

Policy Durability and Agency Design^{*}

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Abstract

A key concern for policy makers is how to ensure the durability of policies they have enacted. One means of enhancing policy durability is to delegate responsibility for policy implementation to independent commissions. Policy makers believe that independent commissions are more insulated from political influence than executive branch bureaus. This chapter uses data from a 2007-8 survey of federal administrators and program managers to evaluate whether independent commissions are, in fact, more insulated. It finds that independent commissions are more insulated from executive and legislative branch influence and that the relative influence of the White House, congressional committees, and interest groups differs by type of agency. Executive branch bureaus are most influenced by the White House, followed by congressional committees, and interest groups. Independent commissions are most influenced by congressional committees. Congress exerts more influence over commissions than executive branch bureaus because they are more likely to contact commissions and more likely to give input on the selection of appointed and career executives in these agencies. Interest groups exercise influence because of the frequency with which former commission employees go to work for firms doing business with or regulated by the commission. It concludes that while delegating to independent commissions protects policies from future political intervention, delegation also determines which actors will have influence over implementation.

A key concern for policymakers is ensuring that policy changes they enact endure.¹ One strategy policymakers use to ensure the durability of policies they enact is to delegate their implementation to independent commissions rather than executive branch bureaus.² Independent

¹ See, for example, Amihai Glazer, "Politics and the Choice of Durability," *The American Economic Review* 79 (1989):1207-13; Forrest Maltzman and Charles R. Shipan, "Change, Continuity, and the Evolution of the Law," *American Journal of Political Science* 52 (2008):252-67; Terry M. Moe, "The Politics of Bureaucratic Structure," In *Can the Government Govern?*, ed. J. E. Chubb and P. E. Peterson (Washington, DC: Brookings Institution Press, 1989); Eric M. Patashnik, *Putting Trust in the US Budget* (New York: Cambridge University Press, 2000); Eric M. Patashnik, "After the Public Interest Prevails: The Political Sustainability of Policy Reform," *Governance* 16(2003):203-34; Eric M. Patashnik, *Reforms at Risk: What Happens After Major Policy Changes Are Enacted* (Princeton University Press, 2008). Concerns about durability are particularly acute in the case of public interest legislation since the private interests adversely influenced by the public interest policies use their substantial resources and organizational advantages to delay, disrupt, or stunt the implementation of enacted policies during implementation. See, for example, Marver Bernstein, *Regulating Business by Independent Commission*. (Greenwood Press, 1955); Terry M. Moe, "Political Control and the Power of the Agent," *Journal of Law Economics and Organization* 22 (2006):1-29; Patashnik, "After the Public Interest Prevails"; Jason Webb Yackee and Susan Webb Yackee, "A Bias Towards Business? Assessing Interest Group Influence on the U.S. Bureaucracy," *The Journal of Politics* 68 (2006):128-39.

² David Epstein and Sharyn O'Halloran, *Delegating Powers* (New York, NY: Cambridge University Press, 1999); David E. Lewis, *Presidents and the Politics of Agency Design*

commissions have fixed terms for appointees, party balancing requirements for nominees, and are omitted from regular OMB budget and regulatory review.³ These structural features insulate agencies from the direct influence of the president and his staff agencies since they blunt the primary means of presidential influence—appointments, removals, budgets, and regulatory review. Independent commissions are also arguably more insulated from congressional influence since commissions are corporate bodies rather than individually led. This makes it harder for Congress to hold one single person accountable. In addition, the same features that limit presidential influence hinder Congress's ability to influence the commissions. For example, the fixed terms of commissioners make it hard for Congress to pressure presidents to fire commissioners members oppose. Finally, some commissions such as the Board of Governors of the Federal Reserve and the Securities and Exchange Commission are partly self-funded through assessments. This diminishes the ability of Congress to influence agency behavior by appropriations.

(Stanford, CA: Stanford University Press, 2003); Mathew D. McCubbins, Roger Noll, and Barry Weingast, "Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies," *Virginia Law Review* 75 (1989):431-82; Craig Volden, "A Formal Model of the Politics of Delegation in a Separation of Powers System," *American Journal of Political Science* 46(2002):111-33.

³ Lewis, *Presidents and the Politics of Agency Design*; David E. Lewis, "The Adverse Consequences of the Politics of Agency Design for Presidential Management in the US: The Relative Durability of Insulated Agencies," *British Journal of Political Science* 34(2004):377-404.

While a significant amount of empirical evidence confirms that delegation decisions are influenced by the configuration of political interests in Congress, the presidency, and agencies, very little empirical work has been done to evaluate whether the strategy of delegating to independent commissions enhances policy durability. This chapter uses evidence from a survey of federal executives to evaluate whether independent commissions are more insulated from political intervention and influence than executive branch bureaus. It finds that independent commissions are more insulated from executive and legislative branch influence and that the relative influence of the White House, congressional committees, and interest groups differs by type of agency. Executive branch bureaus are most influenced by the White House, followed by congressional committees, and interest groups. Independent commissions are most influenced by congressional committees, particularly because members of Congress are more likely to give input on the selection of appointed and career executives in commissions. Interest groups exercise influence because of the frequency with which former commission employees go to work for firms doing business with or regulated by the commission.

The chapter is divided into three sections. The first section reviews existing theoretical and empirical work on policy durability and agency design and argues that more work needs to be done to determine whether delegation to independent commissions enhances policy durability. The second section presents the data and describes the variables and methods used to evaluate the influence of political actors on agency policy making. The final section discusses the results and concludes.

Agency Design and Policy Durability

The literature on delegation and policy durability is comprised of a large theoretical literature that explains how policies delegated to administrative agencies can be altered after enactment. It also includes a thinner empirical literature evaluating various correlates of agency and program durability. This empirical work focuses largely on the formal termination of federal agencies rather than programs.⁴ The work that does examine changes in laws and programs short of termination does not differentiate these laws and programs by whether bureaus or commissions implement them. This makes it difficult to assess whether the strategy of delegating authority to commissions is an effective means of enhancing program durability.

Policy Durability and Independent Commissions

The argument that concerns for policy longevity lead politicians to delegate responsibility for implementation to independent commissions comes in a variety of forms. Moe and Lewis, for example, argue that interest groups reward politicians for policy changes.⁵ Rewards are bigger when politicians can guarantee their durability. An important way politicians make policy durable is to delegate implementation of the policy to bureaucracies that are insulated from political control.

⁴ See, however, J. Kevin Corder, "Are Federal Programs Immortal? Estimating the Hazard of Program Termination," *American Politics Research* 32 (2004):3-25; Maltzman and Shipan, "Change, Continuity, and the Evolution of the Law".

⁵ Lewis, *Presidents and the Politics of Agency Design*; Moe, "The Politics of Bureaucratic Structure".

One threat to a policy's durability is the expected longevity of the enacting coalition itself. When political coalitions enacting important policy changes worry about their own longevity, they try to lock policy changes in by spreading benefits broadly, creating bureaucratic agencies insulated from political control, or generally implementing devices such as trust funds that tie the hands of future politicians.⁶ Regular elections make it difficult for Congress and the president to credibly commit to not intervening in a policy in the future. McCubbins, Noll, and Weingast argue that structure and process can be a way of solving this credible commitment problem.⁷ In their view, the only way that the House, Senate, and president can enact policies that will be an improvement for all when their preferences diverge is for each to commit to not influencing policy post-enactment. One credible way for the chambers of Congress and the president to guarantee that they will not unilaterally change policy after enactment is to design structures and processes in advance that limit ex post political influence. Independent commissions are one type of structure that provides this type of guarantee against political intervention.

