's turf.¹²²

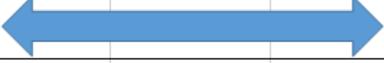
Coordination statutes that are unilaterally-initiated and expansive also allow their lead agencies opportunities to influence other agencies' actions to advance and protect their own interests—more specifically, by giving them the authority to draw on the resources and discretion of other agencies to further certain policymaking goals. Furthermore, since lead agencies are often required to initiate coordination dictated by legislation—and non-lead agencies are obligated to respond—it is more likely that these vertical interagency relationships will, in fact, come to fruition.¹²³ This Article refers to this dynamic as “interagency control.”

121. See, e.g., Elizabeth Magill & Adrian Vermeule, *Allocating Power Within Agencies*, 120 YALE L. J. 1032 (2011); Jon D. Michaels, *An Enduring, Evolving Separation of Powers*, 115 COLUM. L. REV. 515 (2015); Jon D. Michaels, *Of Constitutional Custodians and Regulatory Rivals: An Account of the Old and New Separation of Powers*, 91 N.Y.U. L. REV. 227 (2016).

122. Bijal Shah, *Toward an Intra-Agency Separation of Powers*, 91 N.Y.U. L. REV. 227 (2016) (critiquing Jon D. Michaels's work on this basis).

123. Notably, the many non-mandatory coordination also occur within frameworks that are otherwise hierarchical and expansive, which gives lead agencies maximum discretion in the initiate and implement coordination. See *infra* notes 545–91 and accompanying text. And in at least one instance, coordination legislation also offers a dispute resolution mechanism by which an agency might feasibly influence another. See *infra* notes 557–59 and accompanying text.

Table 4: Factors Engendering Interagency Control

		Mandatory	Semi-Obligatory	Discretionary
<i>Most</i>	Unilaterally-initiated by lead agency with specified (or unnamed) federal agencies			
Hierarchical & Expansive* Authority to Coordinate	Unilaterally-initiated by lead agency with specified (or named) agenc[ies]			
<i>Least</i>	Jointly-initiated (by two named agencies)**			
				
*meaning breadth of topic and number/flexibility of agencies involved	**rarely is there jointly-initiated with unnamed federal agencies.	<i>Most</i>	Congressional Control	<i>Least</i>

There are many coordination regimes in this dataset that create strong conditions of interagency control. These offer evidence that Congress often issues coordination legislation to give favored agencies the opportunity to shape the use of other agencies' resources, policymaking priorities and discretion in order to implement legislative priorities.

Table 5: Overall Categorization of Coordination Legislation

		Mandatory	Semi-Obligatory	Discretionary
Most	Unilaterally initiated by lead agency with unspecified (or unnamed) federal agencies	Emergency Economic Stabilization Act (D. of Treasury/FBI), Market Reform Act (D. of Treasury), National Drug Control Policy (White House Office of National Drug Control Policy), Joint Resolution Making Continuing Appropriations for the Fiscal Year 1985, and for Other Purposes (AG), Coast Guard and Maritime Transportation Act (Coast Guard), An Act to Regulate Commerce with Foreign Countries (International Trade Commission), Small Business Act (Small Business Administration), Higher Education Act (Dept. of Education), Health Research and Quality Act (HHS/Agriculture), Veterans' Benefits Act (VA), Employee Retirement Income Security Act (Dept. of Labor), Older Americans Act (HHS/Administration on Aging), Indian Financing Act (Dept. of Interior), Endangered Species Act (Depts. of Interior and Commerce), Resource Conservation and Recovery Act (EPA), Marine Mammal Protection Act (Marine Mammal Commission), Energy Policy Act (Dept. of Interior), Coast Guard Authorization Act (Coast Guard), Coordination of Wildlife, Fish, and Game Conservation and Rehabilitation in Military Reservations (DOD), An Act Authorizing the Construction, Repair, and Preservation of Certain Public Works on Rivers and Harbors for Navigation, Flood Control, and for Other Purposes (Army), Anti-Drug and Controlled Substances Act (Forest Service), Wolf Trap Park Act (Dept. of Interior)	Omnibus Diplomatic Security and Antiterrorism Act (State Dept.), Methane Transportation Research, Development, and Demonstration Act (Dept. of Energy), Marine Resources and Engineering Development Act (Dept. Commerce), Conservation of Antarctic Fauna and Flora (National Science Foundation), Consumer Product Safety Act (Consumer Product Safety Commission)	Demonstration Cities and Metropolitan Development Act (Dept. of Housing and Urban Development), Housing and Community Development Act (Dept. of Housing and Urban Development), Reforestation Act (Dept. of Agriculture), An Act to Provide for the Protection of Land Resources Against Soil Erosion (Dept. of Agriculture), An Act to Stop Injury to the Public Grazing Lands (Dept. of the Interior), An Act to Promote Effectual Planning, Development, Maintenance, and Coordination of Wildlife, Fish, and Game Conservation and Rehabilitation in Military Reservations (DOD), Colorado River Basin Project (Army), Establishing the Sawtooth National Recreation Area (Dept. of Interior/Forest Service), An Act to Revise, Codify, and Enact into Law, Title 23 of the United States Code, Entitled "Highways" (Dept. of Transportation), Tuna Conventions Act (Secretary of State)
Hierarchical & Expansive* Authority to Coordinate	Unilaterally initiated by lead agency with specified (or named) agencies	National Aeronautics and Space Act (DOD [with NASA]), Energy Reorganization Act (EPA [with Energy Research and Development Administration]), Water Bank Act (Depts. of Agriculture [with Dept. of Interior]), Rural Water Act (Dept. of the Interior [with Dept. of Agriculture]), Housing and Community Development Act (Dept. of Labor [with EPA]),	Southwest Forest Health and Wildfire Prevention Act (Depts. of Agriculture [with Dept. of Interior]), National Fishing Enhancement Act (National Science Foundation [with Dept. of State; Dept. of Commerce, Navy and Dept. of State]), Act to Amend the Commercial Fisheries Research and Development Act (Dept. of Commerce [with Dept. of Interior and other federal agencies]), Electric and Hybrid Vehicle Research, Development, and Demonstration Act (Dept. of Energy [with Dept. of Transportation])	
Least	Jointly initiated** (by two named agencies)	Older Americans Act Amendments (HHS/Administration on Aging and Dept. of Labor); Vietnam Era Veterans' Readjustment Assistance Act (VA and Dept. of Labor); National Flood Insurance Act (Dept. of Homeland Security/FEMA and White House Office of Management and Budget), Whaling Convention (Depts. of State and Commerce)		Forest and Wildlife Coordination Act (Depts. of Agriculture and Commerce)
		Most	Congressional Control	Least
	*meaning breadth of topic and number/flexibility of agencies involved.	**rarely is there jointly initiated with unnamed federal agencies.		

For in-depth discussion and substantiation of all the coordination regimes listed in the preceding table (in the order they are listed), please consult the Appendix. In the following table, the relevant enabling statute for which coordination has been authorized is listed first. The agencies specified in the coordination legislation are bolded. The lead or “named” agency—in other words, the agency at the head of hierarchical coordination—is listed next to the statute in (parenthesis). If the lead agency has control over an unspecified or “unnamed” set of agencies, no other agency is listed in the parenthesis. If the lead agency has control over a named set of agencies, the latter are listed in [brackets]. If the coordination is jointly-initiated, all the initiating agencies are listed in the parenthesis.

C. IMPACT & MITIGATION OF INTERAGENCY CONFLICT

The potential for interagency control is eroded when coordinating agencies engage in conflict. As Anne Joseph O’Connell and Dan Farber have noted, control is never complete in the administrative context,¹²⁴ an observation that bears on statute-based coordination as well. While most coordination legislation authorizes a lead agency to structure coordination on the basis of its own discretion, other agencies may also seek to assert their autonomy over the coordination process. This may reduce the lead agency’s actual ability to shape the coordination process in keeping with its own interests and those it shares with Congress.

Certainly, the presence of interagency dissent may lead to stronger outcomes that take into account different sets of information or political viewpoints.¹²⁵ However, it may lead to inefficiency or other costs that undercut the goals of coordination.¹²⁶

124. See Farber & O’Connell, *supra* note 6, at 1418 (“By their nature, control is never complete in principal-agent models and may be even less so in the administrative context.”).

125. See DeShazo & Freeman, *supra* note 18, at 2233 (suggesting that “interagency conflict can be productive”); Farber & O’Connell, *supra* note 6 (discussing the benefits and drawbacks of interagency conflict).

126. Barkow, *supra* note 64, at 52–53 (noting that “shared authority may undercut the goals of both agencies. Because these agencies may be charged with serving somewhat different politically vulnerable populations, they may undermine each other by engaging in costly and time-consuming turf battles”); John C. Coffee, Jr., *Competition Versus Consolidation: The Significance of Organizational Structure in Financial and Securities Regulation*, 50 BUS. L. 447, 460–66 (1995) (chronicling costs associated with the interagency conflict over jurisdiction between two independent agencies, the Securities and Exchange Commission and the Commodities Futures Trading Commission); Farber & O’Connell, *supra* note 6 (discussing the benefits and drawbacks of interagency conflict); cf. Candeub & Hunnicut, *infra* note 368, at 13 (“[D]issents may simply constitute efforts by members of the executive branch, responding to the power of the party opposite to the Executive, to undermine its administration of the

For instance, if agencies have different views regarding the normative value of the policy to be furthered, unique budgets, or distinct differences in their programmatic priorities, they may seek to alter one another's priorities, clip each other's wings,¹²⁷ or chip away at each other's discretionary powers in order to assert their own interests.

The likelihood of conflict between agencies depends on factors such as whether the shared agency activity is focused only on the lead agency's needs or includes the interests of the other agencies involved, whether the coordinating agencies differ as to the goals of the legislation to be implemented, and whether the coordinating agencies have similar views or values in general.¹²⁸ Joshua Clinton and David Lewis suggest that political ideology is another quality that may strongly predict whether agencies engage in conflict.¹²⁹ In general, if agencies share a common culture, they are more likely to collaborate.¹³⁰ And if a fewer number of agencies are involved in coordination, or the authority to coordinate is limited in subject matter or scope, both the opportunity to exercise interagency control and the locus of interagency conflict are likely to be narrowed or more focused.

The impact of interagency conflict on agencies' ability to assert their own values may vary depending on the structure of the coordination network. More specifically, interagency conflict may erode adherence to coordination by non-lead agencies, particularly within the more uncommon nonhierarchical and/or

law.”).

127. See DAVID EPSTEIN & SHARYN O'HALLORAN, *DELEGATING POWERS* 158–60 (1999) (suggesting that conflicting agencies have fewer units of “delegated authority” than do agencies with a united mission).

128. See Barkow, *supra* note 64, at 51 (“Even if a single agency does not have competing internal goals, conflict can emerge from the agency's relationship with a separate agency that is looking out for a different interest.”).

129. See Joshua D. Clinton & David E. Lewis, *Expert Opinion, Agency Characteristics, and Agency Preferences*, 16 *POL. ANALYSIS* 3, 4 (2008) (ranking several agencies on a scale from liberal to conservative on the basis of expert opinions).

130. See THOMAS H. STANTON, *IMPROVING COLLABORATION BY FEDERAL AGENCIES: AN ESSENTIAL PRIORITY FOR THE NEXT ADMINISTRATION* 1, 15 (2008), http://thomas-stanton.com/pubs/gom/GOM-Improvising_Collaboration.pdf (“For administrative officials who share a common culture . . . collaboration can come naturally.”); HAROLD SEIDMAN, *Foreword* to *MAKING GOVERNMENT MANAGEABLE* (Thomas H. Stanton & Benjamin Ginsburg eds., 2004) (“Agencies are more likely to collaborate and network when they are in agreement on common objectives, operate under the same laws and regulations, and do not compete for scarce resources.”).

more discretionary coordination structures. For instance, even if Congress delegated expansive and mandatory coordination to privilege a particular legislative mandate, it may reduce opportunities for interagency control if the coordination authorized is not clearly hierarchical. Or, hierarchical coordination that otherwise encourages interagency control may never gain enough fuel to be properly implemented by the lead agency in the first place if it is not mandatory. These variations in coordination authorized by legislation are less conducive to strong interagency control because they obligate agencies to submit to the will of the lead only to some extent, and/or give them some leeway to modify the obligation. As a result, agencies may resist coordination either explicitly, bolstered by the flexibility offered by coordination legislation, or by acting with reluctance or inefficiency even if they have apparently acquiesced to requests to coordinate.

Conversely, a strongly hierarchical structure could minimize the effects of conflict. Rachel Barkow has suggested that hierarchy between agencies sharing an enforcement task allows the leading agency to assert its preferences, particularly if the hierarchy is mandatory.¹³¹ Similarly, if interagency coordination is hierarchical and mandatory, the impact of conflict on the lead agency's ability to further its own interests may be reduced.

Indeed, a lead agency might seek to minimize pushback from other agencies with political ideologies or goals that are at odds with its own.¹³² For example, the strong law enforcement

131. See also Candeub & Hunnicutt, *infra* note 368 (suggesting as leader of the board, the Chair controls which orders pass in independent agencies, regardless of commissioner dissent); cf. Barkow, *supra* note 64, at 55 (suggesting that if two agencies share an enforcement responsibility, but are nonetheless in a clear hierarchy in which the latter cannot veto the former, this will not undercut the former's authority and will, in fact, "put[] more cops on the beat").

132. See DANIEL E. HO, CONGRESSIONAL AGENCY CONTROL: THE IMPACT OF STATUTORY PARTISAN REQUIREMENTS ON REGULATION 35 (2007), <http://dho.stanford.edu/research/partisan.pdf> (showing empirical evidence that partisan requirements constrain); Keith S. Brown & Adam Candeub, *Partisans & Partisan Commissions*, 17 GEO. MASON L. REV. 789, 790 (2010) (arguing that "'non-partisan interests' or 'idiosyncrasies' drive a commissioner's voting"); cf. Candeub & Hunnicutt, *infra* note 368 (stating that congressional concerns dominate independent agencies); Datla & Revesz, *supra* note 35, at 797–99 (reporting that the chairs of boards heading independent agencies engage in similar dynamics); Paul R. Verkuil, *Purposes and Limits of Independent Agencies*, 1988 DUKE L.J. 257, 258 (1988).

priorities of entities such as the FBI¹³³ and Department of Justice¹³⁴ may lead to more autocratic treatment of those agencies whose resources these agencies wish to utilize, regardless of underlying resistance from those agencies. Still, even in hierarchical arrangements, disagreement could pose an obstacle to policy implementation.¹³⁵ In the case of the Department of Defense's control over NASA, authorized by Congress to favor the Department of Defense's interests,¹³⁶ the potential problems associated with pushback from NASA¹³⁷ led Congress to include an interagency dispute resolution mechanism.¹³⁸

Resistance may also find greater purchase in semi-obligatory arrangements.¹³⁹ For instance, the Secretary of Commerce may encounter obstacles when seeking the assistance of other agencies governed by the Marine Resources and Engineering Development Act¹⁴⁰ in order to "coordinate . . . to the maximum extent practicable"¹⁴¹ to further energy policy,¹⁴² particularly considering that what is "practicable" is constrained by fact that the Department of Commerce's goals may be in conflict with the preservation of marine resources. The Consumer Product Safety Commission may also meet resistance to its mission to engage agencies¹⁴³ and gain access to their data¹⁴⁴ "to the maximum extent practicable"¹⁴⁵ in order to better implement its enabling

133. *Infra* notes 487–92 and accompanying text.

134. *Infra* notes 493–98, 535–43 and accompanying text.

135. See J.B. Ruhl & James Salzman, *Climate Change, Dead Zones, and Massive Problems in the Administrative State: A Guide for Whittling Away*, 98 CALIF. L. REV. 59, 71 (2010) ("The transaction costs of strong coordination, the differing internal incentives of each agency, the loss of autonomy, and other collective action challenges often overwhelm ambitions toward coordination.").

136. See *supra* note 72 and accompanying text.

137. See *infra* notes 589–93 and accompanying text (discussing the Department of Defense's power to require coordination from NASA).

138. See *infra* notes 591–95 and accompanying text.

139. See *infra* notes 549, 552, 555, 558, 560 and accompanying text.

140. See *infra* note 551 and accompanying text.

141. Coastal Zone Management, 16 U.S.C. § 1456(a) (2012); see also *infra* notes 552–58 and accompanying text.

142. See *infra* note 553 and accompanying text.

143. See *infra* note 558 and accompanying text.

144. See *infra* note 559 and accompanying text.

145. H.R. REP. NO. 110-501 (2007); see also *infra* note 557 and accompanying text.

statute,¹⁴⁶ given that agencies may wish to guard sensitive information in a manner that makes sharing it “impracticable.”

In addition to asserting its status as the lead, an agency authorized to initiate coordination might minimize conflict by encouraging cooperation, including by forming coalitions in order to seek consensus,¹⁴⁷ particularly when relying on agencies with useful policymaking expertise that might be less responsive to a wholly authoritarian approach. For example, despite their authority to spearhead coordination in their areas of interest, the Agency for Healthcare Research and Quality’s extension of healthcare initiatives,¹⁴⁸ the Administration on Aging’s work on elder initiatives,¹⁴⁹ and the Department of the Interior’s efforts to implement the Indian Financing Act¹⁵⁰ might include consensus-building with agencies that have expertise likely to benefit their objectives; in these examples, the expert non-lead agencies include the Department of Commerce, Department of Labor and Small Business Administration, respectively. In these regulatory areas, as opposed to in law enforcement, the lead agencies should incorporate the preferences of the other coordinating agencies, instead of forcing adherence to their own preferences. This is due in part to the longer timeline for accomplishing non-law enforcement initiatives and the potential benefits—such as buy-in and higher-quality participation in the coordination—of coaxing non-lead, but nonetheless expert, agencies to contribute their resources and expertise willingly.

Alternatively, agencies expected to be responsive to a lead agency may be eager to coordinate. For example, legislative history underlying congressional efforts to conserve Antarctic fauna and flora¹⁵¹ shows that the several agencies drafted the bill,¹⁵² which may indicate that they are motivated to implement this legislation. In addition, agencies other than the lead agency may sometimes initiate coordination, or be able to expand their own jurisdiction in response to it. For instance, under the National Oceanic and Atmospheric Administration Authorization Act,¹⁵³ non-lead agencies are also affirmatively authorized to engage

146. See *infra* note 556 and accompanying text.

147. See Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1182–87.

148. See *infra* notes 506–11 and accompanying text.

149. See *infra* notes 511–16 and accompanying text.

150. See *infra* notes 514–19 and accompanying text.

151. See *infra* notes 554–58 and accompanying text.

152. H. R. REP. NO. 95-1031, pt. 2 (1978).

153. See *infra* note 542.

with the lead Commission tasked with coordinating¹⁵⁴ should they wish to do so, notwithstanding any jurisdictional barriers. And when the Secretary of State “delegates” authority to other agency heads to operate their own overseas security,¹⁵⁵ these agency heads gain control of a function that is otherwise technically within the State Department’s purview. A concrete stake in coordination may motivate non-lead agencies to work more cooperatively with the lead than if they had no clear incentive to do so.

Despite the potential for cheerful participation by non-lead agencies, the lack of actual overlapping jurisdiction means that the only agency ultimately responsible for the process is the lead agency. This gives the other coordinating agencies leverage to create conflict without being held accountable for the consequences of doing so.¹⁵⁶ Particularly where the named agency must balance several interests, the other agencies required to coordinate may resist with greater impunity. For instance, the Coast Guard may have some difficulty forcing the varied agencies¹⁵⁷ governed by the Coast Guard and Maritime Transportation Act¹⁵⁸ to act in concert with one another,¹⁵⁹ even though it holds primary responsibility for implementing this Act, precisely because its role as lead agency limits the accountability of the other agencies tasked with coordination. Relatedly, the Coast Guard might be too overwhelmed by the need to balance several equities to hold any agency stakeholders accountable for conflict. To take another example, the Energy Research and Development Administration is less likely to be responsive to the EPA’s concerns, given the former’s lack of responsibility for the latter’s goals.¹⁶⁰

154. See *infra* note 541.

155. Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, Tit. I, § 106, 100 Stat. 853, 858 (1986) (“Specifically, the Secretary may agree to delegate operational control of overseas security functions of other Federal agencies to the heads of such agencies . . .”); see also *infra* notes 545–49 and accompanying text.

156. See Barkow, *supra* note 64, at 55 (noting that when a single agency is responsible for enforcement, it is held accountable for it); O’Connell, *supra* note 6, at 1680 (arguing that redundancy may decrease reliability).

157. See *infra* note 498 and accompanying text.

158. See *infra* notes 496–500 and accompanying text.

159. See *infra* note 499 and accompanying text.

160. See *infra* notes 593–99 and accompanying text.

Finally, executive agencies that are incentivized or bound to coordinate on relatively equal footing, as opposed to within a hierarchical structure, may jointly increase their influence over the implementation of legislation.¹⁶¹ However, this is more likely if they are like-minded. Coordination to further employment and support programs for the elderly is apt to involve friendly exchanges between the Administration on Aging and the Department of Labor, given their shared interest in furthering these programs.¹⁶² Similarly, coordination to provide career counseling and job placement services to veterans furthered jointly by the Department of Veterans Affairs and the Department of Labor may be of comparable interest to both agencies.¹⁶³ In these cases, agencies may seek to amplify one another's efforts to further their shared goals, instead of sublimating them as might happen in a more hierarchical relationship.

However, if two or more specific agencies are empowered to coordinate on relatively equal footing, but do not see eye-to-eye as to the best way to pool their resources—due to substantive, ideological, or other disparities in their perspectives or aims—they are less likely to compromise.¹⁶⁴ Even if coordination legislation nonetheless requires agencies to pursue compromise, agencies may attempt to actively constrain one another to tip policymaking outcomes in their favor—a dynamic Eric Biber refers to as “agency as regulator of another agency.”¹⁶⁵ More specifically, jointly-initiated coordination provides leeway for adversarial agencies to exercise their preferences to reduce one another's impact on policymaking. For example, although Con-

161. See EUGENE BARDACH, *GETTING AGENCIES TO WORK TOGETHER* 8 (1998) (suggesting that collaboration is “any joint activity by two or more agencies that is intended to increase public value by their working together rather than separately”). Here, the value produced is likely to be “public”, in that it furthers an administrative program benefitting the polity, but also of value to the agency itself to the extent it privileges that agency's own priorities and accumulation of resources.

162. See *infra* notes 624–31 and accompanying text.

163. See *infra* notes 629–35 and accompanying text.

164. See, e.g., STANTON, *supra* note 130, at 14–15 (mentioning briefly the difficulty of the Department of Homeland Security in integrating its immigration functions to suggest that “[s]ome agencies have operated as rivals for so long that it may be difficult to bring them to collaborate”).

165. Biber, *Too Many Things to Do*, *supra* note 118, at 6 (referring to a similar model as “agency as regulator’ of another agency”).

gress intended the EPA to exercise significant control over environmental protection initiatives involving other agencies,¹⁶⁶ it may encounter resistance while coordinating with the Energy Research and Development Administration,¹⁶⁷ particularly because the former will seek to intensify protection efforts while the latter has opposing policy interests. It is worth noting that this Article revisits this theory in Part III.C.3, which suggests that interagency conflict—and the resulting deterioration of the potential for interagency control—may offer the President more purchase over statute-based coordination than if the coordinating agencies are generally in agreement.

II. IMPACT ON ADMINISTRATIVE FUNCTION

This Part shifts from a descriptive account of coordination legislation in Part I to potential reasons Congress has legislated interagency relationships. Coordination is generally a tool for executive management, whereby the President, in her capacity as administrator-in-chief, directs agencies to act in a manner that emphasizes executive priorities while fulfilling their legislative mandates.¹⁶⁸ However, Congress's extensive implementation of agency coordination indicates that it is not only an executive tool for administrative management.¹⁶⁹

The literature on administrative coordination initiated by the President and agencies suggests that its effects on agency functions are beneficial to policymaking¹⁷⁰ and “substantial, across a range of regulatory problems.”¹⁷¹ Congress's use of

166. See *infra* notes 593–99 and accompanying text (noting that coordination was authorized to enhance the Environmental Protection Agency's capacity).

167. See *id.*

168. See *supra* notes 29–40 and accompanying text.

169. See *supra* note 9 and accompanying text.

170. See Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1210 (noting in their work on executive-initiated coordination, that “coordination can improve efficiency, effectiveness, and accountability . . . [and further] the purported benefits of functional fragmentation”); Marisam, *Selection Powers*, *supra* note 40, at 835 (observing that the President's power to designate an agency head is “helpful for coordinating executive responses to regulatory problems that involve fragmented jurisdiction”); cf. Jennifer Nou, *Intra-Agency Coordination*, 129 HARV. L. REV. 421, 478 (2015) [hereinafter Nou, *Intra-Agency*] (suggesting that intra-agency coordination stands to promote efficiency and effectiveness across the executive hierarchy if embraced on the appropriate scale).

171. Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1210; cf. Jennifer Nou, *Subdelegating Powers*, 117 COLUM. L. REV. 473, 477 (2017) [hereinafter Nou, *Subdelegating*] (“[Intra-a]gency subdelegation . . . is a more pervasive

agency coordination likely benefits administrative functioning as well, because it allows Congress to more precisely direct agencies' implementation of the law.

First, this Part argues, Congress may establish coordination among agencies—and in particular, coordination that is hierarchical and mandatory, and thus similar to coordination initiated by the President—for reasons like those that motivate the executive formation of interagency coordination. These include harnessing like-minded agencies to further particular substantive goals, implementing a system of accountability (in particular, by creating vertical coordination structures), exploiting the competencies of diverse administrative stakeholders, and bringing to bear greater administrative expertise.

In addition, this Part notes, there are a number of objectives driving the passage of coordination legislation that are unique to the legislature, some of which, like other public interest efforts,¹⁷² may benefit from the administrative autonomy cultivated by hierarchical and expansive forms of statute-based coordination. These objectives include increased administrative sensitivity to congressional priorities, responsiveness to special pressures faced by the legislature and to national crises, replication of the benefits of overlapping authority and, of particular relevance to current times, offsetting problematic political influence on the early stages of administrative policymaking. Overall, this Part suggests that coordination legislation supports more effective administrative implementation of the legislature's goals by allowing agencies with expertise in areas of interest to Congress to engage with one another in a manner shaped by their own discretion. Given the potential for statute-based coordination to minimize some negative elements of presidential administration,¹⁷³ it may, in some cases, be an improvement over coordination implemented by the President.

phenomenon than commonly recognized, sometimes even by agency heads themselves.”).

172. See CROLEY, *supra* note 19, at 157–236 (illustrating beneficial forms of agency autonomy and public interest-oriented agency action); Spaulding, *supra* note 19, at 438–39 (noting briefly that “nothing prevents Congress from restoring decentralization where it might aid the exercise of independent judgment”); Yoon-Ho Alex Lee, *Beyond Agency Core Mission*, 68 ADMIN. L. REV. 551, 599 (2016) (arguing that administrative autonomy can help Congress “ensure that an agency will make a good-faith effort to balance conflicting objectives”).

173. See *infra* Part II.B.V.

A. REPLICATING THE BENEFITS OF EXECUTIVE-INITIATED COORDINATION

Congress designates lead agencies in interagency coordination for reasons that are similar to presidential initiation of administrative coordination.¹⁷⁴ This Section theorizes that interagency relationships created by legislation replicate some of the benefits of executive-initiated coordination. Both vertical and horizontal statute-based coordination helps the legislature to effect dynamics similar to those produced by executive-led coordination. These include amplifying administrative leadership, improving accountability mechanisms, harnessing diverse administrative competencies, intensifying administrative expertise, reducing decisionmaking costs, and maintaining efficient information-sharing and adaptivity in agency decisionmaking.

1. Lead Agency as Mouthpiece

Fostering agency hierarchies also allows the President more control over the administrative process and its outcomes.¹⁷⁵ Like the President, Congress legislates hierarchical coordination in order to utilize lead agencies to help further its aims.¹⁷⁶ According to one theory, “interagency hierarchies” created by the President allow “a single agency or agency head to speak for the President and act as the President’s chief adviser for a particular regulatory problem.”¹⁷⁷ For instance, the President relied “on a lead agency—a single agency put in charge of coordinating federal action and to which all other agencies should defer” in order to implement the National Environmental Protection Act (NEPA).¹⁷⁸

NEPA requires that all federal agencies prepare environmental assessments of any actions that significantly affect the environment. To “avoid . . . inefficiencies, the Executive has determined that a single lead agency shall supervise the review

174. See Marisam, *Duplicative Delegations*, *supra* note 43, at 206–07 (discussing some advantages to designating a lead agency when agency action needs to be coordinated).

175. Marisam, *Selection Powers*, *supra* note 40, at 836 (arguing that the President can take advantage of a hierarchical administrative structure “by selecting an agency—one with knowledge of the regulatory problem at hand and preferences that closely align with the President’s—that will speak for the President and organize the agencies’ actions in his stead”).

176. See *supra* notes 68–80.

177. Marisam, *Selection Powers*, *supra* note 40, at 835.

178. Marisam, *Duplicative Delegations*, *supra* note 43, at 207.

process”¹⁷⁹ and codified this in regulation.¹⁸⁰ The factors determining the lead agency were as follows: “(1) Magnitude of agency’s involvement. (2) Project approval/disapproval authority. (3) Expertise concerning the action’s environmental effects. (4) Duration of agency’s involvement. (5) Sequence of agency’s involvement.”¹⁸¹ Overall, this description reflects the expectation that the President will choose a lead agency based on its expertise and enduring ability to further the President’s goals for NEPA.

Similarly, Congress uses favored agencies as a bullhorn to direct policymaking by choosing lead agencies based on their expertise in areas of legislative interest and the likelihood of their continued involvement in the statute-based coordination process.¹⁸² This approach limits costs to the legislature of making specific policy decisions, because it farms this responsibility out to agencies.¹⁸³ Further, by empowering an agency with expertise in an area of particular importance to the legislature, Congress is able to align administrative interests with its own, thus increasing the likelihood that the agency pursues outcomes that Congress also prefers.¹⁸⁴ This general description matches just about every coordination structure discussed in this Article and the Appendix. Empowering an expert and allied agency to lead also means that, despite some authority to subdelegate tasks, this agency is more likely to remain consistently involved in the implementation of coordination, thus enhancing administrative accountability as well.¹⁸⁵

179. *Id.*

180. *See, e.g.*, 40 C.F.R. § 1501.5(a) (2018) (“A lead agency shall supervise the preparation of an environmental impact statement if more than one agency . . . is involved in the same action.”).

181. 40 C.F.R. § 1501.5(c) (2017).

