

Congress, Responsiveness, and Agency Performance¹

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Comments Welcome*

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Abstract

When elected officials decide to delegate authority to an agency, that choice determines not only the likely policy outputs in that area but also the policy outputs in other areas. New delegations may invite more congressional committees to participate in agency oversight, lead to the creation of new organizational units to implement newly delegated authority, and force department leadership with limited time, attention, and resources to prioritize among programs and tasks. Each of these changes can influence the agency performance in areas outside the primary focus of their delegation. In this paper we examine how the proliferation of statutory responsibilities in federal agencies influences performance. Working with the staff of the U.S. House Committee on Oversight and Government Reform, we obtained three new unique measures of federal agency performance on a task that might be influenced by the proliferation of new responsibilities, responding to Freedom of Information Act requests. Our results indicate that agencies with a greater number and diversity of statutory responsibilities were the least responsive to congressional requests for information about FOIA, slowest in responding to our request for information, and were the least likely to include the appropriate information in their responses to our FOIA request (when they did respond). We conclude by discussing the implications of these findings for our understanding of legislative delegation and agency performance.

When President Roosevelt entered public office on March 4, 1933 he proposed an aggressive domestic program to combat the depression. In the first 100 days Roosevelt persuaded the Democratic Congress to create scores of New Deal programs. Congress, in enacting the New Deal, had to choose whether to delegate responsibility for these new programs to existing federal agencies or create new units to implement them. Some agencies had personnel and practices oriented around large and diverse portfolios of programs and statutory responsibilities. President Roosevelt was dubious as to whether many of these agencies would be effective partners in implementing the New Deal and advocated the creation of a number of new independent agencies to implement his policies.

The decision that Roosevelt and the New Deal Congress confronted is regularly part of congressional delegation considerations. When delegating authority, Congress must determine which agencies will be delegated responsibility for new programs (Epstein and O'Halloran 1999; Volden 2002). Some agencies are large, comprised of multiple bureaus and tasked with implementing numerous legally mandated programs and responsibilities. Others are smaller or have simpler mandates in a limited number of policy areas.

The structure of delegated authority can influence performance (Selin 2013).² The accumulation of statutory responsibilities inside large agencies invites and regularizes attention to the agency from a greater number of congressional overseers. It increases the number of bureaus and offices inside an agency, as the creation of new organizational units often accompanies delegated authority (Lewis 2003). This proliferation of bureaus, offices, and programs can make coordination among parts of the agency difficult, particularly when it comes

² For example, Thomas Jefferson complained of the immense burden reviewing patent applications placed upon him as Secretary of State and how this responsibility detracted from his other responsibilities (cites). The State Department was responsible for tasks as varied as supervising the U.S. Mint and conducting the decennial census in addition to its responsibilities in foreign affairs. The early Department of State included bureaus such as the U.S. Mint, Bureau of the Census, and General Land Office.

to agency-wide mandates and monitoring. The proliferation of responsibilities can also force agencies with limited time, attention, and resources to multitask and prioritize among programs and responsibilities, leaving some activities with persistently low levels of attention and few resources (Holmstrom and Milgrom 1991).

In this paper we examine how the proliferation of statutory responsibilities in federal agencies influences performance. Working with the staff of the U.S. House Committee on Oversight and Government Reform, we obtained three new unique measures of federal agency performance on a task that might be influenced by the proliferation of new responsibilities, responding to Freedom of Information Act (FOIA) requests. Our results indicate that agencies with a greater number and diversity of statutory responsibilities were the least responsive to congressional requests for information about FOIA, slowest in responding to our request for information, and were the least likely to include the appropriate information in their responses to our FOIA request when they did respond. Our examination of the different mechanisms by which the proliferation of tasks hindered performance suggests that the creation of new organizational units to implement newly-delegated authority may negatively influence performance.

We conclude by discussing the implications of these findings for our understanding of legislative delegation and agency performance. In this paper we focus narrowly on the question of how the number of statutory responsibilities influences performance in tasks with lower or higher priorities but note explicitly that this is endogenous to the larger delegation choice made by Congress and the president, something we discuss more fully below.

Delegation of Policymaking Authority

Scholars traditionally approach the problem of delegation in terms of politicians' incentives to delegate policymaking authority to the bureaucracy given various political configurations (e.g. Calvert, McCubbins, and Weingast 1989; Bawn 1997; Epstein and O'Halloran 1999; Huber and Shipan 2000, 2002; Bendor and Meirowitz 2004). This work views delegation from the perspective of political principals and tends to focus on two issues – the decision to delegate or not and, in the event of delegation, the level of discretion given to an agency. The exploration of agency characteristics is often limited to the consideration of agencies' ideological preferences, expertise, and capacity (Bawn 1995; Huber, Shipan, and Pfahler 2001; Volden 2002; Huber and McCarty 2004).

However, other features of the bureaucracy affect the desire and capacity of federal agencies to implement delegated policies (Wood 1988; Hammond 1986; Hammond and Thomas 1989). Bureaucratic structure itself results from strategic choices made by the president and Congress to design an agency in ways that make it more or less responsive to political principals (e.g., McCubbins 1985; Moe 1989; Moe and Wilson 1994). Whether political principals shape organizational values and preferences, slow an agency's ability to change policy, or limit an agency's ability to coordinate internal decisions, agency design affects performance (McCubbins, Noll, and Weingast 1987, 1989; Carpenter 1996; Rudalevige 2005; Krause 2009; Pataconi 2009). Most focus on agency structure explores features that limit presidential influence over agency decisions such as commission structures, fixed term appointments, or party-balancing requirements or administrative procedures that define the rulemaking process.

Another design feature that influences policy implementation, however, is the agency's task environment. While previous work has given us important insight into when and how much

Congress delegates, there has been little attention to the delegation of multiple policies to a single agency.³ Scholarship on delegation generally looks at each policy in isolation, as opposed to considering that most agencies must balance the implementation of multiple policies at once.

Delegation, the Proliferation of Tasks, and Compliance with the Law

The number of policies delegated to an agency has important consequences for agency performance. When Congress delegates multiple policy areas to a single agency, that agency faces difficult decisions about how to allocate resources and structure offices in order to best implement delegated authority. In addition, implementation of multiple policy areas increases the number of political actors interested in agency policy. All of these considerations can influence agency performance and outputs.

First, newly delegated authority forces agencies to re-prioritize which of their policy goals are the most important. Since agencies face time, money, and personnel constraints, agencies are unable to give all of their statutory responsibilities priority within the agency. Thus, agencies implement delegated authority in terms of specific and immediate goals, and will prioritize some missions over others (see Dixit 2002; deShazo and Freeman 2005).