Testing Influence of Independent Commissions on Durability

While there has been a significant amount of empirical work evaluating how delegation decisions are influenced by the preferences of the actors receiving the delegation, very little work

⁶ Lewis, *Presidents and the Politics of Agency Design*; Moe, "The Politics of Bureaucratic Structure"; Terry M. Moe and Michael Caldwell, "The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems," *Journal of Institutional and Theoretical Economics* 150/1 (1994):171-95; Patashnik, *Putting Trust in the US Budget*.

⁷ McCubbins, Noll, and Weingast, "Structure and Process".

has evaluated the assumption that independent commissions are more insulated from political influence than executive branch bureaus.⁸ If independent commissions are just as subject to political intervention and influence as executive branch bureaus, this calls into question both the wisdom of delegating to commissions to enhance durability but also our theories of delegation.

Among the work that focuses on policy durability, most of it examines the formal termination of programs and agencies.⁹ Lewis, for example, argues that agency structure is more malleable than previously believed. He demonstrates that 62% of agencies created between 1946 and 1997 had been terminated and that one primary cause was political turnover.¹⁰ This calls into question whether agency structure is a good guarantor of policy durability. In a later article

⁸ Epstein and O'Halloran, *Delegating Powers*; John Huber and Charles Shipan, *Deliberate Discretion* (New York, NY: Cambridge University Press, 2002); George A. Krause and Ann O'M Bowman, "Adverse Selection, Political Parties, and Policy Delegation in the American Federal System," *Journal of Law, Economics, and Organization* 21 (2005):359-87.

⁹ Daniel P. Carpenter, "Stochastic Prediction and Estimation of Nonlinear Political Durations: An Application to the Lifetime of Bureaus," In *Political Complexity: Nonlinear Models of Politics*, ed. D. Richards (Ann Arbor: University of Michigan, 2000); Daniel P. Carpenter and David E. Lewis, "Political Learning from Rare Events: Poisson Inference, Fiscal Constraints and the Lifetime of Bureaus," *Political Analysis* 12 (2004):201-32; Corder, "Are Federal Programs Immortal?"; Herbert Kaufman, *Are Government Organizations Immortal?* (Washington, DC: Brookings Institution Press, 1976); David E. Lewis, "The Politics of Agency Termination: Confronting the Myth of Agency Immortality," *The Journal of Politics* 64 (2002):89-107; Lewis, "The Adverse Consequences of the Politics of Agency Design".

¹⁰ Lewis, "The Politics of Agency Termination".

Lewis, however, finds that while agency structure is more malleable than previously believed, independent commissions were significantly more durable than other types of agencies.¹¹ He concludes that delegation to independent commissions does protect policies from political intervention.

The durability of agencies, however, is not direct evidence of the durability of policies they implement. Corder, for example, finds that federal credit programs located in independent agencies have a higher risk of termination than programs located in cabinet agencies.¹² In addition, the formal termination of federal programs is only one form of influence over federal programs and probably the most extreme form.¹³ Federal programs persist but the content, funding, and ultimate success of these programs can vary dramatically over time. If federal programs are changed beyond recognition to those that enacted them, we should not consider

¹¹ Lewis, "The Adverse Consequences of the Politics of Agency Design".

¹² Corder, "Are Federal Programs Immortal?". The bulk of federal credit programs, however, are located in independent agencies like the Small Business Administration that are organized like bureaus rather than commissions. This makes it difficult to determine whether programs housed in commissions are more or less durable. Devins and Lewis argue that the time it takes presidents to appoint majorities to independent commissions has been increasing over time but that the commissioners appointed are more reliably partisan loyalists. Neal Devins and David E. Lewis, "Not-So Independent Agencies: Party Polarization and the Limits of Institutional Design," *Boston University Law Review* 88(2008):459-98; Daniel E. Ho, "Congressional Agency Control: The Impact of Statutory Partisan Requirements on Regulation." Manuscript, Stanford University (<http://dho.stanford.edu/research/partisan.pdf>, last accessed December 15, 2007).

¹³ Carpenter and Lewis, "Political Learning from Rare Events".

these programs durable. The fundamental question is whether federal programs persist in the form their supporters envisioned at the time of enactment. Maltzman and Shipan, for example, evaluate the durability of laws enacted by the U.S. Congress and find that political conditions at the time of enactment and current political conditions influence the likelihood that laws are amended.¹⁴ Their analysis, however, generally does not disaggregate programs by efforts to insulate them from political intervention.¹⁵ This is an important consideration since a substantial literature on agency capture argues that policies independent commissions were created to carry out were not durable. Independent regulatory commissions that were created to regulate the marketplace became captured by the interests they were supposed to regulate.¹⁶ As Melnick explains, “Such ‘capture’ of the commission by the regulated is inevitable because dispersed,

¹⁴ Maltzman and Shipan, "Change, Continuity, and the Evolution of the Law".

¹⁵ They do control for whether legislation includes a sunset provision and find that laws enacted with sunset provisions are more likely to be amended.

¹⁶ Bernstein, *Regulating Business by Independent Commission*; J. Leiper Freeman, “The Bureaucracy and Pressure Politics,” In Francis E. Rourke, *Bureaucratic Power in National Politics* (Boston: Little, Brown, & Co., 1958), 15-27; Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 2 ed. (New York, NY: W. W. Norton and Company, Inc., 1979); Moe, "Political Control and the Power of the Agent"; Francis Rourke, “Variations in Agency Power,” In Francis E. Rourke, ed., *Bureaucratic Power in National Politics* (Boston: Little, Brown, & Co., 1969), 240-62.

unorganized citizens cannot sustain the effort needed to counteract the power of organized interests.”¹⁷

Whether or not federal programs delegated to independent commissions are more durable than other programs is an empirical question. One way to get purchase on this question is to evaluate the political environment of the federal programs to determine whether political actors have more influence with executive branch bureaus or commissions. We can also evaluate how much influence these actors are perceived to have in each type of agency.

2007-2008 Survey on the Future of Government Service

In order to evaluate the political environment of executive branch bureaus versus independent commissions, this chapter relies on data from the 2007-2008 Survey on the Future of Government Service.¹⁸ This survey was conducted by the Princeton Survey Research Center during the Fall and Winter of 2007-2008.¹⁹ The survey included a variety of questions on the

¹⁷ R. Shep Melnick, “Strange Bedfellows Make Normal Politics: An Essay,” *Duke Law and Policy Forum* 9 (1998):76.

¹⁸ Anthony Bertelli, Joshua Clinton, Christian Grose, David E. Lewis, and David C. Nixon, “The Ideology of Federal Executives and their Agencies,” Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, 2008.

¹⁹ The survey was web-based. Each potential respondent was sent a letter on Princeton University letterhead inviting them to participate and giving them options about how to do so. If the Princeton Survey Research Center (PSRC) had an email address (77%) for the potential respondent, they were told that they would be getting an email of the survey one week after the initial letter. They were also told they could go to a website and login immediately with a login

backgrounds, experiences, and political views of government executives. The questions included provide a means of evaluating the relative influence of different political actors on agency decisions in executive branch bureaus as compared to independent commissions.

The survey was sent to the population of federal administrators and program managers in the various departments and agencies.²⁰ In total, the survey was sent to approximately 7,448 government executives, both career professionals and political appointees.²¹ The target population included cabinet secretaries, deputy, under-, and assistant secretaries, as well as independent agency heads, bureau chiefs, general counsels, and key deputies in the government bureaucracy. The overall response rate, once potential respondents included incorrectly were

and password included in the invitation letter. If the PSRC did not have an email address for the potential respondent, they were asked to provide the PSRC with an email or go to the website directly and use the login and password provided. The PSRC then scheduled a series of follow up emails, letters, and ultimately, telephone calls. All respondents with valid email addresses received an initial letter (week of November 5, 2007), an email invitation (November 14, 2007), three follow up email reminders (November 29, December 13, January 17), and a telephone call (December, 2007-January, 2008). If the PSRC did not have an email address for a respondent, they received an initial letter (week of November 5, 2007), a follow up letter (November 21, 2007), a telephone call, and a final reminder letter (February 27, 2008).

