

INTERAGENCY COORDINATION ON LABOR REGULATION

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After 9/11, Congress, federal agencies, and scholars exposed the devastating results of the national security agencies' failure to coordinate. The financial crisis has been linked to similar coordination failures in the context of interagency banking regulation, with jurisdictional gaps and blind spots resulting in failure to prevent a global recession. But despite Gilded Age-levels of inequality, little attention has focused on the failures of interagency coordination to secure Americans' access to economic opportunity through work—whether through securing higher wages and higher union density, coordinating government enforcement to achieve redistributive goals and combat consolidation of employer buyer power, or overcoming systemic abuses in employers' wage theft, discrimination, and worker mistreatment. The crippling spread of the coronavirus (COVID-19) pandemic demands that now, more than ever, agencies coordinate in their regulation of labor markets to accomplish micro- and macroeconomic policy goals.

This Essay is a component of a larger project that seeks to document federal agencies' selective coordination along six core policy vectors that impact work- or income-based avenues towards equality—macroeconomic, microeconomic, institution-building, industry-specific, anti-subordination, and democratic/expressive policy. It presents the results of a novel data set collecting and systematizing existing Memoranda of Understanding (MOUs) authorized by the core agencies involved in labor market regulation: the Department of Labor (DOL), its sub-agencies, the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission (EEOC), the Department of Justice-Antitrust Division, and the Federal Trade Commission. By hand-coding and analyzing the 112 discoverable MOUs from the 1950s to the present, the Essay presents a novel history of interagency coordination on labor regulation, highlighting which labor agencies coordinate most and least, what such coordination facilitates as a substantive and administrative

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matter, and the broad scope and areas of labor market regulation on which coordination has not yet occurred. It concludes by arguing that the federal government lacks a coherent, aligned vision on labor market regulation and economic mobility through work, and proposes next steps for improving agency coordination.

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INTRODUCTION

The COVID-19 pandemic has presented an unprecedented crisis for our nation's labor markets. American workers have faced furloughs, layoffs, and levels of unemployment unseen since unemployment data has been collected,¹ unprecedented levels of workplace health and safety risk,² and a broken social safety net.³ The pandemic recession has hit at a time of growing economic

1. GENE FALK, CONG. RSCH. SERV., R46554, UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC (2021), <https://fas.org/sgp/crs/misc/R46554.pdf>.

2. Emily Schwing, *How OSHA Has Failed to Protect America's Workers from COVID-19*, REVEAL (Apr. 4, 2020), <https://revealnews.org/article/how-osha-has-failed-to-protect-americas-workers-from-covid-19/>.

3. See, e.g., Henry Aaron, *The Social Safety Net: The Gaps That COVID-19 Highlights*, BROOKINGS INST. (June 23, 2020), <https://www.brookings.edu/blog/up-front/2020/06/23/the-social-safety-net-the-gaps-that-covid-19-spotlights>; Hiba Hafiz et al., *Regulating in Pandemic: Evaluating Economic and Financial Policy Responses to the Coronavirus Crisis* (B.C. L. Sch., Working Paper No. 527, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3555980.

inequality associated with a decline in labor's share of national income. At the same time, vanishingly weak labor market institutions in the public and private sector have failed to protect against these devastating impacts on workers' lives.⁴ And low union density with limited worker representation outside of unions has eroded any countervailing leverage workers can assert on their own.⁵ Combined, these realities have put even more pressure on the government to create robust enforcement networks and safety nets to guarantee workplace—and workplace-generated protections and benefits for those most in need.

But despite the unparalleled need for wide-ranging, coherent agency coordination to meet these challenges, our current labor market regulation is thoroughly fragmented.⁶ Agencies and sub-agencies tasked with ensuring the availability of well-paying, non-discriminatory, safe jobs that can serve as sources of sustained economic opportunity and mobility—the Department of Labor (DOL) and its sub-agencies, the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ)'s Antitrust Division, and the Federal Trade Commission (FTC), the Treasury Department, the Internal Revenue Service (IRS), and the Federal Reserve—have over- and underlapping jurisdiction, competing

4. See, e.g., ANTHONY ATKINSON, *INEQUALITY: WHAT CAN BE DONE?* 133–54 (2015); THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 307–15 (2014); Anna Stansbury & Lawrence Summers, *The Declining Worker Power Hypothesis* (Nat'l. Bureau of Econ. Rsch., Working Paper No. 27193, 2020), <https://www.nber.org/papers/w27193>; David Autor et al., *Concentrating on the Fall of Labor Share*, 107 *AM. ECON. REV.: PAPERS & PROC.* 180 (2017), <https://doi.org/10.1257/aer.p20171102>; Reuven Avi-Yonah & Orli Avi-Yonah, *Be Careful What You Wish For? Reducing Inequality in the 21st Century*, (Unv. of Mich. L. & Econ., Working Paper No. 17-002, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2958401 (2017); Emmanuel Saez, *Income and Wealth Inequality: Evidence and Policy Implications*, 35 *CONTEMP. ECON. POL'Y* 7 (2017); Mike Elsby et al., *The Decline of the U.S. Labor Share*, *Brookings Papers on Econ. Activity*, Fall 2013.

5. BUREAU OF LAB. STATISTICS, *UNION MEMBERS SUMMARY*, U.S. DEP'T LAB. (Jan. 22, 2021, 10:00 AM), <https://www.bls.gov/news.release/union2.nr0.htm> (reporting 6.3 percent unionization rate in the private sector and 10.8 percent of the labor force overall); Kate Andrias & Benjamin Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 *YALE L.J.* 546 (Jan.2021).

6. For fragmentary and limited interagency coordination, see, e.g., MICHAEL PIORE & ANDREW SCHRANK, *ROOT-CAUSE REGULATION* 1–40 (2018); SHANNON GLEESON, *PRECARIOUS CLAIMS: THE PROMISE AND FAILURE OF WORKPLACE PROTECTIONS* 132–33 (2016); SHANNON GLEESON, *CONFLICTING COMMITMENTS* 57–59 (2012); Michael Oswalt & César Rosado Marzán, *Organizing the State: The New “Labor Law” Seen from the Bottom Up*, 39 *BERKELEY J. EMP. & LAB. L.* 415, 430–32 (2018); Matthew Amengual & Janice Fine, *Co-Enforcing Labor Standards*, 11 *REGUL. & GOVERNANCE* 129, 129–30 (2017).

policy goals, limited information-sharing and access to common data, and limited coordination mechanisms to prioritize strategic enforcement.⁷

Slowing the collapse of our nation's labor markets and planning a jobs-led economic recovery will require robust interagency coordination. This Essay is a component of a larger project that seeks to document and analyze the scope and limitations of administrative agency regulation of labor markets. Much like criminal law scholars have worked to map the broader network of the criminal justice system—from police stops to the after-effects of incarceration—the project seeks to think systematically about Government regulation of labor markets—or lack thereof—as constituting a labor justice system that can also work to preserve certain societal structures and distributions, and limit access to economic mobility and opportunity. This system is not limited to agencies traditionally associated with labor market regulation—the DOL, NLRB, and EEOC—but also includes the antitrust agencies that regulate employer buyer power in labor markets, the Treasury Department, IRS, and the Federal Reserve that create and enforce rules that incentivize or shape employment opportunities.

This Essay presents a novel data set collecting existing Memoranda of Understanding (MOUs) authorized by the core agencies involved in labor market regulation: DOL, its sub-agencies, the NLRB, the EEOC, DOJ's Antitrust Division, the FTC, the Treasury Department, the IRS, and the Federal Reserve. MOUs are generally unenforceable, non-binding agreements signed between agencies and sub-agencies that clarify agencies' respective jurisdiction, assign regulatory tasks, and establish ground rules for information-sharing, investigation, enforcement, and other informal arrangements.⁸ They function as the network of contracts that stitch together interagency coordination within the administrative state. By reviewing and hand-coding the 112 discoverable MOUs between these agencies from the 1950s to the present, the Essay presents the first history of interagency coordination on labor regulation, highlighting which labor agencies coordinate most and least, best practices of interagency coordination through MOUs, and the broad scope and areas of labor market regulation on which coordination has not yet

7. For strategic enforcement, *see, e.g.*, DAVID WEIL, IMPROVING WORKPLACE CONDITIONS THROUGH STRATEGIC ENFORCEMENT (2010), [https://www.dol.gov/sites/dolgov/files/WH D/legacy/files/strategicEnforcement.pdf](https://www.dol.gov/sites/dolgov/files/WH%20D/legacy/files/strategicEnforcement.pdf); JANICE FINE ET AL., MAINTAINING EFFECTIVE U.S. LABOR STANDARDS ENFORCEMENT THROUGH THE CORONAVIRUS RECESSION, WASH. CTR. EQUITABLE GROWTH (Sept. 2020), <https://equitablegrowth.org/wp-content/uploads/2020/09/090320-labor-enforcement-report.pdf>.

8. *See generally* Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131, 1161–65 (2012).

occurred. It contributes to a broader literature in administrative law that has focused on interagency coordination starting in the mid-2000s.⁹ While labor scholars have recently begun to contribute to this literature by analyzing interagency coordination on labor policy at the local level,¹⁰ this Essay is the first to address interagency coordination on labor regulation at the federal level.

The Essay proceeds in three parts. Part I describes and contextualizes the original data set of collected MOUs. Part II analyzes their characteristics based on 22 hand-coded categories identifying their core traits and functions. It then extracts from that data best practices for interagency coordination and exposes areas of fragmentary and underlapping jurisdiction in need of remedy. Finally, Part III proposes next steps for outcome-based interagency coordination based on a consolidated metric of six core policy vectors derived from labor and employment law's stated statutory purposes and scholarly commentary on optimal labor market regulation and worker protections. Based on those vectors, it suggests fruitful avenues for future coordination on policymaking and enforcement actions to ensure robust labor market regulation and growth.

I. INTERAGENCY LABOR REGULATION THROUGH MEMORANDA OF UNDERSTANDING (MOUS)

This Part presents the results of a novel data set of 112 publicly-available MOUs, dating from 1970 to the present, signed by the agencies and sub-agencies that regulate labor and labor markets: the DOL, NLRB, EEOC, DOJ-Antitrust Division, FTC, Treasury Department, IRS, and the Federal Reserve. The MOUs were collected from agency websites and the Federal Register.¹¹ No scholar or commentator has systematically catalogued or analyzed these MOUs despite their decades-long use as coordinating mechanisms by core agencies

9. See generally Verity Winship, *Enforcement Networks*, 37 YALE J. REG. 274 (2020); Bijal Shah, *Congress's Agency Coordination*, 103 MINN. L. REV. 1961 (2019); Daniel Farber & Anne Joseph O'Connell, *Agencies as Adversaries*, 105 CALIF. L. REV. 1375 (2017); Gillian Metzger & Kevin Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1239 (2017); Bijal Shah, *Uncovering Coordinated Interagency Adjudication*, 128 HARV. L. REV. 805 (2015); Jason Marisam, *Interagency Administration*, 45 ARIZ. ST. L.J. 183 (2013); Freeman & Rossi, *supra* note 8; Keith Bradley, *The Design of Agency Interactions*, 111 COLUM. L. REV. 745 (2011); Jason Marisam, *Duplicative Delegations*, 63 ADMIN. L. REV. 181 (2011); Anne Joseph O'Connell, *The Architecture of Smart Intelligence*, 94 CALIF. L. REV. 1655 (2006); Jacob Gersen, *Overlapping and Underlapping Jurisdiction in Administrative Law*, 2006 SUP. CT. REV. 201 (2006); see also FREDERICK KAISER, CONG. RSCH. SERV., R41803, INTERAGENCY COLLABORATIVE ARRANGEMENTS AND ACTIVITIES (2011), <https://fas.org/sgp/crs/misc/R41803.pdf>.

10. See Oswald & Marzán, *supra* note 6.

11. For data collection methods, see *infra* Part I.B.

regulating labor markets. Because agencies tasked with regulating labor market conditions rarely engage in joint rulemakings or joint adjudication, and are rarely directly tasked by Congress to engage in coordination, their primary means of coordinating policy and enforcement priorities are through memoranda of understanding (MOUs) and other informal mechanisms.¹² While MOUs are non-binding and function only as on-paper commitments, they offer an unprecedented window into how agencies have articulated their obligations to one another over time and are informative about what labor market data and information each of the agencies collect, share, and analyze with other agencies to tailor their regulation and enforcement priorities. The Part first provides an overview of interagency coordination through MOUs. It then describes the author's data set collection methods, what the data reveal about the history of interagency networks built through MOUs between agencies regulating workers and labor markets and concludes by summarizing the purposes and functions those MOUs have served.

12. Agencies generally rarely engage in joint rulemaking—the National Archives and Records Administration estimated that 3.9% of total annual rules in 2010 were joint rules. See Freeman & Rossi, *supra* note 8, at 1167 & n. 167. But agencies can and have coordinated on rulemakings outside the joint rulemaking context in areas of overlapping jurisdiction and often comment on other agencies' proposed rules through the public comment process or through the OMB review process. See, e.g., Shah, *Uncovering Coordinated Interagency Adjudication*, *supra* note 9, at 826; Todd Aagaard, *Regulatory Overlap, Overlapping Legal Fields, and Statutory Discontinuities*, 29 VA. ENVTL. L.J. 237 (2011) (describing EPA and OSHA coordination on rulemakings). For the limited interagency adjudication between labor agencies, see Shah, *Coordinated Interagency Adjudication*, *supra* note 9, at 884–94, 900–05 (listing eleven narrow areas of inter- and intra-agency coordination between: OSHA and OSHRC; DOL and DHS; EEOC and DOL-OFCCP; OSHA and EPA; DOL and the DOJ Parole Commission; DOL and the Department of Veterans Affairs; DOL and DHHS, DOJ and DOE; DOL and DOD; EEOC and FCC; DOL-OFCCP and EEOC; and DOL and the Treasury Department). Of these, three were mandated by statute, three were implemented through regulations, and the rest were coordinated through MOUs. For example, in the collaboration between DOL and DHS, under 9 U.S.C. § 1184(c)(1) (2012), Congress delegated to DHS the power to “consult[] with the appropriate agencies of the Government” in deciding whether to grant a foreign worker an H-2B visa, and based on that authority, DHS adjudicates visa eligibility and can deny H-2B visas through a final determination on visa petitions but transfers authority to DOL to make final determinations on H-2B visa petitions. *But see G.H. Daniels v. Perez*, 626 Fed. Appx. 205 (10th Cir. 2015) (holding that transfer of decision-making authority from DHS to DOL was “impermissible subdelegation of authority”); Bijal Shah, *Interagency Transfers of Adjudication Authority*, 34 YALE J. REG. 279, 291–93 (2017). For the very limited congressionally-mandated interagency coordination on work law, see Shah, *Congress's Agency Coordination*, *supra* note 9, at 2016, 2062, 2067, 2086, 2090 & accompanying notes.

A. Interagency Coordination Through MOUs

The vision of an administrative state with individual agencies autonomously acting under the delegated authority of organic statutes—a vision codified in the Administrative Procedure Act of 1946 and canonical judicial decisions—is something of a “lost world of administrative law.”¹³ Scholars now understand the administrative state as a network of agencies transected with overlapping and underlapping jurisdiction, with a range of dependencies on one another to successfully achieve presidential and congressional policy objectives, shot through with under- and overdetermined Executive and congressional oversight, and with agency personnel susceptible to more and less internal drift due to political and private regulatory goals.¹⁴ Agencies can compete and coordinate through a range of formal and informal mechanisms, ranging from statutorily-mandated collaborations and top-down Executive Order or administrative directives from the President to “bottom up” informal collaborative arrangements driven by agency leadership, field agents, or even private co-enforcers such as advocacy groups or regulated parties.¹⁵

Researching and analyzing this web of interagency and intraagency coordination is critical for understanding how the administrative state does and ought to work. Optimal interagency coordination can reduce policy fragmentation, mitigate wasteful competition among agencies, enhance efficiency and effectiveness, change organizational and administrative cultures, and streamline and improve congressional and executive oversight.¹⁶ It can also prompt agencies to focus scarce

13. See Daniel Farber & Anne Joseph O’Connell, *The Lost World of Administrative Law*, 92 TEX. L. REV. 1137, 1141–54 (2014).

14. See generally *supra* note 9 (providing examples of interagency cooperation). See also Jennifer Nou, *Civil Servant Disobedience*, 94 CHI-KENT L. REV. 349 (2019); Jennifer Nou, *Subdelegating Powers*, 116 COLUM. L. REV. 473 (2017); Jennifer Nou, *Intra-Agency Coordination*, 129 HARV. L. REV. 422 (2015); Kirti Datla & Richard Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 CORNELL L. REV. 769 (2013).