182. *See supra* notes 68–80 and accompanying text.

183. *Cf. Nou, Subdelegating, supra* note 171, at 509 (suggesting that intra-agency subdelegation provides a way for political appointees to limit their own costs associated with decisionmaking, by “farm[ing] out the decisionmaking,” particularly when the transaction costs of retaining decisionmaking authority are high); Shah, *Interagency Transfers, supra* note 9, at 284 (arguing that an interagency transfer of adjudication authority “represents an agency’s desire to reduce its delegated power and attendant responsibility by shifting them to another agency”).

184. *Cf. Nou, Subdelegating, supra* note 171, at 525–26 (arguing that “subdelegations [within agencies] are best understood as credible commitment devices through which commissioners motivate better-informed but potentially biased subordinates”).

185. *See Shah, Interagency Transfers, supra* note 9, at 311–14 (discussing

2. Replicating the System of Executive Accountability

By designating a lead agency in statute-based coordination, Congress enables executive management of an administrative process that might otherwise suffer from reduced presidential oversight. Executive-initiated interagency hierarchies “enable presidents to better supervise the multi-agency process.”¹⁸⁶ In contrast, statute-based interagency coordination and their potential to stimulate agency autonomy could weaken administrative accountability.¹⁸⁷ Theoretically, autonomous interagency coordination is also less efficient than initiatives led by the President, because consensus requirements may create networks that are “slow moving and fail to produce bold actions,”¹⁸⁸ in contrast to actions furthered unilaterally by the relatively unencumbered Executive.¹⁸⁹ Nonetheless, the efficiency and orderliness born of executive hierarchy may be preserved to some extent by the creation of discrete, agency-led hierarchies among agencies tasked by legislation to coordinate.

Scholars have noted the benefits of hierarchical administrative management. For instance, Gillian Metzger and Kevin Stack discuss intra-agency “managerial accountability,” defining it as “the extent to which subordinate officials within an agency

that the consistent involvement of a lead agency in coordination enhances administrative accountability).

186. Marisam, *Selection Powers*, *supra* note 40, at 836. Marisam explains that “interagency hierarchies” allow “a single agency or agency head to speak for the President and act as the President’s chief adviser for a particular regulatory problem.” *Id.* at 835.

187. *Cf.* Lawrence Lessig & Cass R. Sunstein, *The President and the Administration*, 94 COLUM. L. REV. 1, 2–3 (1994) (suggesting that values of accountability and organization in the execution of the laws are promoted by presidential hierarchy).

188. Marisam, *Duplicative Delegations*, *supra* note 43, at 207; *see also* HAROLD SEIDMAN, *POLITICS, POSITION & POWER* 70 (2d ed. 1975) (asserting that Congress can only achieve “piecemeal” solutions to problems).

189. *See, e.g.*, Bradley, *supra* note 9, at 783–85 (identifying the “rule-based interface” as a design tool through which the President “preserve[s] the division of authority” between agencies so “[e]ach agency . . . is discouraged from considering interest-dimensions outside of its part of the problem”); Steven G. Calabresi & Nicholas Terrell, *The Fatally Flawed Theory of the Unbundled Executive*, 93 MINN. L. REV. 1696, 1717–18 (2009) (arguing that in a unitary system, information flows to the President from the cabinet in an efficient manner because the President acts as a central point in the network of information).

are responsible and answerable to their organizational superiors.”¹⁹⁰ In more successful systems of accountability, “the manager is present and part of the organization, not an external evaluator, and . . . has power and license not merely to nullify or sanction, but to teach, to inspire, to check, to cajole, to encourage, and to remedy any wayward action.”¹⁹¹ Edward Rubin also suggests that internal agency monitoring improves accountability.¹⁹² Similarly, lead agencies in statute-based coordination could help maintain accountability across agency boundaries.

Finally, perhaps counterintuitively,¹⁹³ lead agencies might also seek to delegate authority to other agencies in order to reduce their policymaking costs, especially if they retain ultimate control over the coordination process. The delegation of authority might also stimulate responsibility among non-lead agencies. For instance, we may not expect that the FBI, Coast Guard, or EPA would willingly distribute their stakes in law enforcement, water management, or environmental protection, but they might if convinced that doing so would allow for the preservation of their own resources;¹⁹⁴ agencies delegated this authority, in turn, might perceive an obligation to use it to foster a successful outcome in coordination.

3. Harnessing Diverse Competencies

Like the President, Congress might initiate coordination to combine and better utilize the capabilities of varied agencies. For

190. Metzger & Stack, *supra* note 9, at 1265.

191. *Id.*

192. See Edward Rubin, *The Myth of Accountability and the Anti-administrative Impulse*, 103 MICH. L. REV. 2073, 2075 (2005) (asserting that “true accountability” involves features common in the administrative state, such as hierarchy, reporting, and monitoring).

193. Cf. Daryl J. Levinson, *Empire-Building Government in Constitutional Law*, 118 HARV. L. REV. 915, 916 (2005) (“[An] enduring and pervasive assumption in constitutional law and theory is that much government behavior is driven by empire-building, the self-aggrandizing pursuit of power”); see also Shah, *Interagency Transfers*, *supra* note 9, at 283 (noting that one common assumption in administrative law is “the foundational theory that agencies are constantly attempting to maintain, grow, and compete for power, or ‘empire build’”).

194. See *infra* notes 487–92 (suggesting benefits to the FBI in farming out certain law enforcement tasks); *infra* notes 527–31 (noting that the Coast Guard can enlist other agencies to fix oil spills); *infra* notes 520–25 (allowing the Environmental Protection Agency to enlist the help of “all federal agencies” to further the Resource Conservation and Recovery Act) and accompanying text.

instance, Daphna Renan explores a phenomenon she calls “pooling,” by which the President “augments capacity by mixing and matching resources dispersed across the bureaucracy.”¹⁹⁵ According to Renan, pooling “concentrates administrative resources . . . through joint efforts that bridge sometimes longstanding structural divides” in order to bolster the Executive’s agenda.¹⁹⁶

Congress also creates horizontal relationships between agencies that facilitate the “pooling” of administrative resources in regulatory matters that it has chosen to emphasize. For instance, the legislature has authorized coordination that combines resources across agencies to further the Endangered Species Act,¹⁹⁷ the Omnibus Diplomatic Security and Antiterrorism Act,¹⁹⁸ the Demonstration Cities and Metropolitan Development Act,¹⁹⁹ and to increase employment opportunities for the elderly.²⁰⁰ Also, there may be limits to Congress’s desire to broaden a favored agency’s scope, which Congress may therefore choose to dilute by reinforcing another agency’s claims to jurisdiction. For instance, in a coordination scheme broadening the Department of Health and Human Services’ role in ensuring quality health care,²⁰¹ Congress explicitly limited the expansion of the agency’s purview by naming the areas in which the Social Security Administration is to remain a key figure.²⁰²

In addition, Congress might implement vertical relationships to bridge administrative divides,²⁰³ particularly where the non-lead agencies might otherwise not have incentives to do so. Examples that fit this description include the Department of De-

195. Renan, *supra* note 40, at 213.

196. *Id.* at 291.

197. *See infra* notes 517–21 and accompanying text.

198. *See infra* notes 545–49 and accompanying text.

199. *See infra* notes 563–67 and accompanying text.

200. *See* H.R. REP. NO. 102-199, at 76–78 (1991) (suggesting that the Secretary of Labor and the Commissioner on Aging should be on equal footing while coordinating for this purpose); *see also infra* notes 626–30 and accompanying text.

201. *See infra* notes 506–11 and accompanying text.

202. H.R. REP. NO. 106-305, at 29 (1999) (noting that while the coordination authority is broad in the context of federal healthcare quality initiatives, the Committee on Commerce “does not intend for the Agency to have an administrative role in the operation of programs under titles XVIII, XIX, and XXI of the Social Security Act”).

203. *See supra* notes 195–97 and accompanying text.

fense wielding control over NASA to support the former's military goals,²⁰⁴ the Environmental Protection Agency exercising control over the Energy Research and Development Administration to further environmental protection initiatives,²⁰⁵ and the Department of Agriculture leading the Department of the Interior to maintain the wetlands program.²⁰⁶

4. Enhancing the Use of Information

Finally, executive agencies coordinating under a statutory directive, just like those tasked to coordinate by the President, may exhibit greater adaptability and a better use of information in decisionmaking than agencies acting alone. For instance, Jody Freeman and Daniel Farber argue that interagency coordination offers more adaptive tools for policymaking than do more traditional forms of executive delegation.²⁰⁷ In addition, they suggest it leads to “modularity,”²⁰⁸ which makes the network “capable of generating and incorporating new information,”²⁰⁹ particularly if one component of the network maintains and organizes the flow of information within the network.²¹⁰ In addition, Jennifer Nou argues that in the intra-agency context, “coordination mechanisms decrease the net information-processing costs for knowledge the agency head values.”²¹¹ This, in turn, is “likely to increase efficiency by lowering the costs necessary [for the agency head] to make a decision.”²¹² Similarly, hierarchical interagency coordination—especially if mandated by legislation, thus decreasing the President's potentially substantial start-up costs for the implementation of coordination²¹³—may both galvanize agency responsiveness and have a mitigating influence

204. See *infra* notes 589–95 and accompanying text.

205. See *infra* notes 593–99 and accompanying text.

206. See *infra* notes 597–602 and accompanying text.

207. See generally Jody Freeman & Daniel A. Farber, *Modular Environmental Regulation*, 54 DUKE L. J. 795 (2005) (proposing a “modular,” or flexible, approach to regulation involving coordination across agencies).

208. *Id.* at 795–96.

209. *Id.* at 876–77.

210. See *id.* at 888–90 (describing how interagency modularity, or coordination, supports information flow).

211. Nou, *Intra-Agency*, *supra* note 170, at 482.

212. *Id.* at 482–83. “While initial implementation costs may be substantial, these mechanisms, once implemented, decrease the resources necessary for the agency head to acquire the information required to reach a rational conclusion.” *Id.* at 482.

213. See *id.* (noting that the “initial implementation costs [of coordination]

on the costs of gathering and disseminating information across agency borders for decisionmaking purposes. In this way, vertical networks of agencies generated by coordination legislation may lend themselves to relatively flexible and effective ways of using information.

B. GOALS UNIQUE TO THE LEGISLATURE

This Section argues that, in addition to motivations that are similar to the President's, statute-based coordination may support unique legislative goals. These include garnering administrative responsiveness both to special pressures faced by the legislature and to national crises. Congress also sometimes seeks to replicate the benefits of overlapping authority, including those associated with redundancy and interagency competition, while maintaining actual jurisdictional separation. This allows the legislature to avoid some of the negative effects of actual shared authority on administrative accountability. Finally, one of the purposes of statute-based coordination, of particular importance to critics of centralized executive governance,²¹⁴ may be to limit political interference in administrative policymaking. Overall, each of these goals is enhanced, to varying degrees, by the administrative autonomy fostered by coordination statutes.

1. Improving Agency Responsiveness to Congress

Congress uses interagency coordination to strengthen the feedback and accountability loops that motivate agencies to shape their interactions in response to legislative signals. For one, legislative systems of oversight and required legislative reporting may reinforce agencies' use of discretion to act in accordance with legislative expectations. For example, Congress established an oversight committee²¹⁵ with sweeping authority²¹⁶ to ensure proper implementation of agency

may be substantial").

214. See, e.g., Metzger & Stack, *supra* note 9, at 1249 (suggesting that "the significant expansion of White House control over the executive branch has made internal administrative law much more centralized and less agency specific").

215. Older Americans Act Amendments of 2006, Pub. L. No. 109-365, 120 Stat. 2522 (2006) (codified as amended at 42 U.S.C. § 3013) (providing for the establishment of the Interagency Coordinating Committee on Aging, which was established to oversee the interagency coordination authorized under § 3013).

216. See 42 U.S.C. § 3013(c)(1) (2012) (suggesting that if a matter relates to aging, including in regards to Public Works and Economic Development, 42 U.S.C. § 3132 ("Cooperation of Federal agencies"); *infra* note 511, the relevant

coordination benefitting programs for the elderly.²¹⁷ Because this committee was created after a determination that agencies were not coordinating enough on their own,²¹⁸ the committee is required to report to Congress on the progress of interagency coordination.²¹⁹

Under the Higher Education Act, agencies report back to Congress regarding which programs they have developed and how they have coordinated in order to improve science, mathematics, engineering, and technology (STEM) education.²²⁰ The Coast Guard and Maritime Transportation Act mandates that agencies submit to the legislature a five-year plan for indicating how coordination will help them fulfill their goals,²²¹ which allows Congress to respond to agency initiatives both prospectively as well as in response to the agencies' ultimate success in adhering to legislative expectations. Similarly, the Veterans Benefits Act provides for an "[a]nnual report on assistance to homeless veterans," which Congress amended in 2008 to require the inclusion of "[i]nformation on the efforts of the Secretary [of Veterans Affairs] to coordinate the delivery of housing and services with other Federal departments and agencies."²²²

Required reporting on the implementation of "greater coordination of the research, operations, and activities relating to civilian Earth observation"²²³ encourages direct agency communication with legislators on this issue, bolstered by the

interagency cooperation would be overseen by the Interagency Coordinating Committee on Aging).

217. See *infra* notes 511–16, 624–31 and accompanying text.

218. S. REP. NO. 109-366, at 11 (2006) (noting that Congress wanted to establish the Coordinating Committee because a "committee [on Health, Education, Labor, and Pensions] review to determine whether congressional intent was carried out in [regard to interagency coordination] determined that there was little coordination activity among various Federal departments and agencies on matters relating to older individuals").

219. *Id.* (indicating that Congress intended for the Coordinating Committee to address this problem by compiling an annual report which "monitor[s], evaluate[s], and recommend[s] improvements" in interagency coordination).

220. 20 U.S.C. §§ 1067a, 3486 (2012); see also *infra* notes 504–08 and accompanying text.

221. Howard Coble Coast Guard and Transportation Act of 2014, Pub. L. No. 113-281, Tit. V, § 502(a) (2014).

222. 38 U.S.C. § 2065(b)(5) (2017); see also *infra* note 509 and accompanying text.

223. 42 U.S.C. § 18731 (2017) (noting, in regards to establishing "a mechanism to ensure greater coordination of the research, operations, and activities

legislature's public commitment to maintaining coordination in this arena.²²⁴ Furthermore, while reducing the country's "vulnerability to flooding hazards"²²⁵ is only one priority among many others shared by the Department of Homeland Security, the Office of Management and Budget, and other agencies,²²⁶ reporting requirements focused on the quality of coordination to further anti-flood efforts²²⁷ may influence these entities to focus their efforts on this responsibility—as opposed to coordinating in regards to, say, the study of earthquake insurance,²²⁸ for which there are no legislative reporting requirements.²²⁹ (Reporting requirements may also encourage agencies to be more responsive to recent crises, another potential reason for coordination legislation discussed in the next Subsection.)

The legislature may also require hearings to account for an agency's proper implementation of coordination. In an example involving an independent agency, the Consumer Product Safety Commission²³⁰ is not tasked with simply filing a report, but must in fact present information directly to the legislature regarding its coordination to further the goals of the Consumer Product

relating to civilian Earth observation," that the "Director [of the Office of Science and Technology Policy] shall provide a report to Congress . . . on the implementation plan for this mechanism"); *see also infra* notes 401–03.

224. *See, e.g., Keeping the Space Environment Safe for Civil and Commercial Users: Hearing Before the Subcomm. on Space & Aeronautics of the Comm. on Sci. & Tech.*, 111th Cong. 81 (2009) (statement of Professor Scott Pace) (responding to a post-hearing question by stating that "strong interagency coordination for a national position and active agency support" would be needed to develop "a common international framework" of operating procedures in space); *Enhancing the Relevance of Space to Address National Needs: Hearing Before the Subcomm. on Space & Aeronautics of the Comm. on Sci. & Tech.*, 111th Cong. 26 (2009) (statement of General Lester L. Lyles) (calling for coordination in space through "some [] leadership forum where all of the agencies involved in space can do a better job of integrating and coordinating their space activities").

225. Nat'l Flood Ins. ch. 50, 42 U.S.C.A. § 4101c(a)(1) ("Coordination") (West 2018); *see also infra* notes 638–42 and accompanying text.

226. *See, e.g., Moving Ahead for Progress in the 21st Century Act*, Pub. L. No. 112-141, 126 Stat. 405 (2012) (listing a range of federal priorities related to transportation and safety).

227. *See infra* notes 638–42 and accompanying text.

228. *See infra* note 638 and accompanying text.

229. *Cf. id.* (noting the requirements for coordination and reporting for floods).

230. *See* 15 U.S.C. § 2078 (2017) (explaining the Commission's duties to cooperate and share information with other agencies).

Safety Act.²³¹ This is the case even if this coordination involves executive agencies as well, perhaps because of the legislature's special interest in the Commission,²³² which strengthens those agencies' connection to Congress in this context. Overall, legislative reporting requirements could be analogized to hard look review in the judicial context, which also encourages agencies to act of their own accord to "intensify [] their 'exercise of . . . authority within [their] substantive field[s].'"²³³

In addition to reporting mechanisms, coordination legislation incentivizes the formation of new interagency initiatives and programs bolstering those regulatory areas in which Congress has granted agencies the power to coordinate. This also has the effect of focusing administrative activity on Congress's priorities, thus serving as another way for Congress to direct agencies. For instance, agency coordination authorized by the Higher Education Act to improve the quality of STEM education²³⁴ may act as a carrot for a lead agency seeking autonomy or others seeking resources to prioritize coordination in this arena, perhaps in spite of competing White House directives. In addition, the Consumer Product Safety Commission may choose to create initiatives to access other agencies' information in order to emphasize its data collection mandate.²³⁵ Similarly, legislation authorizing widespread data collection by the Office of National Drug Control Policy²³⁶ may encourage agencies participating in the National Drug Control Program²³⁷ to develop stronger research facilities.

Finally, as with independent agencies, Congress may seek to "stovepipe" executive agencies via statute-based coordination. "Stovepiping" refers to a dynamic in network theory in which a principal can access an independent source of unfiltered, ground-

231. See *infra* notes 556–62 and accompanying text.

232. Cf. Robert S. Adler & R. David Pittle, *Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?*, 1 YALE J. ON REG. 159, 159–61 (1984) (discussing Congress's ongoing attention to Consumer Protection since the 1960s and analyzing the effectiveness of regulations and public awareness campaigns in that area).

233. Shah, *Interagency Transfers*, *supra* note 9, at 348 (quoting *City of Arlington v. FCC*, 569 U.S. 290 (2013)).

234. See *infra* notes 504–08 and accompanying text.

235. See *infra* notes 556–62 and accompanying text.

236. See *infra* note 492 and accompanying text.

237. See *infra* note 491 and accompanying text.

level information besides that provided by the agent.²³⁸ Here, the principal is Congress and the agent tasked with implementing the principal's goals more generally is the President or political leadership in the executive branch. In the case of coordination statutes, however, Congress might be able to bypass the President and seek direction as to how to shape future initiatives from an independent source: an agency that has implemented coordination in a particularly innovative manner.

2. Encouraging Sensitivity to Pressure, Crisis & Legislative Compromise

Congress might authorize coordination to encourage agencies to be sensitive to political²³⁹ and economic pressures, or it might engage agencies in coordination in order to restructure the government in response to crisis.²⁴⁰ Each of these contexts requires agencies to act with flexibility and expertise, both of which are served by the administrative autonomy that may be enhanced by coordination authority.²⁴¹ By authorizing inter-agency coordination in order to direct agencies towards their own or their constituents' goals, Congress may serve democratic and substantive ends as well. For example, the Forest Service is required by statute to work with the Attorney General (AG) to further implementation of the Anti-Drug and Controlled Substances Act,²⁴² and in particular, to give the AG the flexibility to do so quickly and effectively. In this case, legislative history indicates that a focus of the enacting Congress was policing the growth of marijuana on federal land for both political and policy-oriented reasons.²⁴³ To take another example, the broad authority to coordinate delegated to the EPA was likely based on both

238. See generally Sean Gailmard & John W. Patty, *Stovepiping*, 25 J. THEORETICAL POL. 388 (2013) (presenting the "stovepipe" model of information transmission between decision-makers and outside analysts).

239. Cf. Marisam, *Duplicative Delegations*, *supra* note 43, at 195–99 (discussing how legislators have acted on the basis of political motivation while designing several agencies).

240. See FREDERICK M. KAISER, CONG. RESEARCH SERV., R41803, INTER-AGENCY COLLABORATIVE ARRANGEMENTS AND ACTIVITIES: TYPES, RATIONALES, CONSIDERATIONS 1, 14–15 (2011) (identifying crisis response as a core rationale for increased agency coordination).

241. See *infra* Part III.

242. See *infra* notes 535–43 and accompanying text.

243. See *Initiatives in Drug Interdiction (Part 1): Hearing Before a Subcomm. of the H. Comm. on Gov't Operations*, 99th Cong. 554–56 (1985) (discussing the reasons for, and goals of, domestic marijuana production eradication efforts).

congressional and stakeholder interest in environmental protection goals.²⁴⁴

However, the legislature could also implement coordination to hinder, as opposed to improve, agencies' expression of legislative mandates. Put another way, legislators might mandate interagency coordination to erode an agency's ability to exercise control over a regulatory area or to prevent effective implementation of policies that those legislators, in fact, oppose.²⁴⁵ The text of the coordination statutes and associated legislative history examined in this Article does not suggest that this is generally Congress's purpose. Of course, this intention may not be as transparently communicated by legislators during hearings and other forms of explicit communication about the bill, since this may undercut a legislator's reputation for consensus-building and would appear inconsistent with the apparent policy-building purpose of coordination.

3. Mimicking the Benefits of Overlapping Jurisdiction

Congress may be motivated to authorize interagency coordination for reasons similar²⁴⁶ to those underlying delegations of shared jurisdiction.²⁴⁷ Interagency coordination may allow Congress to reap the benefits of redundancy in the furtherance of its goals—in particular, to provide what Matthew Stephenson and

244. See *infra* notes 593–99 and accompanying text.

245. See generally Terry M. Moe, *The Politics of Bureaucratic Structure*, in CAN THE GOVERNMENT GOVERN? 267 (John E. Chubb & Paul E. Peterson eds., 1989) (examining how Congressionally created bureaucratic structures can undermine the effectiveness of agency regulation).

246. See Todd S. Aagaard, *Regulatory Overlap, Overlapping Legal Fields, and Statutory Discontinuities*, 29 VA. ENVTL. L.J. 237, 240 (2011) (using EPA and Occupational Safety and Health Administration (OSHA) case studies to demonstrate that jurisdictional overlap can “create regulatory synergy rather than dysfunction”); Michael Doran, *Legislative Organization and Administrative Redundancy*, 91 B.U. L. REV. 1815, 1817–20 (2011) (examining how Congress employs redundancy in agency direction to promote and emphasize favored activities); Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1139 (discussing Congress's “redundant or duplicative delegations”); Marisam, *Duplicative Delegations*, *supra* note 43, at 189, 210 (explaining the use of “duplicative delegations” by all three branches of government, and arguing how these institutions can screen out duplication and shape agency behavior by providing strong incentives for agencies to coordinate well). See generally Michael M. Ting, *A Strategic Theory of Bureaucratic Redundancy*, 47 AM. J. POL. SCI. 274 (2003) (modeling how congressional delegations create overlapping programs to further their own interests vis-à-vis agencies).

247. See *supra* note 42 and accompanying text.

others have called “a form of insurance against a single agency’s failure.”²⁴⁸ While none of the statutes brought to light in this Article delegate actual overlapping jurisdiction, they do employ more than one agency in furtherance of a particular legislative goal, which allows agencies to amplify one another’s efforts in important regulatory areas. Furthermore, legislating coordination in lieu of overlapping jurisdiction may allow Congress to stem the wastefulness and the potential abdication of agencies’ responsibilities that occurs when agencies share statutory authority.²⁴⁹ More specifically, the fact that statutes mandating coordination ultimately hold one, lead agency responsible for implementing both the coordination and the statute at large²⁵⁰ may induce that agency to offset any reductions in other agencies’ investment of resources or exercise of accountability that result

248. Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1138; see Farber & O’Connell, *supra* note 6, at 1426 (suggesting that a symmetrical, adversarial relationship may motivate agencies to correct one another’s mistakes); Katyal, *supra* note 34, at 2324 (arguing that “reliance on just one agency is risky” since “[i]t is ‘a form of administrative brinkmanship’”); Matthew C. Stephenson, *Information Acquisition and Institutional Design*, 124 HARV. L. REV. 1422, 1463 (2011) (“Redundant systems are thought to act as a form of insurance: if one agent fails in her task, another agent’s contributions may compensate. Furthermore, if agents’ contributions are partial rather than perfect substitutes (that is, if the agents’ functions overlap but are not fully redundant), then the contributions from multiple agents may add value to the final outcome even if none of them shirk.”); see also JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 274 (1989) (stating that there are both “good and bad redundancies”); Katyal, *supra* note 34, at 2324–27 (arguing bureaucratic overlap can serve as an important internal check on the President).

249. See Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1138 (arguing “overlapping and fragmented delegations are . . . pervasive”); Teresa M. Schwartz, *Protecting Consumer Health and Safety: The Need for Coordinated Regulation Among Federal Agencies*, 43 GEO. WASH. L. REV. 1031, 1032 (1975) (shedding light on the consequences of newly created jurisdictional overlaps); Ting, *supra* note 246, at 275–76 (discussing the traditional redundancy theory and connecting this classic theory with “a simple-game theoretic model”).

250. There is only one example where the agency head with responsibility to oversee the coordination is not part of the agency authorized to implement the parent statute. The Coast Guard Authorization Act of 1996 empowers the Coast Guard to interact expansively with “any Federal agency, State, Territory, possession, or political subdivision thereof, or the District of Columbia,” to literally “perform any activity” it is qualified to perform. 14 U.S.C. § 141(a) (1996). However, the Secretary of Commerce (acting through the Administrator of the National Oceanic and Atmospheric Administration) is charged with ensuring the quality of information rationalizing Coast Guard’s actions. See *id.* § 141(b) (“The Coast Guard, with consent of the head of the agency concerned [may act].”).

from multiple agencies' involvement in the coordination process.²⁵¹ For instance, the Coast Guard is likely to expend resources while leading coordination among several dissimilar agencies to improve the maritime domain of the Arctic under the Coast Guard and Maritime Transportation Act.²⁵²

Like coordination initiated by the executive branch,²⁵³ the legislature also authorizes coordination for the express purpose of eliminating duplication²⁵⁴ or improving coordination incidental to overlapping jurisdiction.²⁵⁵ For example, legislative history notes that Congress authorized cooperation under the Employee Retirement Income Security Act (ERISA)²⁵⁶ "with a view toward avoiding unnecessary expenses and duplication of functions and to utilize the facilities or services . . . of any department [or] agency."²⁵⁷ Under the Housing and Community Development Act,²⁵⁸ coordination was authorized²⁵⁹ "to avoid duplication" in planning and development efforts.²⁶⁰ Legislation concerning land management²⁶¹ also provides for "cooperation and coordination of range administration which [was] under different departments of the Government," when it is preferable for

251. See Stephenson, *supra* note 248, at 1465 ("[I]ncreasing the number of agents involved in researching a public decision problem tends to reduce each individual agent's incentive to invest heavily in doing that research.").

252. See *infra* notes 496–500 and accompanying text.

253. See *supra* note 9 and accompanying text.

254. For reference to two instances in which coordination has been authorized to avoid duplication, see *infra* note 510 and accompanying text. See also Marisam, *Duplicative Delegations*, *supra* note 43, at 184 (suggesting that legislation authorizing coordination constitutes an "antiduplication institution").

255. See Freeman & Rossi, *Improving Interagency Coordination*, *supra* note 42, at 11 (suggesting that Congress may create interagency coordination to "help agencies and the executive branch capitalize on the benefits of shared authority, while minimizing potential losses of efficiency, effectiveness, and accountability").

256. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 66 Stat. 829 (1974); see also *infra* note 513.

257. S. REP. NO. 86-187, at 53 (1959); see also *id.* ("Every Government department, agency, or establishment is directed to cooperate with the Secretary.").

258. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (1974).

259. See *infra* note 566 and accompanying text.

260. S. REP. NO. 93-693, at 73 (1974).

261. See *infra* notes 570–74 and accompanying text.

those efforts to be furthered by the same agency.²⁶² Other examples include coordination enacted to improve the efforts of the Department of Labor and the EPA on the control of lead paint²⁶³ and efforts of the Departments of the Interior and Agriculture to issue more uniform standards under the Rural Water Act.²⁶⁴

4. Capitalizing on Interagency Conflict

By authorizing coordination—particularly hierarchical coordination—rather than shared jurisdiction, Congress could also reduce interagency competition or even reap benefits from perhaps inevitable interagency conflict. Overlapping jurisdiction often results from legislative compromise in response to battles over turf.²⁶⁵ As a result, multiple agencies may believe they have

262. *To Provide for the Orderly Use Improvement, and Development of the Public Range Hearing on H.R. 6462 Before the S. Comm. on Pub. Lands & Surveys*, 73rd Cong. 107 (1934) (statement of Rufus G. Poole, Assistance Solicitor, Dep't of the Interior).

263. *See infra* notes 602–06 and accompanying text. A report on an earlier iteration of this bill (H.R. 5730), which was also aimed at addressing lead paint issues, noted that the EPA and the Department of Housing and Urban Development were already working together to develop “a national lead-based paint program,” with the EPA providing the technical expertise. H.R. REP. NO. 102-852, pt. 1, at 53 (1992); *see also id.* at 50, 53 (stating that an interagency task force already existed, co-chaired by the EPA and HUD, to deal with lead paint issues).

264. *See infra* notes 600–04 and accompanying text. Coordination was authorized here to standardize eligibility criteria for the federal government's rural water programs. *See* S. REP. NO. 109-148, at 13–14 (2005). This section was changed by a committee amendment “which address[ed] concerns raised during the committee hearing and in written submissions.” *Id.* at 13. The need for coordination between the Department of Interior and the United States Department of Agriculture (USDA) was touched upon at several points during the hearing on rural water programs. *See, e.g., The Rural Water Supply Act of 2005: Hearing on S. 895 Before the Comm. on Energy & Nat. Res.*, 109th Cong. 2 (2005) (statement of Sen. Gordon Smith, Member, Comm. on Energy & Nat. Res.) (“We must [] examine other federal programs, particularly the USDA's Rural Utilities Service, to determine whether changes to the eligibility criteria would be of more benefit to rural communities.”); *id.* at 15 (statement of Sen. Ken Salazar, Member, Comm. on Energy & Nat. Res.) (“I am wondering whether there would be a way of bringing in the efforts that we currently have . . . under the U.S. Department of Agriculture, so . . . that there be a coherent program that . . . we can go to and that we can figure out to access those resources.”).