²⁰ The survey excludes executives that are not administrators or program managers.

²¹ We obtained the contact information for the executives from Leadership Directories, Inc., a firm that publishes the *Federal Yellow Book*.

excluded, was 32% (2,225/6,690).²² While the overall number of respondents is large, the sample of respondents may differ in important ways from the population as a whole.²³ This is something I return to below.²⁴ In the entire population there were 557 potential respondents that worked in

²² The response rate from the original 7,448 names was 32%. When potential respondents who were included incorrectly are excluded (i.e., those who are not employees of the federal government or not federal executives), the response rate in the text is produced. The original list included 461 potential respondents from the National Science Foundation because the firm incorrectly labeled NSF program officers as managers or executives. The original list also included 27 names of executives working for the Delaware River Basin Commission, National Gallery of Art, Susquehanna River Basin Commission, and Japan - United States Friendship Commission. Two of these agencies are multi-state compacts and so not technically federal agencies. The National Gallery of Art is partially private and the Japan – United States Friendship Commission is a multi-lateral agency with both Japanese and U.S. citizens working together.

²³ Agency-by-agency, the lowest responders were the Executive Office of the President (11%), the Securities and Exchange Commission (17%), and the Department of the Treasury (19%). The highest responders were the Nuclear Regulatory Commission (55%), the Federal Trade Commission (65%), and the National Archives and Records Administration (75%).

²⁴ An analysis of the early and late responders to the surveys shows generally that early responders look very similar to late responders with the exception that women responding late to the survey tend to be slightly less likely to be self-identifying Democrats. It is unclear how this might influence the results of this chapter.

independent commissions.²⁵ Of the 557 executives in independent commissions, 218 responded to the survey (39%). The remainder of the population is comprised of executives working in the

²⁵ The independent commissions include the following agencies with minor commissions denoted with and (m) and larger independent regulatory commissions denoted by *italics*: Advisory Council on Historic Preservation (m), African Development Foundation (m), Arctic Research Commission (m), Broadcasting Board of Governors, *Commodity Futures Trading Commission*, *Consumer Product Safety Commission*, Coordinating Council On Juvenile Justice And Delinquency Prevention (m), Corporation for National and Community Service, Defense Nuclear Facilities Safety Board, *Equal Employment Opportunity Commission*, Export-Import Bank, Federal Accounting Standards Advisory Board (m), *Federal Communications Commission*, Federal Deposit Insurance Corporation, *Federal Election Commission*, Federal Housing Finance Board, Federal Maritime Commission, *Federal Reserve System*, Federal Retirement Thrift Investment Board (m), *Federal Trade Commission*, Marine Mammal Commission (m), Harry S Truman Scholarship Foundation (m), James Madison Memorial Fellowship Foundation (m), Merit Systems Protection Board, *National Labor Relations Board*, Morris K. Udall Scholarship And Excellence In National Environmental Policy Foundation (m), National Capital Planning Commission (m), National Mediation Board, National Transportation Safety Board, Neighborhood Reinvestment Corporation (m), *Nuclear Regulatory Commission*, Occupational Safety and Health Review Commission, Railroad Retirement Board, *Securities and Exchange Commission*, United States Chemical Safety And Hazard Investigation Board (m), United States Commission on Fine Arts (m), and the United States International Trade Commission. I do not include the Institute of Museum and Library Sciences, Overseas Private Investment Corporation, Tennessee Valley Authority, or Smithsonian Institution as commissions

cabinet departments or other independent agencies that are not commissions. Of this group 2,007 responded to the survey (31%).

Political Influence over Policy Decisions

Importantly, the survey included questions evaluating patterns of political influence with administrative agencies. Specifically, the survey asked respondents, “In general, how much influence do the following groups have over policy decisions in your agency?” and included the following political actors: White House, members or staff of congressional committees, and interest group representatives. Respondents were given fixed-choice response possibilities of “a great deal, a good bit, some, little, none, and don’t know.” In Figure 1 I include graphs comparing the political influence of the White House, members or staff of congressional committees, and interest group representatives. Notably, the figure shows that executives in the independent commissions are less likely to report that political actors have *a great deal* or *good bit* of policy influence. This is important evidence that the strategy of delegating policy implementation authority to independent commissions may enhance policy durability since political actors have less direct influence over policy decisions in these types of agencies.

because their boards are more advisory or like boards of directors rather than boards that are involved in day-to-day functioning of the agencies. I exclude the Pension Benefit Guarantee Corporation and the US Interagency Council on Homelessness because they are not really independent. They are headed by directors who report to other presidentially appointed officials such as the secretaries of labor, commerce, etc. The results reported below are robust to including or excluding minor commissions or examining only the major independent regulatory commissions. A full list of agencies and independent commissions is included in Appendix A.

[Insert Figure 1 here]

Interesting patterns of influence also emerge when agencies are examined by type (Figures 2-3). In executive branch agencies, the White House is reported to have the most influence over policy decisions, followed by members of Congress and committee staffs, and interest group representatives (Figure 2). Respondents are most likely to report that the White House has a great deal or a good bit of influence over policy decisions (68%) in the agency as compared to Congress (62%) or interest groups (28%). Respondents working for independent commissions, however, report that members of congressional committees and their staffs are the most influential political actors with 37% reporting that members of Congress or their staffs have a good bit or great deal of policy influence. The White House and interest group representatives are perceived to be less influential with only 24 - 25% of respondents reporting that each had such influence. Independent commissions are more insulated from political influence overall and the relative power of key political actors is different. Whereas the president is most influential in executive branch bureaus, Congress is most influential in the independent commissions. This is consistent with the arguments of Lewis who argues that independent commissions are designed specifically to limit the influence of presidents.²⁶ When presidents are the biggest threat to program durability, independent commissions may be a good place to locate those programs.

[Insert Figure 2 here]

[Insert Figure 3 here]

Of course, the simple bivariate relationships included in Figure 1 could be misleading if the characteristics of respondents are systematically different between executive branch bureaus and independent commissions. For example, it is possible that respondents in independent

²⁶ Lewis, "Presidents and the Politics of Agency Design".

commissions are less likely to report White House influence because a higher percentage of the management teams in independent commissions are civil servants excluded from the highest levels of policy deliberation. In order to control for this possibility, I estimate a series of ordered probit models controlling for key characteristics of the respondents and their agencies that could influence their perceptions of political influence. The dependent variable is the ordered categories of none (0), little (1), some (2), a good bit (3), and a great deal (4).²⁷

These specifications include controls for different levels in the administrative hierarchy (Senate-confirmed appointee, SES Appointee, Schedule C appointee, SES/SFS, other civil service) and a control for years of experience each executive has in their current agency (mean 18.7 years; SD 11.7).²⁸ My expectation is that those higher in the hierarchy will be most likely to

²⁷ Don't know responses are excluded. The percentages for White House influence are 4.4%, 9.87%, 21.57%, 31.45%, and 32.69%. The percentages for members and staff of congressional committees are 3.77%, 7.27%, 29.51%, 37.80%, and 21.65%. The percentages for interest group representative influence are 7.53%, 22.3%, 42.22%, 21.86%, and 6.09%.