15. See, e.g., KAISER, *supra* note 9, at 1 (highlighting interagency cooperation is “called for in public laws, executive orders, and administrative directives”); Oswalt & Marzán, *supra* note 6, at 432–40 (discussing the various ways that federal agencies cooperate on various levels); Bradley, *supra* note 9, at 748.

16. KAISER, *supra* note 9, at 14–20; Freeman & Rossi, *supra* note 8, at 1139–43 (arguing that delegating authority to more than one agency is a more effective way to achieve lawmakers intended goals); see also Matthew McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms*, 28 AM. J. POL. SCI. 165, 166 (1984) (analogizing how the current system of Congressional oversight operates like police patrol and fire-alarms).

resources on high-priority targets and produce “policy-relevant information” for other agencies, Congress, and the broader public.¹⁷ Coordination can reduce private transaction costs where agencies can harmonize inconsistent regulatory approaches or simplify and integrate jurisdictional assignments, creating greater certainty for regulated parties.¹⁸ But interagency coordination can also distract from an agency’s core responsibilities and priorities, burden agencies with coordination and decision costs, and decrease transparency to the extent it makes individual agency responsibility more obscure and informal collaborative relationships less legible to regulated parties and the public.¹⁹

Whether coordination is beneficial or detrimental turns in large part on the procedures and substantive outcomes specified and monitored through interagency instruments of coordination. The most common and pervasive coordination instruments agencies use are memoranda of understanding, or MOUs.²⁰ MOUs are primarily used to “assign[] responsibility for specific tasks, establish[] procedures, and bind[] agencies to fulfill mutual commitments.”²¹ While they are informal instruments, they cite legal authority for their terms and offer rationales for how they further agencies’ mandates under their respective organic statutes and jurisdiction as well as the agencies’ respective enforcement goals.²²

MOUs can function as a medium for coordinating substantive policy and enforcement while also working to reduce transaction costs between agencies and for regulated parties. They establish *ex ante* rules for agency interactions and formulate how the agencies will interface, “converting a

17. Matthew Stephenson, *Information Acquisition and Institutional Design*, 124 HARV. L. REV. 1422, 1463 (2011).

18. Freeman & Rossi, *supra* note 8, at 1183.

19. See, e.g., KAISER, *supra* note 9, at 21–23; Oswalt & Marzán, *supra* note 6, at 430–431 (discussing how these overlaps and inconsistencies in agency overlapping has negatively affected workers rights); Bradley, *supra* note 9, at 749; Freeman & Rossi, *supra* note 8, at 1187–91.

20. See Freeman & Rossi, *supra* note 8, at 1161–65 (providing examples of agency MOU use to establish jurisdictional lines and procedures for information-sharing, collaborate on common missions, coordinate reviews or approvals in contexts of joint authority, and agree on substantive policy). Agencies sometimes refer to these as “memoranda of agreement”. See *infra* Appendix A.

21. See Freeman & Rossi, *supra* note 8, at 1161.

22. Interagency MOUs trace the legal authority for their respective agencies’ coordination to congressional statutes, Executive Orders, and agency regulations in their “Purpose” or “Legal Authorities” sections. See *infra* Appendix A. For congressional authorization of interagency coordination by labor agencies under various congressional statutes, see Shah, *Congress’s Agency Coordination*, *supra* note 9, at notes 100, 263, 510, 603, 629 and accompanying text (collecting sources).

sequential decisionmaking process into an integrated one with a single record.”²³ By ironing out jurisdictional conflicts, establishing points of contact and information-sharing mechanisms, designing avenues for joint investigations, joint enforcement, and joint policy-making, MOUs establish procedures and pathways for efficient co-functioning and allow agencies to “improve the expertise on which their decisions are based.”²⁴ Not only that, MOUs can encourage agencies to compete and be “laboratories” for policy ideas through a structured process that requires them to account to each other.²⁵ And MOUs can be used to signal changes in enforcement policy without statutory change, so long as their policy-setting is consistent with statutory and budgetary requirements.²⁶

While MOUs have value in their “informality, ease of enactment, and adaptability,”²⁷ the informality of MOUs also means that they cannot enforce themselves nor are they legally enforceable by others. Their main value is in their ability to create buy-in on the part of agencies and agency personnel to cooperate with one another.²⁸ And if that buy-in lapses,

23. Freeman & Rossi, *supra* note 8, at 1164–65, 1184–85 (demonstrating how integration of decisionmaking can help agencies act more efficiently). For *ex ante* and *ex post* controls over agency actions, see Jennifer Nou, *Agency Self-Insulation Under Presidential Review*, 126 HARV. L. REV. 1755, 1766–67 (2013).

24. Freeman & Rossi, *supra* note 8, at 1165, 1184–85. However, by establishing jurisdictional priorities, MOUs can also “shut down important voices in agency decision making” by granting one agency over another sole responsibility for regulating with limited advice from the other. Farber & O’Connell, *supra* note 9, at 1140 & n.187; Marisam, *Duplicative Delegations*, *supra* note 9, at 222–23 (noting that cognitive and experiential diversity from different agencies provides new and relevant information to problem solving).

25. Freeman & Rossi, at 1185; Neal Katyal, *Internal Separation of Powers: Checking Today’s Most Power Branch From Within*, 115 YALE L.J. 2314, 2325 (2006).

26. See, e.g., David Weil, *Crafting a Progressive Workplace Regulatory Policy*, 28 COMP. LAB. L. & POL’Y J. 125, 125–26 (2007).

27. Freeman & Rossi, *supra* note 8, at 1192.

28. For the rich political science literature on how bureaucracies function and the complexities of bureaucratic motivation, see, e.g., MARISSA MARTINO GOLDEN, WHAT MOTIVATES BUREAUCRATS? 1–39 (2000); JOHN BREHM & SCOTT GATES, WORKING, SHIRKING, AND SABOTAGE 1–108 (1997); JAMES WILSON, BUREAUCRACY 10–378 (1989). For importance of Executive and agency personnel buy-in, see, e.g., Oswald & Marzán, *supra* note 6, at 435; *id.* at 460 (“Chicago MOUs tend to be vague, pop-up only intermittently, and exist as an uncertain foundation for deep and sustained collaboration. Put differently, MOUs are *really* ‘soft’ law.”); Javesh Rathod, *Protecting Immigrant Workers Through Interagency Cooperation*, 53 ARIZ. L. REV. 1157, 1160 (2011) (describing Bush Administration’s “silen[ce] about the 1998 MOU between the DOL and the INS, with advocates questioning its ongoing applicability”).

MOUs can serve as a touchstone instrument for Congress or the Executive to encourage revived agency coordination.²⁹

B. Labor MOUs: Collecting the Data Set

To assess the nature and scope of interagency coordination on labor market regulation, I collected publicly available MOUs between agencies and sub-agencies that regulate labor and labor markets: the DOL, NLRB, EEOC, DOJ-Antitrust Division, FTC, Treasury Department, IRS, and the Federal Reserve. Because there are no generally applicable statutes or Executive Orders on the use of MOUs, they are mostly created at the discretion of agencies, and there is no single database that collects them for tracking and assessment. While the Freedom of Information Act (FOIA) may require agencies to publish MOUs in rare circumstances, agencies do not routinely do so absent those circumstances.³⁰ When MOUs are published, agencies tend to publish them in the Federal Register or on agency websites.

My analysis of existing MOUs occurred in two stages. First, I collected the MOUs through web searches on each of the agencies' websites, internet searching, and electronic searching of the Federal Register.³¹ These searches

29. For Presidential control over interagency coordination and enforcement, *see, e.g.*, Kate Andrias, *The President's Enforcement Power*, 88 N.Y.U. L. REV. 1031, 1038 (2013) (arguing that "presidential enforcement should facilitate interagency coordination, further accountability and efficacy in agency enforcement efforts through information sharing, and shape the broad strokes of enforcement policy"); Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2285-99 (2001). For congressional control over interagency coordination and enforcement, *see, e.g.*, Brian Feinstein, *Congress in the Administrative State*, 95 WASH. U. L. REV. 1187 (2018).

30. *See* 5 U.S.C. § 522(a)(1) (requiring publication only if agreements are "statements of general policy" or if they alter agency procedures. *But see id.* § 552(b)(5) (allowing agencies to withhold from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. . ."). *See also EPA v. Mink*, 410 U.S. 73, 89-91 (1973) (holding that inter- and intra-agency MOUs may be withheld from disclosure if they are predecisional and "deliberative," such that disclosure could inhibit candid agency discussion); *Ctr. for Medicare Advocacy, Inc. v. U.S. Dep't of Health & Human Servs.*, 577 F. Supp. 2d 221, 236-37 (D.D.C. 2008) (exempting draft MOU submitted to general counsel for review from FOIA disclosure); Freeman & Rossi, *supra* note 8, at 1190 n. 275.

31. The EEOC, DOL, OSHA, and NLRB MOUs were all searchable and retrievable on agency websites. *See Memoranda of Understanding*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <https://www.eeoc.gov/mou/memoranda-understanding> (last visited July 31, 2021); *Federal Enforcement and Outreach Coordination*, U.S. DEP'T OF LABOR, <https://www.dol.gov/agencies/whd/about/federal-coordination> (last visited July 31, 2021); *Memorandums of Understanding*, U.S. DEP'T OF LABOR, <https://www.osha.gov/laws-regs/mou/publicationdate> (last visited July 31, 2021); NLRB, <https://www.nlr.gov/guidance/memos->

yielded ninety-eight MOUs. I found an additional fourteen MOUs, which were identified or referenced in MOUs contained within the original list, yielding a total of 112 MOUs. After collecting the MOUs, I hand-coded them to identify in their substantive terms twenty-two common characteristics and functions.

C. *Historical Development of Labor MOUs as Interagency Networks*

This novel data set not only illuminates a revisionist history of administrative collaboration on labor regulation but also reveals a selective web of longstanding networks that has favored certain areas of regulatory sharing over others. This Section first provides the untold history of interagency coordination on labor regulation. This historical account revises earlier tracing of interagency coordination to President Reagan's creation of the Office of Information and Regulatory Affairs (OIRA) in 1980, revealing instead that such coordination began as early as the Nixon Administration.³² It then provides a bird's-eye view of the interagency networks that shape and impact labor market regulation.

1. *The History of Labor MOUs*

Just as individual agency control through presidential administration can serve pro- and deregulatory directives, so, too, can control over the networks of interagency coordination through MOUs.³³ Because there has been limited congressional administration of interagency labor regulation through statutes, the use of MOUs—driven by presidential administrations—tells an important story regarding the footprint of labor regulation as Presidents have come and gone.

While labor agency leadership did not sign any MOUs between their respective agencies during the Kennedy and Johnson Administrations, these

research/operations-management-memos. The internet searches were conducted through Google and utilized conjunctive search terms with the agency or sub-agency name (e.g., “Department of Labor”) and “Memorandum of Agreement,” “Memorandum of Understanding,” and “Memorandum”.

32. For traditional accounts, *see, e.g.*, Kagan, *supra* note 29, at 2275. A minority of accounts trace centralized review to President Roosevelt's creation of the Executive Office of the President (EOP), relocating the Bureau of Budget (OMB's predecessor) within the Office. *See, e.g.*, PERI ARNOLD, MAKING THE MANAGERIAL PRESIDENCY 114–15 (1998); Andrias, *supra* note 29, at 1055–58; Stephen Skowronek, *The Conservative Insurgency and Presidential Power*, 122 HARV. L. REV. 2070 (2009).

33. For the oscillation of pro- and deregulatory administrative action and inaction through presidential administration, *see, e.g.*, Kagan, *supra* note 29, at 2248–49, 2315–19; Andrias, *supra* note 29, at 1054–77; Bijal Shah, *Executive (Agency) Administration*, 72 STAN. L. REV. 641, 693–701 (2020).

administrations made considerable efforts to bolster interagency coordination under the Executive's control. In 1960, a Kennedy Administration-commissioned report tasked with studying how best to structure and ensure the proper functioning of the administrative agencies concluded that the absence of interagency coordination inhibited the development of regulatory policy and would be improved by greater executive control.³⁴ For example, the report found a "complete barrenness" of interagency policy formulation and a lack of interagency communication, but while it found a number of areas in need of better coordination—energy, competition, telecommunications, and other policy areas—it did not include labor policy among them, most likely because the EEOC, Occupational Health and Safety Administration (OSHA), Mine Safety and Health Administration (MSHA), and other DOL sub-agencies had not yet been established.³⁵ The Johnson Administration's Great Society programs tackled poverty alleviation through significant coordinated action within the administrative state, and in addition to signing Title VII of the Civil Rights Act of 1964, which established the EEOC,³⁶ Johnson issued Executive Order 11,246 in 1965 charging the Secretary of Labor with responsibility for ensuring equal opportunity for minorities in federal contractors' recruitment, hiring, training, and other employment practices,³⁷ creating the Office of Federal Contract Compliance Programs (OFCCP).³⁸ But the Johnson Administration established neither formal nor informal relationships between the agencies tasked with regulating labor markets.

The first effort to utilize MOUs to ensure interagency coordination on labor policy began during the Nixon Administration (1969–1974), as the number of agencies regulating labor and labor market conditions began proliferating.

34. See James Landis, U.S. Senate Subcomm. on Admin. Practice & Procedure, 86th Cong., Rep. on Regulatory Agencies to the President-Elect, 24–31 (1960).

35. *Id.* at 24. The Report did, however, recommend reversing the Taft-Hartley Act's deprivation of the NLRB's "power to initiate proceedings, transferring this function to an independent General Counsel," through Presidential reorganization. *Id.* at 4.

36. 42 U.S.C. § 2000e (1964).

37. Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965).

38. See James Moeller, *Executive Order No. 11,246: Presidential Power to Regulate Employment Discrimination*, 43 MO. L. REV. 451, 458 & n.43 (1978).

Rise of Federal Agencies Regulating Labor and Employment	
1862	Internal Revenue Service
1884	Bureau of Labor Statistics (BLS) (in Department of Interior)
1903	Department of Commerce and Labor
1913	Department of Labor (with BLS) and Federal Reserve System
1914	Federal Trade Commission (FTC)
1919	Department of Justice – Antitrust Division
1935	National Labor Relations Board
1938	DOL-Wage and Hour Division (WHD)
1957	United States Commission on Civil Rights
1960	United States Commission on Civil Rights (expansion)
1964	Equal Employment Opportunity Commission
1970	DOL – Occupational Safety and Health Administration and Employee Benefits Security Administration
1971	DOL – Employment Standards Administration (ESA) [eliminated 2009]
1973	DOL – Mining Safety & Health Administration (MSHA)
1974	Pension and Welfare Benefits Administration / Pension Benefit Guaranty Corporation
1975	DOL – Employment & Training Administration (ETA)
1977	DOL – Office of Federal Contract Compliance & Programs (OFCCP)

Table 1. Rise of Federal Agencies Regulating Labor and Employment

In a comprehensive move to decentralize federal labor regulation, the Nixon Administration’s “New Federalism” placed more responsibility on state and local actors, replacing federal grants-in-aid with block grants to those governments.³⁹ Decentralization also occurred as a component of the Nixon’s Administration’s deregulatory efforts within the new network of proliferating agencies. Specifically, the Administration established interagency networks to minimize multi-agency jurisdiction over regulated parties and to use agencies as checks on other agencies’ actions, reducing regulatory burdens on businesses. First, MOUs were used between 1970 and 1974 to draw jurisdictional boundaries between the fledgling labor agencies—OSHA, OFCCP, MSHA, EEOC—with respect to each other and outside agencies to ensure that businesses were not being investigated and placed in compliance reviews by more than one agency, particularly with respect to worker health and safety standards developed and exported by OSHA to other agencies.⁴⁰ Second, in addition to broader structural

39. See, e.g., David Balducchi & Alison Pasternak, *Federal-State Relations in Labor Exchange Policy*, LABOR EXCHANGE POLICY IN THE UNITED STATES, 37–38 (2004).