265. *See* DAVID C. KING, *TURF WARS: HOW CONGRESSIONAL COMMITTEES CLAIM JURISDICTION* 144 (1997) (discussing the benefits that occur from committees handling complex issues); KENNETH A. SHEPSLE & MARK S. BONCHEK, *ANALYZING POLITICS: RATIONALITY, BEHAVIOR, AND INSTITUTIONS* 325 (1997) (“Turf battles between committees . . . are notorious . . . [and] often extend[]

been delegated the same authority and compete to invest their energy and bring about their desired outcomes.²⁶⁶ Likewise, provisions granting agencies power to coordinate may result in part from friction between various factions of Congress that seek control over a process or policy for their pet agencies. Nonetheless, compromise that leads to a clear agency hierarchy in coordination reduces the likelihood that coordinating agencies believe themselves to have equal claim to jurisdiction.²⁶⁷

Alternatively, coordination legislation could create situational interdependence among agencies that have different and potentially incompatible primary missions.²⁶⁸ Interdependence could, in turn, mitigate agency conflict (since the agencies need one another to proceed as mandated) while securing some of the benefits of agency diversity. The work of Jacob Gersen and Adrian Vermeule implies that the legislature might delegate power to a lead agency to coordinate with dissimilar agencies with the hope that the lead will take advantage of or transform the resources of those agencies in ways that improve the implementation of legislation.²⁶⁹ An example of this involves efforts by the Secretary of State under the Omnibus Diplomatic Security and Antiterrorism Act to draw on the resources of a variety of federal agencies to maintain the security of all U.S. diplomatic missions.²⁷⁰ Alternatively, Congress could choose to fragment administrative authority specifically to promote administrative

over many years.”); see also Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 1006–10 (2013) (stating findings on the amount of interagency coordination which results in joint regulations). See generally Abbe R. Gluck, Anne Joseph O’Connell & Rosa Po, *Unorthodox Lawmaking, Unorthodox Rulemaking*, 115 COLUM. L. REV. 1789 (2015) (discussing the complex modern lawmaking process).

266. Cf. Gersen & Vermeule, *supra* note 34, at 2234–35 (discussing the tension courts must resolve when two competing agencies interpret the same statute); Stephenson, *supra* note 248, at 1463–64 (explaining the pros and cons of “institutional redundancy” on policy outcomes).

267. Cf. *id.* (stating when multiple agencies interpret the same statute, the court will “seek to identify the agency to which it is most likely Congress would have delegated . . . authority”).

268. Cf. Lessig & Sunstein, *supra* note 187, at 98 (stating the consequences of insulating agencies from presidential influence and control).

269. See Gersen & Vermeule, *supra* note 34, at 2195–96 (suggesting that principals “delegate to enemies or potential enemies” for several reasons: “to reveal the agent’s type,” “to exploit the agent’s type,” and “to transform the agent’s type”).

270. See *infra* notes 545–49 and accompanying text.

independence where it is deemed critical to the legislative mission, or where the mission is so uncertain that its articulation would benefit from agency competition, as in the legislation charging the Army with coordinating the amorphous task of “preparing the general plan for the development of the water resources of the western United States.”²⁷¹

5. Offsetting Political Influence

Finally, statute-based coordination could mitigate the negative influence of politics on the quality of policymaking.²⁷² On the one hand, coordination legislation may lead to a reduction in democratic control.²⁷³ For instance, DeShazo and Freeman suggest that “deputizing lateral agencies [as leaders] allows Congress . . . to influence the interagency process during implementation, thereby enabling members down the road to intervene on behalf of local constituents in particular instances.”²⁷⁴ On the other hand, as Peter Shane notes, “the executive branch is most likely to respect democratic norms when there is some protection of senior policymakers from direct presidential command.”²⁷⁵

Like the legislative designation of independent agencies,²⁷⁶ statute-based coordination could reduce the problematic influ-

271. 43 U.S.C. § 1511a (1970); *see infra* notes 579–85 and accompanying text.

272. *See* DANIEL P. CARPENTER, *THE FORGING OF BUREAUCRATIC AUTONOMY: REPUTATIONS, NETWORKS, AND POLICY INNOVATIONS IN EXECUTIVE AGENCIES, 1862–1928*, at 30–33 (2001) (discussing techniques bureaucracies use to foment relative political independence).

273. *See* Lessig & Sunstein, *supra* note 187, at 98 (stating the consequences of shielding policymaking decisions from presidential control are less accountability and control, and “subject[ing] . . . institutions to the perverse incentives of factions”).

274. DeShazo & Freeman, *supra* note 18, at 2290; *see id.* (noting also that “[l]ateral agencies are attractive instruments of control because they have unique expertise that both Congress and the lead agency may lack”).

275. Peter M. Shane, *Legislative Delegation, the Unitary Executive, and the Legitimacy of the Administrative State*, 33 HARV. J.L. & PUB. POL’Y 103, 108 (2010); *see also* Rourke, *supra* note 1, at 690 (“[T]he White House often plays its action-forcing role for purely self-serving reasons.”).

276. *See supra* note 64 and accompanying text.

ence of political involvement on the quality of pluralistic policy-making,²⁷⁷ which includes presidential displacement of executive agencies in policy implementation.²⁷⁸ More specifically, legislative mandates allowing agencies to implement coordination autonomously could reduce White House interference in crucial interagency coordination at the early stages of policymaking.²⁷⁹

In addition, agencies could draw on authority to coordinate to engage in collective action to constrain the Executive. The idea of agencies checking the President is not novel,²⁸⁰ although scholars have not yet considered how agencies might interact in

277. See Thomas O. Sargentich, *The Emphasis on the Presidency in U.S. Public Law: An Essay Critiquing Presidential Administration*, 59 ADMIN. L. REV. 1, 2 (2007) (“[T]he presumption of presidential power over the agencies and the presidential mystique informing it diminish the vigor of pluralistic debate that is vital for informing governmental decisionmaking.”).

278. See Metzger & Stack, *supra* note 9, at 1245 (noting that “pressures for centralized White House control have led to the displacement of agencies’ own internal law into versions of internal law that stem from central offices within the executive branch”); Alan Morrison, *OMB Interference with Agency Rulemaking: The Wrong Way to Write a Regulation*, 99 HARV. L. REV. 1059, 1063 (1986) (discussing a presidential Executive Order, which enabled the President to curtail agency action).

279. “This process of early interagency coordination can be extremely important and valuable in compiling relevant information and in ensuring that from the very beginning, multiple and potentially diverse perspectives are taken into account.” Cass R. Sunstein, *The Office of Information and Regulatory Affairs: Myths and Realities*, 126 HARV. L. REV. 1838, 1850 (2013); see also Bar-kow, *supra* note 64, at 51 (suggesting that statutes imposing consultation requirements often require agencies to contact one another early in their decisionmaking processes); Bradley, *supra* note 9, at 752–53 (stating that agencies may influence other agencies’ policymaking and choice of priorities early in the regulatory process).

280. See, e.g., Josh Chafetz, *A Fourth Way?: Bringing Politics Back into Recess Appointments (and the Rest of the Separation of Powers, Too)*, 64 DUKE L.J. ONLINE 161, 162–63 (2015) (arguing that the level of control agency actors exercise depends on political climate); Katyal, *supra* note 34, at 2314 (proposing “a set of mechanisms that can create checks and balances within the executive branch in the foreign affairs area”); Gillian E. Metzger, *The Interdependent Relationship Between Internal and External Separation of Powers*, 59 EMORY L.J. 423, 429 (2009) (“[I]nternal separation of powers is most often equated with measures that check or constrain the Executive Branch, particularly presidential power.”); Shah, *Intra-Agency Separation*, *supra* note 122, at 113 (suggesting “that agency fragmentation is a tool for mitigating executive control”).

order to do so. Given that politics can erode legitimacy in rule-making,²⁸¹ and that increasingly authoritarian political norms²⁸² provide motivation to agencies to resist executive leadership in order to preserve their functions, agencies might use coordination statutes to insulate themselves from the President²⁸³ in order to remain more accountable to their missions.²⁸⁴

281. See, e.g., Barkow, *supra* note 64, at 15–16 (considering the problems of capture in financial regulation); Ronald J. Krotoszynski, Jr., *Cooperative Federalism, the New Formalism, and the Separation of Powers Revisited: Free Enterprise Fund and the Problem of Presidential Oversight of State Government Officers Enforcing Federal Law*, 61 DUKE L.J. 1599, 1599–1600 (2012) (suggesting that a unitary executive may undermine the constitutionality of cooperative federalism); Thomas O. McGarity, *Administrative Law as Blood Sport: Policy Erosion in a Highly Partisan Age*, 61 DUKE L.J. 1671, 1671 (2012) (arguing that “high-stakes rulemaking has become a ‘blood sport’ in which regulated industries, and occasionally beneficiary groups, are willing to spend millions of dollars to shape public opinion and influence powerful political actors to exert political pressure on agencies”).

282. See Cary Coglianese, *The Emptiness of Decisional Limits: Reconceiving Presidential Control of the Administrative State*, 69 ADMIN. L. REV. 43, 47–49 (2017) (describing actions taken by President Obama as part of “the modern trend toward an ‘administrative presidency,’” and suggesting that “early actions by President Donald Trump signal that exertions of presidential authority over administrative agencies will continue—if not even be taken to new extremes”); Kathryn A. Watts, *Controlling Presidential Control*, 114 MICH. L. REV. 683, 692–720 (2016) (illustrating how Presidents Bush and Obama exerted “significant control over the regulatory state”); Jennifer Nou, *Taming the Shallow State*, YALE J. ON REG. NOTICE & COMMENT (Feb. 28, 2017), <http://yalejreg.com/nc/taming-the-shallow-state-by-jennifer-nou> (highlighting President Trump’s hostility towards and weakening of the administrative state); Lisa Rein & Juliet Eilperin, *White House Installs Political Aides at Cabinet Agencies to be Trump’s Eyes and Ears*, WASH. POST (Mar. 19, 2017), https://washingtonpost.com/powerpost/white-house-installs-political-aides-at-cabinet-agencies-to-be-trumps-eyes-and-ears/2017/03/19/68419f0e-08da-11e7-93dc-00f9bdd74ed1_story.html (discussing President Trump’s actions to gain control and influence within agencies); Amanda Taub & Max Fisher, *As Leaks Multiply, Fears of a ‘Deep State’ in America*, N.Y. TIMES (Feb. 16, 2017), <https://nytimes.com/2017/02/16/world/americas/deep-state-leaks-trump.html> (discussing the similarities between the Trump administration and authoritarian regimes like Egypt).

283. See Datla & Revesz, *supra* note 35, at 824–25 (arguing that an agency may gain the ability to resist presidential influence from its enabling statute, rather than from classification as independent).

284. See Lisa Schultz Bressman, *Beyond Accountability: Arbitrariness and Legitimacy in the Administrative State*, 78 N.Y.U. L. REV. 461, 461 (2003) (contending “that the ‘presidential control’ model cannot legitimate agencies because the model rests on a mistaken assumption about the sufficiency of political accountability for that purpose”); Lisa Schultz Bressman & Michael P. Vandenbergh, *Inside the Administrative State: A Critical Look at the Practice of Presidential Control*, 105 MICH. L. REV. 47, 51 (2006) (“We conclude, somewhat

Relatedly, coordination statutes could empower executive agencies to jointly resist those presidential actions that increase bureaucratic drift.²⁸⁵ For instance, where a significant number of agencies are authorized to coordinate on environmental matters,²⁸⁶ like-minded agencies with an interest in conservation could find mooring in coordination statutes despite a president's anti-conservation agenda,²⁸⁷ or even if an anti-conservationist is installed as the head of one of the coordinating agencies.²⁸⁸ This

paradoxically, that agencies, though not comprising elected officials, may better promote political accountability than the White House.”); Cynthia R. Farina, *The Consent of the Governed: Against Simple Rules for a Complex World*, 72 CHI.-KENT L. REV. 987, 987–88 (1997) (speaking to “the legitimacy problem” faced by federal agencies from trends “strengthening the hand of the President”); Heidi Kitrosser, *The Accountable Executive*, 93 MINN. L. REV. 1741, 1765–71 (2009) (discussing, in part, the problems that a unitary conception of the executive branch poses for accountability); Mark Seidenfeld, *The Role of Politics in a Deliberative Model of the Administrative State*, 81 GEO. WASH. L. REV. 1397, 1397, 1416–25 (2013) (identifying the presidential control model as “the most prevalent model of political influence on agencies” and nonetheless recognizing flaws with the model that undermine the legitimacy and accountability of agencies and the administrative state as a whole).

285. Katyal, *supra* note 34, at 2318 (suggesting that unitary executive theorists have not answered the question of how institutions should be structured to encourage not only executive oversight, but to check “presidential adventurism”).

286. For examples of this legislation, see *supra* Table 1 & Table 5 and *infra* App.

287. See, e.g., Michael Greshko et al., *A Running List of How President Trump Is Changing Environmental Policy*, NAT'L GEOGRAPHIC (Jan. 9, 2019), <https://news.nationalgeographic.com/2017/03/how-trump-is-changing-science-environment/>; Oliver Milman, *Trump's Alarming Environmental Rollback: What's Been Scrapped so Far*, GUARDIAN (July 4, 2017), <https://theguardian.com/environment/2017/jul/04/trump-environmental-rollback-epa-scrap-regulations> (listing President Trump's agenda rolling back environmental regulations); Nadja Popovich & Tatiana Schlossberg, *23 Environmental Rules Rolled Back in Trump's First 100 Days*, N.Y. TIMES (May 2, 2017), <https://nytimes.com/interactive/2017/05/02/climate/environmental-rules-reversed-trump-100-days.html> (outlining President Trump's extensive rollback of environmental rules).

288. See, e.g., Coral Davenport, *Counseled by Industry, Not Staff, E.P.A. Chief Is Off to a Blazing Start*, N.Y. TIMES (July 1, 2017), <https://nytimes.com/2017/07/01/us/politics/trump-epa-chief-pruitt-regulations-climate-change.html> (“In the four months since he took office as the Environmental Protection Agency's administrator, Scott Pruitt has moved to undo, delay or otherwise block more than 30 environmental rules, a regulatory rollback larger in scope than any other.”); Brady Dennis & Juliet Eilperin, *How Scott Pruitt Turned the EPA into One of Trump's Most Powerful Tools*, WASH. POST (Dec. 31, 2017), <https://washingtonpost.com/national/health-science/under-scott-pruitt-a-year>

dynamic could bolster any of the number of agencies with core missions that are currently incompatible with the views of political leadership.²⁸⁹ Indeed, Congress might protect its interests proactively by authorizing coordination to create a safety net or pressure valve allowing an agency to draw on the assistance of other agencies for reinforcement if faced with executive pushback against its legislative mandate. This desire to inoculate an agency could drive the initial passage of coordination legislation or might be realized through progressive expansion of the authority to coordinate, as Congress sought to do by passing iterations of the Endangered Species Act.²⁹⁰

III. EFFECT ON EXECUTIVE CONTROL

The previous Parts established the paradigm of statute-based coordination and argued that it is motivated, for the most part, by Congress's desire to direct agencies to more effectively implement their legislative and related mandates. This Part theorizes that this tool of agency design alters how Congress and the President share governance of the administrative state. Put another way, this Part suggests that coordination statutes displace, in the words of Nelson Polsby, "a presidential branch of government separate and apart from the executive branch" "that

-of-tumult-and-transformation-at-epa/2017/12/26/f93d1262-e017-11e7-8679-a9728984779c_story.html (stating Scott Pruitt, President Trump's EPA Administrator, has "single-handedly reversed the agency's position"); Alex Guillén & Emily Holden, *What EPA Chief Scott Pruitt Promised—and What He's Done*, POLITICO (Nov. 19, 2017), <https://politico.com/interactives/2017/scott-pruitt-promises> (discussing how Scott Pruitt, the EPA's administrator, plans to roll-back Agency's focus on climate change); Justin Worland, *Inside Scott Pruitt's Mission to Remake the EPA*, TIME (Oct. 26, 2017), <http://time.com/4998279/company-man-in-washington/> ("Pruitt has pioneered a radically different approach to environmental protection.").

289. Cf. Massimo Calabresi, *While Trump Is Tweeting, These 3 People Are Undoing American Government as We Know It*, TIME (Oct. 26, 2017), <http://time.com/magazine/us/4998244/november-6th-2017-vol-190-no-19-u-s> (discussing President Trump's efforts to dismantle the administrative state by appointing heads that are opposed to their respective agencies' mandates); Meg Jacobs, *Trump Is Appointing People Who Hate the Agencies They Will Lead*, CNN (Dec. 12, 2016), <http://cnn.com/2016/12/10/opinions/government-is-the-problem-jacobs/index.html> (stating President Trump is picking agency leadership that is "downright hostile to the mission of the agency they are appointed to run").

290. See H.R. REP. 100-517 (1988) for an example of one of these iterations. See also *supra* notes 517–22 and accompanying text.

sits across the table from the executive branch . . . [and] imperfectly attempts to coordinate both the executive and legislative branches in its own behalf.”²⁹¹

Scholars have long sought to clarify how Congress and the President divide the power to shape agencies’ implementation of statute.²⁹² As the chief executive officer (CEO) of the executive branch, the President directs administrative activity to come extent.²⁹³ Some argue that constitutionally,²⁹⁴ to ensure agency conformity with both executive and legislative norms²⁹⁵ and for purposes of effective governance,²⁹⁶ the President is the administrator-in-chief.²⁹⁷ Others caution that presidential over-involvement in administrative activity can displace expertise²⁹⁸ or

291. Nelson W. Polsby, *Some Landmarks in Modern Presidential–Congressional Relations*, in BOTH ENDS OF THE AVENUE: THE PRESIDENCY, THE EXECUTIVE BRANCH, AND CONGRESS IN THE 1980S 1, 20 (Anthony King ed., 1983).

292. See *supra* Part I.A for a discussion of how the dynamics of administrative control are relevant to historical accounts of the allocation of power between Congress and the President.

293. See Rourke, *supra* note 1, at 687 (likening political control over the administrative to “joint custody,” in which the President “reign[s] in solitary splendor as the bureaucracy’s chief executive officer,” to whom all civil servants must defer, while Congress controls “both the extent of their power and the scope of their resources”).

294. See, e.g., Akhil Reed Amar, *Some Opinions on the Opinion Clause*, 82 VA. L. REV. 647, 652 (1996) (suggesting that the Opinion Clause and Article II “place[s] the President at the apex of three awesome pyramids of power,” including “as Chief Administrator of the Executive Bureaucracy”); Steven G. Calabresi, *Concluding Thoughts*, 12 U. PA. J. CONST. L. 651, 653 (2010) (stating that “[i]t would be impossible for the President to” ensure “that the laws be faithfully executed,” “or for that matter [it is] his oath to preserve, protect, and defend the Constitution of the United States unless the Vesting Clause of Article II gave him the executive power and made him, in effect, our Administrator-in-Chief”); Rao, *supra* note 5, at 1275 (“Article II requires the President serve as the Administrator in Chief, in control of execution of the laws and with directive authority over his subordinates.”). See generally Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 YALE L.J. 1836 (2015) (suggesting that the constitutional principles direct the President to supervise agencies).

295. “It is the internal structures that order collective action with the agency—whether in a hierarchical or decentralized fashion . . . that provide the systems through which agencies incorporate and heed, or neglect, external administrative law [which includes legislative and judicial mandates].” Metzger & Stack, *supra* note 9, at 1264.

296. Rourke, *supra* note 1, at 689–90 (suggesting that the President spurs administrative agencies to action).

297. See *supra* note 5 and accompanying text.

298. See Sidney A. Shapiro, *Political Oversight and the Deterioration of Regulatory Policy*, 46 ADMIN. L. REV. 1, 1, 24 (1994) (suggesting that “[i]f political

even steer an agency away from its legislative mandate.²⁹⁹ Likewise, some scholars suggest that the President is not able to supervise broad swathes of regulatory activity³⁰⁰ and that Congress does not intend for the President to do so in any case.³⁰¹ In contrast, others critique the “*legislative* micro-management of the decisions and actions of executive agencies.”³⁰² A general

oversight is a good thing, then it is possible to have too much of a good thing,” and that presidential oversight has led to “micromanagement techniques that have reduced the collective gains available from relying on agency expertise and experience”).

299. See Thomas O. McGarity, *Presidential Control of Regulatory Agency Decisionmaking*, 36 AM. U. L. REV. 443, 454 (1987) (“The President . . . may not always be enthusiastic about his constitutional duty, and he may use whatever influence he has over the regulatory process to steer an agency away from its congressional mandate.”); Peter L. Strauss, *Presidential Rulemaking*, 72 CHL-KENT L. REV. 965, 984–86 (1997) (cautioning that the legitimacy of agencies is preserved when the President is restrained in exerting his executive power over administrative agencies); *id.* at 986 (“[The President may wield power only] within the constraints of law that Congress has established. No more than he could assign to the Secretary of the Interior responsibilities Congress had placed in the hands of the Secretary of Agriculture but he thought could be more capably met on F Street, can he depart from Congress’s other assignments of responsibility.”).

300. See Kagan, *supra* note 12, at 2250 (arguing a broad system of presidential “administrative control raises serious legal questions”); see also STEPHEN BREYER, MAKING OUR DEMOCRACY WORK 110 (2010) (“[T]he president may not have the time or willingness to review [bureaucratic] decisions.”); RICHARD P. NATHAN, THE ADMINISTRATIVE PRESIDENCY 1–2 (1983) (discussing the historical limits of the President’s executive authority); Cynthia R. Farina, *False Comfort and Impossible Promises: Uncertainty, Information Overload, and the Unitary Executive*, 12 U. PA. J. CONST. L. 357, 412 (2010) (“It is costly for Presidents and their advisers to monitor the mass of agencies’ policymaking activities, to develop positions on the often complex underlying substantive issues, to communicate those positions to the people formally empowered to decide, and to actually get a decision implementing the President’s policy.”).

301. See, e.g., Jerry L. Mashaw, *Recovering American Administrative Law: Federalist Foundations, 1787–1801*, 115 YALE L.J. 1256, 1301 (2006) [hereinafter Mashaw, *Recovering*] (noting that Congress presumes the President’s sub-delegation authority because it cannot expect the President to carry out personally every grant of authority); see also Andrew Coan & Nicholas Bullard, *Judicial Capacity and Executive Power*, 102 VA. L. REV. 765, 787 (2016) (“[R]equiring complete presidential control over the bureaucracy would make Congress less enthusiastic about delegating power, which in turn would slow the growth of the administrative state.”); Jerry L. Mashaw & Avi Perry, *Administrative Statutory Interpretation in the Antebellum Republic*, 2009 MICH. ST. L. REV. 7, 28 (2009) (discussing how Congress did not expect the President to “oversee the various and sundry details of the growing administrative state”).

302. Rourke, *supra* note 1, at 689 (emphasis added) (referencing this general critique).

takeaway from these disputes is that while Congress is in charge of administrative design on an agency-by-agency and component-by-component basis,³⁰³ the President's purview is less precise and concerned with orienting her branch more generally towards her priorities.

This Part suggests that coordination legislation has the potential to impact the salience of executive authority and branch unification, because it empowers agencies to effectuate transboundary relationships without transparent and consistent input from the President. As this Article has noted throughout, interagency coordination is often initiated by the Executive to direct agencies to make policy consistent with her broader agenda. This Part argues that by incentivizing agencies to interact autonomously, in ways that privilege legislative concerns over executive interests, coordination that is initiated by legislation may alter the supervisory relationship between the Executive and executive agencies.

This Part begins by suggesting that administrative networks created by Congress impact our expectations of a hierarchical and unilateral relationship between the President and each executive agency. The piecemeal, vertical interagency relationships mandated by coordination statutes allow executive agencies to control one another outside of the usual executive hierarchy, which would otherwise place the President on top. This, in turn, challenges the assumption of a unique chain of command from the White House to bureaucrats and could interfere with the President's capacity to properly manage the outcomes of interagency coordination. Under a more unitarian conception of presidential power,³⁰⁴ statute-based coordination networks have the potential to infringe on the President's power under Article II of the Constitution. Ultimately, this Part does not take the stance that this legislation necessarily violates the separation of powers, although unitary executive theorists might disagree. Rather, this Part asserts that coordination legislation infuses agencies with additional autonomy and increases the insulation of executive agencies, which may have a functional impact on the President's ability to lead her branch.

This Part then theorizes that executive agencies that coordinate on the basis of statute, be it vertically or horizontally, share some qualities with independent regulatory commissions

303. See *supra* notes 6–7 and accompanying text.

304. See *supra* note 36.

that insulate them from the President. Just as Lisa Bressman and Robert Thompson have identified the existence of mechanisms that make independent agencies increasingly responsive to presidential preferences,³⁰⁵ the authority to coordinate may render executive agencies decreasingly responsive to executive influence. This Part concludes by offering suggestions for proactive steps the President could take to establish greater control over statute-based coordination, including via mechanisms in a handful of statutes that offer avenues for presidential involvement in coordination and, perhaps more consistently, through ex post implementation of the Executive's own tools of administrative oversight. Ultimately, this Part suggests, if Congress allots a clear role for the Executive in statute-based coordination, this will reduce her incentives to overstep and thus reduce the benefits of agency autonomy in statute-based coordination, while improving the exercise of Article II.

A. UNSETTLING PRESIDENTIAL ADMINISTRATION

Congress has a wide degree of authority to structure government as it sees fit and may choose to do so on the basis of several competing values.³⁰⁶ However, the President's mandate to take care that the laws are faithfully executed creates a hierarchical executive structure and an oversight function that Congress may not wholly excise.³⁰⁷ As noted by the judiciary regarding coordination under the Endangered Species Act³⁰⁸ "the President has the constitutional authority to 'supervise and guide' Executive Branch officials in 'their construction of the statutes under which they act.'"³⁰⁹

305. See Bressman & Thompson, *supra* note 50, at 600.

306. See Lessig & Sunstein, *supra* note 187, at 8–9; Yoo, *supra* note 4, at 1953; see also Calabresi & Rhodes, *supra* note 4, at 1168–71; Mashaw, *Recovering*, *supra* note 301, at 1271; Jerry L. Mashaw, *Reluctant Nationalists: Federal Administration and Administrative Law in the Republican Era, 1801–1830*, 116 YALE L.J. 1636, 1657 (2007) [hereinafter Mashaw, *Reluctant*]; Peter L. Strauss, *The Place of Agencies in Government: Separation of Powers and the Fourth Branch*, 84 COLUM. L. REV. 573, 583–648 (1984).

307. See *supra* notes 293–98 and accompanying text (describing theories of executive structure and congressional oversight).

308. See *infra* notes 517–21 and accompanying text.

309. *Portland Audubon Soc'y v. Endangered Species Comm.*, 984 F.2d 1534, 1546 (9th Cir. 1993) (quoting *Myers v. United States*, 272 U.S. 52, 135 (1926)).

There are many political leaders and scholars who recognize³¹⁰ or even favor³¹¹ a strong executive hierarchy. But even those less enthusiastic about centralized executive power note that the Constitution “recognizes the President’s right to consult with those who exercise the legal authority Congress delegates in establishing government agencies.”³¹² It may be safely said that there are some, albeit disputed, limits to Congress’s power to obstruct the President’s supervision of her subordinates.³¹³

On the one hand, if coordination statutes increase the reach and jurisdiction of agencies whose priorities are aligned with the legislature’s, this may encourage policymaking that is more mindful of and responsive to Congress.³¹⁴ On the other hand, the legislative empowerment of agencies in this manner could interfere with the President’s power to direct administrative activity on a larger scale. Coordination statutes even have the potential to serve as a Trojan horse for Congress to actively reduce the President’s capacity to oversee interagency relationships in particularly contentious regulatory areas, although additional evidence would be required to determine whether Congress in fact uses them in this way.

Statutes authorizing coordination are similar to other enabling legislation in that the delegated responsibility is assigned

310. See Farber & O’Connell, *supra* note 6, at 1417–19 (suggesting that “the president and agency leaders often embrace [hierarchical] designs” and that “[m]any hierarchical relationships give power to the president”).

311. Kagan, *supra* note 12, at 2251 (defending the practice of presidential directives to agencies); Mashaw, *Reluctant*, *supra* note 306, at 1657 (implying that “any system of administrative implementation under the American Constitution [is] subject . . . to three forms of control: political control by elected officials; administrative control through hierarchal supervision; and legal control through judicial review”).

312. Strauss, *supra* note 8, at 717; *see id.* at 704–05 (arguing that Presidents lawfully exercise supervision, but not decisional authority over agencies); Yoo, *supra* note 4, at 1953; *see also* Lessig & Sunstein, *supra* note 187, at 8 (comparing “executive” functions to “administrative” functions and suggesting that the President has power over the former but not the latter); Mashaw, *Recovering*, *supra* note 301, at 1271 (“The Constitution’s silence on most matters administrative provides extremely modest textual support for the notion that all administration was to be firmly and exclusively in the control of the President.”).

313. See Calabresi & Rhodes, *supra* note 4, at 1165–71; Lessig & Sunstein, *supra* note 187, at 10; *see also* Kagan, *supra* note 12, at 2251 (arguing that when Congress has not acted expressly to restrict the President’s ability to direct an agency decision, regulatory statutes should be interpreted to permit the President to do so).

314. See *supra* Part II (describing benefits of coordination).

to an agency without mention of the President. The difference here is that agency leadership is given the authority to interact with and in many cases to lead or influence other agencies without the President's permission, as opposed to the more commonly recognized opportunity simply to delegate within her own agency.³¹⁵ As an initial matter, the President may not be aware of the implementation of statute-based coordination. In addition, the assignment of coordination authority to a lead agency beholden to Congress may limit the President's capacity both to manage coordination efficiently, thus hindering her ability to direct cross-cutting administration, and to draw on the mechanism of interagency coordination for her own purposes.

In general, the legislative delineation of a hierarchical relationship among previously horizontally-situated agencies may create opacity in lines of executive accountability. Where previously, an agency may have reported directly to the President on matters of broader executive policy, that agency may now be directed to report instead to another agency designated by Congress, and this too, in response to legislative (as opposed to executive) priorities. The President might sustain a connection to the dominant agency in the coordination network,³¹⁶ but awareness of and control over interagency interactions between or among agencies within the network may be reduced. Alternatively, the President could maintain separate lines of accountability to each coordinating agency in a statute-based network, but once again have a limited understanding of the coordination between or among these agencies, and reduced control over the outcomes of those interactions.³¹⁷ Possible exceptions to this include the relatively uncommon occurrence of a legislatively-designated role for the President in the coordination effort,³¹⁸ or instances when

315. See generally Nou, *Intra-Agency Coordination*, *supra* note 170 (discussing the role of agency heads within an agency); Nou, *Subdelegating*, *supra* note 171 (discussing delegation of authority with an agency).