²⁸ In the federal government the bulk of federal administrators and program managers are either Senate-confirmed political appointees (5% of sample) or members of the Senior Executive Service (SES). The SES is a corps of 7,000 - 8,000 federal managers that serve in management positions between PAS appointees and the traditional civil service. It is comprised of a mixture of career managers (53%) and political appointees (6%). Below the SES is the traditional civil service (26%). Schedule C appointees (1%) are another category of appointees that serve in policy and confidential positions that generally do not have managerial responsibilities with a few exceptions. The omitted category in the analysis are those federal employees that serve in other personnel systems excepted from the traditional civil service system including those

report political influence and those with longer experience will be the least likely to report political influence since they have seen more administrations come and go.²⁹ I also include controls for whether or not executives have worked for other agencies (0,1; 51%) and whether or not respondents self-identify as Democrats (0,1; 54%). Those who have worked in other agencies are less likely to overestimate the extent of political influence. Democrats and Republicans are distributed unevenly throughout government and Democrats are arguably the most likely to perceive White House political influence.³⁰ Finally, I control for a series of agency-specific factors including whether the respondent works in a regional office (as opposed to headquarters; 0,1; 19%), the office of the inspector general (0,1; 1.5%) or general counsel (0,1; 2.6%) of a larger agency and whether the agency is a minor independent agency (0,1; 0.8%).³¹

serving in managerial roles in scientific or technical positions (7%). For a review of the federal personnel system see David E. Lewis, *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance* (Princeton: Princeton University Press, 2008), chapter 2. I also estimated models using pay levels rather than appointment authorities to measure location in the hierarchy. The results confirm what is reported here and are available upon request from the author.

²⁹ Omitting such variables could bias estimates on the commission indicator since commission employees, particularly those with fixed terms, serve longer tenures in their agencies on average.

³⁰ Notably, while 54% of respondents overall, 60% of respondents working in independent commissions are Democrats.

³¹ Over the entire executive branch agencies vary in size and importance from the Department of Defense to the Advisory Council on Historic Preservation. To account for these differences I include controls for tiny independent agencies and those performing only advisory functions.

Table 1 includes estimates from three ordered probit models.³² The estimates generally confirm what emerges in the figures, namely that administrators and program managers in independent commissions report less influence by the political branches. Thus, even when controlling for differences among respondents such as place in the hierarchy, experience, and

Specifically, I code the Advisory Council On Historic Preservation, Federal Accounting Standards Advisory Board, James Madison Memorial Fellowship Foundation, Marine Mammal Commission, Morris K. Udall Scholarship And Excellence In National Environmental Policy Foundation, Neighborhood Reinvestment Corporation, United States Arctic Research Commission, and U.S. Fine Arts Commission as minor independent agencies. I have also estimated models including the number of employees working for the respondent as a measure of agency size. The results are comparable to what is reported here and I was not able to reject the null hypothesis that the number of civilian employees under the respondent was unrelated to perceptions of political influence.

³² One difficulty with these models is that the sample that responded to the survey may not be representative of the population as a whole. To account for this possibility a firm was hired to identify the home addresses of potential survey respondents. Once home addresses were identified for those potential respondents with a unique name, another firm was hired to check voter registration information. The percentage of Democrats in the sample falls well within the range of Democrats in the population. In other analysis I also estimated a probit model with selection in order to model the selection equation directly. The estimates confirm what is reported here. Respondents in commissions are significantly less likely to report a good bit or great deal of policy influence by the executive or legislative branches. Details of these models and model estimates are available from the author.

partisanship, commission executives report less political influence. The estimates indicate that working in an independent commission decreases the probability of saying that the White House exercises *a great deal* or *good bit* of influence by 28 and 13 percentage points, respectively. The effect, while still significant, is notably smaller for members or staff of congressional committees. Working in a commission decreases the probability of reporting that Congress exerts a great deal or good bit of influence by 18 percentage points total. This again confirms the relative insulation of independent commission from executive or legislative branch influence relative to executive branch bureaus. This implies that policies delegated to independent commissions are probably more durable than other policies.

[Insert Table 1 here]

Interestingly, independent commission executives reported about the same amount of influence from interest group representatives as their executive branch bureau counterparts. I could not reject the null of no difference between the independent commissions and executive branch bureaus. This is an interesting finding given the prominent role that interest groups play in the literature on agency capture. While interest groups appear equally influential in both types of agencies, it is possible that interest groups would normally exert even less influence in commissions if not for extraordinary efforts to influence these agencies.

In total, the estimates suggest that the political branches exert less influence over policy in independent commissions. Independent commissions limit the president's influence the most, followed by Congress, and interest group representatives. This makes sense given that the distinctive features of independent commissions—commission structure, party balancing limitations, fixed terms, omission from OMB budget and regulatory review—are targeted at the primary means of presidential influence rather than congressional or interest group influence.

Several other model estimates are worth noting. First, those highest in the administrative hierarchy are the most likely to credit the White House with influence over agency policy. The appointees and the career professionals--with the exception of Senate-confirmed appointees--that work with top appointees most directly are the most likely to see the White House's involvement. Second, administrators and program managers that had worked in other agencies were generally less likely to report high levels of political influence from any political actors. Such executives have a better basis for comparison. Third, Democrats in the agencies are more likely to report both White House and interest group influence over agency decisions. There are several possible explanations for this finding. It is possible that partisans are more sensitive to the actions of the Republican president and the interest groups associated with the Republican Party. It is also possible, however, that agencies populated with large numbers of Democrats are the most likely to be targeted by the Republican Administration and the constellation of groups that support it. Finally, respondents in general counsel's offices are more likely to report political influence while those in minor and advisory agencies are the least likely to report influence. Some presidential personnel officials have referred to general counsel's offices as one of the "choke points" in government and it is possible that particular political attention is paid to these offices.³³

Why the Different Patterns of Policy Influence?

Overall, the models confirm the bivariate relationships described above. They raise the question, however, of why there is variation in the patterns of political influence between the executive branch bureaus and independent commissions. Here, again, the survey can provide

³³ Lewis, *The Politics of Presidential Appointments*.

some leverage because it asks executives about three potential sources of influence in agency policy decisions—direct contact, influence over personnel selection, and the prospect of future private sector employment. The differential responses by agency type to these questions provide hints about why patterns of influence are different across agencies.

Contact by Political Actors

With regard to direct contact by political actors, the survey asked federal executives, “How often do you have contact with:” and includes several categories of political actors including the White House, members or staff of congressional committees, and interest group representatives.³⁴ Respondents were given a fixed choice of daily, weekly, monthly, rarely, never, and don’t know. In Figure 4 I graph the responses by political actor with the White House being the top panel, Congress the middle, and interest group representatives the bottom panel. The figure has several notable features. First, White House contacts are more frequent in executive branch bureaus than independent commissions. Second, agencies of both types are receiving contact from interest group representatives and members or staffs of congressional committees with greater frequency than the White House. The differences in contact are greatest for commissions, however. It is possible that the structural features of commissions that limit presidential influence over appointments, budgets, and regulation also diminish the opportunities for direct contact. This is one possible explanation for why Congress and interest group representatives are more influential.

[Insert Figure 4 here]

³⁴ The other groups mentioned were “Republicans in Congress and their staff”, “Democrats in Congress and their staff,” and “political appointees in your department or agency.”