40. See, e.g., *infra* Appendix A, OFCCP-EEOC MOU (1970); MESA-ATF MOU (July 1, 1971); AEC-OSHA MOU (Feb. 4, 1974); FDA-OSHA MOU (Apr. 10, 1974); OSHA-CPSC MOU (Apr. 11, 1974); OSHA-USDA Extension Service MOU (Apr. 15, 1974); OSHA-ATF MOU (Aug. 8, 1974).

reforms expanding presidential control over the administrative state, President Nixon established a “Quality of Life” (QOL) review process in October 1971 requiring the newly-established OSHA, among other agencies, to submit “significant” regulations to centralized review for interagency comment. Nixon and subsequent Republican administrations used the process as a deregulatory measure, mandating consideration of regulatory alternatives and estimating costs elaborated by other agencies, like the EPA, to reduce the burdens OSHA rules placed on industry.⁴¹ Then-OMB Director George Schultz explained the purpose of QOL review as establishing “a procedure for improving the inter-agency coordination of proposed agency regulations, standards, guidelines, and similar materials pertaining to environmental quality, consumer protection, and occupational and public health and safety.”⁴²

The Ford Administration furthered the trend of centralizing review of labor market regulation to promote deregulatory goals, issuing Executive Order 11,821 in 1974 requiring executive agencies to prepare “inflation impact statements” prior to issuing major rules.⁴³ The Order also created a new agency in the Executive Office of the President (EOP)—the Council on Wage and Price Stability (CWPS)—with broad authority to coordinate both Executive and independent agency compliance.⁴⁴ But this centralized review was not operationalized via information-sharing or other interagency coordination through MOUs. The only two labor MOUs signed during the Ford Administration merely formalized referral procedures between ETA and ESA regarding migrant workers and sought to minimize duplicative litigation between OSHA and the NLRB regarding retaliatory actions taken by employers against workers who reported workplace health and safety violations.⁴⁵ Thus, similar to the Nixon Administration, Ford’s presidential

41. See Memorandum from George Schultz, Agency Regulations, Standards, and Guidelines Pertaining to Environmental Quality, Consumer Protection, and Occupational and Public Health and Safety (Oct. 5, 1971); Andrias, *supra* note 29, at 1057–59; David Lewis & Terry Moe, *The Presidency and the Bureaucracy*, THE PRESIDENCY AND THE POLITICAL SYSTEM 389–93 (9th ed. 2010); Robert Percival, *Checks Without Balance: Executive Office Oversight of the Environmental Protection Agency*, 54 L. & CONTEMP. PROBS., Autumn 1991, at 127, 128 & n.4, 135, 150 & n.133, 181.

42. Office of Management and Budget Plays Critical Part in Environmental Policymaking, *Faces Little External Review*, 7 ENVIR. L. RPTR. (BNA) 693 (1976).

43. Exec. Order 11,821, 3 C.F.R. 926–27 (1974).

44. See generally W. Kip Viscusi, *Presidential Oversight: Controlling the Regulators*, 2 J. POL’Y ANALYSIS & MGMT. 157, 159–60 (1983).

45. See Memorandum of Understanding between Manpower Administration (the predecessor to the Employment and Training Administration) and Employment Standards

administration used top-down, centralized review of agencies' labor market regulation and interagency collaboration to avoid overregulation.

That approach to labor regulation shifted with the Carter Administration. While President Carter also took aggressive steps to centralize presidential regulatory review—directing agencies in 1977 to give more detailed consideration to “the economic cost of major government regulations” and requesting CWPS to analyze the inflationary implications of regulations⁴⁶—his Administration expanded the use of MOUs from controlling overregulation to filling in the gaps of caused by under regulation. In comparison to President Ford's two MOUs, the one-term Carter Administration oversaw fifteen.⁴⁷ The bulk of these MOUs worked to establish relationships between OSHA and outside agencies to train and extend entry of OSHA compliance officers to areas within those agencies' jurisdiction, such as work on ammunition plants (1978), mine sites, and milling operations (1979, 1980), the Outer Continental Shelf (1979), in small businesses (1980), and on hazardous waste sites (1980).⁴⁸ The Carter Administration also sought to ensure coordination between OSHA and ESA to ensure compliance with housing protections for migrant farmworkers (1978, 1979), and to ensure against discrimination through collaborative relationships between the OFCCP and non-labor agencies like the Department of Transportation (1979).⁴⁹ Finally, President Carter was the first to try to bridge gaps in policymaking and enforcement between the NLRB as an independent agency and Executive agencies, signing the first MOUs between the NLRB and DOL's Wage and Hour Division (1978), OSHA (1979), MSHA (1980) as well as the EEOC (1980).⁵⁰

Like prior Republican Administrations, President Reagan's eight-year term took a strong, deregulatory turn, famously through Executive Order 12,291, which centralized regulatory review of significant agency actions in the newly-created OIRA within OMB.⁵¹ The Executive Order tasked

Administration regarding Stranded Migrants (March 1975); Memorandum of Understanding between Occupational Safety and Health Administration, U.S. Dep't of Labor, and the General Counsel, National Labor Relations Board, 40 Fed. Red. 26083 (1975).

46. Percival, *supra* note 41, at n.66, 143 (quoting James Miller, *Lessons of the Economic Impact Statement Program*, 1 REGULATION, July/Aug. 1977, at 14, 14 quoting President Carter).

47. See *infra* Appendix A.

48. See *id.*

49. *Id.*

50. *Id.*

51. See Exec. Order 12,291 § 3, 3 C.F.R. 127, 128–30 (1981). For overview, see, e.g., Andrias, *supra* note 29, at 1058–59.

agencies with submitting regulatory impact analyses of major rules they wished to promulgate and required, to the extent permitted by law, that agencies regulate only if the potential benefits of regulating outweighed the costs.⁵² The Reagan Administration also gave OMB the authority to assess the adequacy of impact analyses submitted to it and to prevent publication of proposed or final rules until it completed its regulatory review.⁵³ And similar to prior Republican Administrations, President Reagan coupled top-down control of administrative agency action with a deregulatory approach to interagency coordination, concerned primarily with overlapping agency jurisdiction and overregulation. The Reagan Administration oversaw the signing of twelve MOUs in eight years, over half of which were concerned with ensuring consistency in workplace safety and health standards between OSHA and other agencies tasked with regulating workplace health and safety so that businesses were not subject to inconsistent regulations.⁵⁴ Similarly, to avoid duplicative workplace discrimination investigations, President Reagan revived the Nixon–Ford MOU between OFCCP and EEOC and oversaw the signing of the first MOU between the FCC and Office of the Special Counsel with the EEOC.⁵⁵ President Bush’s Administration followed suit with the same priorities, overseeing the signing of nine MOUs focused mostly on avoiding overregulation of workplace health and safety (six MOUs) and workplace discrimination (one MOU) violations.⁵⁶ Three MOUs signed between OSHA and the EPA during the Reagan and Bush Administrations stemmed from judicial decisions mandating interagency coordination on standard-setting for exposure to toxic substances under the Toxic Substances Control Act.⁵⁷

As then-Professor Elena Kagan has argued, President Clinton’s Administration demonstrated that centralized review of agency actions could

52. Exec. Order 12,291 §§ 2, 3, 3 C.F.R. at 128–30.

53. *Id.* § 3(e)–(f); 3 C.F.R. at 129–30.

54. *See infra* Appendix A, MOUs signed between OSHA-USDA Food & Inspection Service (May 20, 1982); U.S. Coast Guard-DOT-OSHA (Mar. 4, 1983); OSHA-Commerce Department National Bureau of Standards (Oct. 27, 1983); FSA-OSHA (Nov. 4, 1983); OSHA-ESA-ETA (Jan. 31, 1984); OSHA-NLRB General Counsel (Feb. 11, 1985); NIOSH-OSHA-Coast Guard-EPA (Jan. 7, 1986); EPA-DOL (Feb. 6, 1986); and MSHA-DOE (1987).

55. *See infra* Appendix A.

56. *Id.*

57. *See infra* Appendix A, MOUs signed on Feb. 6, 1986 (covering interagency reports between the EPA and OSHA under the Toxic Substances Control Act (TSCA)); Nov. 23, 1990 (governing workplace conditions under the Occupational Safety and Health Act (OSH Act)); Feb. 13, 1991 (establishing a structure to implement the Nov. 23, 1990, MOU governing workplace conditions under OSH). For fuller discussion, *see infra* Part II.A.

be just as *pro*-regulatory as it could *deregulatory*.⁵⁸ In addition to fortifying centralized review of independent agency rulemaking through Executive Orders, formal directives, and personal appropriation, President Clinton directed the Government Accountability Office (GAO) to research and evaluate major management challenges and program risks resulting from failures of inter- and intra-agency coordination on labor regulation.⁵⁹ The first GAO Report, completed in 1999, recommended that DOL “be more proactive in engaging all agencies with collateral responsibilities relat[ed] to Labor’s missions” because “[l]abor has shown limited capacity to effectively coordinate the activities of the many units at the federal, state, and local levels that share responsibility for implementing worker protection laws and various workforce development programs.”⁶⁰ Importantly, the Report found that “[l]abor lacks accurate and reliable information needed to effectively assess whether many of its programs are producing their intended results and to determine whether its resources are being used effectively.”⁶¹ However, the Report made no references to MOUs as a tool for enabling coordination and information-sharing. The 2001 Report also found coordination problems, particularly between OSHA and WHD, and recommended that Labor “improve coordination with other agencies that have similar responsibilities to increase program effectiveness, ensure worker protections, and minimize employers’ compliance burdens,” but again made no reference to MOUs.⁶²

Despite his lack of specific attention in GAO reports, during his Administration, President Clinton oversaw the signing of eighteen MOUs, facilitating coordination between federal agencies on labor regulation. The majority of these MOUs concentrated on coordinating workplace discrimination and workplace health and safety regulation between anchoring agencies—the EEOC and OSHA, respectively—and outside agencies. Four MOUs coordinated discrimination-related trainings, investigations, and claims between the EEOC and the NLRB (1993), the Office of Special Counsel (1997), the ESA (1999), and the

58. See Kagan, *supra* note 29, at 2249, 2282–316 (reviewing Clinton’s strategies for exercising control over administrative action through executive orders).

59. See Exec. Order No. 12,866, 3 C.F.R. 638, 638–43 (1994); Kagan, *supra* note 29, at 2281–303.

60. U.S. Gen. Acct. Off., Dep’t of Lab., GAO/OCG-99-11, Major Management Challenges and Program Risks, 1, 7 (Jan. 1999).

61. *Id.* at 16.

62. U.S. Gen. Acct. Off., Dep’t of Lab., GAO-01-251, Major Management Challenges and Program Risks, 7, 10 (Jan. 2001).

OFCCP (1999).⁶³ Nine MOUs strengthened OSHA coordination, workplace safety, and health protection enforcement with the Department of Agriculture (1994), the Department of Energy (1994, 1995, 2000), the Nuclear Regulatory Commission (1996, 1998), the EPA (1996), the Chemical Safety and Hazard Investigation Board (1998), and the Federal Aviation Authority (FAA) (2000), particularly in areas where deregulation and the use of contractor-operated facilities had blurred the lines of authority and created potential regulatory gaps between agencies.⁶⁴ The Clinton Administration was also the first to formalize the relationship between the FTC and DOJ Antitrust Division concerning merger clearance investigations, even though those MOUs neither addressed nor allocated review of the impacts of mergers in labor markets.⁶⁵

Between 2001 and 2010, the Bush Administration signed—or re-signed—only one labor-related MOU, that between OSHA and the FAA,⁶⁶ and his Department of Labor moved away from aggressive enforcement in favor of voluntary compliance and deregulation.⁶⁷ However, the Bush Administration

63. *See infra* Appendix A (listing the MOUs between the EEOC and other agencies related to discrimination). Two related to coordination on disability- and immigration-related discrimination after the passage of the Americans with Disabilities Act and amendments to the Immigration and Nationality Act. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–03.; INA, 8 U.S.C. § 1324b.

64. *See infra* Appendix A.

65. *See* Fed. Trade Comm'n & Antitrust Div. of the U.S. Dep't of Just., Memorandum of Understanding between the Fed. Trade Comm'n and the Antitrust Div. of the U.S. Dep't of Just. concerning Clearance Procedures for Investigations (1993); Fed. Trade Comm'n & Antitrust Div. of the U.S. Dep't of Just., Memorandum of Understanding between the Fed. Trade Comm'n and the Antitrust Div. of the U.S. Dep't of Just. concerning Clearance Procedures for Investigations (1995); *see also* Antitrust Div. of the U.S. Dep't of Just., Fed. Trade Comm'n, & Dep't of Agric., Memorandum of Understanding between the Antitrust Div., Dep't of Just., the Fed. Trade Comm'n, and the Dep't of Agric. Relative to Cooperation with Respect to Monitoring Competitive Conditions in the Agricultural Marketplace (Aug. 31, 1999).

66. Fed. Aviation Admin., U.S. Dep't of Transp., & Occupational Safety & Health Admin., Dep't of Lab., Memorandum of Understanding between the Fed. Aviation Admin., U.S. Dep't of Transp., and Occupational Safety & Health Admin. concerning the Protection of Employees who Provide Air Safety Information (Mar. 22, 2002); 67 Fed. Reg. 55,883 (Aug. 30, 2002).

67. *See, e.g.*, U.S. Gen. Acct. Off., Dep't of Lab., GAO-09-458T, Wage & Hour Div.'s Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft (2009) 1, 1 (highlighting the inadequacy of the Wage and Hour Division's response to complaints); U.S. Dep't of Lab., Off. of Inspector Gen., Rep. No. 02-09-203-10-105, Employers with Reported Fatalities Were Not Always Properly Identified and Inspected Under OSHA's Enhanced Enforcement Program (2009) 1, 1–2 (reviewing the effectiveness of the Enhanced Enforcement Program (EEP)); Michael Fletcher, *Labor Dep't. Accused of Straying From Enforcement*, WASH. POST, (Dec. 1, 2008), <https://www.washingtonpost-com.proxy>

informally encouraged interagency coordination between OSHA, the EPA, and DOJ prosecutors to identify and prosecute egregious workplace safety violators.⁶⁸ The idea was that, by pooling their resources and statutory mandates, the agencies could seek steeper penalties from chronic and flagrant violators under environmental, criminal racketeering, and corporate fraud laws, and that DOJ officials could train OSHA inspectors and attorneys on how to spot criminal violations for referral for enforcement.⁶⁹ While the Bush Administration abandoned the initiative in 2005, the Obama Administration revived and expanded it.⁷⁰ The Bush Administration also established a new unit within ETA—the Office of Performance and Results—to coordinate efforts to identify and share best practices for measuring agency performance, but the GAO recommended that DOL “take a broader, cross-program perspective” to “emerging issues related to potential labor and skills shortages,” which would “require[] coordinating more closely with other federal agencies,” particularly to “enhanc[e] training programs for developing skilled workers and developing approaches to retain older workers in the workforce.”⁷¹ GAO’s 2003 report included for the first time a designated section on “Coordinating Enforcement Efforts with Other Agencies” and called on DOL to engage in more extensive coordination, especially as between OSHA, EPA, ATF, and the Chemical Safety and Hazard Investigation Board to protect workers’ health at hazardous materials workplaces.⁷² The report made no reference to MOUs.

The Obama Administration switched gears to embark on one of the most robust presidential efforts at regulatory coordination seen yet, beginning with the issuance on January 18, 2011, of a Memorandum on Regulatory Compliance directing federal executive department agencies to develop plans for making compliance information easily accessible while also

wcl.wrlc.org/wp-dyn/content/article/2008/11/30/AR2008113001900_pf.html (noting the Bush Administration declined enforcement actions).

68. See David Barstow & Lowell Bergman, *With Little Fanfare, a New Effort to Prosecute Employers That Flout Safety Laws*, N.Y. TIMES, (May 2, 2005), <https://www.nytimes.com/2005/05/02/politics/with-little-fanfare-a-new-effort-to-prosecute-employers-that-flout.html> (discussing how the Bush Administration employed penalties to encourage compliance with labor laws rather than enforcement actions).

69. *Id.*

70. See *id.*; see also Andrias, *supra* note 29, at 1087; Maureen Tracey-Mooney, *Honoring 29 Miners*, WHITE HOUSE BLOG (Apr. 5, 2011), <http://www.whitehouse.gov/blog/2011/04/05/honoring-29-miners>.