Agency leaders that are forced to multitask tend to overproduce policies that are complements (Holmstrom and Milgrom 1991; Bueno de Mesquita and Stephenson 2007; Biber 2009). For example, partly at the behest of the Secretary of the Treasury, Congress created a Department of Interior in 1849. The department, colloquially known as the “Department of Everything Else,” was a response to complaints by Treasury Secretary Walker and other department heads about the management of tasks that differed markedly from their primary

³ But see Epstein and O’Halloran 1999 (suggesting that Congress balances discretion and the number of policy areas in an agency); Biber 2009 (addressing the challenges of multiple goal agencies).

duties. The culture of each department naturally recognized some tasks as more important than others. Management of offices such as the General Land Office in the Department of the Treasury and the Indian Affairs Office in the War Department did not complement neatly the central work of either department. Programs such as these, which did not fit easily with the other departments' tasks, became part of the new Department of Interior. Because agencies tend to direct resources and effort to their preferred mission, agencies tend to underperform on policies not central to that mission (see Carpenter 2001; Kaufman 1960; Wilson 1989).

Agency leaders also overproduce on policies whose outputs are easy to measure or observe. This means that agencies have an incentive to allocate substantial effort toward policies Congress and the president monitor and consider a high priority. Elected officials attempt to direct some delegated policies much more vigorously than others (see Spence 1997; deShazo and Freeman 2005). To the extent that some delegated responsibilities are persistently ignored by Congress and the president, agencies have little political incentive to spend significant effort ensuring their effective implementation.

Prioritized policy goals are the recipients of greater attention, more resources, and the best personnel. Policy goals that are rarely monitored by Congress, the president, or the courts predictably get limited time on the agenda of the agency's management team and have less leverage in internal debates over agency resources. Agency leadership is also less likely to assign the best personnel to work on implementing these policy goals. The repeated choices over time to favor some policy goals over others shape the development of reputations inside the agency. Internal agency labor markets reify the choices of agency leaders so that some parts of the agency develop reputations as "turkey farms" and those parts of the agency have a more difficult time recruiting and retaining the best personnel. The high flyers within the agency do not choose

to work in the parts of the agency responsible for low priority policy goals. The joint effect of top-down neglect and bottom-up labor market choices shapes the quality of agency work on low priority policy goals. Proliferating the number of policies an agency must implement leads to predictably poorer performance on the lower priority tasks.

Second, in addition to influencing the allocation of resources, the delegation of new policy responsibilities also comes with the creation of new administrative units. Statutes that delegate authority often specify the creation of new positions, offices, or bureaus to implement the new policies (Light 1995; Lewis 2003). In other cases, Congress creates new policies with the implicit understanding that the agency will create administrative units to implement them. For example, the Attorney General created the Office of Community Oriented Policing Services in 1994 to distribute funds authorized by Congress in the Violent Crime Control & Law Enforcement Act that same year.

Changes in the way an agency is structured can have important consequences for the content and direction of policy. In general, as an agency becomes larger and more complicated, it becomes increasingly difficult to direct employees (Gulick 1937). Changes in institutional organization also can alter policy agendas, affect staffing decisions, and influence policy preferences (e.g. Shepsle 1979; Moe 1989; Macey 1992; Hammond and Butler 2003). Furthermore, the addition of new bureaus or offices can create coordination problems and change the relative influence of officials within the agency (see Hammond and Miller 1985; Magill and Vermeule 2011).

When the delegation of multiple policy responsibilities to the same agency results in the proliferation of bureaus and offices inside, the coordination costs for agency-wide activities increase. This is particularly the case for tasks such as data collection, equal employment

opportunity, contract management, or financial management, which apply agency-wide and depend upon the active cooperation of the different units. For example, when letters are sent to the FOIA office asking for documents from an agency of with many bureaus, the FOIA office now must coordinate with a greater number of offices to get a response. Similarly, if the central budget office is putting together an agency-wide budget, proliferating the number of bureaus and offices makes the task of collecting estimates from the bureaus, revising estimates and passing them back to bureaus, and ultimately compiling an agency-wide budget more difficult. The process of bureau and office creation also generates independent interests and alters work patterns and priorities that increase the transaction costs of coming to agreement. These increased costs may affect overall agency performance.

Finally, in addition to affecting how an agency allocates resources and structures its offices, each added delegation fundamentally alters the relationship between the agency and its political overseers. New statutory responsibilities come with new and increased attention from an agency's regular congressional overseers and can invite attention from new committees if an agency becomes responsible for different policy areas. The addition of committees with jurisdiction over agency programs can increase the number of congressional demands on agency time and resources. Instead of having one interested committee request information on agency activities, agencies have multiple. Agency officials routinely decry the burden that providing congressional testimony and materials place on agencies. For example, there are 108 different committees or subcommittees with jurisdiction over the policies of the Department of Homeland Security.

The proliferation in the number of committees overseeing an agency may make the agency less responsive to Congress in general (Clinton, Lewis, and Selin 2013; Gailmard 2009;

Hammond and Knott 1996; Laffont and Tirole 1993; Miller and Hammond 1990). Since committees are organized around policies, having more committees involved in oversight increases the likelihood that these committees view agency policymaking from different perspectives. This makes it difficult for an agency to know whose directions to follow and it makes collective action in Congress more difficult (Moe 1984, 1985a, 1987). The proliferation in the number of committees can lead to an under-provision of oversight if committees free-ride on the oversight activity of other committees. Committee staffs have scarce resources in time and effort to commit to oversight, and committees may be motivated to let other committees do the hard work of monitoring agencies and initiating legislation to correct poor agency performance. Legislating also becomes more difficult when a greater number of actors have a say in policymaking

In sum, agencies delegated a greater number of different statutory responsibilities are likely to perform worse on some tasks. Some tasks will naturally become lower priorities. Other tasks will suffer because intra-agency coordination becomes more difficult. Finally, others will suffer because of increased political meddling in the agency by new overseers. With new overseers come increased demands on agency resources and less clarity from Congress about what the agency should prioritize.

Data, Variables, and Methods

Congress enacted the Freedom of Information Act in 1966. It is a foundational law providing for transparency in governance. FOIA is used by journalists, government watchdogs, lawyers looking to help cases, and private entities seeking information about competitors. Recently, the law has been used to uncover information about low quality beef in school lunches,

faulty firefighter safety equipment, and the chemical ingredients contained in dispersants used in the aftermath of the BP oil spill. The law has been touted by President Obama as part of his Open Government initiative and has been the subject of intense interest to the House Committee on Oversight and Government Reform.

The law provides that any person may request copies of any agency record not covered by one of 9 exemptions.⁴ The agency is legally obligated to confirm receipt of the request within 10 business days and make a determination within 20 business days.⁵ An agency's determination can be to fill the request, notify the requestor that there are no documents responsive to the request, or decline the request because it falls under one of the exemptions. Requestors may appeal determinations and ultimately sue if dissatisfied with the agency determination.

Examining agency FOIA behavior is a unique means of evaluating federal agency performance on a comparable metric. Working with the help of committee staff on the House Oversight and Government Reform Committee, we collected three different measures of performance related to agencies' FOIA activities, which are explained in more detail below: *Do Agencies Provide the Committee Requested Information on FOIA? Do Agencies Fill Our FOIA Requests in a Timely Fashion? In Their Response to Us, Did Agencies Include their Correspondence with the House Committee?* We estimate a series of models of FOIA performance including key variables and a series of controls.