Congressional Influence over Personnel

One form of contact that could be influential is those relating to personnel. The survey also asked directly about the influence of Congress in the selection of appointed and career executives in each agency. Specifically, the survey asked, “Please indicate your level of agreement or disagreement with each of the following statements about your job and work setting: Members of Congress regularly weigh in on the selection of appointed executives in my agency” and “Members of Congress regularly weigh in on the selection of career executives in my agency.” Respondents were given fixed choice responses of “strongly agree, agree, disagree, strongly disagree, not sure.” Fifty percent of federal executives in commissions agreed or strongly agreed with the statement that Congress regularly weighed in on the selection of appointees compared to only 33% in executive branch bureaus. Unexpectedly, commission executives report that members and staff of congressional committees are less likely to weigh in on the selection of career executives than their counterparts in the departments and agencies (49% vs. 63%). Still, if appointees are the most policy relevant actors on the commissions and Congress exerts a lot more influence over the selection of these officials, this is one explanation for why Congress exerts more influence over commissions than the White House. Unfortunately, the survey did not ask respondents about the influence of the White House over the selection of appointees.

Revolving Door

The results above indicate that interest group representatives exert less influence than either of the elected branches but do exert about the same amount of influence in the commissions as in other agencies. Our expectation might have been that interest group

representatives would exert less influence in commissions just as was the case for presidents and Congress. The question, then, is why there is so much interest group influence in commissions. One survey question that might help explain why interest groups are able to exert equal influence in the commissions is the following: “How often do former agency employees in the following groups accept jobs with firms that are regulated by your agency? [Political appointees, Senior civil servants].” Figure 5 graphs the responses for each type of executive (Appointees, Senior Civil Servants) by agency type. Commission respondents are significantly more likely to report that agency executives take jobs with firms regulated by the agency. Thirty-seven percent of commission respondents report that appointees take jobs in firms regulated by the agency regularly or frequently. In executive branch bureaus only 25% of respondents report that appointees take these jobs regularly or frequently. Similarly, 27% of commission respondents report that senior civil servants take jobs with such firms compared to 19% in executive branch bureaus. The prospect of a job in a firm regulated by one’s agency can be an important influence on executive behavior. Without this additional motivation, it is possible that perceptions of interest group influence on commissions would be substantially lower.

[Insert Figure 5 here]

The survey also asks a related question with the same format: “How often do former agency employees in the following groups accept jobs with firms that do business with your agency?” Responses to this question are less definitive than those described above. Forty-six percent of respondents in commissions report that appointees regularly or frequently take jobs with firms that do business with the agency compared to 43% of executive branch bureau respondents. Respondents in commissions, however, are less likely to report that senior civil

servants regularly or frequently take jobs with firms that do business with the agency (30% vs. 36%).

When the set of commissions is restricted to just the better known independent regulatory commissions, the results become more definitive across the board. Appointees and career executives in commissions are almost twice as likely to take jobs with firms regulated by their agency. Appointed and career commission executives are also more likely to take jobs that do business with the agency than their counterparts in executive branch bureaus. In total, the evidence suggests that interest groups may exert some influence due to the fact that senior agency executives regularly take jobs with the firms that the agency regulates or does business with.

In total, patterns of contact, involvement in personnel selection, and the promise of future employment may be important explanations for the extra influence exerted by Congress and interest groups over the activities of independent commissions.

Caveats

While the evidence here is consistent and robust, showing that commissions are more insulated from political influence and that different actors have access to each type of agency, relying on survey data to measure political influence can be problematic for two reasons. First, it is an open question whether executives who share the views of political actors know whether influence is being exerted. Do agency officials who make policy according to their own views act of their own volition or in response to choices made by politicians to put them there in the first place? The preceding analysis attempted to partially account for this possibility by controlling for the political views of the respondents. If commission executives with different

political views than the White House or Congress also report relatively less influence by the White House, Congress, and interest groups than their executive branch counterparts, this gives us confidence that commissions are more insulated than executive branch bureaus.

A second concern is how one should interpret an apparent lack of contact by political actors. If politicians do not need to contact an agency because the agency is doing what the politicians want, is influence being exerted and is that influence perceived by executives? It is possible that no contact is made and no influence is perceived because political actors have structured the agency and its laws to get exactly what they want without much day-to-day intervention.³⁵ If this is the case, no contact or influence would be reported but a significant amount of influence would exist. Fortunately, in this case the survey was conducted when the two branches had significantly different political views. The differences in views of the two branches make it unlikely that an agency shared the same views as both branches. This helps mitigate the concern that agencies are doing exactly what the White House and Congress want.

The differences in views of the White House and Congress also help locate where bias would emerge, if it exists. For example, during the time of the survey Democrats controlled Congress and Democrats were found in greater numbers in the commissions (relative to executive branch bureaus). This implies that we should see *less* reported congressional influence in the commissions and more reported White House influence if executives do not accurately perceive influence. Yet, the data reveal that commission executives perceive *more* congressional

³⁵ Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms," *American Journal of Political Science* 28 (1984):165-77; Mathew D. McCubbins, Roger Noll, and Barry Weingast, "Administrative Procedures as Instruments of Political Control," *Journal of Law, Economics, and Organization* 3(1987):243-77.

influence than White House or interest group influence. This implies that, if anything, the analysis underestimates the extent to which Congress exerts influence over commissions. While in absolute terms the amount of reported political influence may be underestimated for both executive branch bureaus and commissions, there is little reason to believe that conclusions about relative amounts of political influence are in error.

Discussion and Conclusion

A key concern for policy makers is how to ensure the durability of policies they have enacted. One tactic thought to enhance policy durability is to delegate responsibility for legislative implementation to independent commissions. This chapter has used data from a 2007-8 survey of federal administrators and program managers to evaluate whether independent commissions are more insulated than executive branch bureaus from political influence. The data indicate that independent commissions are more insulated from executive and legislative influence than executive branch departments. They also suggest that the relative influence of the White House, congressional committees, and interest groups differs by type of agency. Executive branch bureaus are most influenced by the White House, followed by congressional committees, and interest groups. Independent commissions are most influenced by congressional committees. Congress appears to exert more influence over commissions than executive branch bureaus because they are more likely to give input on the selection of appointed executives in these agencies. Interest groups arguably exercise more influence over commissions than we might otherwise expect because of the frequency with which former commission employees go to work for firms doing business with or regulated by the commission.

Several implications emerge from this analysis. First, delegating authority to independent commissions probably does enhance policy durability since commissions are less subject to political influence. The structures and processes associated with independent commissions influence the reported levels of political influence. This implies that policies delegated to independent commissions are less at risk to be influenced, amended, or terminated in the future. One possible reason why executives in commissions report less political influence is that commissions are producing policies that satisfy the political branches. This would be consistent with the arguments of Lewis that commissions produce policies closer to the congressional median, making them less subject to political termination.³⁶ A second reason why executives might report less political influence is that the structural features of the agency make it more costly to exert such influence. For example, presidents cannot remove commissioners, revise their budgets, or review their regulations easily relative to the executive branch bureaus. This makes it easier for commissions to resist presidential direction and, thus, less likely for the White House to pursue this strategy.

This research does not speak to other motivations for delegating to commissions or the consequences of doing so. Politicians delegate authority for many reasons other than durability including expertise, blame-shifting, or practical considerations about the timeliness of agency action.³⁷ The relative insularity of independent agencies does not guarantee their expertise or effectiveness.

³⁶ Lewis, “The Adverse Consequences of the Politics of Agency Design”.

³⁷ Epstein and O’Halloran, *Delegating Powers*; Morris P. Fiorina, *Congress, Keystone of the Washington Establishment* (New Haven, CT: Yale University Press, 1977); Cornelius M.