316. Cf. Verkuil, *supra* note 132, at 265–66 (arguing that “centralizing power in the office of the Chair” is a way to make independent agencies into “single-headed agencies” that answer more to the President).

317. Cf. *infra* note 363 and accompanying text (discussing the typical independent agency structure and the buffer it creates between the president and the agency).

318. See *infra* Part III.C.1 (discussing coordination legislation).

the President's attention is commanded by interagency conflict.³¹⁹ Furthermore, to the extent some delegations of coordination authority are, in fact, dysfunctional, interagency conflicts may also pose a challenge to presidential administration by destabilizing the President's highly visible role as the government's CEO.³²⁰

Finally, coordination legislation could violate the Constitution. Its potential to do so rests on whether Article II empowers the Executive to co-opt the authority of agency heads in order to direct the implementation of legislation. On the one hand, scholars such as Justice Kagan, Henry Monaghan, and Saikrishna Prakash suggest that presidents have clear directive power over executive agency leaders even in those instances where it is the agency heads themselves, and not the Executive, that have been assigned by Congress to administer the statute.³²¹ On the other hand, Richard Pildes, Cass Sunstein, Kevin Stack, and Peter Strauss argue that the president may direct the implementation of legislation in lieu of an agency head only when Congress expressly confers the opportunity.³²²

319. See *infra* Part III.C.3 (discussing presidential oversight and agency coordination).

320. See *supra* note 4 and accompanying text (discussing the settled role of the president as analogous to a chief executive officer).

321. See Kagan, *supra* note 12, at 2326–28 (arguing that delegations to agency heads who are removable by the President at will should be interpreted as reflecting an intent to give the President directive authority because “when Congress delegates to an executive official, it in some necessary and obvious sense also delegates to the President”); Monaghan, *supra* note 5, at 57 (arguing that the president has broad “managerial” power to fill in the details of statutes when those details are an incident of normal public administration, even absent supporting statutory authority); Prakash, *supra* note 5, at 991–92 (suggesting that the Framers established that “even if a statute grants discretion to the Secretary of State and explicitly prohibits presidential intervention in the decisionmaking process, the President retains the constitutional authority to substitute his own judgment for the Secretary’s determination”); see also Robert Percival, *Presidential Management of the Administrative State: The Not-So-Unitary Executive*, 51 DUKE L.J. 963, 1011 (2001) (suggesting that every regulatory review program established by Presidents since Nixon has been rooted in the president’s advisory and consultative role in supervising rulemaking by agencies).

322. See, e.g., Pildes & Sunstein, *supra* note 44, at 25 (“[T]he President has no authority to make the decision himself, at least if Congress has conferred the relevant authority on an agency head.”); Thomas O. Sargentich, *The Administrative Process in Crisis: The Example of Presidential Oversight of Agency Rulemaking*, 6 ADMIN L.J. AM. U. 710, 716 (1993) (“[T]he power to regulate remains where the statute places it: the agency head ultimately is to decide what to do.”);

Under a more unitary model of the executive branch, a substantial reduction in the President's ability to direct interagency relationships as a result of coordination legislation could inhibit the President's full expression of Article II and may even violate this constitutional provision. To the extent the President does not have the power to displace agency heads' authority to form statute-based interagency relationships, however, coordination statutes simply allow Congress to wield more nuanced powers of administrative management than are generally associated with its other, more attenuated tools of design and oversight³²³ without running afoul of the Constitution. Nonetheless, regardless of the limited possibility of constitutional violation, coordination legislation alters intra-executive branch dynamics—not only among agencies themselves,³²⁴ but also between the President and the rest of her branch. In other words, even if coordination statutes do not reach the bar of interference with the constitutional separation of powers, they may nonetheless undermine the President's role as a functional matter.

Kevin M. Stack, *The President's Statutory Powers to Administer the Laws*, 106 COLUM. L. REV. 263, 267, 284 (2006) (arguing that the president has directive authority only when Congress expressly confers that power, in part because the legislature would not delegate directly to the President if it was assumed she had power otherwise); Strauss, *supra* note 306, at 649–50 (explaining that “the agencies to which rulemaking is assigned,” rather than the President, possess “ultimate decisional authority”); Strauss, *supra* note 8, at 697–759 (arguing that statutes generally imply less, rather than more, presidential involvement in legislative implementation—in other words, “if [statutory] text chooses between President as overseer of the resulting assemblage, and President as necessarily entitled ‘decider,’ the implicit message is that of oversight, not decision”); Strauss, *supra* note 299, at 984 (“[T]he President is simply in error and deserves the democracy he leads when he behaves as if rulemakings were his rulemakings. The delegations of authority that permit rulemaking are ordinarily made to others, not him—to agency heads whose limited field of action and embeddedness in a multi-voiced framework of legislature, President, and court are the very tokens of their acceptability in a culture of law.”); *see also* Monaghan, *supra* note 5, at 59 (suggesting a limiting principle to broad presidential power by noting that executive initiatives must be based in statute).

323. *See Metzger & Stack, supra* note 9, at 1263 (noting that Congress's “important levers of agency control” consist of the ability to “subject[] agencies to procedural and substantive requirements, like the APA, that courts enforce,” and to “conduct[] investigations and oversight, and further constrain[] agencies through exercise of the appropriations power”); *supra* notes 6–7 and accompanying text.

324. *Supra* Part I.B (discussing coordination legislation and interagency control).

B. INSULATING AGENCY INTERACTIONS

The previous Section suggested that the statutory creation of autonomous interagency coordination disadvantages presidential administration. The instant Section theorizes that statute-based interagency coordination infuses executive agencies with independence in another way. More specifically, dynamics associated with the characteristics of independent agencies that promote insulation from the President—such as for-cause removal restrictions, leadership by multi-member commissions and others—are also associated with networks of agencies created by coordination legislation. For this reason, coordination statutes offer executive agencies an additional degree of independence from the Executive.

Indeed, only seven statutes, total, authorize specific independent agencies to coordinate;³²⁵ the rest are aimed at particular executive agencies. Since a significant majority of the interagency coordination regimes analyzed for this project designate executive (rather than independent) agencies as the lead, this Section's assertion that interagency coordination renders agencies more independent and offers them insulation from the President is that much more challenging to general assumptions about executive hierarchy.

More specifically, this Section adds to the list of "indicia of independence" among executive agencies³²⁶ by arguing that vertical networks of coordinating agencies are like independent regulatory commissions (IRCs) in ways that increase executive agencies' insulation from the President.³²⁷ This hypothesis de-

325. An Act to Provide Revenue to Regulate Commerce with Foreign Countries, to Encourage the Industries of the United States, to Protect American Labor, and for Other Purposes, *infra* notes 393–95, 501–604 (authorizing the International Trade Commission to coordinate); Consumer Product Safety Act, *infra* note 556 (authorizing the Consumer Product Safety Commission to coordinate); Domestic Volunteer Service Act of 1973, *infra* note 561 (authorizing the Corporation for National and Community Service to coordinate); Marine Mammal Protection Act, *infra* note 523 (authorizing the Marine Mammal Commission to coordinate); Market Reform Act of 1990, *infra* note 490 (authorizing the Securities and Exchange Commission to coordinate); National Aeronautics and Space Act of 1958, *infra* note 589 (authorizing NASA to coordinate); America COMPETES Act, *infra* note 562 (also authorizing NASA to coordinate).

326. See *supra* note 35 and accompanying text.

327. KENNETH CULP DAVIS & RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE § 2.5, at 46 (3d ed. 1994) (defining independent agencies as those that are "insulated from presidential control in one or more ways"); Kagan, *supra*

stabilizes the assumption of a strong presidential hierarchy particularly because the overwhelming majority of coordination legislation directs relationships among executive agencies, rather than IRCs.³²⁸

Executive agencies are fundamentally part of the executive hierarchy, even though they are animated by Congress. More specifically, they are tied to their branch's structure and priorities, and generally hew to White House priorities in their enforcement of the law. In contrast, independent agencies may more easily avoid presidential supervision or direction,³²⁹ are more clearly beholden "to the Congress rather than solely to the Executive,"³³⁰ and tend to be more closely aligned with the legislature³³¹ or driven by a set of unique motivations that can be

note 12, at 2274 (suggesting that agency independence poses "a particularly stark challenge to the aspiration of Presidents to control administration"); Geoffrey P. Miller, *Introduction: The Debate over Independent Agencies in Light of Empirical Evidence*, 1988 DUKE L.J. 215, 218–19 (1988) (concluding that independent agencies are independent of presidential power).

328. See *supra* notes 121–22 and accompanying text (discussing the few examples of coordination legislation for independent agencies).

329. See *PHH Corp. v. CFPB*, 839 F.3d 1, 13 (D.C. Cir. 2016) (discussing how the heads of independent agencies are "neither supervised nor directed by the President").

330. See *LANDIS*, *supra* note 60, at 34 ("The policies that [independent agencies] are supposed to pursue are those that have been delineated by the Congress not by the Executive. Departure from these policies or the failure to make them effective or their subordination of legislative goals to the directions of the Executive is thus a matter of necessary legislative concern.").

331. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 523 (2009) ("The independent agencies are sheltered not from politics but from the President, and it has often been observed that their freedom from Presidential oversight (and protection) has simply been replaced by increased subservience to congressional direction."); Barkow, *supra* note 64, at 37–38 (noting that a single head may be more susceptible to presidential influence, especially when the President has the power to demote the chair and appoint a new one); see also Brown & Candeub, *supra* note 132, at 809 (stating that congressional concerns dominate independent agencies); Calabresi & Prakash, *supra* note 5, at 582–83 (arguing that without presidential control, independent agencies are subject only to congressional oversight).

distinguished from those of the President.³³² For this reason, independent agencies may “protect[] against bureaucratic drift.”³³³

However, executive agencies may also exhibit characteristics of independence,³³⁴ including by reducing the potential for drift.³³⁵ On the one hand, as Peter Strauss notes, “[a]ll agencies, whether denominated executive or independent, have relationships with the President.”³³⁶ On the other hand, Congress has long given all agencies the power to act on the basis of expertise, rather than in response to political interests.³³⁷ Generally speaking, independent agencies are structured for precisely this purpose.³³⁸ However, cabinet agencies may have a measure of

332. *Ameron, Inc. v. U.S. Army Corps of Eng'rs*, 787 F.2d 875, 886 (3d Cir. 1986) (“[The] headless ‘fourth branch’ of government consist[s] of independent agencies having significant duties in both the legislative and executive branches but residing not entirely within either.”); *U.S. ex rel. Brookfield Constr. Co. v. Stewart*, 234 F. Supp. 94, 99 (D.D.C. 1964) (“[M]any regulatory commissions fulfill in part a legislative function and in part carry out executive duties.” (citing *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935))).

333. Meazell, *supra* note 64, at 1779; *see also* Barkow, *supra* note 64, at 24 (“A related goal of agency independence is to insulate the agency from future political changes in either Congress or the presidency. This can be done either to cement in place current congressional policy preferences or to allow the agency to make an initial policy decision that is not subject to wide fluctuations over time.”); Bressman & Thompson, *supra* note 50, at 613–14 (discussing how independent agencies prevent short-term political interests from dominating); Gersen, *supra* note 6, at 347–48 (describing the risk of drift as a justification for insulation).

334. *City of Arlington v. FCC*, 569 U.S. 290, 313 (2013) (Roberts, C. J., dissenting) (“Although the Constitution empowers the President to keep federal officers accountable, administrative agencies enjoy in practice a significant degree of independence.”); Datla & Revesz, *supra* note 35, at 828 (suggesting that “indicia of independence” in executive agencies “can have weighty implications for the relationship between an agency and the President,” and serve to constrain presidential authority); Strauss, *supra* note 306, at 585 (“Despite the attention often given asserted differences between single, politically responsible administrators and multimember independent commissions, these organizations are more similar than different below the highest levels.”).

335. *See supra* note 285 and accompanying text.

336. Strauss, *supra* note 306, at 583 (suggesting that all agencies are “subject to presidential direction in significant aspects of their functioning” and all can “resist presidential direction in others”); *see also* Datla & Revesz, *supra* note 35, at 825.

337. Bressman & Thompson, *supra* note 50, at 613–14.

338. Strauss, *supra* note 306, at 583.

insulation from the President as well.³³⁹ For instance, the legislature allows administrative law judges in both independent³⁴⁰ and executive³⁴¹ agencies to adjudicate cases related to their core mandates in lieu of Article III courts, and protects these judges from executive influence, to some extent. And while news accounts decry the President's overly-political influence on the heads of certain executive agencies,³⁴² Adrian Vermeule has

339. Datla & Revesz, *supra* note 35, at 796 ("It is not clear how much more insulation from presidential control results from a multimember agency as opposed to a single-headed agency."); see A. Michael Froomkin, *In Defense of Administrative Agency Autonomy*, 96 YALE L.J. 787, 789 (1987) ("[T]he Constitution permits Congress to create executive agencies with substantial autonomy, regardless of whether they are called independent.").

340. *Humphrey's Ex'r v. United States*, 295 U.S. 602, 629 (1935) (defining independent agencies as those which performed quasi-judicial or quasi-legislative functions because unfettered executive control over these agencies would violate the separation of powers); THE FEDERALIST NO. 47, at 324 (James Madison) (Jacob E. Cooke ed. 1961); Frederick R. Anderson, *Revisiting the Constitutional Status of the Administrative Agencies*, 36 AM. U. L. REV. 277, 278 (1987) ("Legislative and judicial functions—dubbed 'quasi' perhaps to assuage our lingering constitutional guilt—have been steadily transferred to administrative agencies for a century . . . Delegation is the broad channel through which increasing power has flowed to what many feel is a *de facto* fourth branch. How delegation is exercised determines the ability of Congress or the executive to wield power in the constitutional scheme."); Peter B. McCutchen, *Mistakes, Precedent, and the Rise of the Administrative State: Toward A Constitutional Theory of the Second Best*, 80 CORNELL L. REV. 1, 2 (1994) (recognizing the judicial role of agencies generally).

341. See *Crowell v. Benson*, 285 U.S. 22, 54 (1932) (concretizing the transition of judicial functions to the executive branch); Richard H. Fallon, Jr., *Of Legislative Courts, Administrative Agencies, and Article III*, 101 HARV. L. REV. 915, 923 (1988) (discussing the entrenchment of the judicial role of administrative agencies); Thomas W. Merrill, *Article III, Agency Adjudication, and the Origins of the Appellate Review Model of Administrative Law*, 111 COLUM. L. REV. 939, 943 (2011) (noting that the Supreme Court decision that is most often credited with the rise of the current scheme of administrative adjudication, then appellate review, is *Crowell v. Benson* [285 U.S. 22 (1932)]); Caleb Nelson, *Adjudication in the Political Branches*, 107 COLUM. L. REV. 559, 602–03 (2007) (discussing the expansion of non-judicial adjudication).

342. See Rourke, *supra* note 1, at 691 (discussing the FBI's reduced autonomy from the President); Master, *supra* note 37 ("[T]he Department of Justice answers to the president, but . . . [i]t has to maintain a sense of independence from the political forces . . . in the executive branch."); Serwer, *supra* note 37 (discussing the FBI director's attempts to maintain a level of independence from the President); *Transcript: Jeff Sessions's Prepared Remarks at His Attorney General Hearing*, *supra* note 37 ("The office of the attorney general of the United States is not a political position, and [the attorney general] . . . must be committed to following the law. He or she must be willing to tell the president no if he

noted that executive agencies' relative independence may be preserved by conventions that limit the impact of politics on administrative judgment.³⁴³

Interagency interactions also afford agencies some measure of autonomy, particularly when initiated by an entity other than the President. Even within the context of *presidential* efforts to influence agencies by fostering coordination,³⁴⁴ shared responsibilities intensify "the goals of insulation."³⁴⁵ For instance, while Keith Bradley argues that interagency interactions constitute a mechanism for presidential control of agencies,³⁴⁶ he does so in order to challenge the prevalent idea that shared administrative responsibilities "dissipate presidential authority."³⁴⁷ Agency-initiated coordination more easily allows for some independence from presidential interference³⁴⁸ and for increases in joint administrative capacity outside the President's sightline.³⁴⁹ Coordination may even be used by agencies to alter their own jurisdiction, although this is arguably constitutional only when supported by legislation.³⁵⁰ For these reasons, "Congress may

overreaches. He or she cannot be a mere rubber stamp to any idea the president has.").

343. Vermeule, *supra* note 35, at 1166–67 (noting that "[a]gencies that lack for-cause tenure yet enjoy operative independence are protected by unwritten conventions that constrain political actors" from attempting to remove their members or to direct their exercise of discretion).

344. *See supra* Part I.A (discussing presidential efforts to influence agencies).

345. Barkow, *supra* note 64, at 49–55.

346. Bradley, *supra* note 9, at 745.

347. *Id.* at 794.

348. *Cf. Nou, supra* note 35, at 1765–66 (describing how agency insulation can thwart the President's efforts to exercise control).

349. Renan, *supra* note 40, at 211 (discussing how agencies can pool their resources to create "joint structures capable of ends that no single agency could otherwise achieve"); *see* Marisam, *Interagency Administration, supra* note 40, at 186 (discussing agency-initiated coordination). *See generally* Biber, *supra* note 42 (proposing further research into the benefits of coordination); Freeman & Farber, *supra* note 207 (discussing benefits of agency coordination in the environmental regulation context); Freeman & Rossi, *Agency Coordination, supra* note 9 (describing modes of agency-initiated coordination and its effects on the role of the President).

350. *See generally* Shah, *Interagency Transfers, supra* note 9 (discussing how agencies autonomously alter their own jurisdiction by transferring authority to adjudicate administrative cases, and arguing this is constitutional only if based in legislation authorizing interagency coordination).

prefer to inject multiple agencies into the decision-making process to limit presidential control.”³⁵¹ It is noteworthy that Congress has not specified a role for Executive oversight in most coordination legislation involving multiple, diverse agencies. One such example includes several agencies with drastically different goals for their shared control over Arctic initiatives.³⁵² Perhaps, Congress excluded a role for the President in this case to retain more direct control over that area’s immense land mass and resources.

Agency interactions, particularly those resulting from coordination statutes, also share independence-enhancing qualities typically associated with IRCs. One such characteristic is structure. Independent agencies are headed predominantly by commissions, whereas executive agencies are led by individual, political appointees. Coordination legislation, however, creates “commissions” of individual executive agencies, thus compelling the heads of those agencies to negotiate shared activity like a multi-member board. Indeed, every single example analyzed in this Article abides by this structure. And as it does for IRCs,³⁵³ structural separation effected by coordination legislation may offer the resulting networks of agencies a form of independence.

It is commonly recognized that independent agencies’ insulation from the White House stems from the protection of principal officers from removal by the President at will.³⁵⁴ In part as a

351. Barkow, *supra* note 64, at 52 (suggesting that Congress does this in particular to dilute the President’s power over executive agencies).

352. See *infra* notes 496–500 and accompanying text (discussing the challenges with coordination between the Departments of Defense and Homeland Security, the National Oceanic and Atmospheric Administration, and the Environmental Protection Agency, as interests such as national security, scientific research and environmental protection must be balanced).

353. The structural separation of an agency from the President helps to define it as independent. Datla & Revesz, *supra* note 35, at 824 (arguing that an agency’s relative level of independence is based on both structural insulating features as well as functional realities and that such placement need not be static); Vermeule, *supra* note 35, at 1165–66 (arguing that that for-cause removal protection is not an indispensable element of independent agencies or of operational independence in any agency); see also *Wiener v. United States*, 357 U.S. 349, 355–56 (1958) (finding implied for-cause removal protection for members of the War Claims commission because of the nature of the Commission and its structural separation from executive agencies).

354. *Morrison v. Olson*, 487 U.S. 654, 689 (1988) (determining that independent agencies no longer require a quasi-judicial or quasi-legislative function, but are agencies to which Congress may grant for-cause removal protection without interfering with the Take Care clause); see also Gersen, *supra* note 6,

result of this protection,³⁵⁵ independent agencies are able to engage in autonomous or agnostic decisionmaking.³⁵⁶ Also as a result of removal protection, independent agencies may be more likely to further policymaking that takes legislative interests into account.³⁵⁷ For these reasons, the appointment of a chair, particularly one from the President's own political party, provides the Executive with her primary mechanism of control over an independent agency.³⁵⁸ This understanding implies that if a chair is appointed by a previous administration, or is appointed by the sitting president under significant pressure from Senate or congressional lobbyists, or for any other reason is appointed outside of the President's purview (for example, if the chair could

at 347 ("Independence is a legal term of art in public law, referring to agencies headed by officials that the President may not remove without cause. Such agencies are, by definition, independent agencies; all other agencies are not."); Kagan, *supra* note 12, at 2376 (defining the President's removal power as "the core legal difference" between independent and executive agencies); John O. McGinnis, *Presidential Review as Constitutional Restoration*, 51 DUKE L.J. 901, 953–54 (2001) (defining independent agencies as "agencies whose heads do not serve at the pleasure of the president").

355. See BERNARD SCHWARTZ, ADMINISTRATIVE LAW § 1.10, at 20 (3d ed. 1991) (noting that "[t]he key to independence is security of tenure"); see also Pildes & Sunstein, *supra* note 44, at 28–33 (discussing how to interpret for-cause removal provisions to allow inclusion of independent agencies within regulatory review).

356. Marshall J. Breger & Gary J. Edles, *Established by Practice: The Theory and Operation of Independent Federal Agencies*, 52 ADMIN. L. REV. 1111, 1135–36 (2000) (noting that as a result of insulation from presidential control agencies may make decisions that are bi-partisan, non-partisan, ruled by experts, or free from executive influence).

357. See *id.* at 1136 n.126.

358. Daniel A. Crane, *Debunking Humphrey's Executor*, 83 GEO. WASH. L. REV. 1835, 1848–50 (2015) ("The formal power to fire may be structurally less important to controlling an agency or department than other mechanisms, such as the power to appoint members or the chair, budgetary control, or even less formal mechanisms like ex parte contacts."); Devins & Lewis, *supra* note 64, at 469–77 (showing empirically that the President exercises weak control over independent agencies through appointment of members, at least until a majority of commissioners are appointed from the President's own party); Strauss, *supra* note 306, at 587–91 (suggesting that the President influences agencies through appointment of members and chairs and through assistance with budgetary negotiations); Paul R. Verkuil, *Jawboning Administrative Agencies: Ex Parte Contacts by the White House*, 80 COLUM. L. REV. 943, 943–44 (1980) (describing President's power to influence administrative agencies through informal contacts); see Barkow, *supra* note 64, at 17 (discussing ways other than removal limitations to achieve agency insulation from "interest groups and partisan pressure"). See generally *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010) (discussing presidential appointment power).

feasibly, albeit unconstitutionally, be appointed by another branch of the government), the board's decisionmaking or policymaking processes would be more insulated from presidential influence.

In the case of statute-based coordination, there is often one, named agency designated to initiate coordination and lead the resulting network of agencies. However, that agency has not been chosen by the President to spearhead the coordination process. Rather, the agency draws its power to lead from the congressional designation of its post. Moreover, the lead agency cannot be "removed" easily by the President from its post as the head of a network of coordinating agencies, since it was "appointed" to this post by statute.³⁵⁹ By analogy to the chair of an independent agency, the lead agency and those of its actions compelled by coordination legislation are similarly distanced from the President.

In addition, while the conventional distinction between executive and independent agencies lies in for-cause removal protection for principal officers of the latter,³⁶⁰ other criteria also help constitute an independent agency.³⁶¹ According to Justice Kagan, multi-member leadership shared by those with diverse viewpoints is also part of what serves to insulate independent agencies from the Executive.³⁶² More specifically, if the board of an independent agency includes members with differing political and ideological perspectives, the President does not have a clear point of entry to influence their decisionmaking.³⁶³ The diverse multi-member structure enacted by some coordination statutes may similarly serve to insulate networks of coordinating agencies from upper-level executive oversight.

359. Cf. Vermeule, *supra* note 35, at 1194–1203 (arguing that agencies with semi-independent leadership have norms that diffuse the power political actors have to remove their leaders).

360. See *supra* note 354 and accompanying text (discussing for-cause removal as the distinguishing feature of independent agencies).

361. Breger & Edles, *supra* note 356, at 1135; see Datla & Revesz, *supra* note 35, at 826–27 (arguing that several structural features of independent agencies are often present in executive agencies as well).

362. See Kagan, *supra* note 12, at 2376–77 (arguing that independent agencies' "organizational structure featuring multiple agency heads of diverse parties serving staggered terms" increases "the gap between the agency and the President").

363. See *id.*

For instance, legislation requiring the Departments of Homeland Security, Defense, Transportation, State, and the Interior, as well as NASA, National Oceanic and Atmospheric Administration, EPA, National Science Foundation, and Arctic Research Commission to all work together to coordinate control of the Arctic is a paradigmatic example of a coordination structure that is likely to insulate agency decisionmaking from upper-level influence³⁶⁴ without proactive presidential efforts to regain control.³⁶⁵ In another example, under the Indian Financing Act, combined efforts by diverse agencies including the Department of the Interior, the Small Business Administration, and the Corporation for National and Community Service to improve the condition of reservations may similarly limit presidential influence and instead offer Congress greater purchase over implementation of this Act,³⁶⁶ in keeping with its longstanding interest in Indian affairs.

Coordinating agencies also engage in a dynamic that is, loosely-speaking, similar to relationships between the chairperson and other board members of an IRC. While substantive authority is generally assigned to any commission as a whole and not only to the chairperson,³⁶⁷ the chairperson may have, or is at least be perceived to have, more influence over the decisionmaking process than other members of the board.³⁶⁸ For example, while the statute governing the Federal Communications Commission “unambiguously assigns key administrative responsibilities to the agency as a whole,”³⁶⁹ many statutes, like those governing the Federal Reserve Board³⁷⁰ and the National Labor

364. See *infra* notes 496–500 and accompanying text.

365. See *infra* notes 462–67 and accompanying text (describing President Obama’s efforts to do just that).

366. See *infra* notes 514–19 and accompanying text.

367. Breger & Edles, *supra* note 356, at 1166–67.

368. See DAVID M. WELBORN, GOVERNANCE OF FEDERAL REGULATORY AGENCIES 34, 90–96 (1977); Adam Candeub & Eric Hunnicutt, Political Control of Independent Agencies: Evidence from the FCC 9–10 (July 14, 2010) (unpublished manuscript), <http://ssrn.com/abstract=1640285> (presenting empirical work that suggests the ideology of the Chair controls which orders pass in independent agencies, regardless of the frequency and partisanship of commissioner dissent); Strauss, *supra* note 306, at 591.

369. Breger & Edles, *supra* note 356, at 1170–71; see also 47 U.S.C. § 154 (g)–(f) (1994); 47 U.S.C. § 155(b) (2012).

370. 12 U.S.C. § 242 (2012).

Relations Board,³⁷¹ give the chairperson undefined administrative and executive powers.³⁷² And if a hierarchical relationship between a chairperson and her colleagues is established by statute but remains unspecified, decisionmaking may be ambiguous and cause contention even if responsibility for the process is ultimately shared by the board³⁷³—for instance, as a result of the agency’s governing statute and institutional guidance.³⁷⁴

Similarly, as noted throughout this Article, coordination statutes often designate an agency to, like a chair, head a network of coordinating agencies. Further, this lead agency has influence over the process and the application of discretion by all agencies involved, both because of its core statutory responsibility for and its political interest in a successful outcome. The interplay between the agency empowered to initiate coordination and the other agencies tasked with coordinating at the request of the named agency may also be subject to administrative discretion, particularly of the lead agency, because non-lead agencies perceive their decisionmaking role as both shared by and subjugated to that of the named agency. In a number of examples involving the mandatory initiation of coordination by a lead agency with an expansive group of agencies, the statute establishes this type of dynamic.³⁷⁵ Each of these qualities contributes to the complication of interagency relationships that, like the complex interactions among board members of a commission, insulate these relationships from the President.

Finally, like the members of an independent board, the congressional assignment of a role in coordination is related to an agency’s interest and expertise in the broader policy initiative. Like IRCs,³⁷⁶ coordinating executive agencies often deal with limited subject matter and are granted significant discretion to exercise joint authority within their areas of focus. And also like those comprising the boards of independent agencies, coordinating agencies may gather in a variety of sometimes self-chosen

371. 29 U.S.C. §§ 153, 154 (2012).

372. Breger & Edles, *supra* note 356, at 1172.

373. See Farber & O’Connell, *supra* note 6, at 1461 (“[I]n independent agencies with multiple leaders, the ‘decision-maker’ is the majority of members, often creating visible conflict.”).

374. Breger & Edles, *supra* note 356, at 1165–67.

375. See App., Part A.

376. Bressman & Thompson, *supra* note 50, at 613; Verkuil, *supra* note 132, at 260–63.

sub-groups to focus more deeply on the substantive and procedural issues of particular interest to them. In general, just as an independent agency consists of a body of experts that is “free to exercise its judgment” without any obligation or obstacles imposed by the rest of the executive branch,³⁷⁷ coordination regimes that duplicate these dynamics among networks of executive agencies may tend towards similar, expertise-privileging independence from the President.

C. PRESIDENTIAL FOOHOLDS FOR OVERSIGHT

Thus far, this Part has argued that statute-based coordination foregrounds the legislature’s role in structuring interagency relationships. More specifically, it has theorized that by enabling administrative autonomy, coordination legislation undermines the President’s supervisory role. Indeed, as Jennifer Nou suggests, “[i]ndependence is a matter of degree that cannot be determined by removal restrictions alone, but rather requires a careful assessment of the likely presidential calculations within particular contexts.”³⁷⁸ This calculation might include an added responsiveness to conflict between agencies.³⁷⁹

This Section discusses several routes by which the President might reclaim the position of administrator-in-chief in regard to statute-based interagency coordination. Due to necessary limits on the scope of this Article, this Section will not go into great depth evaluating the benefits and drawbacks of these options. Rather, its goal is simply to highlight statutory footholds and endogenous oversight mechanisms that, along with greater executive responsiveness to interagency conflict, could increase presidential control over administrative coordination initiated by the legislature.

Statute-based coordination is fundamentally pervious to the executive assertion of a role in administrative management. For one, some coordination statutes designate explicit executive responsibilities. However, even if these statutes omit mention of the President, they provide leeway for her to pursue control over

377. *Humphrey’s Ex’r v. United States*, 295 U.S. 602, 625–26 (1934); *see also* Katyal, *supra* note 34, at 2320; Strauss, *supra* note 306, at 591–95 (describing the entrenched position of the headless fourth branch in the years since *Humphrey’s Executor*).