⁴ These exemptions are: (b)(1) EXEMPTION - Protects Classified Matters of National Defense or Foreign Policy; (b)(2) EXEMPTION - Internal Personnel Rules and Practices; (b)(3) EXEMPTION - Information Specifically Exempted by Other Statutes; (b)(4) EXEMPTION - Trade Secrets, Commercial or Financial Information; (b)(5) EXEMPTION - Privileged Interagency or Intra-Agency Memoranda or Letters; (b)(6) EXEMPTION - Personal Information Affecting an Individual's Privacy; (b)(7) EXEMPTION - Investigatory Records Compiled for Law Enforcement Purposes; (b)(8) EXEMPTION - Records of Financial Institutions; (b)(9) EXEMPTION - Geographical and Geophysical Information Concerning Wells (Department of Commerce 2011).

⁵ 5 U.S.C. § 552(a)(6)(A) (2012). See § 552 for all legal requirements placed on agencies as part of the Freedom of Information Act.

On January 25, 2011 the Oversight and Government Reform Committee Chairman, Darrell Issa (R-CA) sent a FOIA request to federal agencies requesting information about their FOIA tracking systems. The committee asked for an electronic and sortable copy of each agency's FOIA logs containing information about the requesters, when their requests were made, the subject of their request, and the status of these requests among other information. The chairman asked for agencies to respond by February 15, 2011. Federal agencies are legally required to provide committees the information they request by the deadline the member of Congress has imposed.⁶ The committee tracked whether and when the agencies responded to the request and whether agencies provided all of the requested information. Out of 186 requests, 67 (36%) responded to committee's requests by February 15, 2011 and 161 (87%) responded by August 24, 2011, the last date in the committee's records.

On May 25, 2011 we sent out a request to 132 agencies⁷ or bureaus for the following records: "A copy of all written communications from the agency to the Speaker of the House, John Boehner (R-OH), or Chair of the House Committee on Oversight and Government Reform, Darrell Issa (R-CA), between January 25, 2011 and May 15, 2011." Under FOIA, each agency was required to provide us a determination by June 15, 2011 (20 working days after our request).⁸ Out of the 132 agencies, 33 responded within 20 working days and 102 provided a response to us by August 8, 2012, the last day we collected data. The quickest response was 7

⁶ While there is no provision in the Constitution expressly granting Congress the power to make investigations and compel testimony, Congress has the inherent power to investigate agency activities and request information. See, e.g., *McGrain v. Daugherty*, 273 U.S. 135 (1927). Congress has delegated that authority to its committees. See, e.g., 2 U.S.C. § 190d(a) (2012) ("In order to assist the Congress. . .each standing committee of the Senate and the House of Representatives shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee"); House Rules X and XI; Senate Rule XXVI.

⁷ Our list and the committee's list differed somewhat. We relied on the list of FOIA offices provided by the Department of Justice and the committee relied upon a different list. Out of 132 agencies, the House committee also contacted 125.

⁸ The actual date by which an agency is legally obligated to make a determination can be delayed if the agency has made an attempt to contact the requester to get clarification on the request. Several agencies did contact us about our request and delays in their effective legal deadline account for this fact.

working days (Defense Commissary Agency and Defense Contract Management Agency) and the average response time among those that responded at all was 53 working days, substantially longer than the 20 working days specified in law. Among those that responded, the slowest agency took 316 working days (Federal Maritime Commission).

Under FOIA, each agency's response should have included the materials they sent to the committee in response to the committee's January 25 request.⁹ We know what materials the agency sent to the committee and we can compare this to what they sent in response to our FOIA request. This gives us another clean way of measuring agency FOIA performance. Of the 100 agencies the sent us a response that also sent materials to Issa, 57 (57%) included the materials they sent to Issa in the agencies' responses to us.¹⁰

[Insert Table 1 about here.]

In Table 1 we provide a list of both high and low performers on all three measures. The top of the table includes agencies that responded to the House Committee on Government Oversight and Reform by February 15, 2011, filled our FOIA request within 20 working days, and included the appropriate information in their FOIA response. The agencies on the bottom of the list did not respond to the committee or our FOIA request by the specified date. When they did respond to our FOIA request they also failed to provide the information they sent to the committee. A comparison of the two lists reveals that the high performing agencies seem to have more focused policy missions. For example, the Commission on Civil Rights, a high performer, focuses exclusively on national civil rights policy and the National Capital Planning

⁹ Of course, if the agency did not respond to the House Committee on Oversight and Government Reform by May 15, their response would not include that information.

¹⁰ Of the remainder, 41 did not include the materials and 2 responded with materials other than records. The Federal Deposit Insurance Corporation said our request was overly broad and said would it cost over \$250, even though they recognized the requester was a student of "Tohoku University." The Internal Revenue Service indicated that the request could not be filled because it involved records of individual tax returns.

Commission coordinates planning efforts with respect to the National Capital Region. In contrast, the stated purpose of the Environmental Protection Agency, a low performer, encompasses policies concerning “natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade.”¹¹

Key Variables

Our main expectation is that agencies like the EPA that are delegated tasks across many policy areas will perform worse in complying with federal law related to FOIA and in responding to congressional requests for information. To measure the diversity of an agency’s delegated tasks we count the number of titles of the United States Code that include provisions specifically mentioning the agency by name.¹² The 51 titles of the U.S. Code are organized by subject, ranging from specific topics such as intoxicating liquors and copyrights to more general topics such as labor and transportation. The median number of titles per agency in the data is 7 and the mean is 11. Not surprisingly, executive departments are referenced in more titles than other agencies. The Departments of Defense, Justice, Treasury, and State are mentioned in more than 40 titles of the U.S. Code while the Departments of Energy, Housing and Urban Development, and Veterans Affairs are mentioned in fewer than 30. Smaller agencies such as the Election Assistance Commission, Office of Navajo and Hopi Indian Relocation, and the Broadcasting Board of Governors are mentioned in fewer than 4 titles.

Of course, FOIA may be one of an agency’s priority tasks, such that increasing the number of other statutory responsibilities will not greatly influence FOIA performance for those

¹¹ <http://www2.epa.gov/aboutepa/our-mission-and-what-we-do>

¹² To obtain this list, we searched the Code for the agency name in quotes using Westlaw. For example, to obtain the list for the Commodity Futures Trading Commission we searched the Code for “Commodity Futures Trading Commission.” However, because statutes typically grant authority to the secretaries of the cabinet departments as opposed to the departments themselves, searches for the departments were done by searching for references to the secretary. For example, to obtain the list for the Department of Agriculture we searched the Code for “Secretary of Agriculture.” The agency must have been referenced in statutory text – our count does not include annotations to the Code. *Source:* United States Code; Westlaw.

agencies. For example, agencies that receive lots of FOIA requests such as the National Archives and Records Administration or agencies providing benefits may allocate significant resources and their best personnel to FOIA regardless of other delegated responsibilities. To address the importance of FOIA to agency work we include the natural log of FOIA requests in FY 2011. The median number of requests is 165 per year and the mean is 5,476. The maximum is 175,656 (Department of Homeland Security). We also interact the number of requests with the number of tasks to account for the fact that the more important FOIA is to an agency, the less important the number of other tasks will be to performance on FOIA.