71. U.S. Gen. Acct. Off., GAO-03-106, DEPARTMENT OF LABOR: MAJOR MANAGEMENT CHALLENGES AND PROGRAM RISKS 2, 4 (2003).

72. *Id.* at 20.

directing OMB officials to develop tools to make cross-agency comparisons possible and to “engage[] the public in new and creative ways of using the information.”⁷³ Further, it directed OMB officials—the Chief Information Officer (CIO) and the Chief Technology Officer (CTO)—to collaborate with agencies to identify how best to generate and share information about enforcement and compliance across the government, stating that “[e]fforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement regimes.”⁷⁴ It was the first effort in government history to create a centralized system through which agencies could pool compliance information.⁷⁵

The Obama Administration also took a much more aggressive approach to enforcement in labor markets, implementing a system of “strategic enforcement” to prioritize high-propensity violators,⁷⁶ particularly in the fissured, or vertically-disintegrated, workplace dominated by relationships of subcontracting, outsourcing, and temporary, arms-length contracting for labor services.⁷⁷ A significant component of the Administration’s approach to strategic enforcement was in pioneering truly expansive use of MOUs to ensure interagency coordination on worker protections and labor market regulation, signing thirty-one MOUs establishing information sharing, accountability, and referral authority between agencies—more than any Administration before or since.⁷⁸ In fact, a significant proportion of *all*

73. Presidential Memorandum on Regulatory Compliance, 76 Fed. Reg. 3825, 3825–26 (Jan. 18, 2011). Independent agencies were also encouraged to make their own information available under the directive. President Obama rescinded Bush’s centralized regulatory review Executive Order, returning to Clinton’s, supplementing his approach again two years later to add to that review consideration of scientific integrity and the distributional impacts of rulemaking in that agency actions while also encouraging public participation and independent regulatory agency engagement in retrospective review. *See* Exec. Order No. 13,497, 3 C.F.R. § 218 (2010) (revoking Exec. Order Nos. 13,258 and 13422); Exec. Order No. 13,563, 3 C.F.R. § 215 (2012) (amending Exec. Order No. 12,866).

74. Presidential Memorandum on Regulatory Compliance, 76 Fed. Reg. 3825, 3825–26 (Jan. 18, 2011).

75. Andrias, *supra* note 29, at 1068–69.

76. *See* Weil, *Strategic Enforcement*, *supra* note 7, at 1–2 (reviewing strategies for enforcement); OMB WATCH, THE OBAMA APPROACH TO PUBLIC PROTECTION: ENFORCEMENT 2, 4 (2010), <https://www.foreffectivegov.org/sites/default/files/regs/obamamidtermrulemakingreport.pdf> (analyzing the Obama Administration’s use of enforcement).

77. For the fissured workplace, *see generally* DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT 3–5 (2014) (describing the fissured workplace).

78. *See infra* Appendix A (listing MOUs filed during the Obama Administration).

labor MOUs since 1970—a full 34%—were signed during the Obama administration.⁷⁹ The Administration used MOUs to make unprecedented efforts in building institutional relationships between agencies to streamline investigations and enforcement, including between DOL and its sub-agencies, the EEOC, and the NLRB.⁸⁰ The Obama Administration also doubled down on interagency coordination on worker safety and health issues, overseeing the signing of twelve MOUs between OSHA and MSHA with outside agencies like DHS, the FDA, DOE, the NRC, the Federal Rail Administration, the NLRB, the FAA, ATF, the EPA, and the Departments of Defense and Transportation.⁸¹

A unique feature of the Obama Administration's interagency coordination was its use of MOUs to target policy priorities in a range of underregulated areas or areas where workers were particularly vulnerable.⁸² For example, agency officials signed MOUs to avoid conflicts between workers' rights and immigration enforcement agencies to protect immigrant workers,⁸³ to expand protection to whistleblowers,⁸⁴ to streamline criminal prosecutions of worker safety laws with the DOJ,⁸⁵ to extend worker protections to Federal and Indian lands, in state and local government, through federal contracting, to recipients of federal financial assistance, and to enable workforce development in rural communities.⁸⁶ And, as part of a

79. *See infra* Appendix A (providing labor MOUs between 1970 and 2020).

80. *See* U.S. Dep't of Lab. & Equal Emp. Opportunity Comm'n, Memorandum of Understanding between U.S. Dep't of Lab. and Equal Emp. Opportunity Comm'n (Nov. 7, 2011), 76 Fed. Reg. 71,029, 71,030 (Nov. 7, 2011) (promoting collaboration between the EEOC and DOL); U.S. Dep't of Lab., Wage & Hour Div. & the Nat'l Lab. Relations Bd., Memorandum of Understanding between the U.S. Dep't of Lab., Wage & Hour Div., and the Nat'l Lab. Relations Bd. (Dec. 14, 2016); U.S. Dep't of Lab., Wage & Hour Div. & Equal Emp. Opportunity Comm'n, Memorandum of Understanding between the U.S. Dep't of Lab., Wage & Hour Div. and the U.S. Equal Emp. Opportunity Comm'n (Jan. 6, 2017).

81. *See infra* Appendix A, MOUs signed between OSHA and MSHA and outside agencies on: June 10, 2010; Sept. 16, 2010; Jan. 21, 2011; June 20, 2011; Sept. 6, 2013; Apr. 17, 2014; May 21, 2014; Aug. 26, 2014; Oct. 7, 2014; July 31, 2015; Dec. 1, 2015; and June 30, 2016.

82. *See infra* Appendix A (listing MOUs signed during the Obama Administration).

83. *See infra* Appendix A (referencing MOUs signed between DOL and the NLRB with DHS, ICE, and the DOJ-Civil Rights Division on Mar. 31, 2011, Dec. 7, 2011, July 9, 2013, May 6, 2016, Jan. 12, 2017, and Jan. 13, 2017).

84. *See infra* Appendix A (highlighting MOUs signed on Jan. 14, 2014, Mar. 6, 2014, and Jan. 12, 2017).

85. MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENTS OF LABOR AND JUSTICE ON CRIMINAL PROSECUTIONS OF WORKER SAFETY LAWS (Dec. 17, 2015).

86. *See infra* Appendix A (detailing MOUs signed between MSHA and BLM (Dec. 27,

larger Misclassification Initiative in Vice President Biden's Middle Class Task Force, the Obama Administration sought coordination between DOL and the IRS, which motivated the signing of an MOU to:

help reduce the incidence of misclassification of employees as independent contractors, help reduce the tax gap, and improve compliance with federal labor laws . . . , enabl[ing] both agencies to leverage existing resources and send a consistent message to employers about their duties to properly pay their employees and to pay employment taxes.⁸⁷

Finally, the Obama Administration made ad hoc use of interagency MOUs to respond to crises after the Deepwater Horizon rig explosion on April 20, 2010⁸⁸ and following a deadly salmonella outbreak,⁸⁹ all to share information between agencies on health and safety problems relevant to their respective regulatory and enforcement responsibilities as well as implement training programs for their staff.

The Trump Administration's interagency coordination has been primarily deregulatory, seeking to reduce any overlap or redundancies that may impose additional burdens on regulated parties,⁹⁰ but also, importantly, using MOUs and executive orders to strengthen anti-immigration policy,⁹¹ undermine existing workplace protections against discrimination, and centralize control

2011), ETA and DHHS (Feb. 9, 2012), EEOC and DOJ-Civil Rights Division (July 23, 2015), DOL and GSA (July 9, 2013), and EEOC and DHHS (Jan. 13, 2017)).

87. MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNAL REVENUE SERVICE AND THE DEPARTMENT OF LABOR (Sept. 19, 2011); Press Release, Dep't of Lab., Labor Secretary, IRS Comm'r Sign Memorandum of Understanding to Improve Agencies' Coordination on Emp. Misclassification Compliance and Educ. (Sept. 19, 2011), <https://www.dol.gov/newsroom/releases/whd/whd20110919>.

88. See MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR AND THE FEDERAL ON SCENE COORDINATOR, DEPARTMENT OF HOMELAND SECURITY CONCERNING OCCUPATIONAL SAFETY AND HEALTH ISSUES RELATED TO THE DEEPWATER HORIZON OIL SPILL RESPONSE (June 10, 2010); NAT'L COMM'N ON THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING, DEEP WATER: THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING (2011), <http://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf>.

89. MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR AND THE FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES SHARING HEALTH AND SAFETY INFORMATION WHERE FOOD IS PRODUCED, PROCESSED, OR HELD (June 20, 2011).

90. See Exec. Order No. 13,771, 82 Fed. Reg. 9339 (Feb. 3, 2017).

91. See *Immigration Executive Actions Under the Trump Administration*, NAFSA, <https://www.nafsa.org/professional-resources/browse-by-interest/immigration-executive-actions-under-trump-administration> (last visited July 30, 2021).

over independent agencies by Executive agencies.⁹² First, the Trump Administration oversaw the signing of three MOUs to strengthen immigration enforcement, interagency coordination on foreign labor certification, and impose information sharing requirements on the U.S. Census Bureau to share census data on national origin to inform federal contracting policy at the OFCCP.⁹³ Thus, like the Obama Administration, President Trump mobilized interagency coordination through MOUs to coordinate policy objectives between agencies. Second, the Trump Administration took aggressive steps to limit the scope, jurisdiction and discretion of independent agencies like the EEOC and the Consumer Financial Protection Bureau (CFPB) by: (1) imposing information sharing requirements to allow Executive agency enforcement (or nonenforcement) of whistleblower protections; and (2) limit the EEOC's independence by giving the OFCCP and/or the DOJ more leverage to enforce President Trump's anti-discrimination policies, particularly with regard to discrimination on the basis of religion, sexual identity, and race-based and sex-based stereotyping.⁹⁴ In fact, the EEOC only agreed to the Trump Administration's most recent MOU between the OFCCP, EEOC, and DOJ-Civil Rights Division on a partisan basis, with the two Democratic Commissioners rejecting the MOU as jeopardizing the agency's independence and as granting Executive agencies more leverage to enforce Trump's "Combating Race and Sex Stereotyping" Executive Order which banned certain topics from diversity and inclusion trainings.⁹⁵ The Administration also oversaw the signing of an additional MOU that reduced agency overlap on workplace safety and health protections.⁹⁶

92. See *infra* Appendix A (listing MOUs signed during the Trump Administration).

93. See *infra* Appendix A (citing MOUs between OFCCP and the Census Bureau (June 19, 2017), DOL-WHD and DOL-ETA (Sept. 29, 2017), and DOJ-Civil Rights Division and DOL-ETA (July 31, 2018)).

94. See *infra* Appendix A (listing MOUs between the CFPB and OSHA (Feb. 4, 2017), EEOC and DOJ-Civil Rights Division (Dec. 21, 2018), and OFCCP, EEOC, and DOJ-Civil Rights Division (Nov. 3, 2020)).

95. See MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF LABOR, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, AND THE U.S. DEPARTMENT OF JUSTICE (Nov. 3, 2020); Exec. Order 13,950, 85 Fed. Reg. 60683 (Sep. 22, 2020); EEOC, *Preliminary Transcript: Meeting of November 2, 2020 – Discussion of a Memorandum of Understanding among the U.S. Department of Labor, the Equal Employment Opportunity Commission, and the U.S. Department of Justice* (Nov. 2, 2020), <https://www.eeoc.gov/preliminary-transcript-meeting-november-2-2020-discussion-memorandum-understanding-among-us>.

96. MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION U.S. DEPARTMENT OF LABOR (Apr. 14, 2017).

2. *Networks of Interagency Labor Regulation: A Bird's-Eye View*

The prior Section briefly traced the historical development of interagency coordination on labor regulation through MOUs, but a bird's-eye view of the networks built over that time reveals a striking picture of where robust interconnections between agencies have developed and where they have not. The table below (Table 2) provides a numerical breakdown of the number of memorialized agreements signed by DOL, its sub-agencies, the NLRB, and the EEOC—the agencies most traditionally associated with regulating labor.

Federal Agency	# of MOUs
DOL – Occupational Safety & Health Administration (OSHA)	58
EEOC	16
NLRB	13
DOL – Office of Federal Contract Compliance & Programs (OFCCP)	12
DOL – Mining Safety & Health Administration (MSHA)	9
DOL – Wage and Hour Division (WHD)	9
DOL – Employment & Training Administration (ETA)	7
DOL – Employment Standards Administration (ESA) [eliminated 2009]	6
DOL – Bureau of Labor Statistics (BLS)	2
DOL	2

Table 2. MOUs Between DOL, NLRB, and EEOC

This dataset reveals several interesting trends and patterns. Nearly half of the discoverable, signed MOUs were between OSHA and other federal agencies, either to bridge the gap created under specific statutory exemptions that tasked other agencies with worker health and safety within their regulatory purviews or to avoid duplicate supervision of regulated parties' workplace safety and health compliance.⁹⁷ The following table (Table 3) illustrates the *centrality* of OSHA in building interagency relationships with labor and other agencies.

97. For a full list of these MOUs, see *infra* Appendix A.

reviewing the labor MOUs themselves allowed a more comprehensive accounting of the articulated motives for their use.

I hand-coded the 112 MOUs to identify the procedural and substantive obligations that were included in the MOU. I identified twenty-two categories of cooperation, listed in the following table (Table 4), to help illuminate which functions these agreements were serving for the agencies:

Hand-Coded Categories	
AH (ad hoc/event-limited) – 0.9%	IS (information sharing) – 65%
C (consultation duties/obligations) – 21%	J (jurisdiction clarification) – 38%
CI (coordinating investigations) – 20%	JP (joint policy-making) – 20%
CE (coordinating enforcement) – 38%	JR (joint research) – 3.5%
CR (conflict resolution) – 14%	PLC (permanent lines of communication) – 55%
CTIP (cross-training/personnel interchange) – 37%	PRC (personnel/resources commitment) – 0.8%
E&O (education and outreach) – 13%	PM (procedural mechanisms) – 49.6%
IAC (interagency resource compensation) – 7%	R (referral authority) – 29%
IB (institution building-new office, etc.) – 23%	RR (reporting requirements) – 25%
IAR (interagency compliance review) – 17%	SMC (statutorily-mandated collaboration) – 3.5%
ICR (internal compliance review) – 0.9%	TC (termination conditions) – 9%

Table 4. Percentage of MOUs Containing Hand-Coded Categories of Cooperation

By far the most prominent purpose of the MOUs was to facilitate information-sharing between agencies. The information-sharing ranged from sharing databases and employer information to sharing complaints, investigative materials, filings, research, and analyses. 65% of the agreements included information-sharing provisions. And well over half—55%—included provisions establishing permanent points of contact to handle communications between the agencies. A much smaller number of agreements—23%—used the agreements to go beyond points of contact to establish new institutions—a new office or task force to coordinate between the two agencies. But unlike examples provided by other agencies, such as the well-known 1999 MOU between the DOJ-Antitrust Division and the FTC allocating responsibility for merger enforcement, the labor agencies do not designate points of contact to facilitate communications between and among attorneys, economists, and technical experts staffed within the agencies—only political appointees. And they do not require information-sharing to provide legal, economic, and technical assistance that would help in the other agencies' enforcement responsibilities.

The third most prevalent provisions in the MOUs—contained in nearly half—established procedural mechanisms to ensure orderly exchange of information and coordination. MOUs are also used to clarify jurisdictional boundaries between agencies (38% of MOUs had these provisions), to coordinate enforcement, and to train and exchange personnel so agencies

are familiar with regulations and standards that govern enforcement under the other agency's jurisdiction. But less than a third of agreements established formal referral authority allowing one agency to refer for enforcement actions violations observed by the other agency.

A quarter of the MOUs establish mutual reporting requirements, primarily regarding investigations and enforcement actions in areas of overlapping jurisdiction. And 21% of them imposed consultation duties and obligations, primarily in advance of enforcement actions or engaging in policy-making that would establish standards that may impact the other agencies' enforcement area or their regulated parties. A much smaller number of agreements—20%—included provisions to coordinate investigations, so it is clear agencies are relying much more on information-sharing from independently conducted investigations than joint investigation structures. And 20% of agreements included provisions for joint policymaking to ensure requirements imposed on regulated parties are coherent. While 17% of the agreements imposed requirements on the other agency to ensure compliance with the MOU—for example, allowing one agency to review whether the other timely and properly referred complaints to it—only one agreement allowed the agency to ensure compliance through an internal compliance review. Thirteen percent of agreements included provisions about education and outreach, wherein the agencies agreed to educate the public and regulated parties about their mutually overlapping enforcement areas. But only a small percentage—3.5%—committed the agencies to joint research under their respective mandates. The vast majority of agreements renounced interagency resource compensation, but in seven percent of agreements, agencies committed to compensate each other for certain services performed under the MOU. Only one agreement committed to providing the other agency with personnel and resources. Fourteen percent of agreements included conflict resolution provisions to preempt disputes from derailing their collaboration, and nine percent included termination conditions. Only one agreement—the one coordinating worker safety on the Deepwater Horizon clean-up—was signed for an ad hoc purpose limited and extending only to coordination around a single event.

The fact agency officials signed so few of the MOUs—only 3.5%—due to statutory mandates is an interesting finding because it helps to answer the question of why agencies coordinate. It suggests that agencies are not coordinating because Congress wants them to or envisions that they would collaborate to achieve the goals of specific statutes, but instead as a result of Executive Branch-led policy-setting. And the fact that officials only signed one agreement—the one coordinating worker safety on the Deepwater Horizon clean-up—for an ad hoc, event-limited purpose suggests that

agencies are not collaborating primarily to avert crisis or in an ad hoc manner, but rather because of relatively longer-term institutional needs to coordinate on policy objectives and enforcement.