378. Nou, *supra* note 35, at 1762 (introducing her work examining the ways in which executive agencies may “self-insulate” from the President).

379. *See* Part III.C.3 (discussing the textured impact of interagency conflict on the Executive’s ability to influence administrative coordination).

agency interactions at the back end. This is because while Congress is able to create interagency relationships, its ability to oversee them is limited, at best, in that this is more often accomplished by reporting requirements than by direct and consistent supervision.³⁸⁰ Put another way, coordination statutes offer Congress a better tool for initiating interagency coordination than for guaranteeing it conforms to legislative or other standards of success once implemented, which leaves room for the President to assert an oversight role. Furthermore, interagency conflict may garner political attention that limits agency insulation from the Executive.

This Section highlights, first, the provisions for executive involvement built into a handful of coordination statutes; these routes include direct participation, the mediation of interagency conflicts that stem from coordination, and influencing agencies' reports on coordination to Congress. In addition, it offers several options for supervision of agency coordination that the White House itself could initiate, as well as an explanation of how interagency conflict leaves coordinating agencies more vulnerable to executive oversight. Each of these mechanisms for presidential participation in statute-based coordination could benefit the functioning of the executive branch, as well as reduce any obstacles to the proper exercise of Article II.

1. In Coordination Legislation

Some coordination statutes already contain explicit provisions for presidential involvement in or management of interagency coordination. In a few instances, Congress has included the White House as a party to coordination.³⁸¹ In a handful of others, it delineates an explicit role for executive oversight of the resulting interagency relationships. And in some others, the President has a hand in shaping the way agencies report their successes in coordination to Congress, which may allow her to influence the coordination itself. Although they are unusual, these statutes serve as models for future legislative preservation of the President's role in shaping administrative coordination.

380. See *supra* Part II.B.1.

381. See *infra* notes 403–08 (tasking the White House Office of Management and Budget with directing data collection); *infra* notes 491–95 (tasking the White House Office of National Drug Control Policy with coordination); *infra* notes 638–42 (tasking the White House Office of Management and Budget with coordination).

In one notable example concerning services for the elderly,³⁸² the President has been accorded direct oversight³⁸³ of a committee established by Congress³⁸⁴ to ensure ample coordination, although Congress also retains a measure of control over the committee.³⁸⁵ In another instance, coordination authorized³⁸⁶ under the Omnibus Consolidated and Emergency Supplemental Appropriations Act,³⁸⁷ which allows the State Department “to bring improved coordination and rationalization to U.S. overseas economic and development assistance programs,”³⁸⁸ falls under a general provision stating that the Secretary of State’s activities are to be carried out “[u]nder the direction of the President.”³⁸⁹ In another example, while coordination under the Demonstration Cities and Metropolitan Development Act³⁹⁰ does not include an explicit presidential oversight provision, it nonetheless specifies that “the Secretary [of Housing and Urban Development] is authorized . . . to assist the President in coordinating the areawide development efforts of all Federal agencies” under the Act,³⁹¹ which positions the President in a leadership role.³⁹²

Under An Act to Regulate Commerce with Foreign Countries,³⁹³ the U.S. International Trade Commission may receive records and information as well as “officials and employees” from other agencies in order to pursue investigations under the statute, but only if the President directs other agencies to assist the

382. See *infra* notes 511–16 and accompanying text.

383. 42 U.S.C. § 3013(c)(2) (2012) (giving the President significant authority to direct the interagency coordination effected by the Interagency Coordinating Committee on Aging).

384. See *supra* notes 215–20 and accompanying text.

385. See *id.*; 42 U.S.C. § 3013(c)(7) (providing for a degree of congressional oversight by requiring the Committee to prepare a report for a number of congressional committees every two years). In the report, the Committee must describe its activities and accomplishments in “enhancing the overall coordination of federally funded programs and services.” 42 U.S.C. § 3013(c)(7)(A)(i).

386. 22 U.S.C. § 6593 (2012) (“Assistance programs coordination and oversight”).

387. Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277, 112 Stat. 2681 (1998); S. 903, 105th Cong. (1997).

388. S. REP. NO. 105-28, at 20 (1997).

389. 22 U.S.C. § 6593(a)(1).

390. See *infra* note 563 and accompanying text.

391. 42 U.S.C. § 3332(1) (2012); see *infra* note 564 and accompanying text.

392. See *infra* note 564 and accompanying text.

393. See *infra* note 501 and accompanying text.

Commission in this way.³⁹⁴ This legislation therefore allows the President to shape the Commission's coordination activities to some extent, even though it is an independent agency. Indeed, while coordination between independent and executive agencies might otherwise be initiated by Congress as a way to bring executive agencies under the legislature's influence, a coordination provision stipulating a role for the President may allow her to influence independent agencies to a greater extent than usual, particularly if the statute involves cabinet agencies in the coordination as well.³⁹⁵

In another statute, Congress has established a unique dispute resolution mechanism that requires two independent agencies—NASA and the Department of Defense—to appeal to the President in the event of a conflict regarding the legislature's mandate to NASA that it cooperate with the Department of Defense on any military initiatives.³⁹⁶ Furthermore, NASA and the Department of Defense must both communicate through and acquiesce to the final decision of the President concerning any disagreements.³⁹⁷ Here, the President has the opportunity to influence coordination by resolving interagency disputes, as well as

394. 19 U.S.C. § 1334 (2012) (“The commission shall in appropriate matters act in conjunction and cooperation . . . and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the commission and shall detail, from time to time, such officials and employees to said commission as he may direct.”); *see infra* note 502 and accompanying text.

395. *See Barkow, supra* note 64, at 52 (“[W]hether multiple agencies limit or buttress the power of the President depends on what the single agency alternative looks like. If power would otherwise reside in an insulated agency alone, the President gains power when an executive agency takes on a partnership role.”); DeShazo & Freeman, *supra* note 18, at 2300–01 (observing that congressional schemes that empower executive agencies to influence independent agencies may diminish the independent agency's insulation from presidential influence).

396. *See infra* notes 591–95 and accompanying text.

397. 51 U.S.C. § 20114 (2012) (“The Administration and the Department of Defense, through the President, shall advise and consult with each other on all matters within their respective jurisdictions related to aeronautical and space activities and shall keep each other fully and currently informed with respect to such activities If the Secretary of Defense concludes that any request, action, proposed action, or failure to act on the part of the Administrator [of NASA] is adverse to the responsibilities of the Department of Defense, or the Administrator concludes that any request, action, proposed action, or failure to act on the part of the Department of Defense is adverse to the responsibilities of the Administration, and the Administrator and the Secretary of Defense are

by guiding the submission of an annual report to Congress detailing the “activities and accomplishments of all” aeronautics and space agencies.³⁹⁸ This scheme highlights how coordination legislation can offer agencies and the President combined leverage to shape interagency activity.

While some statutes require the lead agency to report directly on the resulting coordination to Congress,³⁹⁹ some others offer the President a role in the management of reporting requirements. For example, the Higher Education Act mandates that agencies submit reports to the President that are ultimately for transmission to Congress.⁴⁰⁰ Under the National Aeronautics and Space Administration Authorization Act,⁴⁰¹ the Office of Science and Technology Policy must submit a report to Congress regarding its coordination “of the research, operations, and activities relating to civilian Earth observation of those Agencies, including NASA, that have active programs that either contribute directly or indirectly to these areas [of science and technology].”⁴⁰²

unable to reach an agreement with respect to the matter, either the Administrator or the Secretary of Defense may refer the matter to the President for a decision (which shall be final.)”; *see infra* notes 591–95 and accompanying text.

398. *See* National Aeronautics and Space Act of 1958, Pub. L. No. 85-568, § 206, 72 Stat. 426, 432 (1958).

399. For instance, under the Marine Resources and Engineering Development Act, the Secretary of Commerce is charged with leading the coordination and reporting directly to Congress on the progress of this coordination of policy-making. *See infra* notes 551–56 and accompanying text. And under the Methane Transportation Research, Development, and Demonstration Act, the Department of Energy, as the “lead agency,” must submit annual reports regarding progress on related initiatives to a Senate committee. *See infra* notes 547–53 and accompanying text.

400. *See* 20 U.S.C. § 3486 (2012); *infra* notes 504–08 and accompanying text.

401. National Aeronautics and Space Administration Authorization Act of 2010, Pub. L. No. 111-267, 124 Stat. 2805 (2010).

402. 42 U.S.C. § 18371 (2012) (“Interagency collaboration implementation approach”).

Under the Paperwork Reduction Act,⁴⁰³ the Office of Management and Budget (OMB) is not only authorized to coordinate⁴⁰⁴ and ensure the quality⁴⁰⁵ of large scale data sharing and management, but also required to inform Congress about its data-sharing efforts.⁴⁰⁶ Since both the Office of Science and Technology and OMB are part of the White House, the President could involve herself in these coordination efforts, should she want to, as a result of proximity—and in any case, her staff is directly involved. Explicit executive oversight is also stipulated in regard to OMB’s collaborative data-collection work.⁴⁰⁷ And finally, the President is also plainly invoked as part of the chain of command for agencies reporting to Congress on their success coordinating the development of aeronautics programs⁴⁰⁸ and

403. Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

404. 44 U.S.C. § 3510 (2012) (“Cooperation of agencies in making information available”) (“The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.”). The purpose of this section is to “encourage[] agencies to cooperate in data sharing to facilitate more efficient and effective, and less burdensome information collection and use.” H.R. REP. NO. 104-37, at 53 (1995); S. REP. NO. 104-8, at 54 (1995).

405. 44 U.S.C. § 3513 (“Director review of agency activities; reporting; agency response”) (“In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.”). The purpose of this section is to provide for “more effective executive branch review of agency implementation of the Act and related IRM [information resource management] laws.” S. REP. NO. 104-8, at 55 (expecting OMB to cooperate fully with the GSA, NARA, NIST, and OPM); H.R. REP. NO. 104-37, at 54. The OMB Director does, in consultation with the other agencies, have broad discretion to review information resource management activities of other agencies. The section “focuses OMB review of agency IRM activities on determining their efficiency and effectiveness in [order to] help[] . . . improve agency performance and achieve program missions and goals.” S. REP. NO. 104-8, at 55.

406. Section 3514 of the Paperwork Reduction Act of 1995 requires the OMB “to inform the Congress on the major activities under the Act, including through an annual report.” S. REP. NO. 104-8, at 56. However, section 3514 does not contain an explicit requirement that the OMB report on interagency coordination under the Paperwork Reduction Act. *See* § 3514, 109 Stat. 163, at 181–82.

407. 44 U.S.C. § 3513.

408. *See* National Aeronautics and Space Act of 1958 § 206, 72 Stat. 426, 432

safety standards for mobile homes.⁴⁰⁹ Through her involvement in these reporting requirements, the President can shape agencies' justification of their approach to coordination, thus creating a more united executive representation of agencies' coordination efforts to Congress and the public. And in the process of seeking guidance on how to fulfill reporting requirements, agencies may in fact allow the President entrée to influencing the coordination itself.

In no other statute examined for this project, however, has Congress either specified a statutory role for presidential management of or mentioned in related legislative history a desire for or expectation of executive involvement in the legislated coordination. Nonetheless, Congress might choose to incorporate the President into interagency coordination more often moving forward, in order to acknowledge the integrity of and draw on the benefits of presidential administration. In addition, it might improve the quality and outcomes of agency coordination by specifying a mechanism for dispute resolution by the Executive in those cases where it anticipates interagency conflict.

At the very least, Congress should ensure that the exclusion of an allocated role for the President in interagency coordination is not due solely to a conflicted or disorganized legislative process. Moreover, if a particular delegation of authority to coordinate restructures agencies in ways that disrupt the President's ability to direct agency activity, or if it renders executive agencies more akin to an autonomous "fourth branch of government,"⁴¹⁰ explicit legislative specification of executive oversight

(1958) (requiring a report from the President detailing the "activities and accomplishments of all" aeronautics and space agencies).

409. See 42 U.S.C. § 5425 (1994) (repealed 2000) (requiring the Secretary of HUD to submit an annual report to the President for transmittal to Congress "on the administration of [Federal mobile home safety standards] for the preceding calendar year"; this provision does not discuss interagency cooperation standards specifically); Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 626, 88 Stat. 633, 714 (1974) (providing for an annual report on the administration of the chapters of Pub. L. No. 91-646, 84 Stat. 1894 and Pub. L. No. 112-141, 126 Stat. 405 dealing with mobile homes, but without explicit mention of oversight of agency coordination); *infra* notes 543–47 and accompanying text.

410. The "fourth branch" literature identifies the contours and impact of agencies on the proper balance of government. See, e.g., Datla & Revesz, *supra* note 35, at 829 (suggesting that "indicia of independence" beyond for-cause removal can create a separate constitutional status for certain executive agencies, constrain presidential authority, and create a branch of government not contemplated by the Constitution); Katyal, *supra* note 34, at 2320; Strauss, *supra*

in interagency coordination schemes might mitigate interference with the Take Care Clause or the proper separation of powers.⁴¹¹ Therefore, legislative grants to agencies of the power to coordinate should encourage the most effective combined administrative efforts while also carving out explicit opportunities for the president to fulfill her role as “administrator-in-chief.”

2. Endogenous to the Executive

The President also has many options for overseeing interagency coordination beyond those delineated by coordination statutes themselves. More specifically, there are several centralized methods by which the President might oversee statute-based interagency coordination,⁴¹² either explicitly or by use of the powers of persuasion associated with her position.⁴¹³ There are, of course, drawbacks to centralized review, such as the possibility of delay in coordination.⁴¹⁴ But the benefits of clear presidential supervision include, in brief, the implementation of more holistic coordination frameworks, a reduction in factionalism, and increased transparency.⁴¹⁵

The President could harness entities such as the Office of the Chief of Staff to shape high-profile coordination;⁴¹⁶ the Office of White House Policy, the President’s primary vehicle for policy

note 306.

411. Cf. Peter P. Swire, Note, *Incorporation of Independent Agencies into the Executive Branch*, 94 YALE L.J. 1766, 1785 (1985) (“The decline of expertise and impartiality, and the rise in importance of presidential coordination of and accountability for agencies, today combine to justify incorporation on functionalist grounds.”); *id.* (arguing for a shift towards a more formalist structure that values a return to tripartism through incorporation of the independent agencies into the executive branch).

412. See Metzger & Stack, *supra* note 9, at 1255–56 (suggesting that “measures that emanate from central executive branch actors” and that “take familiar forms like executive orders, memoranda, bulletins, and circulars” can “force agencies to generate new internal processes, organization, and policy”). See generally Christopher C. DeMuth & Douglas H. Ginsburg, *White House Review of Agency Rulemaking*, 99 HARV. L. REV. 1075 (1986).

413. See Percival, *supra* note 321, at 1011–12 (“[The President] can have substantial influence over [agency decisions] . . . [A] president who wishes to play an active role in management of the administrative state must be prepared to use the formidable powers of persuasion the presidency provides.”).

414. Shah, *Uncovering*, *supra* note 9, at 873.

415. *Id.* at 871–72.

416. See Sunstein, *supra* note 279, at 1874 (noting that OIRA “has an important role insofar as it works to advise on and help coordinate executive branch activity with close reference to the President’s own commitments”).

coordination that also contains the Domestic Policy Council and the National Economic Council, which has “an especially important role . . . in helping to coordinate different parts of the federal government”;⁴¹⁷ OMB, which plays an important role in coordinating agency action;⁴¹⁸ OMB’s Office of Regulatory Affairs (OIRA), which oversees a regulatory review process to ensure that agency regulations are consistent with the President’s priorities and economically justified, and whose “day-to-day operations . . . largely involve interagency coordination”;⁴¹⁹ the Office of Legal Counsel, which is involved in resolving interagency conflict;⁴²⁰ or perhaps a new office created expressly for overseeing and managing the exercise of agency discretion in coordination.⁴²¹ In order to reduce the arguably overwhelming coordination responsibilities that OIRA faces, lead agencies in coordination networks could instead be required by the President to serve unofficially as “mini-OIRAs” for their own coordination regimes.⁴²² Holding lead agencies accountable also has

417. *Id.* at 1849.

418. “The President has used . . . OMB directives (the OMB being the principal although hardly the only instrument of his coordinating activities) to create supplementary coordinating regimes of a generally uncontroversial character.” Strauss, *supra* note 8, at 718 (noting that “OMB oversees coordination of legislative testimony, legislative proposals, agency regulatory agendas, and a variety of analytic regimes having some, but incomplete support in legislative requirements”); *see also* Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1178 (noting that OMB, “with a staff of hundreds, in the largest office in the [Executive Office of the President], . . . contains several ‘resource management offices’ with responsibility for evaluating the performance of agency programs and reviewing agency budget requests”); Shah, *Uncovering*, *supra* note 9, at 860–64 (discussing several entities, including the Office of Management and Budget and the Office of Information and Regulatory Affairs, as possibilities for the oversight of interagency coordination); STANTON, *supra* note 130, at 4 (suggesting that OMB “is the only agency with current capacity and clout to foster improved collaboration”).

419. Sunstein, *supra* note 279, at 1840.

420. *See* Strauss, *supra* note 8, at 718 (“Conflicts between executive agencies about their delegated authority are resolved in processes involving OMB or the Department of Justice’s Office of Legal Counsel . . .”).

421. For instance, Landis suggested to President Kennedy that he install offices within the Executive Office of the President to coordinate and develop transportation, communications, and energy policy, and also that he create an Office for the Oversight of Regulatory Agencies. LANDIS, *supra* note 60, at 85–87.

422. *Cf.* Marisam, *Interagency Administration*, *supra* note 40, at 205 (suggesting that OIRA improves interagency coordination).

the potential to improve policy in those agencies' areas of interest, including to the extent this localized oversight mitigates the drawbacks of interagency conflict.⁴²³

In order to reiterate and strengthen her involvement in the communication between agencies and Congress beyond participation in agency reporting, the President could involve the White House Office of Legislative Affairs or the OMB Office of Legislative Affairs in oversight of agency coordination. Both of these entities have key roles "in coordinating discussions between the Administration and Congress."⁴²⁴ At very least, the Executive could increase upper-level awareness of statute-based interagency coordination by working with the Government Accountability Office.⁴²⁵ Nina Mendelson also notes that "budget requests, legislative positions, and testimony before Congress" are tools the president has to "systematically [coordinate and 'clear' policies] through White House offices so that a unified executive branch position can be presented."⁴²⁶

In addition, the White House might take more conspicuous steps, like issuing explicit directives to agencies⁴²⁷ in response to or anticipation of statute-based coordination. The President also

423. DeShazo & Freeman, *supra* note 18, at 2263 (describing how the statutory requirement that the Federal Energy Regulatory Commission implement its own dispute resolution mechanism to further coordination under the Electric Consumers Protection Act "raised the transaction costs of making anti-environment decisions and, implicitly, the cost of ignoring the other agencies").

424. Sunstein, *supra* note 279, at 1873.

425. See Shah, *Uncovering*, *supra* note 9, at 864 (noting that the Government Accountability Office is mandated by statute to identify and reduce duplicative agency activity).

426. Mendelson, *supra* note 5, at 2459.

427. Such directives may take "the form of written memoranda posted to WhiteHouse.gov and published in the Federal Register." Watts, *supra* note 282, at 700-03 (discussing Obama's overt control of agency decisionmaking via "extensive reliance on directives" and how "Obama—taking a cue from Clinton—relied extensively on positive command to turn the administrative state into an extension of the White House"); see also Nina A. Mendelson, *Disclosing "Political" Oversight of Agency Decision Making*, 108 MICH. L. REV. 1127, 1148 (2010) (uncovering "literally hundreds of presidential statements directing agencies to take action of one sort or another" from the Clinton through the second Bush administration).

could implement executive orders that improve statute-based coordination,⁴²⁸ monitor the likelihood of conflict,⁴²⁹ or even reduce the baseline regulatory power of coordinating agencies,⁴³⁰ thereby weakening the potentially insulating effect of coordination networks, for better or for worse. The President might also create executive task forces and working groups to oversee coordination or appoint “czars” that establish a hierarchy over coordinating agencies and govern agencies’ influence on one another.⁴³¹ Presidential appointment of “czars,” or cabinet officials

428. In many cases, executive orders establishing regulatory review programs have expressly disclaimed that the President has the authority to dictate regulatory decisions entrusted to agency heads. Watts, *supra* note 282, at 690–91. Nonetheless, they could feasibly be used to establish a stronger executive hierarchy as well. For example, Executive Order 13,563 furthers principles of “integration and coordination.” Sunstein, *supra* note 279, at 1846; *supra* note 417 and accompanying text (suggesting that the Domestic Policy Council and the National Economic Council were created by executive order); *see also* Strauss, *supra* note 8, at 718 (“The President has used executive orders . . . to create supplementary coordinating regimes of a generally uncontroversial character.”).

429. For instance, Executive Order 12,866 authorizes OIRA to review agency regulatory actions for consistency with presidential priorities, statutory mandates, and, notably, other agencies’ rules. *See* Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1178–79 (noting that Executive Order 12,866 requires both executive and independent agencies to submit annual plans of their anticipated regulatory actions prior to proposing them in the Federal Register and encourages agencies to plan their regulatory activities “to maximize consultation and the resolution of potential conflicts at an early stage”).

430. *See, e.g.*, Exec. Order No. 13,771, 82 Fed. Reg. 9339, 9339 (Jan. 30, 2017) (“[I]t is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”).

431. Arguably, czars can both help a president to “advance ambitious policy agendas” and play a role in ensuring regulatory coherence and helping to coordinate “the work of agencies on . . . key [presidential] policy priorities.” Watts, *supra* note 282, at 704–05 (discussing Obama’s appointment of “regulatory czars” to White House policy positions). “Obama’s czars seem to serve as a structural solution to the compartmentalization of the President’s cabinet organization, helping to provide interagency coordination and coherency in areas that require expertise across areas.” *Id.* at 705.

placed in the White House itself⁴³²—a practice with deep historical roots⁴³³—has recently been used to facilitate the coordination of agencies that traditionally work at cross-purposes.⁴³⁴ Alternatively, the President could attempt to restructure coordinating agencies herself, for instance, by regrouping administrative competencies⁴³⁵ in order to modify ineffective statute-based coordination or coordination that is overly burdensome for a particular agency. In addition, the President could shape the orientation and improve the quality of interagency relationships by holding agencies themselves responsible for justifying their coordination, for instance, via cost/benefit analysis⁴³⁶ and other forms of reporting to the White House and/or the public.

432. See generally Aaron J. Saiger, *Obama's "Czars" for Domestic Policy and the Law of the White House Staff*, 79 *FORDHAM L. REV.* 2577 (2011) (discussing Obama's approach to czar appointments); see also *id.* at 2583 (arguing that Obama's "proliferation of high-profile czars is his particular instantiation of a policy, common to all modern Presidents, of seeking to magnify his control over agency action").

433. Graham Allison, *An Executive Cabinet*, *SOC'Y*, July-Aug. 1980, at 41.

434. See Harold H. Bruff, *Presidential Power Meets Bureaucratic Expertise*, 12 *U. PA. J. CONST. L.* 461, 489 (2010) (concluding that the President need only control the czars to coordinate bureaucracy). Examples of czars focusing on coordination include the "drug czar" and Obama's "urban affairs czars." See 21 *U.S.C. § 1702(a)* (2012) (establishing "in the Executive Office of the President an Office of National Drug Control Policy, which shall . . . coordinate and oversee the implementation of the national drug control policy"); *id.* § 1704 (establishing duties of line agencies to provide ONDCP with information in order to facilitate "coordination"); *Examining the History and Legality of Executive Branch Czars: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 96 (2009) (letter from Gregory Craig, White House Counsel, Obama Admin., to Sen. Russel Feingold); *Reauthorization of the Office of National Drug Control Policy: Hearings Before the Legis. and Nat'l Sec. Subcomm. of the H. Comm. on Gov't Operations*, 103d Cong. 185 (1993) (statements of Peter Reuter & Jonathan Caulkins) ("The impulse to create [the Office of National Drug Control Policy] was primarily the friction among federal agencies involved in controlling illicit drugs."); John Carnevale & Patrick Murphy, *Matching Rhetoric to Dollars: Twenty-Five Years of Federal Drug Strategies and Drug Budgets*, *J. DRUG ISSUES*, Spring 1999, at 299, 312 ("The Drug Czar . . . must attempt to exert top-down pressure and control in a process that is fragmented . . ."); Adolfo Carrión, Jr., *Foreword: A New Urban Vision for a New Urban Reality*, 24 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 1, 4 (2010) (Obama's first "urban affairs czar" justifying his office largely in terms of coordination); Michael D. Shear & Ceci Connolly, *Obama Assembles Powerful West Wing*, *WASH. POST*, Jan. 8, 2009, at A1.

435. Renan, *supra* note 40, at 248.

436. See Wendy E. Wagner, *Administrative Law, Filter Failure, and Infor-*

More broadly, the President could use any of the aforementioned mechanisms to influence statute-based administrative coordination either through consensus, for instance, by identifying an overlap in her interests and agency motivations,⁴³⁷ or by brandishing authoritarian control over agencies.⁴³⁸ Identifying and protecting administrative incentives could lead to coordination with fewer conflicts and greater fidelity to legislative intent. However, gains in collaboration may also lead to losses in the efficiency and unity of mission offered by a stronger hierarchy.⁴³⁹ Ultimately, the President could feasibly remove an agency head exercising authority to coordinate in a manner with which she disagrees,⁴⁴⁰ although taking this action would be controversial and may signal that the President must resort to drastic measures due to a considerable lack of actual control over her branch.

3. Responsiveness to Interagency Conflict

This Article has already suggested that interagency discord reduces agencies' ability to wield control over one another on the basis of coordination authority.⁴⁴¹ This Section concludes the Article by positing that interagency conflict also impacts the extent

mation Capture, 59 DUKE L.J. 1391, 1394–95 (2010) (suggesting that cost/benefit and other agency analysis can “provide valuable mechanisms for the White House or other high-level political officials to gain purchase on regulatory issues and intervene more directly in ways that offset participatory imbalances arising from information capture”).

437. See Bradley, *supra* note 9, at 755 (suggesting that a “directing agency derives its voice not from law but from circumstance”).

438. See DONALD B. AYER ET AL., STATEMENT BY FORMER NATIONAL SECURITY OFFICIALS 2 (2016), <https://assets.documentcloud.org/documents/3007589/Nationalsecurityletter.pdf>. (“In our experience, a President must be willing to listen to his advisers and department heads; must encourage consideration of conflicting views; and must acknowledge errors and learn from them.”).

439. See Metzger, *supra* note 294, at 1836, 1842 (arguing for the inclusion of “systemic administration [in] constitutional law,” particularly in “structural and individual rights contexts”); Shah, *Intra-Agency Separation*, *supra* note 122, at 115 (suggesting that administrative efforts to help the poor might “be better served by the accountability, efficiency, and expertise ascribed to a stronger administrative hierarchy”).

440. *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting); *Myers v. United States*, 272 U.S. 52, 135, 176 (1926) (deriving an unlimited presidential removal power over certain subordinate executive officials from, among other sources, the Article II Vesting Clause and the Take Care Clause).

441. See *supra* Part I.C. The potential for interagency conflict may also motivate the passage of coordination legislation in some instances. See *supra* Part II.B.4.

to which coordinating agencies are, in fact, able to act with collective independence from the Executive. As an initial matter, interagency conflict may reduce interagency control,⁴⁴² which in turn limits statute-based coordination's interference with the President's command of each agency in the affected coordination network.⁴⁴³ Further, while harmonious interagency relationships may progress under the President's radar, conflict is likely to draw her attention to interagency coordination that might otherwise move forward autonomously. More specifically, interagency conflict can lead to infighting and indeterminacy that garners the attention of the President, thus leading to greater presidential influence on the coordination process.

On the one hand, a strict hierarchy whereby the lead agency exercises strong control over others in the network, or conversely, agreeable interagency collaboration, may dilute the President's power to direct agency functions.⁴⁴⁴ For instance, Jennifer Nou notes that coalition-building may provide some insulation from the President.⁴⁴⁵ In statute-based coordination, substantively narrow aims,⁴⁴⁶ a specified set of coordinators,⁴⁴⁷ or a clear alignment among the incentives and goals of the agencies involved⁴⁴⁸ may also reduce the likelihood that coordination

442. See *supra* note 441 and accompanying text.

443. See *supra* notes 316–19.

444. See Verkuil, *supra* note 132, at 265 (“Given the need for the President to control policy as part of his constitutional duties pursuant to article II, independence and collegiality are being seen increasingly as qualities counterproductive to the rulemaking function.”); see also Peter L. Strauss & Cass R. Sunstein, *The Role of the President and OMB in Informal Rulemaking*, 38 ADMIN. L. REV. 181 (1986).

445. Nou, *supra* note 35, at 1798–99 (arguing that coalition-building increases the costs of reviewing agency activity, which reduces the likelihood of presidential oversight).

446. See, e.g., *infra* notes 569–73 (discussing the delegation of broad authority to coordinate in order to reduce soil erosion), *infra* notes 523–27 (discussing the delegation of broad authority to coordinate to protect marine mammals), *infra* note 529 and accompanying text (discussing coordination to protect specific national parks).

447. See, e.g., *infra* note 588 and accompanying text (discussing coordination between the Coast Guard and the Department of Health and Human Service to provide emergency medical helicopter services to civilians).

448. See, e.g., *infra* notes 624–31 (discussing coordination between the Administration on Aging, which is part of the Department of Health and Human Services, and the Department of Labor to improve employment and training programs for the elderly), *infra* note 629 (discussing coordination between the Department of Veterans Affairs and the Department of Labor to provide job assistance for veterans), *infra* notes 633–40 (discussing coordination between

will draw upper-level attention. For example, the Departments of Energy and Transportation may be able to further the Electric and Hybrid Vehicle Research, Development, and Demonstration Project if they are equally committed to doing so,⁴⁴⁹ regardless of the politics of any given presidential administration. In addition, a lack of conflict means the President is less likely to become involved as a mediator.⁴⁵⁰ In general, if coordination legislation enables lead agencies to fashion coordination to suit their needs and suppress discord, or like-minded agencies to cooperatively increase their reach and attain their goals,⁴⁵¹ those agency interactions are less likely to draw the attention of the President.