Controls

How well an agency's FOIA operation works will also be influenced by other agency characteristics that may be correlated with the number of tasks or the agency's FOIA workload. We control for agency ideology, the natural log of 2011 agency employment, and agency location in the Executive Office of the President or Cabinet or an independent commission. We include controls for ideology since liberal agencies might have less of an incentive to provide the conservative Rep. Issa the information he requested. To measure ideology we include indicators for liberal (0,1; 15%) or conservative (0,1; 60%) agency based upon the estimates of agency ideology created by Clinton and Lewis (2008). Clinton and Lewis (CL) use an expert survey to generate estimates of agency ideology, accounting for differences in what experts consider to be liberal and conservative. We do not include ideology measures in all models since CL did not ask experts about every agency which means that models including the CL scores omit a number of cases. To account for substantial differences in agency size we include the natural log of the number of federal civilian employees ($\ln(\text{mean } 18,882; \text{median } 896; \text{min } 0; \text{max } 645,950)$).¹³

¹³ The United States Institute of Peace is listed as having 0 employees since none of its employees are federal employees.

Finally, given differences in presidential control in different types of agencies, we include indicators for agency location, agencies in the Executive Office of the President or cabinet (0,1; 64%) and independent commissions (0,1; 23%).

Methods

We estimate a series of models evaluating the relationship between the number of policy areas under which an agency has statutory responsibilities and FOIA performance. For models of whether or not the agency responded to the House Committee on Oversight and Government Reform, we estimate models of both whether or not the agency responded (0,1) and the time to response. The former models are probit models and for the latter analysis we estimate Cox proportional hazards models. We also estimate probit models of whether or not the agency included in their FOIA response to us the materials they sent to the committee (0,1). For each model we report robust standard errors clustered by department.

We next assess *why* we observe a correlation between an increase in policy areas and the quality of FOIA performance. We focus on the three possible explanations for the correlation that we describe above. Specifically, we examine whether responsibility over more policy areas invites in a greater number of congressional overseers or leads to a greater number of bureaus across which to coordinate FOIA responses. We also examine whether a greater number of policy areas means that FOIA will be a lower priority inside the agency. We measure each of these possibilities by examining the correlation between the number of titles in the U.S. Code and the number of committees with oversight jurisdiction over the agency, the number of bureaus within each agency, and whether or not the chief FOIA officer is located high in the agency hierarchy (0,1).

Results

Model estimates generally confirm that agencies with statutory responsibilities across a larger number of policy areas are the least responsive to Congress about FOIA, the slowest in responding to our FOIA requests, and the least likely to include the appropriate information in our requests, even when controlling for a host of factors such as agency size, the number of requests, and other aspects of agency design and FOIA operation. In Table 2 we include estimates from probit models of whether or not an agency responded to the House committee by the specified date. The results suggest that agencies delegated a wider variety of statutory responsibilities were less likely to respond to the committee. In all three models the coefficient is positive and significant. Substantively, the estimates suggest that each additional portion of the U.S. Code decreases the probability of response by 0.024 percentage points. So, for example, whereas an agency such as the Federal Reserve (22 different titles in the U.S. Code) is estimated to have a probability of responding of 0.45, the Food and Drug Administration (12 different titles) is estimated to have a probability of responding of 0.69.

[Insert Table 2 about here.]

Notably, the effect of the number of titles is muted when an agency receives lots of FOIA requests. The more FOIA requests an agency receives the less important the number of tasks becomes for predicting response. This is illustrated most clearly in Figure 1, which graphs the estimated change in probability for agencies with different numbers of requests. The slope of the decline in probability is the flattest for agencies that receive a lot of requests, and agencies that receive a lot of requests are the most likely to respond to Issa's request for information. One possible interpretation is that agencies that receive a lot of requests prioritize FOIA and are best able to respond to requests for information about FOIA.

The results in Table 2 suggest that larger agencies are slower to respond. A one percent increase in employment is estimated to decrease the response probability by 3 percentage points. The final model suggests that independent commissions are less likely to respond by the deadline. This is a result that is consistent across the different measures of performance and suggests that agencies insulated from political control may feel less pressure to comply with legal requirements relating to congressional requests for information. Other results are inconsistent across models. Some of the inconsistency appears caused by differences in the number of cases. Including controls for the ideology of agency reduces the number of cases and also influences the estimates on some of the controls.¹⁴

[Insert Table 3 about here.]

In Table 3 we replicate the models of responses to Issa's request, but for these models, the dependent variable is whether or not the agency made a determination on our FOIA request within the legally mandated 20 working days. The results are quite similar to the results in Table 2. Agencies with statutory responsibility defined in a greater number of titles were significantly less likely to respond to our FOIA request. Each additional title in the U.S. Code is estimated to reduce the chances of a response by 2-3 percentage points. We graph the estimate effect in Figure 2. As the number of titles in the U.S. Code increases, the chances of a response decrease. Interestingly, the results suggest that agencies with a limited number of statutory responsibilities are more likely to respond when there are fewer requests. Conversely, when an agency has statutory responsibilities across more policy areas, it is the busy FOIA agencies that are most likely to respond. It is possible that in smaller agencies with fewer FOIA requests that FOIA

¹⁴ We have also estimated hazard models of the time it took agencies to send their information to the committee. The results confirm what is reported here. They are included in Appendix A (Tables 1A and 2A).

requests are handled by attorneys in the general counsel's office who are more aware of and attuned to the legal requirements of the FOIA statute.

Table 4 reports the models of whether the agency included its response to Issa in its response to us. These results are generally similar, but they are less robust. All of the coefficient estimates suggest that an increase in the titles of the U.S. Code in which the agency is mentioned decreases the chances that the agency's FOIA response included their communication with Issa. The effects, particularly in the most fully specified model, are quite large as Figure 3 suggests. These results, while suggestive, cannot be determinative for a few reasons. First, we do not observe the cases where the agency did not respond to our FOIA request or did not send a response to the House Committee at all. Second, the models are estimated on a small sample making them sensitive to specification, as the difference between models 2 and 3 suggest.¹⁵

In sum, while not conclusive, the evidence consistently suggests that a greater number of statutory responsibilities, as measured by the number of titles of the U.S. Code mentioning the agency, leads to poorer performance on FOIA as measured in three different ways. What is less clear, however, is why that correlation exists.

What Explains the Correlation Between the Number of Tasks and Performance?