II. ANALYZING MOUS AS COORDINATION ON LABOR REGULATION

While there is “no systematic, comprehensive, long-term, current analyses or comparisons of [interagency collaborative] arrangements to assess how well the[y] met their purposes or rationales” in general,¹⁰¹ a number of best practices can be derived from analysis of the full set of MOUs. This Part analyzes core takeaways from the MOUs as a tool of interagency coordination on labor regulation based on their stated purposes and functions, deriving best practices but also highlighting what they reveal about agency coordination failures.

A. *Best Practices in Interagency Labor Regulation Through MOUs*

In reviewing the MOUs, it is clear that such agreements can be used to achieve effective interagency coordination that not only effectuates joint policy goals of the statutes agencies administer, but can also further mutual agency expertise, enforcement, investigation, and administrative efficiency. This Section discusses the most well-developed examples from the labor regulatory setting to illustrate what agencies can achieve when they develop robust coordination mechanisms through MOUs.

The most well-developed agreements evolved out of decades of collaboration mandated by a combination of congressional coordination and judicial intervention, like the ones between OSHA and the EPA.¹⁰² The agencies signed five MOUs between 1980 and 1991, and through that long-term collaboration, developed a robust system of joint-policy making, coordinated investigation and enforcement, referrals, interagency compliance reviews, personnel training programs and information sharing. The Toxic Substances Control Act, and judge-made law interpreting Act, require OSHA to demonstrate a significant workplace risk to employees from toxic substances in order to regulate any substance, and those requirements compelled agency coordination.¹⁰³ Pursuant to the courts’ requirements, OSHA had to collect

101. KAISER, *supra* note 9, at 23.

102. *See infra* Appendix A, MOUs between OSHA and EPA signed on Dec. 18, 1980; Jan. 19, 1981; Jan. 7, 1986; Feb. 6, 1986; and Feb. 13, 1991.

103. *Indus. Union Dep’t, AFL-CIO v. API*, 448 U.S. 607 (1980); *see also Indus. Union Dep’t v. Hodgson*, 499 F.2d 467, 473–76 (D.C. Cir. 1974) (requiring that OSHA support its policies with substantial evidence); Sidney Shapiro & Thomas McGarity, *Reorienting OSHA: Regulatory Alternatives and Legislative Reform*, 6 YALE J. REG. 1, 57–58 (1989).

data to show that its regulations were economically and technologically feasible for the industry as a whole. Thus, judge-made law interpreting congressional requirements made access to EPA data and findings critical for OSHA to avoid its agency action being struck down on judicial review. What this meant in practice was that, despite the highly deregulatory actions of the Reagan and Bush Administrations, the OSHA-EPA MOUs signed during that period had highly-developed cross-reporting, had robust interagency working groups, established a Data Exchange Committee, included a framework and efficient methodology for data exchange and data managers, incorporated unusually detailed timetables listing actions needed and deadlines for completion, and devised unprecedented training programs on their respective areas of expertise that went from the inspector level through to senior managers and policy planners.¹⁰⁴ The 1996 OSHA-EPA MOU, signed during the Clinton Administration, added even more robust coordination through joint on-scene investigations, and took the unprecedented and unique step among all the agreements to require that their respective reports be reviewed by independent experts to “assess the scope, approaches, and methods used” and require that the results of those independent reviews “guide and improve future studies, investigations, and reports.”¹⁰⁵ The agencies also took the still unique step of requiring that “[n]either agency will enter a settlement agreement with any employer . . . that would compromise the sharing of information between agencies or use of information that may be lawfully disclosed in the development of a public report.”¹⁰⁶

The Clinton Administration also took the unique step of using an interagency MOU to establish for the first time points of contact and information-sharing beyond political appointees to instead also include attorneys, economists, and technical experts within the agencies. The 1999 MOU between the Department of Agriculture and the antitrust agencies—the DOJ and FTC—tasked the agencies with coordinating on monitoring competitive conditions in agricultural markets and established a primary contact person to facilitate communication between line attorneys, staff economists, and other technical experts, including to share information pertaining to legal, economic, and technical assistance

104. *See supra* note 102.

105. Memorandum of Understanding between the U.S. Env’t Protection Agency Office of Solid Waste and Emergency Response Office of Enforcement and Compliance Assurance and the U.S. Dep’t of Occupational Safety and Health Administration on Chemical Accident Investigation (Dec. 1, 1996).

106. *Id.*

believed to be potentially relevant and useful to the other agencies' enforcement responsibilities.¹⁰⁷

MOUs signed during the Obama Administration built on these precedents to strengthen interagency relationships a robust set of criteria that built on and furthered obligations already present in existing MOUs. For example, the information-sharing provisions of the Obama Administration MOUs, such as the 2011 OSHA-DOE MOU, added requirements that the agency with specific expertise as between the two signing agencies identify and prioritize certain data and information and incorporate analyses of such data.¹⁰⁸ The 2011 EEOC-OFCCP MOU designated "Coordination Advocate[s]" at both agencies to streamline compliance coordination and mandated notification requirements for findings of cause, unsuccessful attempts to conciliate, and decisions not to file lawsuits, but they also established dual-filed complaints and charges, designating the OFCCP as the EEOC's agent for receiving complaints and charges, making it simpler for workers and federal contractors to navigate the bureaucratic complaint process.¹⁰⁹

Coordinated investigation requirements also became more robust during the Obama Administration. For example, in the 2016 MSHA-ATF MOU, the agencies went beyond mere referrals to require one agency's—MSHA's—inspectors to inform mine operators of discovered violations of ATF regulations, document those on ATF forms, and forward them to ATF for review.¹¹⁰ As part of the broader strategic enforcement efforts of David Weil and other Obama political appointees in the Department of Labor, 2016 and 2017 MOUs for the first time incorporated obligations for agencies to coordinate on "the experiences and enforcement perspectives of each agency in identifying and investigating complex employment structures" such as vertically-disintegrated firms, subcontracting, outsourcing, and other supply-chain arrangements in the fissured workplace.¹¹¹ So agencies were committing

107. See *infra* Appendix A, MOU between DOJ-Antitrust Division, FTC, and USDA signed on Aug. 31, 1999.

108. Memorandum of Understanding between the U.S. Dep't of Labor and the U.S. Dep't of Energy 9–10 (Jan. 21, 2011).

109. Memorandum of Understanding between U.S. Dep't of Labor, Equal Employment Opportunity Commission, and the U.S. Dep't of Justice 11 (Nov. 3, 2011).

110. Memorandum of Understanding between the U.S. Dep't of Labor, Mine Safety and Health Administration and the U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (June 30, 2016).

111. See, e.g., Memorandum of Understanding between the U.S. Dep't of Labor, Wage and Hour Division, and the National Labor Relations Board (Dec. 14, 2016); Memorandum

to a more systematic approach to regulation based on a deeper mutual understanding of workplace structures.

This collection of MOUs makes clear that collaborative, iterative refinements in interagency agreements coupled with historical interagency relationships matter. Agencies show real improvement over the course of their MOUs in terms of more robust commitments to one another, more efficient referral authority, and more effective procedural mechanisms for accountability and compliance. Concretely establishing mechanisms for joint enforcement, joint investigation, and information-sharing that extends beyond political appointees can be used to target high-priority enforcement areas, identify such areas with shared expertise, and reduce inefficiencies that result from overlapping and underlapping enforcement or investigations. Judicial review, along with congressional coordination mandates established by statute, impacts interagency coordination, as seen in the OSHA-EPA MOUs. Judicial review helps to facilitate interagency information sharing for more informed labor market regulation.

B. MOUs as Exposing Fragmentary and Underlapping Coordination

Analysis of the MOUs also exposes a significant amount of fragmentation and underlapping coordination between agencies in their labor market regulation. The MOUs reveal that what agencies are *not* doing is just as important as what they are doing.

First, some agencies are more isolated and less collaborative than others, and the level of collaboration does not turn on whether the agency is an Executive or independent agency. OSHA has by far the widest network of interagency agreements, but the EEOC places second, with the NLRB relatively isolated by comparison. The NLRB's MOUs are also narrower and more limited than other agencies' MOUS and primarily deal with coordinating whistleblower complaints for violations under other work laws. They lack robust provisions for information sharing or interagency personnel training. It took the NLRB forty years to update its first MOU with the Wage and Hour Division—from 1978 to 2016—and it did not use tools that other agencies had already developed to get data, analysis, and expertise-based aid in analyzing labor market conditions to better enforce the National Labor

of Understanding between the U.S. Dep't of Labor, Wage and Hour Division and the U.S. Equal Employment Opportunity Commission (Jan. 6, 2017); Memorandum of Understanding between the National Labor Relations Board and the Occupational Safety and Health Administration, U.S. Dep't of Labor (Jan. 12, 2017).

Relations Act (NLRA).¹¹² Also, the NLRB's policy of regulating primarily through adjudication rather than rulemaking resulted in a refusal to clarify policy positions through MOUs and set it further behind other agencies. For example, its 1993 MOU with the EEOC reveals that it refused to "make policy" on issues of first impression pertaining to the intersection of the ADA and the NLRA.¹¹³ The EEOC sought clarity on, for example, whether the NLRA required bargaining with a union in selecting an effective reasonable accommodation and other questions, but its MOU negotiations with the NLRB were derailed and then limited only to procedural measures. As a result, the limited number of MOUs that the NLRB entered into reinforce the idea that the NLRB has persisted in a form of administrative exile.¹¹⁴

When agencies do coordinate with one another to promote seamless enforcement, they are not necessarily comprehensive in coordinating with *all* agencies. For example, while the DOL and DHS signed an MOU to prevent conflicts in their worksite-based enforcement activities that may deter immigrant worker reporting of labor violations, the MOU did not extend to the NLRB or EEOC, nor was it "replicated in other areas of agency conflict."¹¹⁵

And not all agencies coordinate. The Federal Reserve, IRS, and Treasury Departments have very limited interagency coordination with labor agencies to coordinate macroeconomic policy priorities. This is particularly striking because agencies tasked with implementing macroeconomic and distributive policies are directly tasked with, and in fact directly regulate labor markets, unemployment rates, worker classifications for receiving benefits and immunities, all of which significantly impacting conditions of enforcement for other labor agencies. Coordination gaps in these areas may limit labor agencies' ability to upscale labor market regulation, or impact labor markets in specific industries or across particular shared policy goals, particularly in the context of economic recovery. For example, failures to coordinate or build a robust network of collaboration regarding macroeconomic policy goals may limit agencies' ability to work together on overcoming high unemployment rates and limit timely and efficient responses to economic downturns or other economy-wide labor market crises like the one we are

112. Memorandum of Understanding between the U.S. Dep't of Labor, Wage and Hour Division, and the NLRB (Dec. 14, 2016) (citing the Oct. 26, 1978 MOU).

113. Memorandum of Understanding between the General Counsel of the NLRB and the EEOC (Nov. 16, 1993).

114. See, e.g., Catherine Fisk & Deborah Malamud, *The NLRB in Administrative Law Exile*, 58 DUKE L. REV. 2013 (May 2009).

115. Andrias, *supra* note 29, at 1088.

witnessing with the pandemic and its accompanying recession.¹¹⁶ Further, the limited coordination between the labor agencies and the IRS, Treasury, and the Federal Reserve through MOUs suggests that none of the labor agencies are incorporating or benefiting from the analysis generated by those agencies, even if the Bureau of Labor Statistics furnishes much of the publicly-available data that goes into their modeling.

Agencies have also not used MOUs to coordinate on structural labor market challenges resulting from increased employer power relative to worker power.¹¹⁷ As I and others have written elsewhere, enforcement of work law and antitrust law are interrelated.¹¹⁸ Antitrust law regulates unlawful employer buyer power over workers which can not only reduce workers' bargaining leverage, wages, and hire rates, but also decrease workers' ability to report or quit in response to employer violations of labor and employment law. The DOL, NLRB, and EEOC have signed no MOUs to coordinate with the DOJ and FTC on labor market regulation of employers' buyer power and bargaining leverage in setting workers' wages and terms and conditions of work. They thus do not share any information about ongoing enforcement actions, investigations, information or data collection pertaining to, for example, which workers are more vulnerable to work law violations because of their weakened bargaining leverage with employers, or which employers' acquisitions or mergers may have strengthened their bargaining power in a labor market in ways that impact organizing workers' demands for union recognition or make workers more in need of whistleblower and retaliation protections.¹¹⁹ When antitrust agencies enforce against employer monopsony power and unlawful agreements to wage-fix, do not poach each other's workers, or use non-compete agreements as labor market restraints,¹²⁰ they are doing so without

116. See *How Government Jobs Programs Could Boost Employment* URBAN INST. (May 6, 2020), <https://www.urban.org/features/how-government-jobs-programs-could-boost-employment#chapter-1> (providing examples how macroeconomic policies can boost employment); Kate Bahn & Carmen Sanchez Cumming, *The Consequences of Job Displacement for U.S. Workers* (Wash. Center for Equitable Growth, May 5, 2021), <https://equitablegrowth.org/the-consequences-of-job-displacement-for-u-s-workers/>.

117. See Hiba Hafiz, *Structural Labor Rights*, 119 MICH. L. REV. 651 (Feb. 2021).

118. See *id.*; see also Sanjukta Paul, *Antitrust as Allocator of Coordination Rights*, 67 UCLA L. REV. 379 (2020); Ioana Marinescu & Eric Posner, *A Proposal to Enhance Antitrust Protection Against Labor Market Monopsony*, ROOSEVELT INST. (Dec. 21, 2018), <https://rooseveltinstitute.org/publications/a-proposal-to-enhance-antitrust-protection-against-labor-market-monopsony/>.

119. See, e.g., Hafiz, *Structural Labor Rights*, *supra* note 117.

120. For antitrust agency enforcement in labor markets, see Hiba Hafiz, *Labor Antitrust's Paradox*, 86 U. CHI. L. REV. 381 *passim* (2019). For failures of coordination between labor and

any coordination with the labor agencies. If a DOJ investigation revealed evidence that employers were engaging in wage-fixing, labor agencies lack established mechanisms to obtain that evidence to aid in proving that two employers are “joint employers” for the purposes of Fair Labor Standards Act (FLSA) or NLRA cases. Evidence of employer buyer power is thus critical for labor agencies’ knowledge and analysis of facts on the ground as well as their awareness of which employers and which industries suffer from the most severe labor market failures. This is not only key for our post-pandemic recovery, but also for strategic enforcement and refining substantive labor and antitrust law, for example, by designating employers that wage-fix as “joint employers.”¹²¹ The lack of any feedback loop between the enforcement efforts of the antitrust agencies and the labor agencies means that broader labor market enforcement suffers from fragmentary and underlapping coordination and could benefit from the best practices discussed in the prior Section.

Finally, while the MOUs reveal key areas of interagency coordination on labor market regulation, they also reveal important areas where agencies have failed to build institutions in ways that impact certain industries more than others. For example, information-sharing is often designed to benefit certain stakeholders and not others. The Small Business Act imposes information-sharing requirements between agencies to ensure that regulatory burdens are minimized on small businesses.¹²² But agencies lack any similar statutory obligations to share information, solicit other agencies’ involvement, or consult workers or unions on how their regulation affects workers in the labor market.

III. TOWARDS OUTCOME-BASED INTERAGENCY COORDINATION

As described above, interagency coordination can play an important role in helping agencies effectuate policy goals, and its absence can stymie them. This Part takes the lessons learned from studying existing MOUs, and the regulatory gaps they reveal, to propose key areas of future, improved coordination. It first identifies and briefly discusses six core policy vectors—derived from Congress’s stated purposes in passing labor and employment statutes as well as scholarly commentary—for benchmarking interagency successes and failures in regulating labor markets moving forward. It then leverages the insights gained from studying existing MOUs to offer proposals for future interagency coordination on both policymaking and enforcement.

antitrust agencies in the merger context, see Hiba Hafiz, *Interagency Merger Review in Labor Markets*, 95 CHI. KENT L. REV. 37 (2020).

121. See, e.g., Hafiz, *Structural Labor Rights*, *supra* note 117.

122. See 5. U.S.C. §§ 601–12.

A. Policy Vectors for Outcome-Based Interagency Coordination

How an administrative system is organized “affects the substance of regulation.”¹²³ Interagency coordination on labor regulation can further the policies at the core of our labor and employment laws by, among other things, enabling regulatory efficiencies through information-sharing, prioritizing limited resources, and ensuring against duplicative efforts. This Section identifies six policy vectors—macroeconomic, microeconomic, institution-building, industry-specific, anti-subordination, and democratic/expressive policy—as a basis for generating proposed areas for additional interagency coordination.