Alternatively, if there is friction between or among agencies within the coordination process, then the process has the potential to attract executive intervention.⁴⁵² As noted earlier, conflict can result from subtle upward resistance in vertical coordination arrangements or clashes within horizontal structures.⁴⁵³ Such interagency discord provides justification for elevating the review of administrative activity to the White House⁴⁵⁴ and for delaying the administrative implementation of legislation.⁴⁵⁵ Indeed, the erosion of insulation resulting from interagency conflict may be particularly acute for independent agencies.⁴⁵⁶

the State Department and Department of Commerce to implement international whaling regulations).

449. See *infra* notes 618–24 and accompanying text.

450. See Farber & O'Connell, *supra* note 6, at 1411 (noting that, “[m]ost commonly, the White House steps in” to mediate or negotiate conflict at the agency level); Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1175.

451. For a discussion of the coordination structures in which agencies are less likely to engage in conflict than in others, see *supra* Part I.B.2.

452. See Strauss, *supra* note 8, at 744 (suggesting that interagency conflict draws presidential oversight).

453. See *supra* Part I.C (discussing reduced interagency control resulting from the interagency conflict occurring in horizontal and vertical coordination structures).

454. Sunstein, *supra* note 279, at 1856–59 (noting several examples in which review of agency activity was elevated to the White House due to disagreements between agency actors).

455. See Watts, *supra* note 282, at 699–70 (noting how the President harnesses delay to wield broad control over the regulatory state).

456. Barkow, *supra* note 64, at 51 (suggesting that if an “executive agency has the authority to veto or dictate the insulated agency’s policies,” an agency that is insulated from public influence can no longer operate with the same level of insulation, regardless of whether the agencies are more equally situated or if their relationship is hierarchical); *id.* at 52–53 (noting that if an independent

Agencies might even engage in conflict to draw the President's attention in order to slow down coordination. For example, the Department of Energy, whose approach to conservation may be characterized as conservative,⁴⁵⁷ could seek to disrupt meaningful coordination by involving a White House sympathetic to its perspective in order to delay the development of vehicles using alternative fuel or technology.⁴⁵⁸

In addition, indeterminacy⁴⁵⁹ could invite greater executive oversight and scrutiny, ultimately limiting agencies' ability to act on their incentives and shape their own goals. As Strauss suggests, "If Congress has given apparently conflicting statutory instructions to differing agencies, it will not clearly have established where authority lies. [Thus,] the President as 'the decider'—or at least as the preliminary, and often enough in practice, the final decider—is a readily understandable outcome."⁴⁶⁰ Similarly, if agency infighting or a lack of clear jurisdiction in coordination slows down or leads to an ineffective policymaking process, this may alert the President's attention and lead to a firmer Executive grasp on agency activity. And indeed, this appears to have happened as a result of interagency conflicts resulting from a coordination statute governing several agencies' efforts to coordinate to further policy on the Arctic.⁴⁶¹ More specifically, in order to grab the reins,⁴⁶² President Obama created a steering committee⁴⁶³ to oversee and facilitate the implemen-

agency has veto power over another, the latter may suffer a reduction in mechanisms insulating it from partisan pressure, although those losses would be greater if the vetoing agency were executive).

457. See Clinton & Lewis, *supra* note 129, at 6 fig.1 (illustrating mean agency political preferences).

458. See, e.g., *infra* notes 547–53, 618–24 and accompanying text.

459. See Adrian Vermeule, *Second Opinions and Institutional Design*, 97 VA. L. REV. 1435, 1459–60 (2011) (noting that a problem for interagency decisionmaking is indeterminacy, which is often resolved through compromises that are arbitrary and not based on sound technocratic reasoning).

460. Strauss, *supra* note 8, at 745 (noting that "[t]he same cannot be said of disagreements between White House and agency, where a statute empowers only the agency").

461. See *infra* notes 496–500 and accompanying text.

462. See *supra* notes 352, 364 and accompanying text (discussing how the coordination statute in this case may have otherwise insulated agency policymaking from the President).

463. See Andrew Hartsig et al., *Next Steps to Reform the Regulations Governing Offshore Oil and Gas Planning and Leasing*, 33 ALASKA L. REV. 1, 16 (2016) (noting Obama's creation of an Arctic Executive Steering Committee to

tation of legislation governing the Arctic by these diverse agencies.⁴⁶⁴ In addition, as noted earlier, Congress has in one instance explicitly involved the President in a conflict-reduction mechanism.⁴⁶⁵ This oversight provision also provides the President a concrete tool for curtailing these agencies' exercises of discretion and interagency control.

Ironically, Congress may inadvertently create purchase for presidential control by yoking together agencies with disparate interests and aims,⁴⁶⁶ even if it actually sought agency conflict for the express purpose of lessening executive control.⁴⁶⁷ Finally, agencies might be able to reduce the likelihood that the president becomes involved in coordination in response to interagency conflict by implementing their own dispute resolution mechanisms, as discussed earlier,⁴⁶⁸ but this is not a foolproof approach to avoiding presidential intervention.

CONCLUSION

This Article is the first to establish the paradigm of statute-based coordination, by which Congress—as opposed to the President, as is otherwise understood—initiates interagency relationships in myriad areas of public law. By bringing coordination legislation to light and contemplating its features, this Article

“provide guidance . . . and enhance coordination of Federal Arctic policies across agencies and offices”); *see also* Exec. Order No. 13,689, 80 Fed. Reg. 4189–94 (Jan. 26, 2015) (announcing the Arctic Executive Steering Committee).

464. *See infra* notes 496–500 and accompanying text (describing the mandatory and non-mandatory agency coordination provisions of the Coast Guard and Maritime Transportation Act).

465. *See infra* notes 591–95 and accompanying text; *see also supra* notes 136–38 and accompanying text (discussing the statutory provision for mediation by the President should Department of Defense and NASA disagree as to how best to coordinate to further the former's military aims).

466. *C.f.* Marisam, *Selection Powers*, *supra* note 40, at 825 (“[W]hen Congress creates overlapping authority among several agencies, it enables presidents to select which of these agencies will act in the overlapping space.”).

467. *See supra* note 351 and accompanying text; *see also* EPSTEIN & O’HALLORAN, *supra* note 127, at 160 (“Congress does play agencies off against each other more under divided government, despite the reductions in efficiency and centralized control that this might entail.”); Barkow, *supra* note 64, at 52 (suggesting that Congress may pit conflicting agencies against one another because this increases the costs of executive oversight in ways that “insulate certain policy decisions from presidential control”).

468. *See supra* notes 422–24 and accompanying text (describing internal dispute resolution mechanisms, and the increased transaction costs resulting when agencies implement their own).

presents and parses an unexamined framework by which Congress interacts directly with agencies, and highlights its potential influence on interagency dynamics, presidential hierarchy, and executive unification. More broadly, this Article suggests that the debate regarding which political branch controls administrative agencies⁴⁶⁹ must account for the *congressional administration*⁴⁷⁰ of activity that occurs across agency boundaries, in addition to its general focus on presidential administration.

The primarily mandatory and vertical interagency networks established by coordination legislation empower agencies to draw on one another's competencies and even shape each other's use of discretion to better implement legislative mandates. In this way, statutory authority to coordinate encourages agencies to better abide by legislative intent while also maintaining some of the efficiency in policymaking that might otherwise be lost in more horizontal interagency relationships.⁴⁷¹ This Article thus illustrates, in contrast to other accounts,⁴⁷² that the legislature indeed creates beneficial forms of decentralization in the executive branch.⁴⁷³

However, by empowering agencies to interact of their own volition, coordination statutes may interfere with the President's function as manager and overseer of her branch. Arguably, combined legislative-administrative efforts to further Congress's priorities should accommodate the President's leadership role in the efficient and principled execution of the law. That having been said, it is unclear which coordination format best balances and preserves both the legislature's and the President's power to direct the administrative state. For instance, while coordination initiated unilaterally by a lead agency provides the President a single entry-point to oversee the process, it also offers the lead agency a mechanism for exercising control over other agencies

469. See *supra* notes 1–7 and accompanying text (introducing interagency coordination as a framework for examining executive and legislative control of the administrative state).

470. See *supra* note 11 and accompanying text (describing legislation orchestrating agency coordination).

471. See *supra* Part II (discussing reasons for legislative interagency coordination).

472. See *supra* note 19 and accompanying text (summarizing prior paradigms for legislative interagency coordination).

473. See CROLEY, *supra* note 19, at 153 (“[I]ndividual legislators who are motivated at least in part to advance general interests might not regret much that agencies enjoy sufficient autonomy to do what Congress itself can do directly only at great political cost.”).

outside of the Executive's core purview.⁴⁷⁴ Conversely, while more horizontal forms of coordination are less likely to undermine the traditional executive hierarchy, this structure also generates its own form of administrative independence and subsequent insulation from the President.⁴⁷⁵

Arguably, clear legislative delineation of a role for the President in statute-based coordination⁴⁷⁶ both enhances executive accountability and reinforces a constitutional and functional distribution of the power to initiate and direct administrative relationships. Paradoxically, providing the President entrée ex ante may allow the legislature both to limit overall executive involvement in agency coordination and to sidestep any latent obstacles posed by this legislation to the proper separation of powers.⁴⁷⁷ Moreover, if the legislature fails to establish an explicit role for the President, she may be motivated to pursue ex post strategies that ultimately reduce beneficial agency autonomy in statute-based coordination and subsequent administrative responsiveness to the legislature's priorities.⁴⁷⁸ Finally, the statutes and legislative history this Article uncovers is ripe for future study, including both fine-grained evaluations of statute-based coordination in particular regulatory areas or involving certain agencies, as well as broader consideration of the impact of agency design on the relationship among the political branches and the administrative state.

474. See *supra* Part III.A (describing how coordination legislation disadvantages executive administration).

475. See *supra* Part III.B (describing how vertical coordination insulates agencies and increases their independence from the executive).

476. For examples, see *supra* Part III.C.1.

477. See *supra* note 411 and accompanying text (giving examples of statutes delegating specific coordination of other tasks to White House offices).

478. See *supra* Part III.C.2 (discussing methods for overseeing legislative coordination that are endogenous to the executive).

APPENDIX: COORDINATION LEGISLATION &
INTERAGENCY CONTROL

This Article presents and analyzes statutes that include a section title referencing coordination, cooperation, and/or collaboration between or among federal agencies and/or departments, as well as all the relevant legislative history, on which the preceding Article is based.⁴⁷⁹ Overall, the Appendix illustrates how statutes sanctioning coordination support the contention that Congress frequently legislates with specificity and intention, as opposed to only in vague and ambiguous terms, as it is often accused of doing. In addition, the Appendix also discusses the features of each coordination paradigm that lend themselves to *interagency control*.⁴⁸⁰

As noted in the body of the Article, almost all of the coordination statutes authorize one named agency to control the implementation of legislation stipulating coordination between or among the named agency and others. In the majority, the agency is authorized to initiate coordination with several other agencies. More specifically, the statutes analyzed throughout this Article are more likely than not to authorize coordination that is “*unilaterally-initiated*,” by only one, leading, “named” agency, and that is “*expansive*,” in that it spans several agencies.⁴⁸¹ Alternatively, only eleven of the statutes analyzed for this project are *unilaterally-initiated* and “*limited*,” in that they allow the authorized, lead agency to coordinate with only one or two named agencies.⁴⁸² This suggests that legislation authorizing coordination is predominantly hierarchical and rather, but not entirely, expansive. Finally, a few statutes provide for “*jointly initiated*,” or horizontal, forms of coordination in which there is no “named,” lead, agency.⁴⁸³

In addition, the majority of statutes considered in this analysis are *mandatory*, in that they require coordination by use of terms such as “shall” and “must.” Some others are “*semi-obligatory*,” in that they require coordination to the “maximum extent possible” or the “maximum extent practicable,” thus rendering the coordination requirement semi-obligatory. Only a handful of

479. See *supra* notes 81–82 and accompanying text (describing the data collection methods that informed this statutory analysis).

480. See *supra* Part I for a discussion of the term interagency control.

481. See *infra* App., Part A.

482. See *infra* App., Part B.

483. See *infra* App., Part C.

statutes are *discretionary*, in that they offer agencies the option to coordinate determined only, and transparently, on the basis of their own discretion, and all of these occur within coordination frameworks that are as hierarchical and expansive as possible. In other words, the “discretionary” subset of the unilaterally-initiated and limited category and the jointly-initiated category of coordination legislation includes no statutes.

While the main body of the Article focuses on the trends suggested by this data, including that this legislation is primarily unilaterally-initiated, expansive, and mandatory, the Appendix substantiates all the categories of statute in the dataset, including those that are jointly-initiated or discretionary. The statutes framing the coordination are listed in the order they are presented in Table 5 in the body of the Article, which can be found in Part I.B. Table 5 lists the coordination statutes included in the dataset, and describes the hierarchical relationship between agencies directed by Congress to coordinate. The statutes appearing in Table 5 have been bolded in the Appendix, so that readers may more quickly and easily reference the related coordination network.

The statutes framing the coordination are listed in the order they are presented in Table 5 in the body of the Article, which has been reprinted here. In this table, the relevant substantive statute for which coordination has been authorized is listed first and the agencies specified in the coordination legislation are **bolded**. The empowered or named agency—in other words, the agency at the head of the coordination hierarchy—is listed next to the statute in (parenthesis). If the named agency has control over an unnamed set of agencies, no other agency is listed in the parenthesis. If the named agency has control over a named set of agencies, the latter are listed in [brackets]. If the coordination is jointly-initiated, both agencies are listed in the parenthesis.

		Mandatory	Semi-Obligatory	Discretionary
Most	Unilaterally initiated by lead agency with unspecified (or unnamed) federal agencies	Emergency Economic Stabilization Act (U.S. Treasury), Market Reform Act (Securities and Exchange Commission), National Drug Control Policy (White House Office of National Drug Control Policy), Joint Resolution Making Continuing Appropriations for the Fiscal Year 1985, and for Other Purposes (AG), Coast Guard and Maritime Transportation Act (Coast Guard), An Act to Regulate Commerce with Foreign Countries (International Trade Commission), Small Business Act (Small Business Administration), Higher Education Act (Dept. of Education), Health Research and Quality Act (HHS/Aging), Veterans' Benefits Act (VA), Employee Retirement Income Security Act (Dept. of Labor), Older Americans Act (HHS/Administration on Aging), Indian Financing Act (Dept. of Interior), Endangered Species Act with other unnamed agencies (Dept. of Interior and Commerce), Resource Conservation and Recovery Act (EPA), Marine Mammal Protection Act (Marine Mammal Commission), Energy Policy Act (Dept. of Interior), Coast Guard Authorization Act (Coast Guard), Coordination of Wildlife, Fish, and Game Conservation and Rehabilitation, Military Reservations (DOD), An Act Authorizing the Construction, Repair, and Preservation of Certain Public Works on Rivers and Harbors for Navigation, Flood Control, and for Other Purposes (Army), Anti-Drug and Controlled Substances Act (Forest Service), Wolf Trap Park Act (Dept. of Interior)	Omnibus Diplomatic Security and Antiterrorism Act (State Dept.), Methane Transportation Research, Development, and Demonstration Act (Dept. of Energy), Marine Resources and Engineering Development Act (Dept. Commerce), Conservation of Antarctic Fauna and Flora (National Science Foundation), Consumer Product Safety Act (Consumer Product Safety Commission)	Demonstration Cities and Metropolitan Development Act (Dept. of Housing and Urban Development), Housing and Community Development Act (Dept. of Housing and Urban Development), Reforestation Act (Dept. of Agriculture), An Act to Provide for the Protection of Land Resources Against Soil Erosion (Dept. of Agriculture), An Act to Stop Injury to the Public Grazing Lands (Dept. of the Interior), An Act to Promote Effectual Planning, Development, Maintenance, and Coordination of Wildlife, Fish, and Game Conservation and Rehabilitation in Military Reservations (DOD), Colorado River Basin Project (Army), Establishing the Sawtooth National Recreation Area (Dept. of Interior/Forest Service), An Act to Revise, Codify, and Enact into Law, Title 23 of the United States Code, Entitled "Highways" (Dept. of Transportation), Tuna Conventions Act (Secretary of State)
Hierarchical & Expansive* Authority to Coordinate	Unilaterally initiated by lead agency with specified (or named) agencies	National Aeronautics and Space Act (DOD [with NASA]), Energy Reorganization Act (EPA [with Energy Research and Development Administration]), Water Bank Act (Depts. of Agriculture [with Dept. of Interior]), Rural Water Act (Dept. of the Interior [with Dept. of Agriculture]), Housing and Community Development Act (Dept. of Labor [with EPA]),	Southwest Forest Health and Wildlife Convention Act (Depts. of Agriculture [with Dept. of Interior]), National Fishing Enhancement Act (National Science Foundation [with Dept. of State; Dept. of Commerce, Navy and Dept. of State]), Act to Amend the Commercial Fisheries Research and Development Act (Dept. of Commerce [with Dept. of Interior and other federal agencies]), Electric and Hybrid Vehicle Research, Development, and Demonstration Act (Dept. of Energy [with Dept. of Transportation])	
Least	Jointly initiated** (by two named agencies)	Older Americans Act Amendments (HHS/Administration on Aging and Dept. of Labor); Vietnam Era Veterans' Readjustment Assistance Act (VA and Dept. of Labor); National Flood Insurance Act (Dept. of Homeland Security/FEMA and White House Office of Management and Budget), Whaling Convention (Depts. of State and Commerce)		Fish and Wildlife Coordination Act (Depts. of Agriculture and Commerce)
		←—————→		
*meaning breadth of topic and number/flexibility of agencies involved.	**rarely is there jointly initiated with unnamed federal agencies.	Most	Congressional Control	Least

The statutes listed in this table have been **bolded** in the following text of the Appendix, so that readers may more quickly and easily reference the related coordination framework.

A. UNILATERALLY INITIATED & EXPANSIVE

Most of the coordination statutes discussed in this project empower one “named” agency to coordinate at will with a broad, diverse and often unspecified, or “unnamed,” set of other agencies. Many of these statutes make use of the word “shall” or otherwise require a set of agencies to respond to the empowered agency if it chooses to initiate coordination.⁴⁸⁴ As noted earlier, these examples are paradigmatic of interagency control, in that they compel opportunities for individual, named agencies to make use of the resources and discretion of other agencies to further their own implementation of legislation and related policy.⁴⁸⁵

In some, semi-obligatory statutes, phrases such as “the maximum extent practicable,”⁴⁸⁶ present an apparent mandate for the named agency that nonetheless gives it some choice regarding whether to coordinate. In still fewer, the coordination may be more transparently up to the discretion of the named agency. But even within non-mandatory coordination frameworks, the named agency may be able to draw from the resources and expertise of other agencies in order to increase its own enforcement power.

1. Mandatory

Law enforcement and security is an area bolstered by mandatory coordination and that allows for interagency control by law enforcement agencies and agency heads. For instance, under the **Emergency Economic Stabilization Act**,⁴⁸⁷ “[a]ny Federal financial regulatory agency *shall* cooperate with the Federal Bureau of Investigation and other law enforcement agencies investigating fraud . . . with respect to . . . financial products.”⁴⁸⁸ Here, agencies are required to follow the FBI’s lead, should it

484. Cf. Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1158 (providing an example of “mandatory consultation”).

485. See *supra* notes 89–90 and accompanying text.

486. See *supra* Part I.B (describing coordination legislation, including mandatory coordination statutes).

487. Emergency Economic Stabilization Act of 2008, 12 U.S.C.A. § 5234 (2012) (“Cooperation with the FBI”) (emphasis added).

488. *Id.* (“Cooperation with the FBI”) (emphasis added).

initiate coordination.⁴⁸⁹ Likewise, the **Market Reform Act** compels agencies to coordinate with the Securities and Exchange Commission to mitigate significant financial or operational risks regarding any entity the Commission regulates.⁴⁹⁰ Legislation governing the **National Drug Control Policy** requires all agencies tasked with furthering the National Drug Control Program⁴⁹¹ to share any drug-related data with the White House Office of National Drug Control.⁴⁹² Under **Joint Resolution** legislation,⁴⁹³ the Attorney General can demand coordination (and, in some cases, staff and money) from any agency⁴⁹⁴ to empower local law enforcement to help implement and increase the effectiveness of the Federal Witness Security Program.⁴⁹⁵ The text of these statutory schemes allow the named agency to coordinate with almost any other agency to amplify both its resources and its reach for law enforcement purposes.

The information-sharing piece of the **Coast Guard and Maritime Transportation Act** (which seeks to improve the maritime domain of the Arctic) is phrased as an imperative (“shall”).⁴⁹⁶ However, the sharing of tangible resources is not a

489. More specifically, the language is mandatory (“requires”) given that *all* regulatory agencies have to cooperate with FBI and federal law enforcement in the investigation of fraud; indeed, the Miller Amendment also specifies “with any state consumer protection agencies.” H.R. REP. NO. 110-374(l) (2007). The language is also broad, in that it uses umbrella term “cooperate” without specifying further.

490. Market Reform Act of 1990, Pub. L. No. 101-432, § 7, 104 Stat. 975–76 (1990) (codified at 12 U.S.C.A. § 1831*l*) (authorizing the Securities and Exchange Commission to coordinate).

491. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, 112 Stat. 2681 (1999).

492. Office of National Drug Control Policy Reauthorization Act of 1998, Pub. L. No. 105-277, § 705, 112 Stat. 2681 (1998) (codified as amended at 21 U.S.C. § 1704) (“Coordination with National Drug Control Program agencies in demand reduction, supply reduction, and State and local affairs”).

493. Act of Oct. 12, 1984, Pub. L. No. 98-473, § 1208, 98 Stat. 1837, 2153–63 (1985).

494. 18 U.S.C. § 3526(a) (2012). In the chapter describing witness protection provisions, § 3526 (“Cooperation of other Federal agencies and State governments; reimbursement of expenses”) provides that “[e]ach Federal agency shall cooperate with the Attorney General in carrying out the provisions of this chapter and may provide, on a reimbursable basis, such personnel and services as the Attorney General may request in carrying out those provisions.”

495. 130 CONG. REC. 31,742 (1984).

496. 14 U.S.C. § 154(a)–(b) (2012) (“Cooperation with Other Agencies”) (“The Commandant shall improve maritime domain awareness in the Arctic—(1) by

requirement⁴⁹⁷—and thus not a requirement the Coast Guard may implement unilaterally. Nonetheless, coordination does offer the Coast Guard and several other agencies, named and unnamed,⁴⁹⁸ a significant opportunity to share resources and exercise discretion broadly in order to act on concerns related to the Arctic.⁴⁹⁹ However, the variety of executive and independent agencies authorized to coordinate may pose challenges. These agencies include, for instance, the Departments of Defense and Homeland Security, as well as the National Oceanic and Atmospheric Administration and Environmental Protection Agency.⁵⁰⁰ Thus, the interests (such as national security, the development of scientific research, and environmental protection), political perspectives, relative sizes, budgets, relationships with Congress, and involvement of the President of each of these agencies are likely to come into conflict with one another and may result in the constraint of any one agency's influence. While the Coast Guard may seek the final word on the implementation of policy, it is unlikely to be able to fully control the consequences, or even the quality of progress, resulting from binding this colorful group of agencies. Similarly, **An Act to Regulate Commerce with Foreign Countries**⁵⁰¹ requires the International Trade Com-

promoting interagency cooperation and coordination; (2) by employing joint, interagency, and international capabilities; and (3) by facilitating the sharing of information, intelligence, and data related to the Arctic maritime domain between the Coast Guard and departments and agencies listed in subsection (b) [listed in the body of the paper].”).

497. Howard Coble Coast Guard and Maritime Transportation Act of 2014, Pub. L. No. 113-281, § 502(a), 128 Stat. 3022, 3057–58 (2014).

498. These include the Department of Homeland Security, Department of Defense, Department of Transportation, Department of State, Department of the Interior, *National Aeronautics and Space Administration*, National Oceanic and Atmospheric Administration, *Environmental Protection Agency*, National Science Foundation, *Arctic Research Commission*, and “[a]ny Federal agency or commission or State the Commandant determines is appropriate.” *Supra* note 496 (italics denote independent agencies).

499. The coordination here is in service of improving the maritime domain awareness of the Arctic, but legislators’ statements also mention national security and energy security. *Id.*; 160 CONG. REC. E1809 (daily ed. Dec. 12, 2014) (statement of Hon. Jim Jordan).

500. *Supra* note 498.

501. Act of June 17, 1930, ch. 497, 46 Stat. 590 (“An Act To provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes”).

mission to coordinate with the Treasury Department, the Department of Commerce, the Federal Trade Commission, and any other agency to further the goals of the statute as a whole.⁵⁰²

There are also examples from other substantive areas of regulation with a similarly unilateral and mandatory initiation of coordination. Under the **Small Business Act**, the Small Business Administration is charged with and may require other agencies to coordinate in order to further small business interests.⁵⁰³

The **Higher Education Act**⁵⁰⁴ requires the Department of Education to work with other agencies to improve the quality of STEM education.⁵⁰⁵ Under the **Healthcare Research and Quality Act**,⁵⁰⁶ Congress has accorded the Agency for Healthcare Research and Quality, a subcomponent of the Department of Health and Human Services, the power to mold the activities of any and all federal agencies that are involved with health services research and quality assurance.⁵⁰⁷ Indeed, Congress made clear that it wishes for the named agency to have

502. Tariff Act of 1930, 19 U.S.C. § 1334 (2012) (“Cooperation with Other Agencies”). This section is titled, “Cooperation with other agencies,” and it provides that “[t]he commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments”

503. 15 U.S.C. § 634 (2012).

504. See Higher Education Amendments of 1998, Pub. L. No. 105-244, § 301(a)(5,7), 112 Stat. 1581, 1636 (1998) (transferring the STEM program from the National Science Foundation to the Department of Education); Higher Education Amendments of 1992, Pub. L. No. 102-325, § 1002(d), 106 Stat. 448, 778–79 (1992); Higher Education Amendments of 1986, Pub. L. No. 99-498, § 1002, 100 Stat. 1268, 1561 (1986); Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (1965) (strengthening the educational resources of colleges and universities and providing financial assistance for students in postsecondary and higher education). The “Findings” and “Purpose” sections of the Act also indicate coordination is to support technological and economic competitiveness, educate Americans, and improve STEM programs.

505. 20 U.S.C. § 1067i (2012) (“Cross program and cross agency cooperation”) (“The [Department of Education] Minority Science and Engineering Improvement Programs shall cooperate and consult with other programs within the Department and within Federal, State, and private agencies which carry out programs to improve the quality of science, mathematics, and engineering education.”).

506. See Healthcare Research and Quality Act of 1999, Pub. L. No. 106-129, 113 Stat. 1653 (1999) (codified as amended at 42 U.S.C. § 299–299c-7) (amending Title IX of the Public Health Service Act).

507. See 42 U.S.C. § 299b-6(a) (2012) (“Coordination of Federal Government quality improvement efforts”) (mandating that “the Secretary, acting through

expansive powers to influence other agencies to further healthcare initiatives throughout the federal government.⁵⁰⁸ Legislation authorizing coordination under the **Veterans' Benefits Act** has also effected an expansion of the Department of Veteran's Affairs power to assist homeless veterans.⁵⁰⁹ The implementation of other labor standards, including under the **Employee Retirement Income Security Act (ERISA)**, is also reinforced by coordination offering the Department of Labor interagency control.⁵¹⁰

The Department of Health and Human Services, and in particular, the Administration on Aging, must initiate coordination with other agencies—which are obligated to participate—as a result of a large-scale agency coordination arrangement involving multiple pieces of legislation (such as the **Older Americans Act**

the Director, shall coordinate all research, evaluations, and demonstrations related to health services research, quality measurement and quality improvement activities undertaken and supported by the Federal Government”).

508. See S. REP. NO. 106-82, at 5 (1999) (stating that “through coordination of various Federal quality initiatives, the Agency is to become the hub and driving force of Federal efforts to improve quality of health care in all practice environments”); H.R. REP. NO. 106-305, at 29 (1999) (noting that “this legislation instructs the Agency to have an expanded role in the coordination of Federal quality improvement efforts undertaken by the Federal government”).

509. Veterans' Benefits Act, Pub. L. No. 105-114, § 1774, 111 Stat. 2277, 2286 (1997) (codified as amended at 38 U.S.C. § 2034(a) (2001)) (“Coordination with other agencies and organizations”) (“In assisting homeless veterans, the Secretary [of Labor] shall coordinate with, and may provide services authorized under this title in conjunction with, State and local governments, other appropriate departments and agencies of the Federal Government, and nongovernmental organizations.”); see also S. REP. NO. 105-123, at 17 (1997) (indicating that the purpose of authorizing interagency coordination here was to “consolidate, clarify, and codify” authority for successful homeless assistance programs that the VA had already established); H.R. REP. NO. 105-293, at 11 (1997) (“[T]he reported bill does not seek to diminish VA efforts on behalf of the homeless To the contrary, the bill would effectively extend VA's authority to administer [pilot] programs [began in Public Law 102-590].”).

510. See, e.g., Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 506, 88 Stat. 829, 894 (1974) (codified as amended at 29 U.S.C. § 1136 (1996)) (“Coordination and responsibility of agencies enforcing this subchapter and related Federal laws”) (implementing coordination between the Secretary of Labor and “any such agency as he may find to be practicable and consistent with law”); Labor-Management Reporting and Disclosure Act, Pub. L. No. 86-257, § 607, 73 Stat. 519, 540–41 (1959) (codified at 29 U.S.C. § 527) (“Cooperation with other agencies and departments”) (implementing coordination between the Department of Labor and “any department, agency, or establishment of the United States or of any State or political subdivision of a State”).

and the **Public Works and Economic Development Act**) concerning programs for the elderly.⁵¹¹ The original grant of coordination authority⁵¹² was mandated to “build[] in requirements for coordination with all other groups” having programs related to the elderly, while also allowing the Administration on Aging to retain its role as the leading component on elder issues.⁵¹³ Another example of broad authority involves the **Indian Financing Act**,⁵¹⁴ under which the Department of the Interior is authorized to coordinate extensively with other agencies⁵¹⁵ to improve the condition of Native reservations.⁵¹⁶

511. See, e.g., Older Americans Act, Pub. L. No. 89-73, § 602, 79 Stat. 218, 226 (1965); 42 U.S.C. § 3013(a)(1)–(2) (2012) (“Federal agency cooperation”) (“The Assistant Secretary [on Aging], in carrying out the objectives and provisions of this chapter, shall coordinate, advise, consult with, and cooperate with the head of each department, agency, or instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of this chapter, with respect to such programs or services The head of each department, agency, or instrumentality of the Federal Government proposing to establish programs and services substantially related to the objectives of this chapter shall consult with the Assistant Secretary prior to the establishment of such programs and services.”); Public Works and Economic Development Act of 1965, Pub. L. No. 89-136, § 503, 79 Stat. 552, 565–66 (1965) (codified at 42 U.S.C. § 3132) (“Cooperation of Federal agencies”) (“In accordance with applicable laws and subject to the availability of appropriations, each Federal agency shall exercise its powers, duties and functions, and shall cooperate with the Secretary [of Commerce], in such manner as will assist the Secretary in carrying out this subchapter.”). Congress provided for interagency cooperation here in order to improve employment and community service opportunities for the elderly. See 42 U.S.C. § 3056c. This statute is closely related to 42 U.S.C. § 3013, *infra* note 626. The main difference between the two statutes is that the coordination authorized here is focused on employment and community service opportunities, whereas § 3013 encompasses coordination on a much broader range of programs for the elderly.