The delegation of multiple policies to a single agency can invite in greater congressional oversight, increase the number of distinct offices and bureaus within an agency, and force the agency to prioritize some tasks over others, particularly those tasks that are complementary to the agency's central mission or policies that are monitored carefully. To further explore why there is a connection between the number of tasks and performance we collected data on the

¹⁵ An appropriate modeling strategy here would first model response to Issa and us and then model whether the response to us included the appropriate material. To estimate such a model requires finding an appropriate instrument.

number of committees (mean 6.3; SD 6.8; min 0, max 29)¹⁶ actively exercising jurisdiction over the agency and the number of distinct bureaus (mean 1; SD 3.9; min 0, max 34) inside the agency.¹⁷ We also collected data on where the chief FOIA officer is in the agency hierarchy (Senate-confirmed appointee ((2); 31%), Senior Executive Service ((1); 43%), career professional ((0); 26%)) and the workload of FOIA officers (# requests/# FOIA employees; mean 99; SD 153; min 7.14, max 818.78). Our goal was to determine whether agencies with tasks or statutory responsibilities in more policy areas responded less often because they were focused on responding to oversight – did they have a larger number of committees overseeing them? – or whether the agencies’ reduced responsiveness is explained by coordination problems across a more elaborate agency structure because they had more distinct bureaus. We also sought to determine whether agencies with more tasks gave FOIA responsibility to a lower level official and allocated FOIA officers fewer resources, another possible explanation for lackluster FOIA performance.

¹⁶ To measure committee jurisdiction, we use daily issues of the Congressional Record of the 112th Congress to identify each hearing at which an executive branch official testified. Small, focused agencies such as the U.S. Institute of Peace testified before one committee (Senate Foreign Relations) and larger, more general agencies such as the Department of Homeland Security testified before many more (Senate Appropriations; Senate Banking, Housing, and Urban Affairs; Senate Commerce, Science, and Transportation; Senate Energy and Natural Resources; Senate Foreign Relations; Senate Health, Education, Labor, and Pensions; Senate Homeland Security and Governmental Affairs; Senate Indian Affairs; Senate Judiciary; Senate Small Business and Entrepreneurship; House Appropriations; House Armed Services; House Energy and Commerce; House Financial Services; House Foreign Affairs; House Homeland Security; House Judiciary; House Natural Resources; House Oversight and Government Reform; House Science, Space, and Technology; House Transportation and Infrastructure; House Veterans Affairs; and House Ways and Means). Some agencies, like the Department of Defense Education Activity, did not testify before any committees. The committee jurisdiction for these agencies is entered as 0. This does not necessarily mean that no committee oversees such an agency, merely that no committee called on an agency official to testify.

¹⁷ According to the Congressional Review Act, all federal agencies must submit a copy of promulgated rules to both houses of Congress and to the Government Accountability Office before the rules can take effect. 5 U.S.C. § 801(a)(1)(A) (2012). Our measure of bureaus includes each bureau or office within a larger agency that notified the GAO of a promulgated a rule since enactment of the CRA (1996). In addition, to account for significant bureaus that have not promulgated a rule since 1996, we included bureaus and offices related to intelligence and those bureaus and offices that are listed in both the employment data on FedScope *and* listed in the 2012 Government Manual as a bureau or office that reports directly to an undersecretary or its equivalent (not counting administrative offices like public affairs, which are common across all agencies).

Our analysis provides additional insight into how task environment influences performance. Not surprisingly, the number of titles in the U.S. Code was highly correlated with the number of committees (0.77) and the number of bureaus (0.60). This suggests that greater statutory responsibilities do come with greater committee oversight and the creation of new organizational units within an agency.

The number of titles in the U.S. Code was also correlated with the location in the hierarchy of the chief FOIA officer and FOIA office workload but not as expected. The number of agency tasks was correlated with the location in the hierarchy of the chief FOIA officer at 0.10 but agencies with appointed chief FOIA performed *worse* overall.¹⁸ In addition, agencies with more statutory responsibilities actually had a *higher* workload per person (i.e., number of requests per FOIA employee).

These findings suggest that the correlation between the breadth of agency policy arenas and FOIA performance are unlikely to be due to the allocation of more attention from appointed agency leaders or resources to the FOIA office, at least as measured here. The correlation, however, may be at least partly caused by an increase in the number of committees overseeing the agency or the number of bureaus, both of which are side effects of congressional delegation of new policy areas to agencies. The proliferation in the number of committees overseeing an agency may increase the distortion in the allocation of effort across agency programs and make the agency less responsive to Congress in general. The proliferation of distinct units inside agencies may make work harder for agency-wide FOIA offices. More distinct units may make it harder for the FOIA office to provide requesters with the information they need.

[Insert Table 5 here.]

¹⁸ Specifically, in models corresponding to those in Tables 2, 3, and 4 the coefficient estimate on having an appointee as chief FOIA officer was negative, indicating that appointed chief officers were correlated with poorer agency performance. The coefficient estimates were significant in two of the three cases.

In Table 5 we replicate the models from the previous tables and include the number of committees overseeing each agency and the number of bureaus.¹⁹ In the models of FOIA response to the House committee and to us the number of bureaus is negatively correlated with performance. Neither the number of committees nor the number of bureaus was significantly correlated with the content of agency FOIA responses.²⁰ Substantively, each additional bureau inside the agency is estimated to reduce the probability of responding to Issa by the deadline by 3 percentage points. Each additional bureau is estimated to decrease the probability of responding to our FOIA request by the 20 working day deadline by 3-4 percentage points. This suggests that congressional delegations that increase the number of offices or units inside agencies may complicate agency-wide management tasks (such as FOIA, information technology, or data collection or budgeting) that require coordination. The number of committees, however, was not significantly related to agency performance in any of the models. Interestingly, the inclusion of these measures does not decrease the influence of the number of agency tasks, suggesting that agency task environment may influence performance in other ways not captured by the measures employed in this paper.

Conclusion

As the experience of President Roosevelt and the New Deal Congress suggests, Congress does not delegate in a vacuum. Each choice to delegate is influenced by the characteristics of the potential recipients of delegated authority (Epstein and O'Halloran 1999; Huber and Shipan

¹⁹ We choose a specification without the controls for liberal or conservative agencies because of the limited degrees of freedom.

²⁰ It may be that this measure of performance is slightly different than the others. Because our theoretical expectations with respect to committees and bureaus relate to increased demands on agency time and resources, we would expect the responses of agencies with many bureaus or committees to be slower. However, it is unclear whether increased demands should affect the *quality* of responses. Failing to give a complete response, our third measure of performance, is a measure of quality, rather than speed.

2001, 2002; Krause and O'M Bowman 2005). Whether Congress delegates and in what manner Congress delegates is influenced by the members' expectations about how delegated authority will be used both now and in the future (Huber and McCarty 2004; McCarty 2002; Moe 1989; McCubbins, Noll, and Weingast 1989). In this paper we argue that one agency characteristic that likely shapes delegation decisions is the number and diversity of tasks the agency has already been delegated. The delegation of new authority has the potential to influence the agency's actions with regard to previously delegated responsibilities. New delegations may invite more congressional committees to participate in agency oversight, lead to the creation of new organizational units to implement newly delegated authority, and force department leadership with limited time, attention, and resources to prioritize among programs and tasks. Each of these changes can influence the agency performance in areas outside the primary focus of their delegation.