1) *Macroeconomic Policy.* Broader macroeconomic policy goals—economic growth, full employment, and equitable distribution—inform Congressional legislation, presidential administration, and scholarly commentary on optimal labor market regulation and worker protections. Most explicitly through the tax and central banking system, Congress set goals of maximum sustainable employment and distributional priorities.¹²⁴ However, these goals also extend to labor and employment legislation. The Preamble of the NLRA states that one of its goals is to equalize workers’ bargaining power with employers to avoid “recurrent business depressions, [caused] by depressing wage rates and the purchasing power of wage earners in industry.”¹²⁵ Similarly, the FLSA seeks to eliminate detrimental labor conditions to maintain a “minimum standard of living necessary for health, efficiency, and general well-being of workers . . . without substantially curtailing employment or earning power.”¹²⁶ Scholars have also highlighted the significance of macroeconomic policy-setting beyond monetary and fiscal policy, and consideration of the macroeconomic effects of agency action on economy-wide prices and employment, including in and through labor market regulation.¹²⁷ Setting macroeconomic policy as a metric for

123. Bradley, *supra* note 9, at 748.

124. *See, e.g.*, Employment Act of 1946, 15 U.S.C. § 1021 (declaring “continuing policy and responsibility of the Federal Government to use all practicable means . . . to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining . . . conditions which promote useful employment opportunities”); Federal Reserve Reform Act of 1977, Pub. L. 95-188, 91 Stat. 1387 (tasking the Federal Reserve with the goal to “promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates”). For redistributive and regulatory goals of taxation, see, e.g., Reuven Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 10–25 (2006) (collecting sources).

125. 29 U.S.C. § 151; Hiba Hafiz, *Economic Analysis of Labor Regulation*, 2017 WIS. L. REV. 1115, 1175–79 (2017).

126. 29 U.S.C. § 202.

127. The burgeoning literature on evaluating the distributional consequences of

evaluating interagency coordination enables consideration, for example, of how well agencies use information-sharing and expertise-sharing to coherently attack unemployment, redistributive problems, and weak labor market institutions that impact employment outcomes. But it may also reveal how agencies' joint investigation and enforcement impacts labor's share of national income relative to capital.

2) *Microeconomic Policy*. Achieving microeconomic policy goals of ensuring efficient wage-setting and reducing market failures like information asymmetries, search costs, and other labor market frictions are also critical for optimal labor market regulation.¹²⁸ One purpose of the NLRA is to correct for the adverse effects of unequal bargaining power between workers and employers that “prevent[] the stabilization of competitive wage rates and working conditions within and between industries,”¹²⁹ and presidential policy-setting has also sought to ensure workers' access to competitive labor markets.¹³⁰ Assessing the microeconomic effects of minimum wages is a staple of minimum wage policy and regulation under the FLSA, both as a matter of law and as a matter of consistent presidential administration and DOL regulation.¹³¹ Evaluating interagency coordination and its effect on microeconomic policy would allow consideration of how well agencies coordinate to

regulation is relatively recent. See, e.g., YAIR LISTOKIN, *LAW AND MACROECONOMICS* (2019); Hafiz, *Structural Labor Rights*, *supra* note 117 **Error! Bookmark not defined.**; Rory Van Loo, *Broadening Consumer Law: Competition, Protection, and Distribution*, 95 NOTRE DAME L. REV. 211, 251–60 (2019); Richard Revesz, *Regulation and Distribution*, 93 N.Y.U. L. REV. 1489 (2018); Hafiz, *Economic Analysis*, *supra* note 125, at 1152–54, 1176–88.

128. See generally Hafiz, *Economic Analysis*, *supra* note 125, at 1161–64 (providing a microeconomic analysis on labor regulations); Suresh Naidu & Eric Posner, *Labor Monopsony and the Limits of Law* (Jan. 13, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3365374.

129. 29 U.S.C. § 151.

130. See, e.g., Exec. Order No. 13,725, 81 Fed. Reg. 23,417, 23,417 (Apr. 15, 2016) (declaring a policy of “[p]romoting competitive markets and ensuring . . . workers have access to the information needed to make informed choices must be a shared priority across the Federal Government,” in both “Executive departments and agencies” that “can contribute to these goals through, among other things, pro-competitive rulemaking and regulations, and by elimination regulations that create barriers to or limit competition.”).

131. See generally Michael Reich, *Minimum Wage Policy after Seventy-Five Years: Historical and Contemporary Effects of the FLSA*, U.S. Senate Presentation: Building a Foundation of Fairness 4 (2013), <https://www.help.senate.gov/imo/media/doc/Reich1.pdf> (summarizing the effects of minimum wages on the labor market and employment); David Neumark & William Wascher, *Minimum Wages and Employment: A Review of Evidence from the New Minimum Wage Research*, NAT'L BUREAU OF ECON. RSCH. (2007) (discussing the evolution of minimum wage policy in the United States).

counter social welfare harms like employer buyer power that suppresses wages but also how agencies have worked to counter labor market failures that create inefficiencies.

3) *Institution Building*. Building robust labor market institutions—whether they be unions or other institutions like hiring halls, workers’ centers, or political advocacy organizations that represent workers’ interests—is a core goal of the NLRA and has been increasingly identified by scholars as a necessary component of stabilizing workers’ countervailing power against employers’ unilateral wage-setting.¹³² Labor market institutions impact the distribution of wages, labor’s share of national income, and workers’ broader representation in the political process.¹³³ Evaluating how well agencies have collectively worked to ensure robust institution-building within labor markets can thus be an important window into whether agencies are achieving or undermining congressional policy goals in enacting the labor laws, but also broader distributional and democratic goals.

4) *Industry-Specific Policy*. While various statutes and Executive policy deliberately shape industry-specific formation and growth, those broader goals also incentivize and impact skills-development and development in human capital that impacts economic growth, unemployment, the effects of growing automation on workers’ earning potential, and worker displacement.¹³⁴ Broader labor policy can also impact wage differences

132. See, e.g., Andrias & Sachs, *supra* note 5; Benjamin Sachs, *the Unbundled Union: Politics Without Collective Bargaining*, 123 YALE L.J. 148 (2013); Bruce Kaufman, *Institutional Economics and the Minimum Wage: Broadening the Theoretical and Policy Debate*, 63 ILR REV. 427 (2010).

133. See, e.g., Bruce Kaufman, *Institutional Economics and the Minimum Wage*, 63 ILR REV. 427 (2010); see also INT’L LABOUR ORG., ORG. FOR ECON. CO-OPERATION AND DEV., THE LABOUR SHARE IN G20 ECONOMIES 9–10 (2015), <https://www.oecd.org/g20/topics/employment-and-social-policy/The-Labour-Share-in-G20-Economies.pdf>; JAKE ROSENFELD, WHAT UNIONS NO LONGER DO (2014); RICHARD FREEMAN & JAMES MEDOFF, WHAT DO UNIONS DO? (1984); Stanbury & Summers, *supra* note 4, at 2, 9, 12; Josh Bivens et al., *It’s Not Just Monopoly and Monopsony: How Market Power Has Affected American Wages* 2, 4 (Econ. Pol’y Inst. 2018), <https://www.epi.org/publication/its-not-just-monopoly-and-monopsony-how-market-power-has-affected-american-wages/>; Tali Kristal, *Good Times, Bad Times: Postwar Labor’s Share of National Income in Capitalist Democracies*, 75 AM. SOC. REV. 729, 730–33 (2010); Frank Levy & Peter Temin, *Inequality and Institutions in 20th Century America* (NBER, Working Paper No. 13106 2007), https://www.nber.org/system/files/working_papers/w13106/w13106.pdf; Samuel Bentolila & Gilles Saint-Paul, *Explaining Movements in the Labor Share*, 3 B.E. J. OF MACROECONOMICS 1, 14 (2003).

134. See, e.g., Cynthia Estlund, *What Should We Do After Work? Automation and Employment Law*, 128 YALE L.J. 254, 272 (2018).

between industries.¹³⁵ Thus, evaluating how well agencies collectively work to tailor industry-specific policy to support and strengthen not only human capital but economic growth is a key metric for evaluating the health of our labor markets, priority areas for enforcement, and areas of underlapping agency jurisdiction that need remedy.

5) *Anti-Subordination*. Labor market regulation—or lack thereof—differentially impacts workers based on race, gender, and other protected classifications.¹³⁶ One goal of workplace anti-discrimination law is prohibiting practices that “enforce the inferior social status of historically oppressed groups” and “allows practices that challenge historical oppression.”¹³⁷ But agencies can either reinforce or work at cross purposes with regard to these anti-subordination goals. But agencies can either reinforce or work at cross purposes with regard to these anti-subordination goals. For example, the EEOC may adopt a narrower interpretation of religious exemptions from compliance with anti-discrimination laws than the OFCCP under Executive Order 11,246.¹³⁸ It is thus key that analysis of interagency coordination assess how agencies are working together to ensure equal opportunity and participation, but also to identify areas of improvement based on locating areas of underenforcement and needed change.

6) *Democratic and Expressive Policy*. Interagency coordination can also work to enhance or frustrate democratic or expressive policy. Agency policies and enforcement can either facilitate or hinder worker organizing, associational rights, consolidation of resources, and political power, but they can also facilitate or hinder worker expression in and beyond work, whether through policies on worker speech, retaliation protections, or allocation of decision-

135. See, e.g., Stanbury & Summers, *supra* note 4, at 9–19; William Dickens & Lawrence Katz, *Interindustry Wage Differences and Industry Characteristics* 1, 1–2 (NBER, Working Paper No. 2014, 1986).

136. For recent discussions, see, e.g., Ellora Darenoncourt et al., *Why Minimum Wages are a Critical Tool for Achieving Racial Justice in the U.S. Labor Market* 1, 1–2 (Wash. Ctr. Equitable Growth, Oct. 29, 2020), <https://equitablegrowth.org/why-minimum-wages-are-a-critical-tool-for-achieving-racial-justice-in-the-u-s-labor-market/>; Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality* 1, 2 (Econ. Pol’y Inst. June 1, 2020), <https://www.epi.org/publication/black-workers-covid/>; Francine Blau & Lawrence Kahn, *The Gender Wage Gap: Extent, Trends, and Explanations*, 55 J. ECON. LIT. 789, 847–48 (2017).

137. Bradley Areheart, *The Anticlassification Turn in Employment Discrimination Law*, 63 ALA. L. REV. 955, 957 (2012); Reva Siegel, *Discrimination in the Eyes of the Law*, 88 CAL. L. REV. 77, 83 (2000); see also Reva Siegel, *From Colorblindness to Antibalkanization*, 120 YALE L.J. 1278 (2011); Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. REV. 1003 (1986).

138. See, e.g., John Fox, *USDOL Announced a Coming Controversial OFCCP Final Rule Recognizing Expanded Religious Defenses*, JDSUPRA.COM (Dec. 14, 2020).

making power within the firm regarding labor costs or capital investments.¹³⁹ Labor and employment laws have a number of explicit protections for workers' expressive rights,¹⁴⁰ but political and expressive rights are also more deeply anchored in the First Amendment and the normative and social values that inform its doctrinal development.¹⁴¹ Including democratic and expressive policy as a metric for evaluating interagency coordination would allow assessment of how agencies are strengthening or undermining one another to ensure worker participation in private and public life as well as identify areas of worker underrepresentation and needed reforms.

B. Beyond MOUs: Interagency Policymaking and Enforcement Actions

Interagency coordination is a critical mechanism for effectuating centrally-driven Executive policy, incentivizing agency responsiveness to Congressional mandates, and establishing metrics for central supervision to avoid agency costs and capture. This is particularly true in labor regulation where the number of agencies regulating labor markets are numerous, face high coordination costs, and include Executive and independent agencies not subject to the same level of centralized review and scrutiny by OIRA.¹⁴² But because Congress has not mandated interagency coordination on labor regulation by statute, presidential administrations have taken inconsistent and limited approaches to interagency coordination through MOUs, and MOUs are non-binding instruments subject to the buy-in of political appointees and more permanent agency staff, more aggressive measures to ensure interagency coordination are required. This Section thus proposes

139. See, e.g., Andrias & Sachs, *supra* note 5 at 575, 579, 607 (examining how agency administration can strengthen constituency voices and “rebalance[e] political power in the direction of political equality” while also collaborating with workers in organizing campaigns); J.S. Ahlquist, *Labor Unions, Political Representation, and Economic Inequality*, 20 ANNUAL REV. POL. SCI. 409 (2017) (describing unions' use of political institutions to effectuate worker-friendly policy).

140. See, e.g., Samuel Bagenstos, *Employment Law and Social Equality*, 112 MICH. L. REV. 225, 260–61 & accompanying notes (2013) (collecting anti-retaliation provisions and whistleblower protections under labor and employment law); Eugene Volokh, *Private Employees' Speech and Political Activity: Statutory Protection Against Employer Retaliation*, 16 TEX. REV. L. & POL. 295 (2012) (same); see also FREEMAN & MEDOFF, *supra* note 133, at Ch. 1 (discussing union enablement of “collective voice/institutional response face” for workers to state concerns and demands rather than exit).

141. See, e.g., Catherine Fisk, *A Progressive Labor Vision of the First Amendment: Past as Prologue*, 118 COLUM. L. REV. 2057, 2079 (2018).

142. See, e.g., Nicholas Bagley & Richard Revesz, *Centralized Oversight of the Regulatory State*, 106 COLUM. L. REV. 1260, 1284–1292 (2006).

more robust interagency labor regulation through policymaking and enforcement that takes advantage of a larger range of formal and informal coordination tools available to agencies.

A first step in establishing a more robust network is identifying the scope of interagency coordination beyond merely documenting and contextualizing the existence of MOUs on paper. Additional analysis of agency documents and interviews on the extent of actual MOU compliance is required, as is documentation and analysis of the extent of agency consultations pursuant to MOUs, joint agency responsiveness to the demands of regulated parties and the broader public, and the scope of presidential and congressional administration through policy offices, councils, task forces, regulatory review, and oversight mechanisms.¹⁴³ Further, while Professor Bijal Shah has exhaustively identified the limited scope of interagency adjudications on labor regulation,¹⁴⁴ more study is necessary to ascertain the extent and nature of interagency joint rulemakings as well as comment submissions and more informal consultations in informal rulemakings in order to determine the current state of interagency involvement in both policy-setting and expertise-sharing in the important process of agency rulemakings.

Following fuller documentation of interagency coordination on labor regulation, it is critical to evaluate which of the tools of coordination—interagency adjudication, interagency rulemaking, and more informal MOU use and collaboration—best effectuate both administrative efficiencies and achievement of the substantive policy goals along the policy vectors identified above. In doing so, government actors and scholars should assess the extent to which coordination is enhanced through presidential and congressional control and oversight, but also through “bottom-up”¹⁴⁵ instigators and checks that preserve democratic participation and public involvement in agency action.

Both executive and congressional agencies can assess the extent to which agency policy and enforcement priorities are set and successfully fulfilled through presidential or congressional coordination, including through OMB,

143. See, e.g., Shah, *Congress's Agency Coordination*, *supra* note 9, at 1980–2000 (documenting Congress's statutory authorization and oversight of interagency coordination); Freeman & Rossi, *supra* note 8, at 1155–81 (examining the range of interagency coordination tools); Feinstein, *supra* note 29, at 1195–1203 (analyzing the sources and limitations of congressional oversight of coordination within the administrative state).

144. See Shah, *Uncovering Coordinated Interagency Adjudication*, *supra* note 9, at Appendix 883–905 (documenting areas of interagency adjudications on labor regulation by subject area, role, governing law, substance of adjudication, and adjudicating agency).

145. See Oswalt & Marzán, *supra* note 6, at 458.

OIRA, and the Government Accountability Office (GAO), but also through congressional committee, subcommittee, and task force statutory direction and oversight.¹⁴⁶ Evaluating such coordination can also extend to analysis of procedures beyond substance, to whether institutional structures, lines of communication, and existing procedures function efficiently, and whether agency-collected, legally-shareable labor market information is being optimally shared and utilized in agency policy-making, investigation, and enforcement. And agencies like the Administrative Conference of the United States can study and evaluate agency-led efforts to engage in joint rulemaking and policymaking, where agencies identify areas of overlapping enforcement and devise policies for joint enforcement to address identified enforcement weaknesses.¹⁴⁷ Such assessments can also recommend whether interagency coordination may be more robust if mandated by congressional statute, presidential mandate or administrative state restructuring, or strengthening agency discretion to structure interagency coordination for themselves.¹⁴⁸

Additionally, government actors and scholars should also seek assessments of interagency coordination successes from the perspective of workers, from the “bottom-up,” to ascertain whether agencies are satisfying their statutory mandates and achieving statutory goals along the above-mentioned policy vectors. Workers, worker organizations, and worker advocates are best situated to evaluate and suggest priorities for enforcement in particular industries and with regard to particularly problematic employers.¹⁴⁹ And worker-led assessments can evaluate how much interagency coordination utilizes innovative institutional design and participatory mechanisms to enable worker involvement and ensure that, as agencies coordinate, they prioritize equitable and inclusive engagement in their joint actions.¹⁵⁰

146. See, e.g., Freeman & Rossi, *supra* note 8, at 1193 (suggesting OMB coordination through implementation of the Government Performance and Results Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866, or through reconstituted OIR); see also Andrias, *supra* note 29, at 1103-04; Shah, *Uncovering Coordinated Interagency Adjudication*, *supra* note 9, at 863-64, 871-75.