512. Older Americans Comprehensive Services Amendments of 1973, Pub. L. No. 93-29, 87 Stat. 30 (1973) (codified in scattered sections of 29 U.S.C. and 42 U.S.C.).

513. H.R. REP. NO. 93-43, at 13 (1973) (noting that coordination should allow the Administration on Aging to “maintain its own identity in order to serve as a strong advocate for the needs of the older population”).

514. Indian Financing Act of 1974, Pub. L. No. 93-262, 88 Stat. 77 (1974).

515. 25 U.S.C. § 1542 (2012) (“Agency cooperation; private contracts for management services and technical assistance”) (authorizing the Department of Interior “to cooperate with the Small Business Administration and the Corporation for National and Community Service and other Federal agencies” to further 25 U.S.C. § 1541).

516. This legislation is intended to require agencies to “provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for

One significant arena in which Congress has empowered agencies to exercise control through coordination is environmental regulation, perhaps because of the cross-cutting, urgent and protective nature of the enabling legislation. For instance, under the **Endangered Species Act**,⁵¹⁷ all agencies are required to “utilize their authorities” to “carry[] out programs for the conservation of endangered species and threatened species,”⁵¹⁸ even though only the Departments of the Interior and Commerce are the named implementers of this mandate. Further, Congress made clear that the Secretaries of the Interior and Commerce may even review other federal agencies’ programs and leverage their authority to encourage agencies to use their resources in service of these priorities.⁵¹⁹ And under the **Resource Conservation and Recovery Act**,⁵²⁰ all federal agencies are required to assist the Environmental Protection Agency in waste management.⁵²¹ In addition, this coordination provision was intended to “require[] cooperation of other Federal agencies with the EPA in

the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts.” 120 CONG. REC. 8383, at 8388 (1974) (“The House . . . added a new title V which would direct the Secretary [of Interior] to work with the Small Business Administration and Action to use their technical and managerial skills to develop a viable economic community on Indian reservations. This amendment is needed because the lack of business, financial, and management skills has been a reason for this failure.”).

517. Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. No. 100-707, § 109(g), 102 Stat. 4689, 4709 (1988); National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act of 1985, Pub. L. No. 99-659, § 411(b)–(c), 100 Stat. 3706, 3741–42 (1986); Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, §§ 4(a), 8(b), 96 Stat. 1411, 1417, 1426 (1982); Endangered Species Act of 1973, appropriation authorization, Pub. L. No. 96-159, § 4, 93 Stat. 1225, 1226–27 (1979); Endangered Species Act Amendments of 1978, Pub. L. No. 95-632, § 3, 92 Stat. 3751, 3752–60 (1978); Endangered Species Act of 1973, Pub. L. No. 93-205, § 7, 87 Stat. 884, 892 (1973) (codified as amended at 16 U.S.C. § 1536 (1988)).

518. 16 U.S.C. § 1536(a)(1) (2012) (“Interagency cooperation”).

519. *See id.*

520. Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, 90 Stat. 2795 (1976) (codified as amended at 42 U.S.C. §§ 6901–6987 (1984)).

521. 42 U.S.C. § 6963(a) (2012) (“Cooperation with Environmental Protection Agency”) (“All Federal agencies shall assist the Administrator [of the EPA] in carrying out his functions under this chapter and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.”).

achieving the purposes of th[e Resource Conservation and Recovery Act].”⁵²²

Under the **Marine Mammal Protection Act**⁵²³ the Marine Mammal Commission “shall have access to all studies and data compiled by Federal agencies regarding marine mammals” and may even “utilize the facilities or services of any Federal agency” with their consent (presumably, to carry out its mission).⁵²⁴ Similarly, under the **Energy Policy Act**,⁵²⁵ the Department of the Interior “shall consult and coordinate with Federal, State, and local agencies” to “ensure comprehensive collection of scientific data . . . share resources, and fund projects” to “provide a better

522. H.R. REP. NO. 94-1491, at 8 (1976) (emphasis added). The purpose of the Resource Conservation and Recovery Act was to increase reclamation and reuse of waste and to protect people from the harmful effects of hazardous waste disposal. *Id.* at 2–3. The purpose of the original grant of cooperation authority, 42 U.S.C. § 6963(a), was to “require[] cooperation of other Federal agencies with the EPA in achieving the purposes of th[e Resource Conservation and Recovery Act].” *Id.* at 8. In amending the grant of cooperation authority to add subsection (b) to the statute, Congress intended to assist the EPA in its execution of studies on reuse of waste byproducts. 126 CONG. REC. 2733, 3361–62 (1980) (statement of Hon. Tom Bevill) (discussing the importance of reusing waste byproducts in regards to a related bill, H.R. 3994, and stating that EPA studies on byproduct reuse “should not proceed in a vacuum,” but rather should be undertaken with “the assistance and cooperation of those most expert in this field . . . includ[ing] . . . personnel from other agencies of Government [such as the Department of Energy, the Department of Interior, the Federal Highway Administration, the Department of Commerce, and the Department of Agriculture] that are aware of the role coal plays in our national energy policy, or of actual disposal and utilization practices”). The congressional record was eventually incorporated into the Solid Waste Disposal Act Amendments of 1980, Pub. L. No. 96-482, § 6003, 94 Stat. 2334, 2356 (1980) (codified as amended at 42 U.S.C. § 6963), in a slightly different form. Under subsection (a), all Federal agencies are required to cooperate with the EPA in functions related to solid waste. *See id.* The cooperation authority under subsection (b) also extends to all Federal agencies, although the congressional record suggests that the Department of Energy, the Department of Interior, the Federal Highway Administration, the Department of Commerce, and the Department of Agriculture are the agencies most likely to cooperate with EPA under this subsection. *See id.*

523. Marine Mammal Protection Act of 1972, Pub. L. No. 92-522, § 205, 86 Stat. 1027, 1045 (1972) (codified at 16 U.S.C. § 1405).

524. 16 U.S.C. § 1405 (2012) (“Coordination with other Federal agencies”) (“The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this chapter.”).

525. Energy Policy Act of 2005, Pub. L. No. 109-58, § 348, 119 Stat. 594, 708 (2005) (codified at 42 U.S.C. § 15906).

understanding of the terrestrial, aquatic, and marine ecosystems of the North Slope of Alaska.”⁵²⁶ In addition, the **Coast Guard Authorization Act**⁵²⁷ allows the Coast Guard to utilize the resources of other agencies to respond to environmental concerns like oil spills and other debris clean-up. Indeed, the language of the coordination authority is expansive, in that it allows the Coast Guard to unilaterally perform any activity for another agency, or to avail itself of any other agency’s resource with the permission of that agency head.⁵²⁸

In addition, in a number of instances, Congress has mandated coordination in order to protect individual national

526. See 42 U.S.C. § 15906 (2012) (“North Slope Science Initiative”).

527. This legislation is aimed at environmental protection and clean-up, and the provision is part of a larger bill that discusses responses to oil spills, marine debris clean-up, and related items. Coast Guard Authorization Act of 1996, Pub. L. No. 104-324, § 405(a), 110 Stat. 3901, 3924 (1996) (codified as amended at 14 U.S.C. § 141).

528. 14 U.S.C. § 141 (2012) (“Cooperation with other agencies, States, territories, and political subdivisions”) (“The Coast Guard may, when so requested by proper authority, utilize its personnel and facilities (including members of the Auxiliary and facilities governed under chapter 23) to assist any Federal agency, State, Territory, possession, or political subdivision thereof, or the District of Columbia, to perform any activity for which such personnel and facilities are especially qualified The Coast Guard, with the consent of the head of the agency concerned, may avail itself of such officers and employees, advice, information, and facilities of any Federal agency, State, Territory, possession, or political subdivision thereof, or the District of Columbia as may be helpful in the performance of its duties.”).

parks.⁵²⁹ For instance, under the **National Parks Act**, the Department of the Interior⁵³⁰ is authorized to coordinate with other agencies concerning a park/music facility called Wolf Trap located near an airport in Virginia.⁵³¹ Indeed, mandating agencies to coordinate may amplify administrative efforts in an arena in which agencies might not otherwise concentrate ample resources. According to Congress, the purpose of cooperation was “to assure adequate protection for Wolf Trap from undue noise and air pollution in the future.”⁵³² Because Wolf Trap Park is operated by Interior and the anticipated source of noise and air pollution was Dulles Airport, cooperation between Interior and the Federal Aviation Authority in particular was contemplated by the statute, although the text of the statute leaves open the opportunity for Interior to coordinate with other agencies.⁵³³

529. See, e.g., Act of June 4, 1968, Pub. L. No. 90-327, § 3, 82 Stat. 169 (1968) (codified at 16 U.S.C. § 693d) (“Cooperation with public and private agencies; contributions and gifts for Robert S. Kerr Center”) (“The Secretary of Agriculture is hereby authorized to cooperate with and receive the cooperation of public and private agencies and organizations and individuals in the development, administration, and operation of the Robert S. Kerr Memorial Arboretum and Nature Center. The Secretary of Agriculture is authorized to accept contributions and gifts to be used to further the purposes of sections 693b to 693d of this title.”); Act of Sept. 28, 1965, Pub. L. No. 89-207, § 4, 79 Stat. 843, 843–44 (1965) (codified at 16 U.S.C. § 460p-3) (“Outdoor recreation facilities development; cooperation with Federal and State agencies”) (encouraging the Department of Agriculture to coordinate to develop recreation facilities in West Virginia); *Robert S. Kerr Memorial Arboretum and Nature Center: Hearing on H.R. 15822 Before the Comm. on Agric.*, 90th Cong., 2–3 (1968) (statement of Orville L. Freeman, Secretary, Department of Agriculture) (reiterating the narrow subject matter in arboretum-related coordination); Act of Mar. 25, 1948, Pub. L. No. 80-454, § 2, 62 Stat. 85 (1948) (codified at 30 U.S.C. § 402) (“Acquisition of lands and property; utilization of voluntary services; cooperation with other Federal, State, and private agencies”) (granting authority to the Secretary of Interior to contract with any agency, state or federal to secure a laboratory in North Dakota).

530. See 16 U.S.C. § 284g(a) (2012) (“Cooperation of government agencies”) (“The Secretary [of Interior] shall cooperate with, and seek cooperation from, other Federal, State, and local agencies (including the Federal Aviation Administration) to protect the park from undue noise intrusions, air pollution, and visual degradation.”).

531. Act of Oct. 14, 1982, Pub. L. No. 97-310, § 8(a), 96 Stat. 1455, 1457 (1982) (codified at 16 U.S.C. § 284g(a)); Act of Oct. 15, 1966, Pub. L. No. 89-671, 80 Stat. 950 (1966).

532. H.R. REP. NO. 97-825, at 11 (1982).

533. *Id.* at 10; *supra* note 530.

The named agency may even be the object, as opposed to the subject, of the coordination effort. In an example that is reminiscent of the FBI's remarkable power to utilize other agencies in its fraud investigations,⁵³⁴ under the **Anti-Drug Abuse Act**,⁵³⁵ the Forest Service (a division of the Department of Agriculture) is compelled to cooperate with any federal agency that has related jurisdiction over a drug investigation⁵³⁶ and to "cooperate with the Attorney General in carrying out the seizure and forfeiture provisions"⁵³⁷ of the **Controlled Substances Act**⁵³⁸ for any violations of the Act.⁵³⁹ The Forest Service must even accept the exercise of law enforcement from any other federal agency that wishes "to exercise the powers and authorities of the Forest Service" when it is "economical and in the public interest" for general law enforcement purposes.⁵⁴⁰ In other words, the Forest Service is expected to coordinate with other, unnamed agencies at *their* discretion. Beyond these exceptions, however, the named agency is generally empowered to divert other agencies' resources and attention, thus circumscribing those agencies' discretion and altering their ability to pursue their preferred priorities.

Finally, in one case, more than one agency is tasked with initiating coordination among an unspecified set of other agencies. More specifically, a Commission comprised of officials from the Departments of State and Commerce is tasked with carrying out duties and cooperating⁵⁴¹ under the **National Oceanic and**

534. See *infra* notes 554–58 and accompanying text.

535. Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 15004, 100 Stat. 3207, 3398–99 (1986) (codified as amended at 16 U.S.C. 559d(1) (1988)).

536. *Id.* ("[T]he Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed . . .").

537. 16 U.S.C. § 559d(3) (2012) ("Cooperation with other Federal, State, and local law enforcement agencies") ("[T]he Forest Service shall cooperate with the Attorney General in carrying out the seizure and forfeiture provisions of section 511 of the Controlled Substances Act (21 U.S.C. 881) for violations of the Controlled Substances Act [21 U.S.C. 801 et seq.] relating to offenses committed within the National Forest System, or which affect the administration of the National Forest System . . .").

538. 21 U.S.C. § 841 (2012).

539. *Id.* §§ 801–904, 951–71.

540. 16 U.S.C. § 559d(4)–(5) ("Cooperation with other Federal, State, and local law enforcement agencies").

541. See *id.* § 5007(a)–(b) ("Cooperation with other agencies") ("Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a

Atmospheric Administration Authorization Act.⁵⁴² And, under the **Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs**,⁵⁴³ an unspecified set of agencies are tasked with coordinating to ensure the safety of mobile homes.⁵⁴⁴

2. Semi-Obligatory

Congress may also implement somewhat less obligatory frameworks of coordination by mandating agencies to interact “to the maximum extent possible” or, seeming more discretionarily, “to the maximum extent practicable.” In general, while the statutory language in these examples is not as binding as “shall” or “must,” it nonetheless, apparently, leaves less room for opting out than the clear delegation of pure discretionary authority to coordinate, as discussed later in this subsection. Furthermore, the hierarchy established by these coordination statutes may offer the named agency in each case some power to persuade other agencies to support its interests.

For instance, under the **Omnibus Diplomatic Security and Antiterrorism Act**,⁵⁴⁵ “other Federal agencies” are required to cooperate “to the maximum extent possible with the

reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.”).

542. See National Oceanic and Atmospheric Administration Authorization Act of 1992, Pub. L. No. 102-567, § 808, 106 Stat. 4270, 4312 (1992) (codified as amended at 16 U.S.C. § 5007 (2000)); Oceans Act of 1992, Pub. L. No. 102-587, § 8008, 106 Stat. 5039, 5101 (1992); Pribilof Islands Transition Act, Pub. L. No. 106-562, § 304(a), 114 Stat. 2794, 2806 (2000) (amending the Oceans Act of 1992). In particular, the commission has expansive authority to implement the North Pacific Anadromous Stocks Convention, as well as “minimiz[e] current bureaucratic red tape,” streamline procedures, and strengthen enforcement under the statute. See National Oceanic and Atmospheric Administration Authorization Act of 1992, § 802, 138 CONG. REC. 32,467, 32,474 (1992).

543. See Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971).

544. 42 U.S.C. § 4634 (2012) (“Agency coordination”) (authorizing inter-agency coordination to set and determine compliance with mobile home and manufactured home standards). The purpose of the overall legislative scheme is to “ensure safer and better constructed mobile homes” possibly at the behest of those with a stake in mobile homes. *Housing and Community Development Legislation—1973: Hearings Before the Subcomm. on Housing of the Comm. on Banking and Currency*, 93d Cong. 2186 (1973) (indicating a legislative interest in coordination regarding this matter: “In all, what seems to be evolving is a new cooperation between Federal, State and local governments in establishing and fulfilling the housing policies of the Nation.”).

545. See Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub.

Secretary of State” to maintain the security of all U.S. diplomatic missions.⁵⁴⁶ Similarly, under the **Methane Transportation Research, Development, and Demonstration Act**,⁵⁴⁷ the Department of Energy is authorized to work with any federal entity, and agencies may exercise discretion to further aims of the statute⁵⁴⁸ “to the maximum extent possible.”⁵⁴⁹ However, the particular coordination language in this instance limits the responsibility and power of the Secretary of Energy by not specifying to what extent other agency activities must incorporate the goals of methane vehicle development and by leaving to those agencies’ discretion whether they will provide resources to the Department of Energy in service of this goal.⁵⁵⁰

Under the **Marine Resources and Engineering Development Act**,⁵⁵¹ the Secretary of Commerce is expected to coor-

L. No. 99-399, § 106, 100 Stat. 853, 857–58 (1986) (codified at 22 U.S.C. § 4805).

546. 22 U.S.C. § 4805 (2012) (“Cooperation of other Federal agencies”) (authorizing coordination to accomplish 22 U.S.C. § 4802(a), which provides for the protection of all U.S. security and diplomatic missions).

547. *See* Methane Transportation Research, Development, and Demonstration Act of 1980, Pub. L. No. 96-512, § 5, 94 Stat. 2827, 2830 (1980) (codified at 15 U.S.C. § 3804); *see also* S. REP. NO. 96-1006 (1980) (supporting the Methane Transportation, Development, and Demonstration Act of 1980).

548. The overarching goal of the statute is to “provide for advanced and accelerated research into, and development of, methane vehicle design.” 15 U.S.C. §§ 3801(b)(1), 3804 (2012) (“Coordination with other Federal departments and agencies”).

549. *Id.* § 3804(a)–(b) (“Coordination with other Federal departments and agencies”) (“In carrying out the programs established under sections 3803 [management of methane vehicle research, development, and demonstration] and 3806 [assessing current state of methane vehicle technologies] of this title, the Secretary shall assure, to the maximum extent practicable, that the functions of this program are coordinated with related regulatory activities and other responsibilities of the Department of Energy and any other Federal departments of agencies.”); *see also* S. REP. NO. 96-1006, at 5 (1980) (explaining that the statute directs the Secretary to maximize cooperation between Federal agencies).

550. *See* 15 U.S.C. § 3804(a).

551. *See* Oceans Act of 1992, Pub. L. No. 102-587, § 2205(b)(13), 106 Stat. 5039, 5051 (1992) (amending the Coastal Zone Management Act of 1972); Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 6208, 104 Stat. 1388, 1695 (1990) (amending the Coastal Zone Management Act of 1972); Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, § 504, 92 Stat. 629, 693 (1978) (amending the Coastal Zone Management Act of 1972); Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, § 6, 90 Stat. 1013 (1976); Coastal Zone Management Act of 1972, Pub. L. No. 92-583, 86 Stat. 1280 (1972) (codified as amended at 16 U.S.C. § 1456(a) (1992)) (amend-

dinate with other agencies “to the maximum extent practicable”⁵⁵² in order to improve and strengthen coastal zone management in the United States and to coordinate and further the objectives of national energy policy.⁵⁵³

Another statute, the **Act to Implement the Agreed Measures for the Conservation of Antarctic Fauna and Flora**⁵⁵⁴ dictates that the National Science Foundation cooperate with other federal agencies “to the maximum extent practicable”⁵⁵⁵ for the named purpose of the statute. In another example, the **Consumer Product Safety Act**⁵⁵⁶ provides the Consumer Product Safety Commission, an independent agency, the opportunity to interact with any other federal agency, “to the maximum extent practicable,”⁵⁵⁷ both in a general capacity⁵⁵⁸ as

ing the Marine Resources and Engineering Development Act of 1966 in an attempt to “establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation’s coastal zones”); Marine Resources and Engineering Development Act, Pub. L. No. 89-454, 80 Stat. 203 (1966) (seeking “to provide for a comprehensive, long-range, and coordinated national program in marine science, to establish a National Council on Marine Resources and Engineering Development, and a Commission on Marine Science, Engineering and Resources”).

552. 16 U.S.C. § 1456(a) (2012) (“Coordination and cooperation”) (“In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.”).

553. H.R. REP. NO. 94-1298, at 23 (1976) (Conf. Rep.).

554. Antarctic Conservation Act of 1978, Pub. L. No. 95-541, § 12, 92 Stat. 2048, 2056 (1978).

555. Antarctic Conservation, ch. 44, 16 U.S.C.A. § 2411 (2012) (“Federal agency cooperation”) (“Each Federal department or agency whose activities affect Antarctica shall utilize, to the maximum extent practicable, its authorities in furtherance of the purposes of this chapter, and shall cooperate with the Director in carrying out the purposes of this chapter.”).

556. 15 U.S.C.A. § 2078 (2012); Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314, Tit. II, §§ 207, 235(c)(7), 122 Stat. 3016, 3044–3046, 3075 (2008) (Cooperation with States and other Federal agencies (ch. 47, Consumer Product Safety)); Consumer Product Safety Commission Improvements Act of 1976, Pub. L. No. 94-284, § 15, 90 Stat. 503, 510 (1976); Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, Tit. V, § 5115(c), 102 Stat. 1107, 1433 (1988); Consumer Product Safety Act, Pub. L. No. 92-573, § 29, 86 Stat. 1207, 1230–1231 (1972).

557. H.R. REP. NO. 110-501 (2007).

558. Consumer Product Safety, ch. 47, 15 U.S.C.A. § 2078(c) (“Cooperation with States and other Federal agencies”) (“The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult

well as more specifically for the collection of data in order to carry out any of its functions.⁵⁵⁹ And a general set of “Federal agencies” are expected to coordinate with any other “Federal departments and agencies” on this basis for the purposes of metropolitan development under the **Demonstration Cities and Metropolitan Development Act**.⁵⁶⁰ Other examples in which the language mandating coordination is somewhat tempered include interagency efforts to foster volunteer programs under the **Domestic Volunteer Service Act**⁵⁶¹ and aeronautics activities under the **America COMPETES Act**.⁵⁶²

3. Discretionary

Finally, in some cases, the named agency has the discretion to choose whether to coordinate with other agencies. Those unnamed agencies must, however, be responsive to the named agency, should it decide to initiate coordination. In these examples, the named agency wields power independent of Congress. In other words, unlike those instances in which unilaterally-initiated coordination is mandatory, Congress has not required that

in order to insure fully coordinated efforts.”); *see supra* note 556 and accompanying text.

559. 15 U.S.C.A. § 2078(c) (“The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter.”).

560. *See infra* notes 553–66 and accompanying text. The relevant statutory language states that “all Federal agencies which are engaged in administering programs related to metropolitan development, or which otherwise perform functions relating thereto, shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.”

561. Domestic Volunteer Service Act of 1973, Pub. L. No. 93-113, 87 Stat. 394 (1973); Domestic Volunteer Services, ch. 66, 42 U.S.C.A. § 5050 (1973) (“Coordination with other programs”) (“The Director [of the Corporation for National and Community Service] shall take necessary steps to coordinate volunteer programs authorized under this chapter with one another, with community action programs, and with other related Federal, State, and local programs.”); S. REP. NO. 93-311, at 107 (1973) (deriving the section from various sources and noting that it “continues the emphasis from [the Economic Opportunity Act of 1964] on the importance of including volunteer programs under this Act within . . . community action programs being carried out under this Act”).

562. Aeronautics, ch. 401, 51 U.S.C.A. § 40103 (2012) (“Cooperation with other agencies on aeronautics activities”) (“The Administrator [of NASA] shall coordinate, as appropriate, the Administration’s aeronautics activities with relevant programs in the Department of Transportation, the Department of Defense, the Department of Commerce, and the Department of Homeland Security”); America COMPETES Act, Pub. L. No. 110-69, 121 Stat. 572 (2007).

the lead agency utilize the resources of other agencies for policy-making purposes. As a result, while an agency's ability to influence another agency's actions may be fairly strong, that the agency will pursue the exercise of interagency control in the first place is not a given. Therefore, these statutes do not provide a reliable way for the legislature to exercise influence over the structure of administrative relationships.

Most statute-based coordination in this category concerns the development and management of land. For instance, under the **Demonstration Cities and Metropolitan Development Act**,⁵⁶³ the Secretary of Housing and Urban Development has expansive authority to collect data from other agencies for the general purpose of "areawide development."⁵⁶⁴ The Secretary of Housing and Urban Development also has authority under the **Housing and Community Development Act**⁵⁶⁵ to coordinate in order to plan and develop the safety and construction of manufactured homes.⁵⁶⁶ And under the **Reforestation Act**,⁵⁶⁷ the Department of Agriculture may insert itself into the work done by any institution on any land—public or private—near a national park, as long as "the public interest justifies" it; further,

563. Economic Development Administration and Appalachian Regional Development Reform Act of 1998, Pub. L. No. 105-393, 112 Stat. 3596 (1998) (providing for interagency coordination); Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, 80 Stat. 1255 (1966) (original statute).

564. Demonstration Cities and Metropolitan Development Program, ch. 41, 42 U.S.C.A. § 3332 (2012) ("Cooperation between Federal agencies") ("In order to insure that all Federal programs related to areawide development are carried out in a coordinated manner . . . the Secretary is authorized to call upon other Federal agencies to supply such statistical data, program reports, and other materials as he deems necessary to discharge his responsibilities for areawide development, and to assist the President in coordinating the areawide development efforts of all Federal agencies . . .").

565. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (1974).

566. Manufactured Home Construction and Safety Standards, ch. 70, 42 U.S.C.A. § 5408 (1974) ("Cooperation by Secretary with public and private agencies").

567. An Act to Facilitate and Simplify the Work of the Forest Service, and for Other Purposes, Pub. L. No. 81-478, 64 Stat. 83 (1950); An Act to Facilitate and Simplify the Work of the Forest Service, United States Department of Agriculture, and to Promote Reforestation, Pub. L. No. 68-575, 43 Stat. 1132 (1925).

the institution is required to pay for Agriculture's involvement.⁵⁶⁸ And to combat soil erosion under the **Act To provide for the protection of land resources against soil erosion**,⁵⁶⁹ the Department of Agriculture may "secure the cooperation of any governmental agency."⁵⁷⁰ Under **An Act To stop injury to the public grazing lands . . .**,⁵⁷¹ the Department of the Interior is authorized to coordinate to improve range management.⁵⁷² Under the **Sawtooth National Recreation Area Act**,⁵⁷³ the Department of the Interior's Forest Service division sought and was granted the authority to coordinate with any other agency in regards to "technical planning and assistance,

568. Forests; Forest Service; Reforestation; Management, ch. 3, 16 U.S.C.A. § 572 (2012) ("Cooperation between Secretary of Agriculture and public or private agencies in working land under State or private ownership") ("The Secretary of Agriculture is authorized, where the public interest justifies, to cooperate with or assist public and private agencies, organizations, institutions, and persons in performing work on land in State, county, municipal, or private ownership, situated within or near a national forest, for which the administering agency, owner, or other interested party deposits in one or more payments a sufficient sum to cover the total estimated cost of the work to be done . . .").

569. An Act to Amend Reorganization Plan Numbered 2 of 1973, and for Other Purposes, Pub. L. No. 93-253, § 102, 88 Stat. 50 (1974); An Act to Provide for the Protection of Land Resources Against Soil Erosion, and for Other Purposes, Pub. L. No. 74-46, 49 Stat. 164 (1935), 63 Stat. 972 (1949).

570. Cooperation of Governmental Agencies; Officers and Employees, Appointment and Compensation; Expenditures for Personal Services and Supplies, 16 U.S.C.A. § 590 d (1935) ("For the purposes of this chapter, the Secretary of Agriculture may—(1) Secure the cooperation of any governmental agency. . .").

571. An Act to Stop Injury to the Public Grazing Lands by Preventing Overgrazing and Soil Deterioration, to Provide for Their Orderly Use, Improvement, and Development, to Stabilize the Livestock Industry Dependent Upon the Public Range, and for Other Purposes., Pub. L. No. 73-482, 48 Stat. 1269 (1987).

572. Grazing Lands, ch. 8A, 43 U.S.C.A. § 315k (2012) ("Cooperation with governmental departments; coordination of range administration") (authorizing the Secretary of the Interior to cooperate with "any department of the Government" to carry out the Act's purposes and coordinate range administration).

573. An Act to Establish the Sawtooth National Recreation Area in the State of Idaho, and to Temporarily Withdraw Certain National Forest Land in the State of Idaho from the Operation of U.S. Mining Laws, and for Other Purposes, Pub. L. No. 92-400, 86 Stat. 612 (1972).

advice, and [even simply] encouragement”⁵⁷⁴ concerning the protection of land in Idaho.⁵⁷⁵ Congress has even authorized the Department of State to initiate international coordination around tuna fishing under the **Tuna Conventions Act of 1950**.⁵⁷⁶

In some cases, Congress has established a structure of interagency control to enhance the power of the armed services. These are paradigm instances in which the named agency has discretion to implement coordination at will, but the unnamed agencies must be responsive if the former chooses to coordinate. For instance, the **Act To promote effectual planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation in military reservations** allows the Secretary of Defense to enter into agreements with just about any entity to maintain or improve national resources in order to benefit its own military efforts.⁵⁷⁷

574. *Sawtooth National Recreation Area: Hearing on H.R. 6957 Before the Subcomm. on Nat'l Parks and Recreation of the H. Comm. on Interior and Insular Affairs*, 92d Cong. 62 (1971) (statement of John R. McGuire, Deputy Chief of the Forest Service).

575. “The Secretary may cooperate with other Federal agencies, with State and local public agencies, and with private individuals and agencies in the development and operation of facilities and services in the area in furtherance of the purposes of this subchapter, including, but not limited to, the restoration and maintenance of the historic setting and background of the frontier ranch-type town of Stanley.” National Parks, Military Parks, Monuments, and Seashores, ch. 1, 16 U.S.C.A. § 460aa-5 (1972) (“Cooperation with other agencies in development and operation of facilities and services; Stanley, restoration”) (located in An Act to Establish the Hells Canyon National Recreation Area in the States of Oregon and Idaho, and for Other Purposes, Pub. L. No. 94-199, 89 Stat. 1117 (1975)).

576. S. REP. NO. 2094, at 2, 6 (1950) (noting that interagency cooperation was authorized in this case to further the international coordination of tuna research); Tuna Conventions Act of 1950, Pub. L. No. 81-764, 64 Stat. 777 (1950); Tuna Conventions, ch. 16, 16 U.S.C.A. § 958 (2012) (“Cooperation with other agencies”).