In our empirical analysis we found that agencies with a greater number and diversity of statutory responsibilities were the least responsive to congressional requests for information about FOIA, slowest in responding to our request for information, and were less likely to include the appropriate information in their responses to our FOIA request (when they did respond). When we probed further to determine why this correlation existed the most persuasive evidence suggested that the creation of new organizational units to implement newly delegated authority hindered agency performance. FOIA offices tasked with collecting information from a larger number of bureaus took longer to respond to the House Committee on Government Oversight and Reform's request for FOIA information and to our FOIA request. This suggests one way delegating new authority may influence performance on already existing tasks. Increasing the

number of bureaus may increase the difficulty of agency-wide management and hinder performance on a whole number of statutory responsibilities Congress has assigned to agencies.

These results should be taken with some caution for a couple of reasons. First, we have focused narrowly on the question of how the number of statutory responsibilities influences performance in tasks with lower or higher priorities, but Congress almost certainly takes these considerations into account when making delegation decisions in the first place. This implies that the number of tasks, as measured here, is not exogenous. Rather, the number of statutory responsibilities an agency has and its performance are both caused by some omitted factors that explain both. For example, some coalitions may want agencies to fail at some tasks and this desire will influence the number of statutory responsibilities given to an agency. The real cause of the failure is not the number of tasks per se. It is the political decision that started the process.

Second, FOIA is a task that has unique characteristics, and the correlations we see here between the number of statutory responsibilities and performance on FOIA or the number of bureaus and FOIA performance may not apply to other policies. FOIA is an agency-wide management responsibility, and few powerful stakeholders are interested in its success or failure. Other agency policies such as patents or environmental regulation are more likely to have entrenched interests behind them and are less likely to require as much direct agency-wide coordination. The safest ground for generalizing our results are cases of policies similar to FOIA that apply agency-wide and attract little regular political attention, either because they are not politically relevant or their outputs are hard to measure, like agency data collection, information technology policies, and contract management policies.

That said, the fundamental insight that no delegation choice is made in isolation has broad applicability. Each delegation of new authority has the potential to influence the agency's

actions with regard to previously delegated responsibilities because they invite more congressional committees to participate in agency oversight, change the organizational structure of agencies, and force department leadership with limited time, attention, and resources to prioritize among programs and tasks. Each of these changes can influence agency performance in areas both inside and outside the primary focus of their delegation.

Table 1. High and Low Performing Agencies

High Performers

Commission on Civil Rights

Committee for Purchase from People who Are Blind or Severely Disabled

Federal Financial Institutions Examination Council

Federal Mediation and Conciliation Service

Inter-American Foundation

National Archives and Records Administration

National Capital Planning Commission

National Credit Union Administration

Office of Government Ethics

Office of the United States Trade Representative

Overseas Private Investment Corporation

Railroad Retirement Board

Small Business Administration

Special Inspector General for Iraq Reconstruction

United States African Development Foundation

United States Postal Service

Low Performers

Air Force

Bureau of Customs and Border Protection

Centers for Medicare & Medicaid Services

Defense Information Systems Agency

Defense Intelligence Agency

Defense Logistics Agency

Defense Threat Reduction Agency

Department of Commerce

Department of Education

Department of Veterans Affairs

Environmental Protection Agency

General Services Administration

National Guard Bureau/JA-FOIA

National Institutes of Health

National Reconnaissance Office

National Security Agency

TRICARE Management Activity

Tennessee Valley Authority

United States Secret Service

Note: Each agency on the top of the list responded to the House Committee on Government Oversight and Reform by February 15, 2011, filled our FOIA request within 20 working days, and included the appropriate information in their FOIA response. Each agency on the bottom of the list failed in each of these tasks.

Table 2. Probit Models of Whether Agency Respond to Committee Request by February 15, 2011 Deadline

	(1)	(2)	(3)
# Titles	-0.04** (0.01)	-0.06** (0.02)	-0.08** (0.02)
# Titles*ln(Requests)		0.01* (0.00)	0.01* (0.00)
Liberal (0,1)			-0.65** (0.26)
Conservative (0,1)			0.02 (0.44)
Ln(Employment)		-0.08 (0.06)	-0.25** (0.10)
Ln(Requests)		-0.23** (0.07)	-0.07 (0.09)
EOP or Cabinet (0,1)		-0.32 (0.43)	0.38* (0.38)
Independent Commission (0,1)		0.20** (0.03)	-0.27** (0.12)
Constant	1.06** (0.11)	2.64** (0.60)	3.59** (0.90)
Number of Cases	95	89	69

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors clustered by department reported.

Table 3. Probit Models of Whether Agency Respond to Our FOIA Request Within 20 Working Days

	(1)	(2)	(3)
# Titles	-0.02** (0.01)	-0.08 (0.06)	-0.10** (0.05)
# Titles*ln(Requests)		0.01 (0.01)	0.01* (0.01)
Liberal (0,1)			-0.34 (0.43)
Conservative (0,1)			0.20 (0.41)
Ln(Employment)		0.00 (0.05)	-0.07 (0.13)
Ln(Requests)		-0.22** (0.11)	-0.17 (0.13)
EOP or Cabinet (0,1)		-0.47 (0.48)	0.63 (0.60)
Independent Commission (0,1)		0.11 (0.18)	-0.34 (0.39)
Bureau (0,1)		0.89 (0.69)	0.73 (0.63)
Constant	-0.40** (0.06)	0.64 (0.52)	1.28** (0.84)
Number of Cases	132	124	104

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors clustered by department reported.

Table 4. Probit Models of Whether Agency Response Included Agency Correspondence with House Committee

	(1)	(2)	(3)
# Titles	-0.03** (0.01)	-0.02 (0.04)	-0.13* (0.08)
# Titles*ln(Requests)		0.00 (0.01)	0.01 (0.01)
Liberal (0,1)			-0.73 (0.89)
Conservative (0,1)			0.19 (0.61)
Ln(Employment)		-0.05 (0.05)	-0.58** (0.23)
Ln(Requests)		-0.10 (0.08)	0.02 (0.31)
EOP or Cabinet (0,1)		-0.29 (0.45)	-0.54 (0.69)
Independent Commission (0,1)		-0.21 (0.16)	-1.56** (0.58)
Constant	1.23** (0.09)	2.00** (0.59)	6.88** (1.38)
Number of Cases	73	72	55

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors clustered by department reported.

Table 5. Probit Models of Agency Performance w/Measures of Committee Oversight and the Number of Bureaus

	(1) Respond to Issa by February 15, 2011	(2) Determination on FOIA request W/I 20 working days	(3) Include appropriate information in FOIA response
# Titles	-0.11** (0.03)	-0.10** (0.03)	-0.01 (0.04)
# Titles*ln(Requests)	0.02** (0.01)	0.01** (0.01)	0.00 (0.01)
# Committees	0.04 (0.07)	-0.05 (0.09)	-0.05 (0.05)
# Bureaus	-0.09* (0.05)	-0.10** (0.03)	0.00 (0.08)
Ln(Employment)	-0.06* (0.04)	0.03 (0.03)	-0.08 (0.06)
Ln(Requests)	-0.29** (0.08)	-0.18** (0.06)	-0.10 (0.08)
EOP or Cabinet (0,1)	0.21 (0.54)	0.22 (0.24)	-0.11 (0.68)
Independent Commission (0,1)	0.21** (0.05)	0.26** (0.05)	-0.17** (0.04)
Constant	2.87** (0.57)	0.21 (0.38)	2.04** (0.61)
Number of Cases	88	88	68

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors clustered by department reported.