147. See ADMIN. CONFERENCE OF THE UNITED STATES, *IMPROVING COORDINATION OF RELATED AGENCY RESPONSIBILITIES* (2012); Andrias, *supra* note 29, at 1105.

148. See, e.g., Shah, *Congress's Agency Coordination*, *supra* note 9, at 1965, 1967-68; see also J.R. DeShazo & Jody Freeman, *Public Agencies as Lobbyists*, 105 COLUM. L. REV. 2217, 2261 (2005).

149. See, e.g., Oswald & Marzán, *supra* note 6, at 428-41.

150. For inclusive participation in the administrative state, see, e.g., K. Sabeel Rahman & Hollie Gilman, *CIVIC POWER: REBUILDING AMERICAN DEMOCRACY IN AN ERA OF CRISIS* (2019); K. Sabeel Rahman, *Rethinking Regulation* at 3 (Roosevelt Inst. Apr. 19, 2016), <https://rooseveltinstitute.org/publications/rethinking-regulation/>; see also Yale Journal on Regulation's Symposium on Racism in Administrative Law, <https://www.yalejreg.com/topic/racism-in-administrative-law-symposium/>.

Worker involvement can also serve as a check on highly politicized control and as a flexible, adaptive alternative to the ossification and delay that can occur in mandated White House clearance of significant agency action.¹⁵¹

CONCLUSION: TOWARDS A LABOR JUSTICE SYSTEM

The federal government lacks a coherent, aligned vision on labor market regulation and economic mobility through work. But post-pandemic labor regulation will require interagency coordination in order to accomplish its critical policy goals. A deeper understanding of the regulatory footprint—its breadth and scope—as well as the functional limitations of agency cooperation requires further research and investigation, not only to determine how interagency cooperation impacts macroeconomic growth and inequality, but also to ensure that the convergence of factors that have increased permanent unemployment risk through “reallocation shock” and low-quality, low-paying jobs are not further entrenched. Assessing the general level of labor policy fragmentation and which forms of collaboration better effectuate which policy outcomes and ensure ideal collaborative practices will play an important role in facilitating regulation that will maximize workers’ access to economic opportunity and mobility.

151. On ossification and delay resulting from centralized review, *see, e.g.*, Sidney Shapiro & Ronald Wright, *The Future of the Administrative Presidency*, 65 U. MIAMI L. REV. 577, 609 (2011); Bagley & Revesz, *supra* note 142, at 1268; Paul Verkuil, *Rulemaking Ossification—A Modest Proposal*, 47 ADMIN. L. REV. 453, 453-59 (1995).

APPENDIX A: HAND-CODED INTERAGENCY MEMORANDA OF
UNDERSTANDING

Number of Agreements: 113

Federal Agency	# of MOUs
Occupational Safety and Health Administration (OSHA), Department of Labor	58
Equal Employment Opportunity Commission (EEOC)	16
National Labor Relations Board (NLRB)	13
Office of Federal Contract Compliance and Programs (OFCCP), Department of Labor	12
Mining Safety and Health Administration (MSHA), Department of Labor	9
Wage and Hour Division (WHD), Department of Labor	9
Employment and Training Administration (ETA), Department of Labor	7
Employment Standards Administration (ESA), Department of Labor	6
Bureau of Labor Statistics (BLS), Department of Labor	2
Department of Labor (DOL)	2

CODES:

AH (ad hoc/event-limited)
 C (consultation duties/obligations)
 CI (coordinating investigations)
 CE (coordinating enforcement)
 CR (conflict resolution)
 CT/P (cross-training or interchange of agency personnel)
 E&O (education and outreach)
 IAC (interagency compensation of resources)
 IB (institution building—office, liaison position, etc.)
 IAR (interagency compliance reviews)
 ICR (internal compliance reviews)
 IS (information sharing)
 J (jurisdiction clarification)
 JP (joint policy-making)

JR (joint research)
PLC (permanent lines of communication between designated officials)
PRC (personnel and resources commitment)
PM (procedural mechanisms)
R (referral authority)
RR (reporting requirements)
SMC (statutorily-mandated collaboration)
TC (termination conditions)

Nixon Administration

1970:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION CONCERNING THE PROCESSING OF COMPLAINTS OF EMPLOYMENT DISCRIMINATION AS BETWEEN THE TWO AGENCIES – R, C, RR, IS, PM, CE

1971:

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL TRADE COMMISSION AND THE FOOD AND DRUG ADMINISTRATION (May 14, 1971) – IS, PM, JP

MEMORANDUM OF UNDERSTANDING BETWEEN THE MINING ENFORCEMENT AND SAFETY ADMINISTRATION, DEPARTMENT OF INTERIOR, AND THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS DIVISION (ATF), INTERNAL REVENUE SERVICE (June 1, 1971) – J, PM

1973:

MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR, AND THE NATIONAL BUREAU OF STANDARDS (NBS), DEPARTMENT OF COMMERCE (Oct. 9, 1973) – JR, IB, PLC, PM

1974:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION – R, C, RR, IS, PM,

CE

ATOMIC ENERGY COMMISSION (AEC)-OSHA AGREEMENT (Feb. 4, 1974) – J

MEMORANDUM OF UNDERSTANDING BETWEEN THE FOOD AND DRUG ADMINISTRATION DEPARTMENT OF HEALTH, EDUCATION AND WELFARE AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION DEPARTMENT OF LABOR (Apr. 10, 1974) – C, JP, RR, IS, IAR, CE, IB, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION U.S. DEPARTMENT OF LABOR AND THE CONSUMER PRODUCT SAFETY COMMISSION (CPSC) (Apr. 11, 1974) – J, IB, PLC, JP, C, IS, E&O, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION U.S. DEPARTMENT OF LABOR AND THE EXTENSION SERVICE, U.S. DEPARTMENT OF AGRICULTURE (Apr. 15, 1974) – J, CE, CT/P, IS, IB, E&O, IAR, TC

RESPECTIVE AUTHORITIES OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) AND THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS (ATF) CONCERNING EMPLOYEE SAFETY AND HEALTH IN EXPLOSIVES STORAGE AREA (Aug. 8, 1974) – J, PM

Ford Administration

1975:

MEMORANDUM OF UNDERSTANDING BETWEEN EMPLOYMENT AND TRAINING ADMINISTRATION (ETA) AND EMPLOYMENT STANDARDS ADMINISTRATION (ESA) REGARDING STRANDED MIGRANTS (March 1975) – PM

MEMORANDUM OF UNDERSTANDING BETWEEN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, AND THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD (June 24, 1975) – J, PM, CE, RR, C

*Carter Administration**1978:*

AGREEMENT BETWEEN OSHA AND EMPLOYMENT STANDARDS ADMINISTRATION (ESA) FOR MIGRANT AND SEASONAL FARMWORKER HOUSING INSPECTIONS (Apr. 19, 1978) – J, CE, PM, R, IB, PLC, CT/P, IS

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, AND THE NATIONAL LABOR RELATIONS BOARD (Oct. 26, 1978) [not available]

MEMORANDUM OF UNDERSTANDING CONCERNING ARMY GOCO AMMUNITION PLANTS BETWEEN THE DEPARTMENT OF LABOR AND THE DEPARTMENT OF THE ARMY ACTING FOR THE DEPARTMENT OF DEFENSE (Nov. 6, 1978) – J, PM, CR, CI, TC

1979:

MEMORANDUM OF UNDERSTANDING BETWEEN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, AND THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD (Jan. 17, 1979) – J, R

INTERAGENCY AGREEMENT BETWEEN THE MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), U.S. DEPARTMENT OF LABOR, AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR (Mar. 29, 1979) – J, PM, IB, CR, R, IS, PLC, JP, CT/P, TC

INTERIM MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF LABOR AND THE DEPARTMENT OF TRANSPORTATION (Dec. 7, 1979) – IS, PM, ICR

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES COAST GUARD, THE DEPARTMENT OF TRANSPORTATION AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, THE DEPARTMENT OF LABOR, CONCERNING OCCUPATIONAL SAFETY AND HEALTH ON ARTIFICIAL ISLANDS, INSTALLATIONS, AND OTHER DEVICES ON THE OUTER CONTINENTAL SHELF ON THE UNITED STATES (Dec. 19, 1979) – JP, PM, IS, JR, IAR, CT/P, C, CE, CI, R

AGREEMENT BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA), THE EMPLOYMENT STANDARDS ADMINISTRATION (ESA), AND THE EMPLOYMENT AND TRAINING ADMINISTRATION (ETA) FOR INSPECTIONS OF MIGRANT AGRICULTURAL WORKER HOUSING (1979) – J, IS, CE, R, RR

1980:

MEMORANDUM OF UNDERSTANDING BETWEEN MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), U.S. DEPARTMENT OF LABOR, AND THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD (NLRB) (Feb. 19, 1980) – J, C, PM, CE, RR, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), DEPARTMENT OF LABOR, AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (ATF), DEPARTMENT OF TREASURY (Apr. 9, 1980) – J, PLC, C, JP, CE, IS

MEMORANDUM OF AGREEMENT REGARDING RESOLUTION OF SMALL BUSINESS PROBLEMS BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND THE SMALL BUSINESS ADMINISTRATION (Apr. 10, 1980) – PLC, CE

MEMORANDUM OF AGREEMENT REGARDING FLEXIBILITY IN RULEMAKING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND THE SMALL BUSINESS ADMINISTRATION (Apr. 10, 1980) – C, IS, JP, PLC, E&O, RR

MEMORANDUM OF UNDERSTANDING BETWEEN EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD (June 24, 1980) [not available]

MEMORANDUM OF UNDERSTANDING AMONG THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, THE UNITED STATES COAST GUARD AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – GUIDANCE FOR WORKER PROTECTION DURING HAZARDOUS WASTE SITE INVESTIGATIONS CLEANUP AND HAZARDOUS SUBSTANCE EMERGENCIES (Dec. 18, 1980) – PLC, IB, JP, PM, CT/P, TC, IAR, JR

MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF PESTICIDES

AND TOXIC SUBSTANCES, U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR FOR GENERAL COOPERATION, SHARING OF CONFIDENTIAL BUSINESS INFORMATION, OSHA-EPA COOPERATION IN THE TSCA PREMANUFACTURE NOTIFICATION PROGRAM, AND TRANSFER OF EPA INFORMATION ON SUBSTANCE RISK NOTICES (Jan. 19, 1981) – IB, PLC, IS, R, JP, J, E&O, CT/P, ICR, C, RR, TC

Reagan Administration

1981:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION – R, C, RR, IS, PM, CE

1982:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) AND THE U.S. DEPARTMENT OF AGRICULTURE, FOOD AND INSPECTION SERVICE (FSIS) (May 20, 1982) – PLC, C, IS, E&O, RR, JP, J, TC

1983:

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES COAST GUARD, U.S. DEPARTMENT OF TRANSPORTATION, AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, CONCERNING THEIR AUTHORITY TO PRESCRIBE AND ENFORCE STANDARDS OR REGULATIONS AFFECTING THE OCCUPATIONAL SAFETY AND HEALTH OF SEAMEN ABOARD VESSELS INSPECTED AND CERTIFIED BY THE UNITED STATES COAST GUARD (Mar. 4, 1983) – J, R

MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR, AND THE NATIONAL BUREAU OF STANDARDS (NBS), DEPARTMENT OF COMMERCE (Oct. 27, 1983) – JR, IB, PLC, PM

MEMORANDUM OF UNDERSTANDING BETWEEN THE GENERAL SERVICES ADMINISTRATION (GSA) AND THE OCCUPATIONAL SAFETY AND HEALTH

ADMINISTRATION (OSHA) (Nov. 4, 1983) – IS, PM, IAR

1984:

AGREEMENT BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA), THE EMPLOYMENT STANDARDS ADMINISTRATION (ESA), AND THE EMPLOYMENT AND TRAINING ADMINISTRATION (ETA) FOR INSPECTIONS OF MIGRANT AGRICULTURAL WORKER HOUSING (Jan. 31, 1984) – J, IS, CE, R, RR

1985:

MEMORANDUM OF UNDERSTANDING BETWEEN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, AND THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD (Feb. 11, 1985) [not available]

1986:

MEMORANDUM OF UNDERSTANDING AMONG THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, THE UNITED STATES COAST GUARD AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – GUIDANCE FOR WORKER PROTECTION DURING HAZARDOUS WASTE SITE INVESTIGATIONS CLEANUP AND HAZARDOUS SUBSTANCE EMERGENCIES – SUB-AGREEMENT FOR COORDINATING RESEARCH, DEVELOPMENT, TESTING, AND EVALUATION OF CHEMICAL PROTECTIVE CLOTHING, EQUIPMENT, PROCEDURES, AND INFORMATION AMONG FEDERAL AGENCIES (Jan. 7, 1986) – PM, IS, JR, IAR, C, CE, CI, R

ENV'T PROT. AGENCY & THE DEP'T OF LAB., MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE DEP'T OF LAB. (Feb. 6, 1986) – IS, RR, PLC, C, PM, JP

MEMORANDUM OF UNDERSTANDING BETWEEN THE FCC AND EEOC (1986) – IS, CE, R, C, PM, C, JP, PLC, TC

1987:

MEMORANDUM OF UNDERSTANDING BETWEEN THE MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) AND THE U.S. DEPARTMENT OF ENERGY (DOE) (1987) – CI, RR

1988:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. OFFICE OF SPECIAL COUNSEL AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Feb. 1998) – J, R, IS, RR, CI, PLC, PM

Bush I Administration

1989:

MEMORANDUM OF UNDERSTANDING BETWEEN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THE OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED UNFAIR EMPLOYMENT PRACTICES (1989) – IS, PM, PLC, R

MEMORANDUM OF UNDERSTANDING BETWEEN THE CENTERS FOR DISEASE CONTROL, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH), AND THE DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Dec. 26, 1989) – IS, PLC, IB, TC

1990:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND EMPLOYMENT STANDARDS ADMINISTRATION, WAGE AND HOUR DIVISION (Apr. 5, 1990) – R, IS, CE, CT/P, PM, IAR, TC

INTERAGENCY AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF THE NAVY AND THE UNITED STATES DEPARTMENT OF LABOR - OSHA (July 11, 1990) – IB, CT/P, CR, TC

OCCUPATIONAL SAFETY & HEALTH ADMIN., DEP'T OF LAB. & OFF. OF ENF'T, U.S. ENV'T PROT. AGENCY, MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEP'T OF LAB. OCCUPATIONAL SAFETY & HEALTH ADMIN. & THE U.S. ENV'T PROT. AGENCY OFF. OF ENFORCEMENT (Nov. 23, 1990) – J, PM, IS, R, CT/P, JP, IB, PLC, CR, CI, CE, IAR, TC

1991:

OCCUPATIONAL SAFETY & HEALTH ADMIN., DEP'T OF LAB. & OFF. OF ENF'T, U.S. ENV'T PROT. AGENCY, MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEP'T OF LAB. OCCUPATIONAL SAFETY AND HEALTH ADMIN. & THE U.S. ENV'T PROT. AGENCY OFF. OF ENFORCEMENT (Feb.