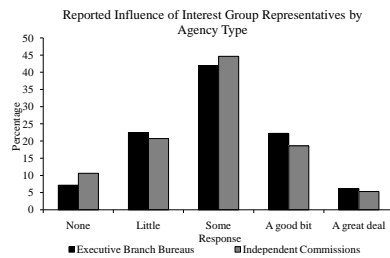
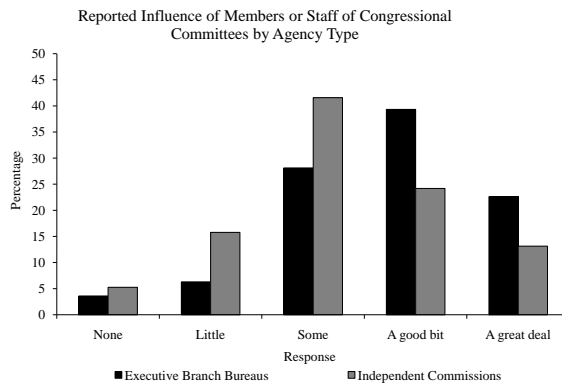
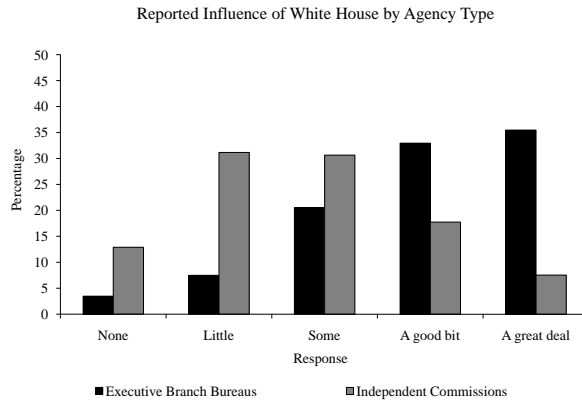
Second, if threats do arise to policies implemented by commissions, they are most likely to come from Congress or interest groups rather than the White House. Independent commissions are most effective at limiting the president's influence. While administrators and program managers in the executive branch bureaus report that the White House has the most influence over agency decisions, those in independent commissions report that the White House has less influence than Congress. Indeed, the purpose of party-balancing limitations, fixed terms for appointees, and location outside the cabinet is to blunt the primary instruments of presidential influence—nominations, removals, and OMB review of budgets and regulations. With a few exceptions, Congress's primary means of influence-- appropriations, lawmaking, confirmations, and direct contacts-- are less influenced by the structural features that define these commissions. While these agencies are less subject to political intervention, the effects are most dramatic for presidents.

Finally, interest groups are equally influential in commissions and executive branch bureaus. While commissions are more insulated from influence by the political branches overall, interest groups maintain influence through the means suggested by theories of commission capture—regular contact and the revolving door. Federal executives report more contacts with interest groups and more regular moves from agency work to work for firms that do business with the agency or firms that are regulated by the agency. The prospects of future employment in these firms arguably make executives more sensitive to their concerns in agency policy making.

Kerwin, *Rulemaking: How Government Agencies Write Law and Make Policy*, 3rd ed.

(Washington, DC: Congressional Quarterly, 2003).

Figure 1. Political Influence of White House, Congress, and Interest Group Representatives by Agency Type



Note: Responses to following question on 2007-8 Survey on the Future of Government Service: “In general, how much influence do the following groups have over policy decisions in your agency?”

Figure 2. Reported Political Influence by Different Political Actors--Executive Branch Bureaus

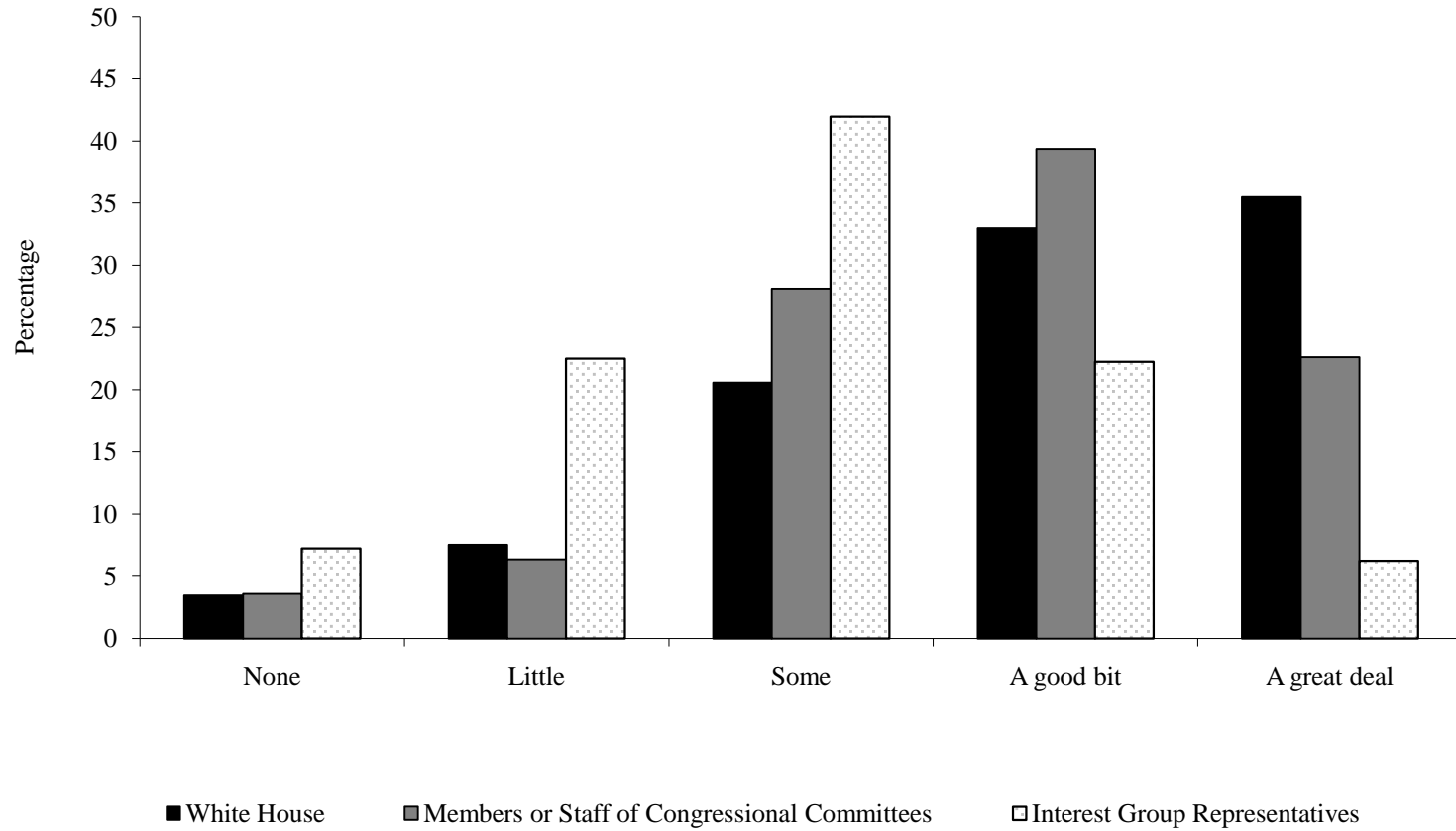


Figure 3. Reported Political Influence by Different Political Actors--Independent Commissions