Figure 1. Estimated Influence of the Number of Titles on Probability of Responding to House Committee Request by Stated Deadline

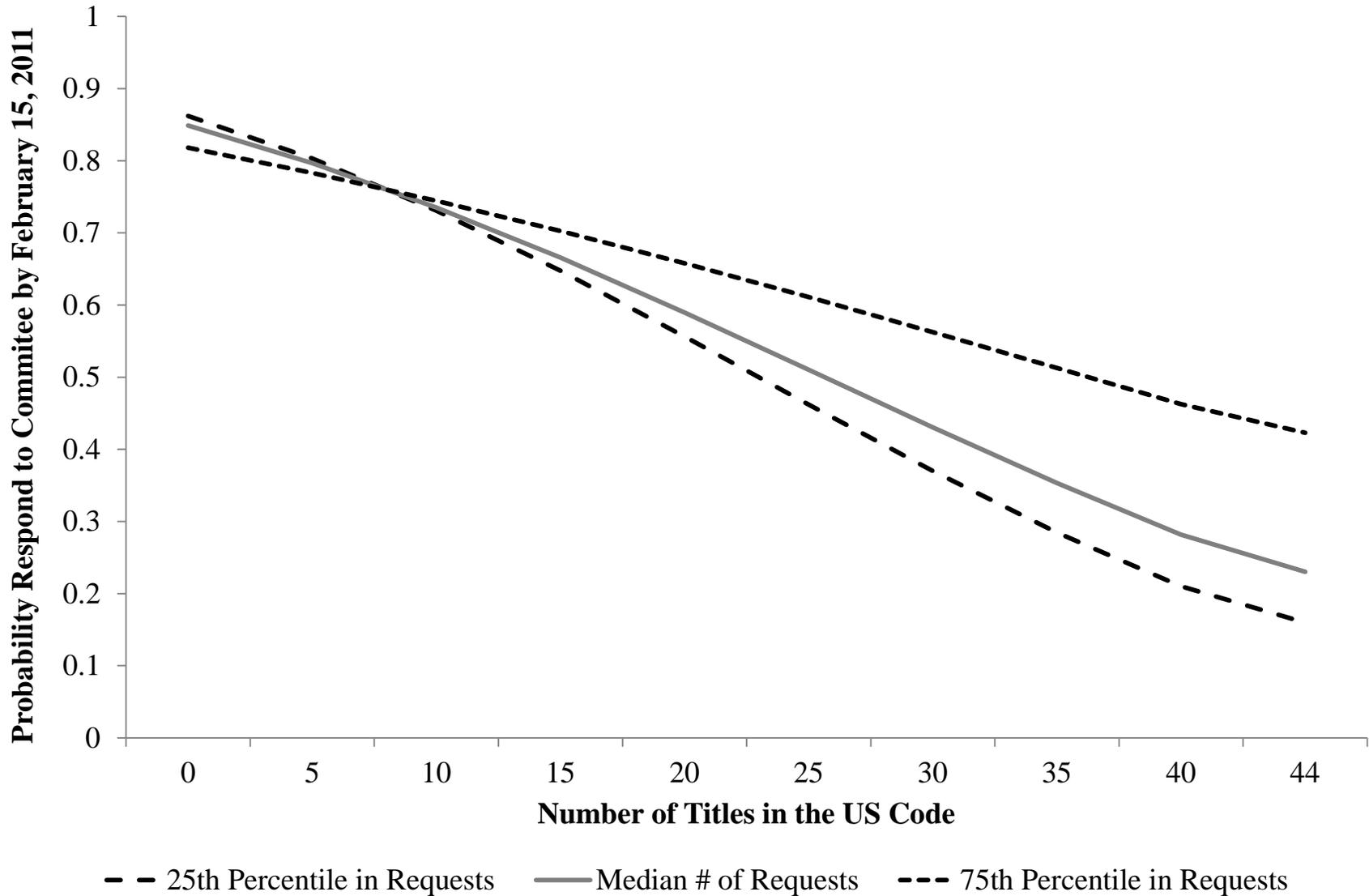


Figure 2. Estimated Influence of the Number of Titles on Probability of Responding to FOIA Request by Legal Deadline