13, 1991) – CT/P, IS, JP, CI, CE, R, IB, PLC, IAR, IB, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE CENSUS BUREAU AND BUREAU OF LABOR STATISTICS (April 1991) – IS, PM

1992:

MEMORANDUM OF UNDERSTANDING BETWEEN THE CENSUS BUREAU AND BUREAU OF LABOR STATISTICS (April 1992) – IS, PM

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR AND THE U.S. DEPARTMENT OF ENERGY (Aug. 28, 1992) – J, PM, IAC, CT/P, IS, IAR, C, R, PLC, IB, TC

Clinton Administration

1993:

FED. TRADE COMM'N & ANTITRUST DIV. OF THE U.S. DEP'T OF JUST., MEMORANDUM OF UNDERSTANDING BETWEEN THE FED. TRADE COMM'N AND THE ANTITRUST DIV. OF THE U.S. DEP'T OF JUST. CONCERNING CLEARANCE PROCEDURES FOR INVESTIGATIONS (1993) [not labor market-related]

MEMORANDUM OF UNDERSTANDING BETWEEN THE GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Nov. 16, 1993) – C, PM, PLC, IS, CE, R

1994:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND THE U.S. DEPARTMENT OF AGRICULTURE FOOD AND INSPECTION SERVICE (Feb. 4, 1994) – J, JP, CT/P, PM, R, IS, IAR, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND U.S. DEPARTMENT OF ENERGY OFFICE OF ENVIRONMENTS, SAFETY AND HEALTH (Dec. 21, 1994) – J, PM, R, CI, C, IS, CT/P, CR, PLC, TC

1995:

FED. TRADE COMM'N & ANTITRUST DIV. OF THE U.S. DEP'T OF JUST.,
MEMORANDUM OF UNDERSTANDING BETWEEN THE FED. TRADE
COMM'N AND THE ANTITRUST DIV. OF THE U.S. DEP'T OF JUST.
CONCERNING CLEARANCE PROCEDURES FOR INVESTIGATIONS (1995)
[not labor market-related]

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF
LABOR AND THE U.S. DEPARTMENT OF ENERGY (June 19, 1995) – J, PLC,
IAC, IB, TC

1996:

MEMORANDUM OF UNDERSTANDING BETWEEN THE ANTITRUST DIVISION
UNITED STATES DEPARTMENT OF JUSTICE AND THE IMMIGRATION AND
NATURALIZATION SERVICE UNITED STATES DEPARTMENT OF JUSTICE
(Mar. 15, 1996) – CE

MEMORANDUM OF UNDERSTANDING BETWEEN THE NUCLEAR REGULATORY
COMMISSION AND THE OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION WITH RESPECT TO THE GASEOUS DIFFUSION PLANTS
(Aug. 1, 1996) – J, SMC, CR, IS, E&O, R, PM, CT/P, PLC, C, CE, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY OFFICE OF SOLID WASTE AND
EMERGENCY RESPONSE OFFICE OF ENFORCEMENT AND COMPLIANCE
ASSURANCE AND THE UNITED STATES DEPARTMENT OF OCCUPATIONAL
SAFETY AND HEALTH ADMINISTRATION ON CHEMICAL ACCIDENT
INVESTIGATION (Dec. 1, 1996) – J, PM, RR, IS, CI, CE, PLC, CR, CT/P,
TC

1997:

MEMORANDUM OF UNDERSTANDING BETWEEN THE EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION AND THE OFFICE OF SPECIAL COUNSEL FOR
IMMIGRATION RELATED UNFAIR EMPLOYMENT PRACTICES (Dec. 18,
1997) – IS, PM, PLC, R

1998:

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF LABOR
AND THE NUCLEAR REGULATORY COMMISSION COOPERATION

REGARDING EMPLOYEE PROTECTION MATTERS (Sept. 9, 1998) – RR, R, IS, CE, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND THE UNITED STATES CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD ON CHEMICAL INCIDENT INVESTIGATION (Sept. 24, 1998) – PM, RR, PLC, CR, CT/P, E&O, IAC, TC

1999:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Apr. 7, 1999) – IS, CT/P, R, PM

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (1999) – R, C, RR, IS, PM, CE

ANTITRUST DIV. OF THE U.S. DEP'T OF JUST., FED. TRADE COMM'N, & DEP'T OF AGRIC., MEMORANDUM OF UNDERSTANDING BETWEEN THE ANTITRUST DIV., DEP'T OF JUST., THE FED. TRADE COMM'N, AND THE DEP'T OF AGRIC. RELATIVE TO COOPERATION WITH RESPECT TO MONITORING COMPETITIVE CONDITIONS IN THE AGRICULTURAL MARKETPLACE (Aug. 31, 1999) – CE, PLC, TC, IS

2000:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND THE U.S. DEPARTMENT OF ENERGY OFFICE OF ENVIRONMENT, SAFETY AND HEALTH ON SAFETY AND HEALTH ENFORCEMENT AT PRIVATE FACILITIES AND OPERATIONS (July 25, 2000) – J, PM, JP, CR, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL AVIATION ADMINISTRATION U.S. DEPARTMENT OF TRANSPORTATION AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION U.S. DEPARTMENT OF LABOR (Aug. 9, 2000) – J, CR, PM, JP, C

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF

LABOR AND U.S. GENERAL SERVICES ADMINISTRATION ON MEGA CONSTRUCTION PROJECTS (Aug. 28, 2000) – J, IS, PM, E&O, CE, IAR, IB, PLC, CT/P, CR, PM, TC

Bush II Administration

2002:

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL TRADE COMMISSION AND THE ANTITRUST DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE CONCERNING CLEARANCE PROCEDURES FOR INVESTIGATIONS (Mar. 2, 2002) – J, CE, JP, IS, RR, PLC, PM, CR, IB

FED. AVIATION ADMIN., U.S. DEP'T OF TRANSP., & OCCUPATIONAL SAFETY & HEALTH ADMIN., MEMORANDUM OF UNDERSTANDING BETWEEN THE FED. AVIATION ADMIN., U.S. DEP'T OF TRANSP., AND OCCUPATIONAL SAFETY & HEALTH ADMIN. CONCERNING THE PROTECTION OF EMPLOYEES WHO PROVIDE AIR SAFETY INFORMATION (Mar. 22, 2002), 67 Fed. Reg. 55,883 (Aug. 30, 2002). – CE, PLC, JP, IS, TC

2003:

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL COMMUNICATIONS COMMISSION AND THE FEDERAL TRADE COMMISSION REGARDING TELEMARKETING ENFORCEMENT (Dec. 2003) [not labor market-related]

Obama Administration

2010:

OCCUPATIONAL SAFETY & HEALTH ADMIN., DEP'T OF LAB. & FED. ON SCENE COORDINATOR, DEP'T OF HOMELAND SEC., MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMIN., DEP'T OF LAB. & THE FED. ON SCENE COORDINATOR, DEP'T OF HOMELAND SEC. CONCERNING OCCUPATIONAL SAFETY AND HEALTH ISSUES RELATED TO THE DEEPWATER HORIZON OIL SPILL RESPONSE (June 10, 2010) – J, AH, IS, R, CE, RR, E&O, TC, PLC

DEP'T OF HEALTH & HUMAN SERVICES, FED. DRUG ADMIN. & OCCUPATIONAL SAFETY & HEALTH ADMIN., DEP'T OF LAB., JOINT STATEMENT BETWEEN OSHA AND THE FDA, DEP'T OF HEALTH AND

HUMAN SERVICES (Sept. 16, 2010) – IS, PLC, PM

2011:

U.S. DEP'T OF LAB. & U.S. DEP'T OF ENERGY, MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEP'T OF LAB. AND THE U.S. . DEP'T OF ENERGY (Jan. 21, 2011) – J, CE, PM, IS, PLC

REVISED MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF HOMELAND SECURITY AND LABOR CONCERNING ENFORCEMENT ACTIVITIES AT WORKSITES (Mar. 31, 2011) – J, IS, PM, CE, CI, IB, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMODITY FUTURES TRADING COMMISSION (CFTC) AND THE FEDERAL TRADE COMMISSION (FTC) REGARDING INFORMATION SHARING IN AREAS OF COMMON REGULATORY INTEREST (Apr. 2011) [not labor market-related]

OCCUPATIONAL SAFETY & HEALTH ADMIN., DEP'T OF LAB. & DEP'T OF HEALTH & HUMAN SERVICES, FOOD & DRUG ADMIN., MEMORANDUM OF UNDERSTANDING BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH ADMIN., DEP'T OF LAB. & THE FOOD & DRUG ADMIN., DEP'T OF HEALTH & HUMAN SERVICES SHARING HEALTH AND SAFETY INFORMATION RELATED TO FACILITIES WHERE FOOD IS PRODUCED, PROCESSED AND HELD (June 20, 2011) – IS, PM, CT/P, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNAL REVENUE SERVICE AND THE U.S. DEPARTMENT OF LABOR (Sept. 19, 2011) – IS, PLC, CE, IB, E&O, R, PM, IB, TC

U.S. DEP'T OF LAB. & EQUAL EMP. OPPORTUNITY COMM'N, MEMORANDUM OF UNDERSTANDING BETWEEN U.S. DEP'T OF LAB. AND EQUAL EMP. OPPORTUNITY COMM'N (Nov. 7, 2011), 76 Fed. Reg. 71,029, 71,030 (Nov. 7, 2011) – J, IB, PLC, PM, R, IS, C, IAR, CE, CI, CT/P, JP

REVISED MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF HOMELAND SECURITY AND LABOR CONCERNING ENFORCEMENT ACTIVITIES AT WORKSITES (Dec. 7, 2011) – J, IS, PM, CE, CI, IB, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES

DEPARTMENT OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT (Dec. 27, 2011) – J, CE, IS, RR, PLC, CR, TC

2012:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF LABOR (EMPLOYMENT AND TRAINING ADMINISTRATION) AND THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (OFFICE OF NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY AND HEALTH RESOURCES AND SERVICES ADMINISTRATION) (Feb. 9, 2012-Feb. 28, 2015) – IB, PLC, E&O, IS, CE, TC, IAR, CR

2013:

U.S. DEPARTMENT OF LABOR AND U.S. GENERAL SERVICES ADMINISTRATION MEMORANDUM OF UNDERSTANDING ON MEGA CONSTRUCTION PROJECTS (July 9, 2013) – J, IS, PM, E&O, CE, IAR, IB, PLC, CT/P, CR, PM, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL LABOR RELATIONS BOARD AND THE DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES (July 9, 2013) – J, IS, R, CI

U.S. NUCLEAR REGUL. COMM'N & OCCUPATIONAL SAFETY & HEALTH ADMIN., DEP'T OF LAB., MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. NUCLEAR REGUL. COMM'N & THE OCCUPATIONAL SAFETY & HEALTH ADMIN. (Sept. 6, 2013) – J, R, RR, CI, IS, CT/P, PLC, TC

2014:

MEMORANDUM OF UNDERSTANDING BETWEEN U.S. OFFICE OF SPECIAL COUNSEL AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Jan. 14, 2014) – J, R, IS, RR, CI, PLC, PM

MEMORANDUM OF UNDERSTANDING BETWEEN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) AND GENERAL COUNSEL OF NATIONAL LABOR RELATIONS BOARD (NLRB) (MEMORANDUM 14-60) (Mar. 6, 2014) – CE, PLC, CT/P, R, RR

MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL RAILROAD

ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, AND THE MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR (Apr. 17, 2014). – SMC, J, CT/P, R, RR, IS, CI, C, CR, PLC, JP, TC

MEMORANDUM OF UNDERSTANDING BETWEEN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, AND THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD REGARDING OSHA REFERRED CHARGES (OM 14-60) (May 21, 2014) – J, SMC, CE, IAR, R, RR, CT/P, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL AVIATION ADMINISTRATION U.S. DEPARTMENT OF TRANSPORTATION AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION U.S. DEPARTMENT OF LABOR CONCERNING OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AIRCRAFT CABIN CREWMEMBERS (Aug. 26, 2014). – CE, PLC, JP, IS, TC

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE U.S. DEPARTMENT OF ENERGY (DOE) AND THE MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR (Oct. 7, 2014). – J, CE, PM, IS, PLC

2015:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THE U.S. DEPARTMENT OF JUSTICE – CIVIL RIGHTS DIVISION REGARDING ADA AND GINA EMPLOYMENT DISCRIMINATION CHARGES AGAINST STATE AND LOCAL GOVERNMENTS (July 23, 2015) – J, CE, PM, E&O, JP, CT/P

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF DEFENSE DEPARTMENT OF THE NAVY AND THE DEPARTMENT OF TRANSPORTATION U.S. MARITIME ADMINISTRATION AND THE DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND THE ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE ON COORDINATION AND INFORMATION SHARING OF DOMESTIC SHIP RECYCLING OPERATIONS (July 30, 2015) – RR, PM, CI, IS, PLC, TC

FCC-FTC CONSUMER PROTECTION MEMORANDUM OF UNDERSTANDING

(November 2015) [not labor market-related]

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL AVIATION ADMINISTRATION U.S. DEPARTMENT OF TRANSPORTATION AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION U.S. DEPARTMENT OF LABOR CONCERNING THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY COORDINATION (Dec. 1, 2015) – IS, RR, IAR, CT/P, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENTS OF LABOR AND JUSTICE ON CRIMINAL PROSECUTIONS OF WORKER SAFETY LAWS (Dec. 17, 2015) – IS, CT/P, R, IB, PLC, PM, TC

2016:

ADDENDUM TO THE REVISED MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF HOMELAND SECURITY AND LABOR CONCERNING ENFORCEMENT ACTIVITIES AT WORKSITES (May 16, 2016) – J, IS, PM, CE, CI, IB, PLC, TC

MEMORANDUM OF UNDERSTANDING BETWEEN DEPARTMENT OF JUSTICE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES AND THE DEPARTMENT OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (June 30, 2016). – PLC, C, RR, JP, CE, CT/P, IS, PM, CI, TC

U.S. DEP'T OF LAB., WAGE & HOUR DIV. & THE NAT'L LAB. RELATIONS BD., MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEP'T OF LAB., WAGE & HOUR DIV., AND THE NAT'L LAB. RELATIONS BD. (Dec. 14, 2016) – CI, CE, IS, PM, CT/P, E&O, PLC, C, RR, TC

2017:

U.S. DEP'T OF LAB., WAGE & HOUR DIV. & EQUAL EMP. OPPORTUNITY COMM'N, MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEP'T OF LAB., WAGE & HOUR DIV. AND THE U.S. EQUAL EMP. OPPORTUNITY COMM'N (Jan. 6, 2017) —IS, CI, CE, CT/P, E&O, PM, JP

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION U.S. DEPARTMENT OF TRANSPORTATION AND THE OCCUPATIONAL SAFETY AND HEALTH

ADMINISTRATION U.S. DEPARTMENT OF LABOR (Apr. 14, 2017) – R, IS, PLC, CT/P, IAR, CR, TC

INTER-AGENCY AGREEMENT BETWEEN THE U.S. DEPARTMENT OF LABOR (DOL), OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP) AND THE U.S. CENSUS BUREAU (USCB) TO PROVIDE GOODS AND SERVICES RELATED TO THE EQUAL EMPLOYMENT OPPORTUNITY CUSTOM TABULATION (EEO CUSTOM TABULATION OR EEO TAB) USING THE AMERICAN COMMUNITY SURVEY (ACS) 5-YEAR DATA FOR YEARS 2014-2018 (June 19, 2017) – IS, IAC, PM, IAR, IB, PLC, C, RR, CT/P, TC, CR

MEMORANDUM OF UNDERSTANDING BETWEEN THE WAGE AND HOUR DIVISION AND THE EMPLOYMENT AND TRAINING ADMINISTRATION OFFICE OF FOREIGN LABOR CERTIFICATION REGARDING EMPLOYMENT-BASED LABOR CERTIFICATION AND LABOR CONDITION APPLICATION DATA (Sept. 29, 2017) – IS, PM, CT/P, PLC, TC, CR

RESTORING INTERNET FREEDOM FCC-FTC MEMORANDUM OF UNDERSTANDING (Dec. 14, 2017) [not labor market-related]

2018:

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION IMMIGRANT AND EMPLOYEE RIGHTS SECTION AND THE DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION OFFICE OF FOREIGN LABOR CERTIFICATION REGARDING INFORMATION SHARING AND CASE REFERRAL (July 31, 2018) – R, IS, CE, CT/P, PM, IB, PLC, CI, PRC, J, TC, CR

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL TRADE COMMISSION AND THE DEPARTMENT OF VETERANS AFFAIRS (Nov. 29, 2018) [not labor market-related]

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THE U.S. DEPARTMENT OF JUSTICE – CIVIL RIGHTS DIVISION (CRT) REGARDING TITLE VII EMPLOYMENT DISCRIMINATION CHARGES AGAINST STATE AND LOCAL GOVERNMENTS (Dec. 21, 2018) – R, CE,

IS, RR, C, PLC, PM, CT/P, JP, TC

2019:

MEMORANDUM OF UNDERSTANDING BETWEEN THE CONSUMER FINANCIAL PROTECTION BUREAU AND THE FEDERAL TRADE COMMISSION (Feb. 25, 2019) [not labor market-related]

2020:

MEMORANDUM OF UNDERSTANDING AMONG THE U.S. DEPARTMENT OF LABOR, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, AND THE U.S. DEPARTMENT OF JUSTICE (Nov. 3, 2020) – IS, PM, C, CE, CI, PLC, IB, R, TC