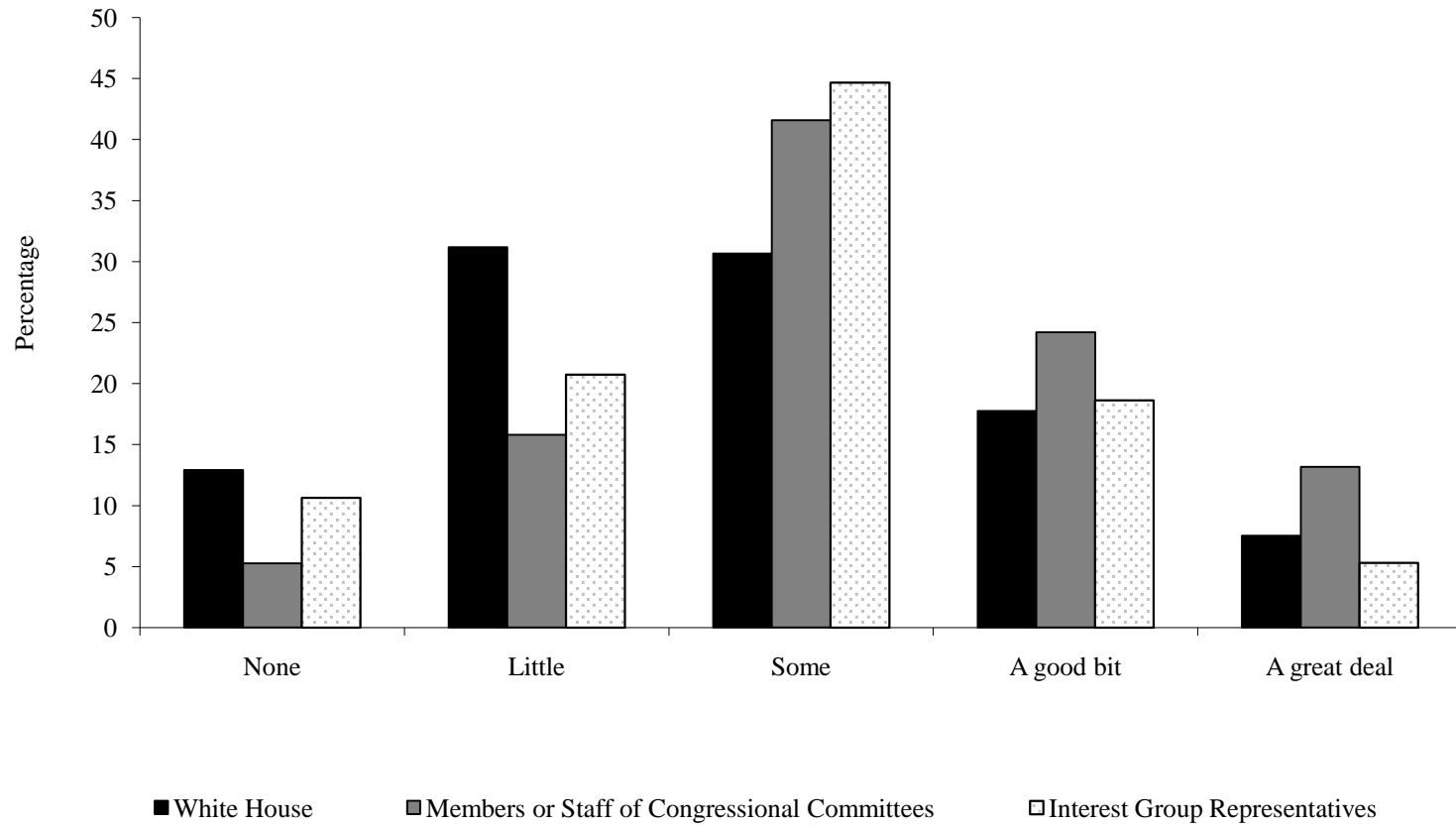
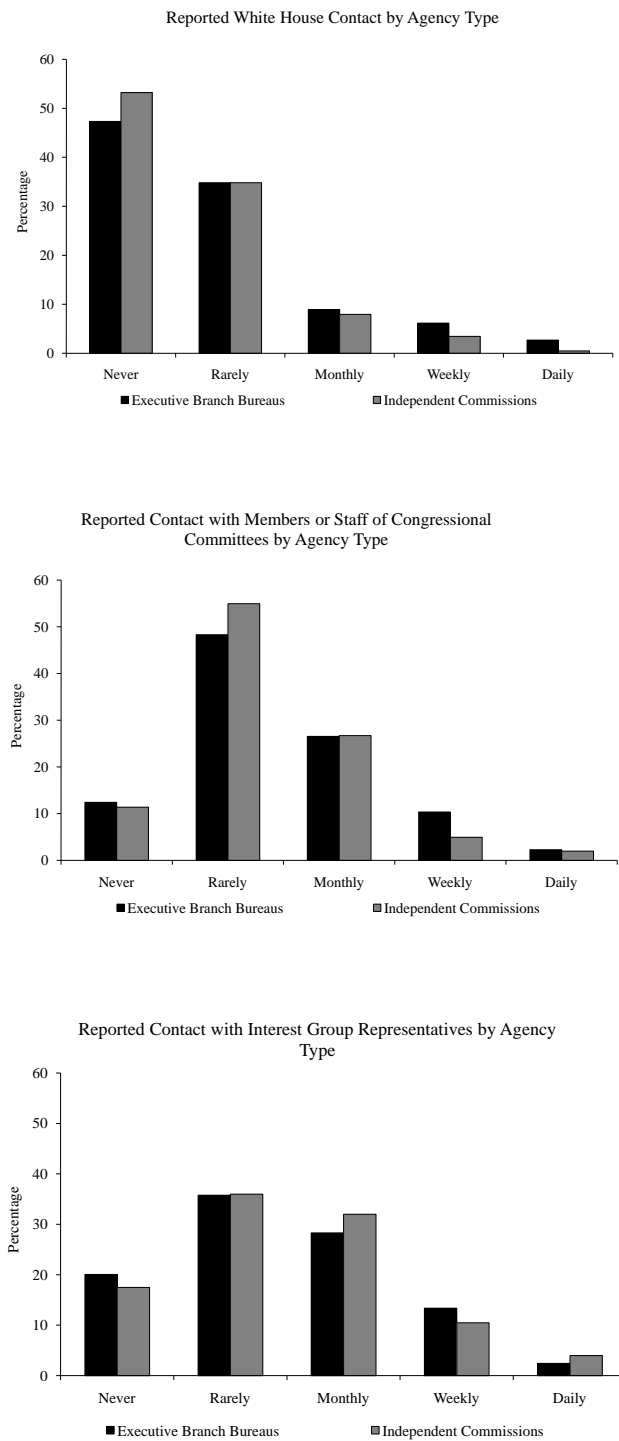
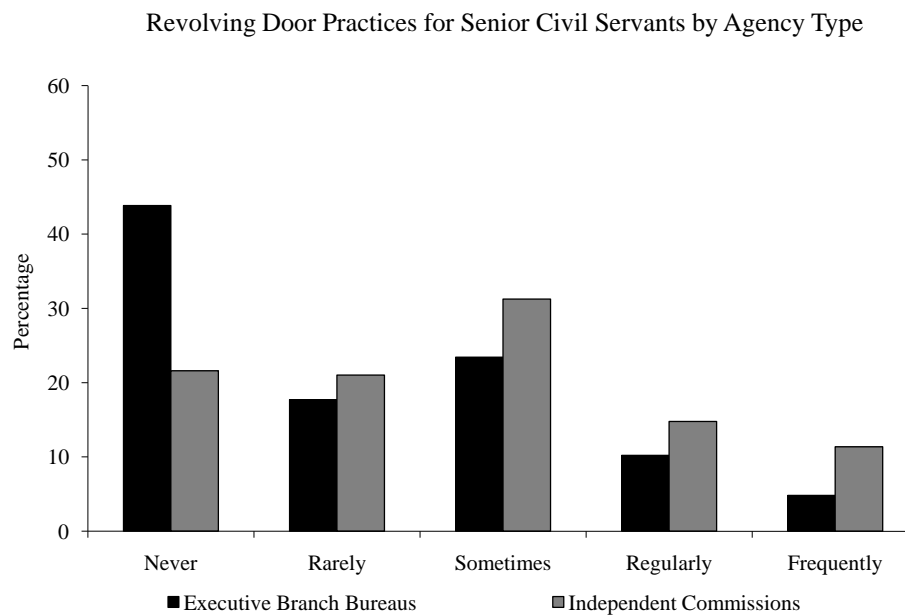
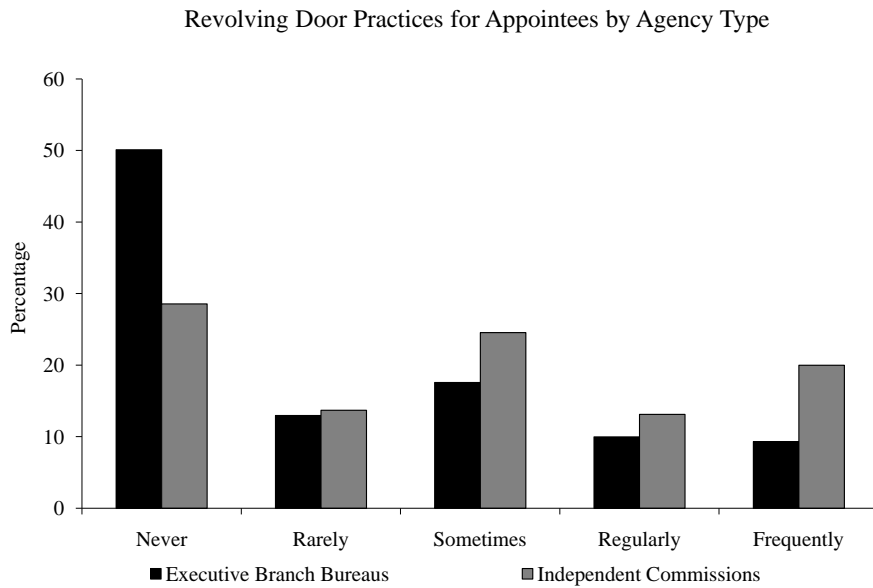