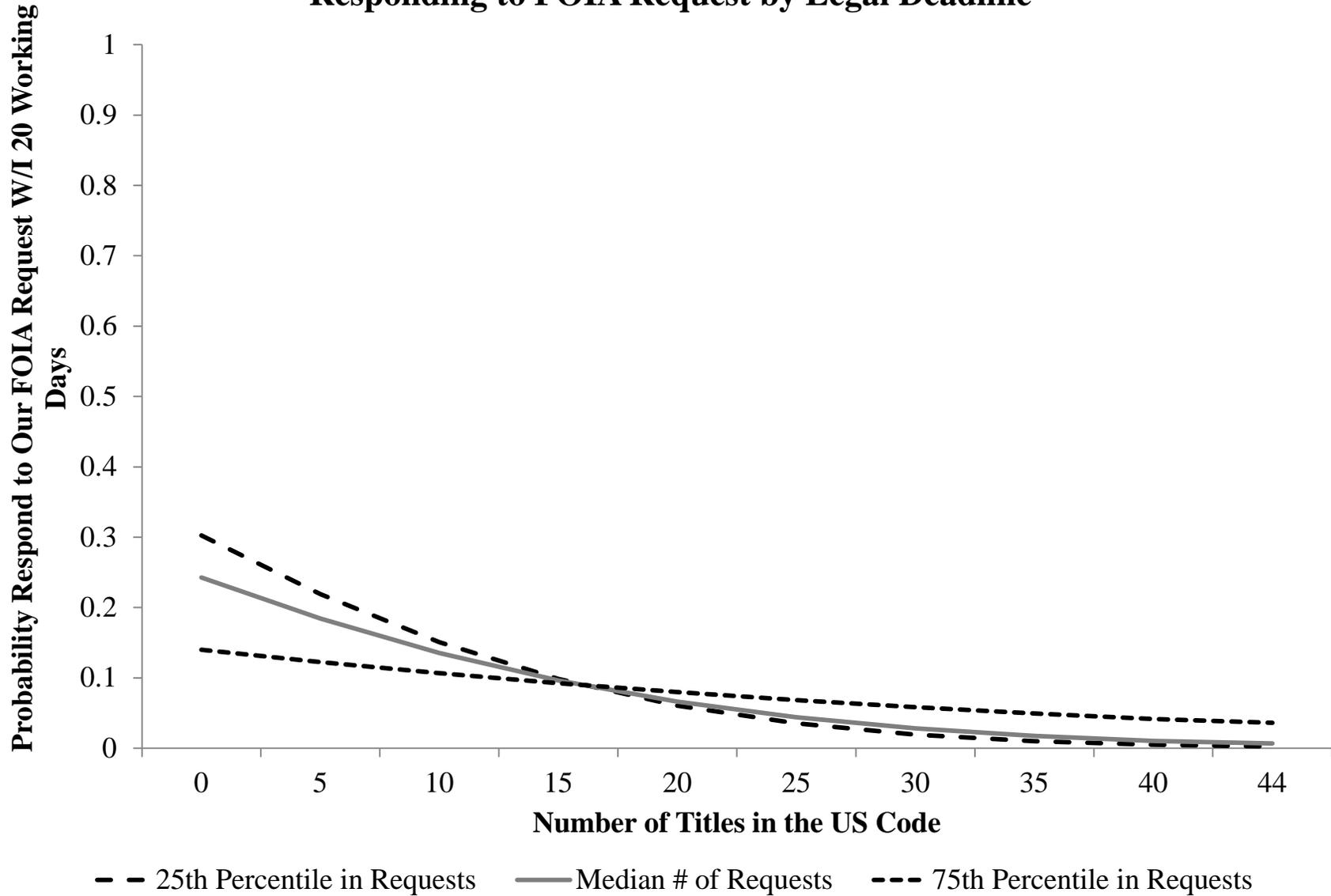
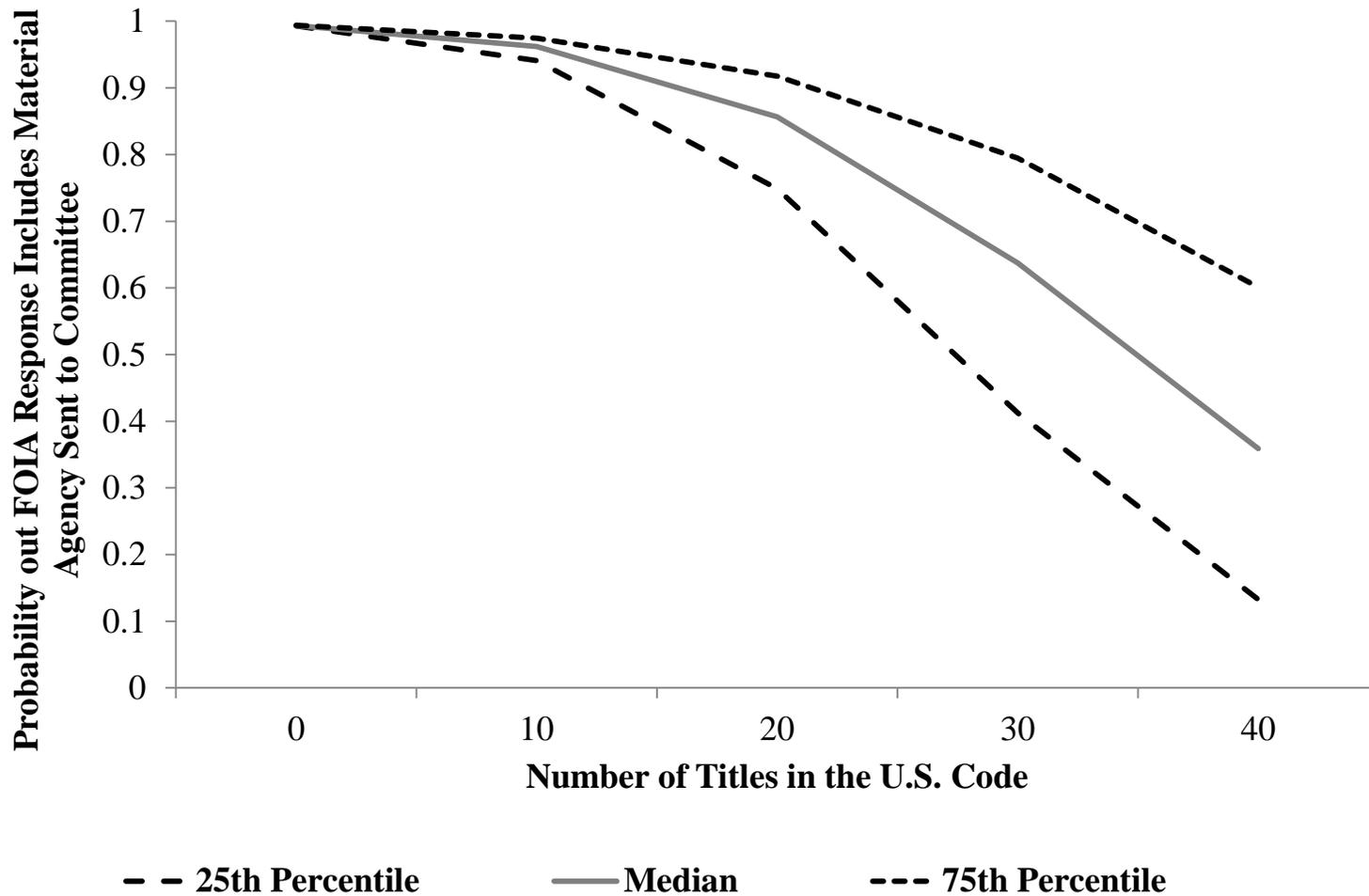


Figure 3. Estimated Influence of the Number of Titles on Probability FOIA Response Includes Material Agency Sent to House Committee



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Appendix

Table 1A. Hazard Models of Number of Days for Agency to Respond to Committee Request

	(1)	(2)
# Titles	-0.05** (0.01)	-0.05** (0.01)
# Titles*ln(Requests)	0.00** (0.00)	0.00 (0.00)
Liberal (0,1)		-0.36** (0.07)
Conservative (0,1)		-0.56** (0.21)
Ln(Employment)	-0.13** (0.03)	-0.04 (0.05)
Ln(Requests)	-0.06** (0.02)	-0.07 (0.05)
EOP or Cabinet (0,1)	0.13 (0.08)	0.58** (0.11)
Independent Commission (0,1)	0.16** (0.02)	0.28** (0.11)
Number of Cases	89	69

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors clustered by department reported.

Table 2A. Hazard Models of Number of Days for Agency to Respond to Our FOIA Request

	(2)	(3)
# Titles	-0.07** (0.03)	-0.06* (0.04)
# Titles*ln(Requests)	0.01** (0.00)	0.01 (0.00)
Liberal (0,1)		-0.02 (0.32)
Conservative (0,1)		-0.27 (0.35)
Ln(Employment)	0.06 (0.05)	0.13 (0.09)
Ln(Requests)	-0.23** (0.10)	-0.24** (0.11)
EOP or Cabinet (0,1)	-0.31 (0.47)	-0.22 (0.49)
Independent Commission (0,1)	0.40** (0.08)	0.30** (0.13)
Bureau (0,1)	0.55 (0.71)	0.38 (0.68)
Number of Cases	123	103

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors clustered by department reported.