577. Conservation Programs on Government Lands, ch. 5C, 16 U.S.C.A. § 670c-1 (“Cooperative and interagency agreements for land management on installations”) (“The Secretary of a military department may enter into cooperative agreements with States, local governments, Indian tribes, nongovernmental organizations, and individuals, and into interagency agreements with the heads of other Federal departments and agencies, to provide for the . . . maintenance and improvement of natural resources . . . if the purpose of the cooperative agreement or interagency agreement is to relieve or eliminate current or anticipated challenges that could restrict, impede, or otherwise interfere with, whether directly or indirectly, current or anticipated military activities.”); An Act to Promote Effectual Planning, Development, Maintenance, and Coordination of Wildlife, Fish, and Game Conservation and Rehabilitation in Military

Here, Congress prescribed coordination to ensure an emphasis on military interests vis-à-vis wildlife conservation.⁵⁷⁸ And, within the auspices of a seemingly narrowly-focused statute, the **Act Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation & flood control**⁵⁷⁹ the Secretary of the Army is empowered to engage with other agencies to further the large project of “preparing the general plan for the development of the water resources of the western United States”⁵⁸⁰ Indeed, this coordination was intended to authorize the Secretary to “participate to the fullest extent in development of water resources in the Western United States”⁵⁸¹ Put another way, Congress wished to give the Secretary of the Army a free hand to participate in the development of a water plan for the Western United States, so the Secretary’s authority to cooperate with other agencies in this policy area was intended to be quite broad.⁵⁸²

Finally, in at least a few instances, the named agency is the object, as opposed to the subject, of the coordination effort, as may be the case within mandatory coordination frameworks.⁵⁸³ In these situations, it is the unnamed set of agencies that are empowered by coordination legislation to wield control over the named agency. For instance, the Department of Transportation has permission to maintain and improve highways for other agencies, as well as states and foreign countries,⁵⁸⁴ and to pro-

Reservations, Pub. L. No. 86-797, 74 Stat. 1052 (1960).

578. S. REP. NO. 97-413 (1982).

579. An Act Authorizing the Construction, Repair, and Preservation of Certain Public Works on Rivers and Harbors for Navigation, Flood Control, and for Other Purposes, Pub. L. No. 91-611, 84 Stat. 1818 (1970).

580. Colorado River Basin Project, ch. 32, 43 U.S.C.A. § 1511a (2012) (“Cooperation and participation by Secretary of the Army with Federal, State, and local agencies”).

581. H.R. REP. NO. 91-1665, at 66 (1970); *see also* S. REP. NO. 91-1422, at 107–08 (1970) (noting that the “[present] authority . . . available to the Department of the Army [was] not sufficient for participation in a study of this magnitude,” meaning, a study to develop a “general plan for the future water needs of Western United States”).

582. *See id.*

583. *See supra* notes 535–43 and accompanying text.

584. *See* 23 U.S.C. § 308 (2012); An Act to Revise, Codify, and Enact into Law, title 23 of the United States Code, Entitled “Highways,” Pub. L. No. 85-767; Cooperation with Federal and State Agencies and Foreign Countries (Chapter 3. Highways, General Provisions).

vide “services” to these entities for people and businesses displaced by highway projects under the **Act To revise, codify, and enact into law, title 23 of the United States Code, entitled “Highways”**.⁵⁸⁵ In another example under the **Moving Ahead for Progress in the 21st Century Act**, the Coast Guard is required to cooperate with and expend resources to assist several agencies that have an interest in international or foreign matters⁵⁸⁶ and have jurisdiction over ports of entry with which the Coast Guard may interact.⁵⁸⁷ The Coast Guard also “may assist” the Department of Health and Human Services and other agencies in the provision of “medical emergency helicopter transportation services to civilians” if the assistance occurs within the Coast Guard’s jurisdiction under **An Act To amend titles and to improve the Code**.⁵⁸⁸

B. UNILATERALLY INITIATED & LIMITED

Authority to coordinate may also empower a named agency to initiate coordination at its discretion with a specified second

585. See *Moving Ahead for Progress in the 21st Century Act*, Pub. L. No. 112-141, 126 Stat. 405, 126 Stat. 577, 577–79 (2012); see also ROBERT S. KIRK, RES., SCI., & INDUS. DIV., R42445 SURFACE TRANSPORTATION REAUTHORIZATION LEGISLATION IN THE 112TH CONGRESS: MAP-21, H.R. 7, AND H.R. 4348 – MAJOR PROVISIONS 42–43 (2012) (amending an earlier version of Pub. L. No. 85-767 to include “activities under section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” as “services” that the Secretary may perform “for other Federal agencies, cooperating foreign countries, and State cooperating agencies”).

586. These agencies include U.S. Customs Service, the U.S. Postal Service, the Public Health Service, and the now-defunct Immigration and Naturalization Service, and ostensibly the immigration subcomponents of the Departments of Homeland Security and Justice. See *An Act to Provide for the Establishment, Operation, and Maintenance of Foreign-trade Zones in Ports of Entry of the United States, to Expedite and Encourage Foreign Commerce, and for Other Purposes*, Pub. L. 106-36, Tit. I, § 1001(b)(3), 48 Stat. 998; *An Act to Make Miscellaneous and Technical Changes to Various Trade Laws, and for Other Purposes*, Pub. L. No. 106-36, Tit. I, § 1001(b)(3), 113 Stat. 127, 131 (1934).

587. *Foreign Trade Zones*, ch. 1A, 19 U.S.C.A. § 81i (2012) (“Cooperation of Board with other agencies”) (“The Board shall cooperate with . . . the United States Customs Service, the United States Postal Service, the Public Health Service, the Immigration and Naturalization Service, and such other Federal agencies as have jurisdiction in ports of entry described in section 81b of this title.”).

588. *Cooperation with Other Agencies*, ch. 7, 14 U.S.C.A. § 147a (1982) (“Department of Health and Human Services”); *An Act to Amend Titles 10, 14, 37, and 38, United States Code, to Codify Recent Law and to Improve the Code*, Pub. L. No. 97-295, 96 Stat. 1287 (1982); H.R. REP. NO. 97-388, at 48 (1982).

agency, as opposed to with a set of unnamed agencies. These examples often indicate intent by Congress to grant one agency dominion over another in regards to a particular directive, particularly when the coordination is mandatory. The interagency control exercised in these examples is more limited, primarily because the statute-based coordination in each example involves only one compelled agency, and also if the subject matter is often narrower or more focused in scope.

1. Mandatory

Agencies may be mandated to consult with one other, named agency. Overall, coordination legislation involving named executive agencies may lay the groundwork for legislative and interagency control, albeit in a manner characterized less explicitly as such by Congress, perhaps because the legislature has to be careful in the way it circumscribes the discretion of agencies beholden to the President.

In a regime under the **National Aeronautics and Space Act**,⁵⁸⁹ Congress granted the Department of Defense significant control over NASA to ensure the former's military goals are bolstered by the latter.⁵⁹⁰ Congress also added a unique dispute resolution mechanism granting the President the final authority to determine the outcome of any conflicts between the two independent agencies,⁵⁹¹ because "the procedure . . . in this highly

589. National Aeronautics and Space Act of 1958, Pub. L. No. 85-568, 72 Stat. 426 (1958).

590. National Aeronautics and Space Program, ch. 201, 51 U.S.C.A. § 20114 (2012) ("Administration and Department of Defense coordination"); H.R. REP. NO. 85-1770, at 7 (1958) (noting that NASA was "directed, and not merely authorized, to cooperate with the Department of Defense" to achieve two purposes: "[1] cooperation between civilian and military organizations on all matters extending beyond purely peaceful applications or readily identifiable military requirements; and [(2)] freedom for the military departments to conduct such basic and applied research and development as may be necessary and appropriate to their military missions.").

591. National Aeronautics and Space Program, ch. 201, 51 U.S.C.A. § 20114 ("The Administration and the Department of Defense, through the President, shall advise and consult with each other on all matters within their respective jurisdictions related to aeronautical and space activities and shall keep each other fully and currently informed with respect to such activities If the Secretary of Defense concludes that any request, action, proposed action, or failure to act on the part of the Administrator [of NASA] is adverse to the responsibilities of the Department of Defense, or the Administrator concludes that any request, action, proposed action, or failure to act on the part of the Department

important subsection constitutes the machinery through which the more difficult problems of civilian and military relationships in the fields of aeronautics and astronautics will be worked out.”⁵⁹² Given the presumed alliance between the President, who is Commander-in-Chief of the Armed Forces, with the Department of Defense, which is also a cabinet agency (unlike NASA), this dispute resolution mechanism may also boost the Department of Defense’s reach and ability to shape NASA’s actions and priorities.

Some examples of seemingly joint initiation of collaboration in fact involve the legislature arming one independent agency with the power to shape the activities of another, perhaps because a sitting Congress seeks to alter the mandate of the latter agency to conform to its own political and ideological priorities. In the 1970s, under the **Energy Reorganization Act**, Congress authorized coordination⁵⁹³ in order to ensure the Environmental Protection Agency (EPA) has control over all environmental protection initiatives, in particular those of the Energy Research and Development Administration (ERDA). Indeed, a statement by the senators responsible for the language of this section speaks to this point: “It is not enough for EPA to maintain an ability to ‘assess’ pollution control developments [vis-à-vis the ERDA]; the Agency must be able to stimulate such developments and to participate actively in that process in order to understand the problem with particular technologies.”⁵⁹⁴ This was due, perhaps, both to an interest in environmental initiatives as well as in anticipation of these agencies’ dissimilar incentives and goals.

of Defense is adverse to the responsibilities of the Administration, and the Administrator and the Secretary of Defense are unable to reach an agreement with respect to the matter, either the Administrator or the Secretary of Defense may refer the matter to the President for a decision (which shall be final).”).

592. H.R. REP. NO. 1770, at 16 (1958).

593. Development of Energy Sources, ch. 73, 42 U.S.C.A. § 5820 (2012) (“Coordination with environmental efforts”) (“The Administrator [of the Energy Research and Development Administration] is authorized to establish programs to utilize research and development performed by other Federal agencies to minimize the adverse environmental effects of energy projects. The Administrator of the Environmental Protection Agency, as well as other affected agencies and departments, shall cooperate fully with the Administrator in establishing and maintaining such programs, and in establishing appropriate interagency agreements to develop cooperative programs and to avoid unnecessary duplication.”); Energy Reorganization Act of 1974, Pub. L. No. 93-438, 88 Stat. 1233 (1974).

594. S. REP. NO. 93-980, at 51 (1974) (statement by Sens. Jacob K. Javits & Edmund S. Muskie).

In fact, while developing this coordination, the drafting senators declared, “We do not question the importance of the proposed agency [meaning, the ERDA] having a strong environmental component but it should not replace or duplicate EPA’s activities. Instead of removing this function from EPA, full coordination between EPA and ERDA should be required to assure that EPA’s research capability is utilized.”⁵⁹⁵ Furthermore, this is not the only time Congress has authorized coordination to expand the EPA’s purview in relation to other agencies.⁵⁹⁶

Under the **Water Bank Act**, the Departments of Agriculture and the Interior have similar authority to coordinate per the text of the statute.⁵⁹⁷ Legislative history bears this out by emphasizing how important the Secretary of the Interior is to maintaining the wetlands program, which is of interest in this provision.⁵⁹⁸ However, it is the Secretary of Agriculture that is empowered, in the operative language of the statute, to affirmatively coordinate in order to ensure the program’s success,⁵⁹⁹ perhaps because Congress did not wish to sublimate Agriculture to this effort if it has other important priorities.

595. *Id.*

596. *See supra* notes 504–23 and accompanying text.

597. Water Bank Program for Wetlands Preservation, ch. 29, 16 U.S.C.A. §§ 1309, 2504 (2012) (“Consultation with Secretary of the Interior; conformity of program with wetlands programs administered by Secretary of the Interior; consultation with and utilization of technical services of appropriate local, State, Federal, and private conservation agencies; coordination of programs”) (“The Secretary shall consult with the Secretary of the Interior and take appropriate measures to insure that the program carried out pursuant to this chapter *is in harmony with* wetlands programs administered by the Secretary of the Interior.”) (emphasis added).

598. More specifically, the House Committee on Merchant and Marine Fisheries deemed the coordination provision “most important,” stating further that cooperation is necessary to the success of the migratory waterfowl conservation program established by the statute because the Secretary of the Interior is “[t]he nation’s principal wildlife conservation officer,” responsible for acquiring “valuable migratory waterfowl habitat throughout the United States” and that without land for waterfowl habitats, the program would flounder. H.R. REP. NO. 91-1307, at 12 (1970).

599. *See supra* note 575.

The **Rural Water Act**⁶⁰⁰ requires the Department of the Interior to coordinate with the Department of Agriculture to improve governmental rural water programs.⁶⁰¹ And per the **Housing and Community Development Act**,⁶⁰² the Department of Labor is required to coordinate with the Environmental Protection Agency to control the dangers of lead paint.⁶⁰³ Finally, the **Whale Conservation and Protection Study Act**⁶⁰⁴ requires the Department of State and other agencies to work with the Department of Commerce⁶⁰⁵ to ensure international cooperation to promote whale conservation.⁶⁰⁶

2. Semi-Obligatory

Unilaterally-initiated, named-agency coordination may also be structured so that an agency is tasked with a responsibility in consultation with another agency.⁶⁰⁷ In these examples, the hierarchy is clear but permeable, or “soft,”⁶⁰⁸ in keeping with documented legislative preferences. For example, under the **Antarctic Marine Living Resources Conservation Act**, “the Director of the National Science Foundation, in consultation with the Secretary of State and the heads of other appropriate departments and agencies of the United States, shall continue to

600. See, e.g., Rural Water Supply Act, ch. 42, Pub. L. No. 109-451, 120 Stat. 3345 (2006). Coordination was authorized here to standardize eligibility criteria for the federal government’s rural water programs.

601. Rural Water Supply Act, ch. 42, 43 U.S.C.A. § 2428 (2006) (“Interagency coordination and cooperation”) (requiring coordination between the Department of the Interior and the USDA for financial appraisal functions and loan guarantee administration under the Rural Water Supply Act).

602. Housing and Community Development Act of 1992, Pub. L. No. 102-550, 106 Stat. 3672 (1992).

603. Residential Lead-Based Paint Hazard Reduction Act, ch. 63A, 42 U.S.C.A. § 4853a (1992) (“Coordination between Environmental Protection Agency and Department of Labor”).

604. Whale Conservation and Protection Study Act, Pub. L. No. 94-532, 90 Stat. 2491 (1976).

605. Whale Conservation and Protection and Study Act, ch. 14A, 16 U.S.C.A. § 917b (1976) (“Cooperation of other Federal agencies”) (“All Federal agencies shall cooperate, to the fullest extent possible, with the Secretary of Commerce in preparing the study and recommendations required . . .”).

606. 122 CONG. REC. 32,928 (1976).

607. Cf. Freeman & Rossi, *Agency Coordination*, *supra* note 9, at 1157 (discussing and providing one example of “discretionary consultation”).

608. See Farber & O’Connell, *supra* note 6, at 1389 (defining a “soft” hierarchy among agencies as one in which “a substantive power relationship still exists, but the dominant actor’s control has limits”).

support basic research investigations of the Antarctic marine ecosystem as a part of the United States Antarctic Program”;⁶⁰⁹ and “the Secretary of Commerce, in consultation with the Director of the National Science Foundation, the Secretary of State and the heads of other appropriate Federal agencies, shall design and conduct the program of directed scientific research . . . supplemental to and coordinated with the United States Antarctic Program.”⁶¹⁰

In these examples, the first named agencies are in charge of their respective duties, but must make overtures towards including the input of other agencies. Further, the named agency may not be able to implement the policy without input from the secondary agenc[ies]. And while the secondary, consultative agencies are not in full control of the process at hand, they do have the opportunity to participate—and very likely, to determine their own level of participation, thereby impacting the scope of the lead agencies’ efforts and the outcome of the coordination. In these arrangements, the first agency may obligate the consulting agency to expend resources or share information, while the consulting agency shapes the named agency’s path to statutory implementation.

In a twist on this type of authority, some statutes authorizing coordination require that agencies consult with one another to establish coordination with yet a third set of agencies. For instance, the legislature passed the **Fisheries Amendments Act**⁶¹¹ because it was concerned by the unequal distribution of federal resources across fishing jurisdictions.⁶¹² Therefore, it authorized the Departments of Commerce and Interior to involve additional institutions, including federal agencies, in the management of commercial fishing regulations.⁶¹³ And, under the

609. Antarctic Marine Living Resources Conservation Act of 1984, Pub. L. No. 98-623, § 312, 98 Stat. 3394 (1984); *see also* Coast Guard and Maritime Transportation Act of 2006, Pub. L. No. 109-241, § 902(h)(2), 120 Stat. 516 (1984) (changing Department of Transportation to Department of Homeland Security in the afore mentioned Act).

610. Antarctic Marine Living Resources Convention, ch. 44A, 16 U.S.C.A. § 2441 (2012) (“Federal agency cooperation”).

611. Fisheries Amendments Act of 1982, Pub L. No. 97-389, 96 Stat. 1949 (1982).

612. H.R. REP. NO. 97-295, 3–4 (1981).

613. North Atlantic Salmon Fishing Act, ch. 56, 16 U.S.C.A. § 3605 (“Cooperation with other agencies and institutions”) (stating that to promote inter-jurisdictional management of resources that inherently transcend jurisdictional boundaries as well as research and development, “the Secretary of Commerce,

Southwest Forest Health and Wildfire Prevention Act,⁶¹⁴ the Secretary of Agriculture is tasked, in consultation with the Secretary of the Interior, to “facilitate the transfer of interdisciplinary knowledge”⁶¹⁵ and to otherwise encourage agencies to coordinate and cooperate for ecological restoration and wildlife management purposes.⁶¹⁶ In these examples, agencies are effectively jointly empowered to shape the priorities of a third set of agencies. As a result, on the one hand, pressure from two agencies may more easily persuade a third set of agencies to respond to requests for coordination. On the other hand, the fact that compliance or responsiveness by the third set of agencies has not been made mandatory by statute in these examples means that agencies’ ability to exercise interagency control is not certain.

Finally, a statute may also direct two specific agencies to engage in jointly-initiated coordination “to the maximum extent practicable.”⁶¹⁷ For example, under the **Electric and Hybrid Vehicle Research, Development, and Demonstration Act**,⁶¹⁸ the Department of Energy is directed to coordinate with the Department of Transportation “to the maximum extent practicable” to further the Electric and Hybrid Vehicle Research, Development, and Demonstration Project.⁶¹⁹ While the Department of Transportation may have some leverage that equalizes the two agency heads’ roles, given that Congress delegated analysis of relevant data to the Secretary of Transportation,⁶²⁰ legislative

in consultation with the Secretary of the Interior, may arrange for the cooperation of agencies of the United States and the States, and of private institutions and organizations”).

614. Southwest Forest Health and Wildfire Prevention Act of 2004, Pub. L. No. 108-317, 118 Stat. 1204 (2004).

615. H.R. REP. NO. 108-397, § 3 (2003); *see also* S. REP. NO. 108-252 (2004).

616. Southwest Forest Health and Wildfire Prevention, ch. 86, 16 U.S.C.A. § 6705 (“Cooperation between Institutes and Federal agencies”).

617. *See* Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. No. 94-413, 90 Stat. 1260 (1976).

618. *Id.*

619. Electric and Hybrid Vehicle Research, Development, and Demonstration Act, ch. 52, 15 U.S.C.A. § 2504(a) (2012) (“Coordination between Secretary of Energy and other agencies”) (“[T]he Secretary of Energy shall, to the maximum extent practicable, consult and coordinate with the Secretary of Transportation with respect to any functions of the Secretary of Energy under this chapter which relate to regulatory activities or other responsibilities of the Secretary of Transportation . . .”).

620. S. REP. NO. 94-1048, at 19 (1976) (Conf. Rep.).

history suggests that Congress authorized the Secretary of Energy to coordinate at will with Department of Transportation.⁶²¹ Nonetheless, the similar ideological and programmatic interests of these two agencies might mean they in fact seek to advance the project together.

3. Discretionary

The set of statutes considered in this project do not include any purely discretionary regimes that involve unilaterally-initiated/hierarchical coordination between named agencies.

C. JOINTLY INITIATED

Thus far, the analysis has focused on unilaterally-initiated coordination, in part because this constitutes the majority of statute-based coordination. However, the authority to coordinate may also be fashioned by Congress into a form of administrative partnership or collaboration,⁶²² either between two named agencies or among a group of agencies. In some of these statutes, the coordination is limited, in that it occurs between two named agencies and is substantively narrow; in others, it is broad, in that it involves several, unspecified agencies. As a whole, the relative lack of hierarchy in these statutes do not grant agencies as much opportunity to exercise interagency control as in the frameworks examined thus far, although the impact of joint initiation of coordination on interagency dynamics may be complex. Finally, this type of coordination appears to be primarily mandatory, perhaps because discretionary, jointly-initiated coordination might be toothless.

621. More specifically, Congress authorized coordination to allow the Secretary of Energy to delegate certain parts of the electric car project to other agencies when those parts are within the expertise of other agencies and suggested that the Secretary may do so by entering into “such arrangements and agreements with various Federal offices and agencies *as he may deem* necessary or appropriate.” S. REP. NO. 94-830, at 46 (1976) (emphasis added).

622. See Farber & O’Connell, *supra* note 6, at 1427 (“For symmetrical arrangements, the powers within the federal bureaucracy are more equivalent than in advising and monitoring adversarial relationships.”); KAISER, *supra* note 240, at 6 (“[C]ollaboration . . . recognizes a degree of voluntarism among the participants; even though required to become members of a collaborative arrangement, their actual participation could vary, based on their own determinations and not on directives from a lead authority. This situation reflects parity . . . producing a horizontal cooperative arrangement among peers.”); STANTON, *supra* note 130, at 7 (noting that in collaboration, “multiple agencies may perceive mutual benefit in working together”).

1. Mandatory

Congress may mandate coordination with a clearly collaborative flavor. The set of intentional, mandated jointly-initiated coordination schemas brought to light here tend to involve agencies with similar views on the importance and intent of the overarching legislative mandate, meaning that agencies involved in these frameworks are inherently motivated to work together. Furthermore, in these instances, the interplay between the lack of hierarchy and the likelihood of conflict⁶²³ resulting from overlapping jurisdiction means that the potential for interagency control is reduced, but not eliminated, because agencies are still required to coordinate.

For instance, the **Older Americans Act** and other legislation concerning the Administration on Aging⁶²⁴ include coordination between two named agencies. More specifically, the Administration on Aging must work with its parent agency, the Department of Health and Human Services,⁶²⁵ and with the Department of Labor⁶²⁶ to improve “employment and training programs”⁶²⁷ and further “support services” for the elderly involving health, education and training, among others.⁶²⁸ The provision of job assistance for veterans also includes mandatory joint coordination arrangements between the Department of Veterans Affairs and the Department of Labor under the **Vietnam Era Veterans’ Readjustment Assistance Act**.⁶²⁹ And, a joint

623. See *supra* Part II.B.1.

624. See *supra* notes 511–16 and accompanying text (describing coordination within the Older Americans Act).

625. Programs for Older Americans Act, ch. 35, 42 U.S.C.A. § 3056c (2012) (“Interagency cooperation”).

626. 42 U.S.C.A. § 3013 (requiring the Commissioner on Aging (now the Assistant Secretary on Aging) to “advise, consult, and cooperate with the Secretary of Labor” in order to increase employment opportunities for the elderly); Older Americans Act Amendments of 1992, Pub. L. No. 102-375, 106 Stat. 1195 (1992); H.R. REP. NO. 102-199, at 76–78 (1991) (determining that “the Secretary of Labor and the Commissioner on Aging [should] work together”).

627. H.R. REP. NO. 102-199, at 76–78 (1991).

628. *Id.*; see also 42 U.S.C.A. § 3030(d).

629. Job Counseling, Training, and Placement Service for Veterans Act, ch. 41, 38 U.S.C.A. § 4105 (2012) (“Cooperation of Federal agencies”) (mandating that the Department of Labor to coordinate with the Department of Veterans Affairs, the Department of Defense and “[a]ll federal agencies” under the Vietnam Era Veterans’ Readjustment Assistance Act to provide career counseling and job placement services to veterans); S. REP. NO. 100-128, at 29–30 (1987); Vietnam Era Veterans’ Readjustment Assistance Act of 1972, Pub. L. No.

approach to coordination⁶³⁰ is mandated by the **Public Works and Economic Development Act**⁶³¹ in order to promote domestic economic development.⁶³² In all of these instances, agencies must both wield and willingly submit to use of one another's resources in order to further a shared goal. And in a rather idiosyncratic example under the **Whaling Convention Act**,⁶³³ agencies must concur with—that is, consent to—the Secretary of State's efforts to coordinate⁶³⁴ in order to uphold national policy

92-540 (1972); *see also* 38 U.S.C.A. § 4108 (1972) (“Cooperation and coordination”) (allowing periodic coordination between the Department of Labor and the Department of Veterans Affairs under the Vietnam Era Veterans’ Readjustment Assistance Act); *see also supra* note 509 and accompanying text (describing interagency coordination in assisting homeless veterans).

630. Economic Development Partnerships Cooperation and Coordination Act, ch. 38, 42 U.S.C.A. § 3133 (“Coordination”) (“The Secretary [of Commerce] shall coordinate activities relating to the preparation and implementation of comprehensive economic development strategies under this chapter with Federal agencies carrying out other Federal programs, States, economic development districts, Indian tribes, and other appropriate planning and development organizations.”). Whereas 42 U.S.C.A. § 3132 (2012) required other federal agencies to cooperate with the Secretary of Commerce, this section places a duty on the Secretary of Commerce to coordinate the activities of state and federal agencies/programs related to the Act. The grant of power is broad, as it appears to encompass all federal agencies. Even prior to the addition of § 3132, the Economic Development Administration (within the Department of Commerce) was coordinating with a wide range of agencies to execute its duties under the Demonstration Cities and Metropolitan Development Act; these included the Department of Energy, Department of Labor, and Department of Defense, among others. *See Economic Development Partnership Act: Hearing on S. 1647 Before the S. Subcomm. on Transp. and Infrastructure, Comm. on Env’t and Pub. Works*, 105th Cong. 30, 42 (1998).

631. Economic Development Administration and Appalachian Regional Development Reform Act of 1998, Pub. L. No. 105-393, 112 Stat. 3596 (1998) (providing for coordination); Public Works and Economic Development Act of 1965, Pub. L. No. 89-136, 79 Stat. 552 (1965) (original statute).

632. S. REP. NO. 105-332, at 5 (1998) (suggesting that Congress provided for interagency cooperation in 42 U.S.C.A. § 3133 because it found that “better coordination of Federal activities [was] needed” to achieve the Public Works and Economic Development Act’s purpose of providing economic development assistance to less developed parts of the United States).

633. Whaling Convention Act of 1949, Pub. L. No. 81-676, 64 Stat. 421 (1950).

634. Whaling Convention Act, ch. 14, 16 U.S.C.A. § 916h(a) (2012) (“Cooperation between Federal and State and private agencies and organizations in scientific and other programs”) (“In order to avoid duplication in scientific and other programs, the Secretary of State, with the concurrence of the agency, institution, or organization concerned, may direct the United States Commissioner to arrange for the cooperation of agencies . . .”).

concerning the regulation of whaling,⁶³⁵ even though the State Department's authority in this instance stems in part from the international nature of whaling⁶³⁶ and allows it to reach out to just about any institution.⁶³⁷ Here, although coordination is mandated, agencies that affirmatively concur/consent may be more likely to volunteer resources that benefit the State Department's agenda on whaling regulation.

In one notable case, under the **National Flood Insurance Act**,⁶³⁸ Congress mandated coordination between an executive agency—the Department of Homeland Security and its subcomponent, the Federal Emergency Management Agency—and the White House, in order to prevent hazards that might lead to flood disasters.⁶³⁹ Finally, a few examples in this category are responsive to the need for coordination created by overlapping jurisdiction. For instance, shared informal ownership of fishing regions and the related nuances of transboundary fish migration under the **Northwest Atlantic Fisheries Convention**⁶⁴⁰ motivated the issuance of coordination between the Department of Commerce and other “Federal agencies, the States, the New England and Mid-Atlantic [Fishery Management] Councils, and private institutions and organizations”⁶⁴¹ under the **Fisheries**

635. H.R. REP. NO. 2514, at 5 (1950).

636. *Id.* at 7.

637. *See supra* note 634.

638. National Flood Insurance Act, ch. 50, 42 U.S.C.A. § 4122 (1968) (“Studies of other natural disasters; cooperation and consultation with other departments and agencies”); National Flood Insurance Act of 1968, Pub. L. No. 90-448, 82 Stat. 572 (1968).

639. National Flood Insurance Act, ch. 50, 42 U.S.C.A. § 4101c(a)(1) (“Coordination”) (mandating that the “Secretary of Homeland Security, the Administrator [of the Federal Emergency Management Agency, which is a component of Homeland Security], the Director of the Office of Management and Budget, and the heads of each Federal department or agency . . . shall work together to ensure that flood risk determination data and geospatial data are shared among Federal agencies in order to coordinate the efforts of the Nation to reduce its vulnerability to flooding hazards”); *id.* § 4101c(a)(2) (“Coordination”) (requiring the “Director of the Office of Management and Budget, in coordination with the Federal Emergency Management Agency, the United States Geological Survey, the National Oceanic and Atmospheric Administration, the Corps of Engineers, and other Federal agencies [to] submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives an interagency budget crosscut and coordination report”).

640. Northwest Atlantic Fisheries Convention Act, ch. 76, 16 U.S.C.A. § 5604 (1995) (“Interagency cooperation”).

641. S. REP. NO. 104-91, 15 (1995).

Act.⁶⁴² The various statutes on coordination to provide programming for the elderly also feature overlap.⁶⁴³

2. Semi-Obligatory

The examples examined in this project do not include any regimes that involve jointly-initiated coordination between named agencies “to the maximum extent possible” or “to the maximum extent practicable.”

3. Discretionary

Finally, the only instances of jointly-initiated, discretionary coordination in the examined dataset is the oldest statute in this dataset, the **Fish and Wildlife Conservation Act**, under which the Secretaries of Agriculture and Commerce are “authorized” to coordinate with federal and state agencies to “increase the supply of game and fur-bearing animals, as well as to study the effects of domestic sewage, trade wastes, and other polluting substances on wildlife.”⁶⁴⁴ The neutral, non-mandatory language in this statute may be due to its function as prototype of the more forceful language Congress now uses to mandate interagency coordination.

642. Fisheries Act of 1995, Pub. L. No. 104-43, 109 Stat. 366, (1995).

643. *See supra* notes 499–504 (discussing interagency coordination to provide programming for elderly Americans).

644. *See supra* notes 48–49 and accompanying text.