Figure 4. Reported Frequency of Political Contacts of White House, Congress, and Interest Group Representatives by Agency Type



Note: Responses to following question on 2007-8 Survey on the Future of Government Service: “How often do you have contact with:”

Figure 5. Revolving Door Practices for Appointees and Senior Civil Servants by Agency Type



Note: Question from 2007-8 Survey on the Future of Government Service "How often do former agency employees in the following groups accept jobs with firms that are regulated by your agency?" Don't know answers excluded.

Table 1. Ordered Probit Models of Respondent Perceptions of Political Influence

	White House	Members or Staff of Congressional Committees	Interest Group Representatives
<i>Agency Type</i>			
Independent Commission (0,1)	-1.07**	-0.47**	-0.11
<i>Respondent Characteristics</i>			
Senate-confirmed appointee (0,1)	-0.01	-0.25	-0.10
Appointed SES (0,1)	0.25*	-0.11	-0.13
Schedule C Appointee (0,1)	0.55**	0.00	-0.25
SES/SFS (0,1)	0.30**	-0.02	0.03
Civil Service (0,1)	0.08	-0.04	0.12
Years in Agency	0.00	0.00	0.00
Worked for Other Agencies (0,1)	-0.13**	-0.09*	-0.08*
Democrat (0,1)	0.14**	-0.00	0.26**
<i>Agency Characteristics</i>			
Regional Office (0,1)	-0.06	-0.16**	0.11
Inspector General's Office (0,1)	-0.12	-0.25	-0.24
General Counsel's Office (0,1)	0.27	0.25*	0.49**
Minor Independent Agency (0,1)	-0.23**	-0.60**	-0.38**
N	1806	1810	1760
χ^2 (13, X, X df)	639**	563**	109**

Note: Standard errors adjusted for clustering on agencies. **significant at the 0.05 level, *significant at the 0.10 level in two-tailed tests. Cut point estimates are -1.69, -1.00, -0.22, 0.64; -1.93, -1.37, -0.35, 0.68; and -1.24, -0.31, 0.83, 1.82, respectively, for the three models.

Appendix A. List of Independent Establishments

IndCom	Agency Code	Agency
1	ACHP	Advisory Council on Historic Preservation
1	ADF	African Development Foundation
0	AMTRAK	Amtrak
1	ARC	Appalachian Regional Commission
0	ARMY	Department of the Army
1	BBG	Broadcasting Board of Governors Coordinating Council On Juvenile Justice And Delinquency Prevention
1	CCJJDP	Prevention
1	CFTC	Commodity Futures Trading Commission
1	CNCS	Corporation for National and Community Service
0	COM	Department of Commerce
1	CPSC	Consumer Product Safety Commission
1	CSHIB	Chemical Safety And Hazard Investigation Board
0	DHS	Department of Homeland Security
1	DNFSB	Defense Nuclear Facilities Safety Board
0	DOD	Department of Defense
0	DOE	Department of Energy
0	DOED	Department of Education
0	DOJ	Department of Justice
0	DOL	Department of Labor
0	DOT	Department of Transportation
0	DTRS	Department of the Treasury
0	DVA	Department of Veterans Affairs
1	EEOC	Equal Employment Opportunity Commission
0	EOP	Executive Office of the President
0	EPA	Environmental Protection Agency
1	EXIM	Export-Import Bank
1	FASAB	Federal Accounting Standards Advisory Board
1	FCC	Federal Communications Commission
1	FDIC	Federal Deposit Insurance Corporation
1	FEC	Federal Election Commission
1	FED	Federal Reserve System
1	FHFB	Federal Housing Finance Board
1	FMC	Federal Maritime Commission
1	FMSHRC	Federal Mine Safety Health and Review Commission
1	FRTIB	Federal Retirement Thrift Investment Board
1	FTC	Federal Trade Commission
0	GSA	General Services Administration
0	HHS	Department of Health and Human Services
0	HSTSF	Harry S Truman Scholarship Foundation
0	HUD	Department of Housing and Urban Development
0	IMLS	Institute Of Museum And Library Services
0	INT	Department of Interior
1	JMMFF	James Madison Memorial Fellowship Foundation
1	MKSF	Morris K. Udall Scholarship Foundation
1	MMC	Marine Mammal Commission

1	MSPB	Merit Systems Protection Board
0	NARA	National Archives and Records Administration
0	NASA	National Aeronautics and Space Administration
0	NAVY	Department of the Navy
1	NCPC	National Capital Planning Commission
0	NFAH	National Foundation on the Arts and Humanities
1	NLRB	National Labor Relations Board
1	NMB	National Mediation Board
1	NRC	Nuclear Regulatory Commission
1	NREC	Neighborhood Reinvestment Corporation
0	NSF	National Science Foundation
0	OPM	Office of Personnel Management
1	OSHRC	Occupational Safety and Health Review Commission
0	OTH	Other
0	PCOR	Peace Corps
1	RRB	Railroad Retirement Board
0	SBA	Small Business Administration
1	SEC	Securities and Exchange Commission
0	SMTH	Smithsonian Institution
0	SSA	Social Security Administration
0	STAT	Department of State
0	USAF	Department of the Air Force
0	USAID	Agency for International Development
1	USARC	Arctic Research Commission
1	USCFA	Commission on Fine Arts
0	USDA	Department of Agriculture
1	USITC	International Trade Commission
0	USPS	Postal Service
