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The Political Environment of Federal Rulemaking:  
An Analysis of Comment Submissions on Regulatory Outcomes

A thesis submitted in partial fulfillment of the requirement  
for the degree of Bachelor of Arts in Public Policy from  
The College of William and Mary

by  
Michael Robert Testa

Accepted for \_\_\_\_\_  
(Honors)

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Williamsburg, VA

May 3, 2017

# The Political Environment of Federal Rulemaking: An Analysis of Comment Submissions on Regulatory Outcomes

## Abstract:

*During the Obama administration, waves of new legislation upended regulatory environments in finance and healthcare. At the forefront of these changes were the federal bureaucracies tasked with adopting and implementing new rules based on the legislation. This thesis examines final rules published by the Securities and Exchange Commission and Department of Health and Human Services related to the Dodd-Frank Act and Affordable Care Act to determine which organized interests have an advantage during the notice-and-comment period required by the Administrative Procedures Act, what factors encourage agencies to change proposed rules, and how regulatory bureaucracies differ from public service agencies on these topics. The results indicate that biases towards particular types of commenters exist, but those biases differ across different types of agencies. Furthermore, coalitions of commenters are effective at achieving desired results in both types of agencies.*

By

Michael Testa

May 3, 2017

## Introduction

Political scientists have studied the role of interest groups for decades, and more recently, even the public has taken notice of crony capitalism. Despite the increased attention, very few researchers have examined how interest groups influence bureaucracies even though these agencies maintain a significant role in policymaking and affect most Americans' everyday lives. Unfortunately, this lack of oversight allows powerful interests to manipulate discretionary tasks performed by federal agencies. Previous studies account for these interests' relationships with well-known regulatory agencies such as the Environmental Protection Agency, the Occupational Health and Safety Administration, and the National Labor Relations Board, but these agencies all have one thing in common: they are regulators of powerful business interests. Academics give almost no attention to public service agencies even though these types of agencies frequently publish rules and have clientele who are acutely aware of these regulations (Golden 1998).

General differences exist between traditional regulatory bureaucracies and public service agencies which are worth considering. Traditional regulatory agencies generally restrict business practices using rules to promote general welfare and eliminate externalities. Product safety laws and environmental regulations are good examples. Alternatively, in a public service agency, rules often establish procedures for the implementation and administration of services such as healthcare, education, and infrastructure. Their clientele includes both intermediaries like states and organizations who administer services and the recipients of those services. The differences between rules providing services versus rules governing businesses likely leads to differences in who lobbies federal agencies, how stakeholders interact with federal agencies, and how federal agencies respond to these interests. Previously, very few studies have attempted to identify these differences and examine their effects on federal agencies.

To determine how organized interests influence public service agencies compared to traditional regulatory agencies, this paper focuses specifically on public comments submitted to rules published in response to the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the 2010 Affordable Care Act (ACA) by the Securities and Exchange Commission (SEC) and Department of Health and Human Services (HHS), respectively. Both the Dodd-Frank Act and Affordable Care Act significantly changed the regulatory environment, and therefore, present an optimal opportunity to examine how interests responded to these changes.

Three rules from each agency and the corresponding comments were examined. For each specific request within a comment, the commenter's position (either supporting or opposing the rule), the commenter's name, the type of commenter, the agency's response to that request, and a variable on the inclusion of evidence in the request were coded. With this information, two ordinary least squares regressions were created. In one model the dependent variable was measured by favorable outcomes; a variable measuring if the agency did what the commenter requested. In the second model, the dependent variable was the percentage of favorable outcomes in a rule proposal, or in other words, the percentage of requests the agency favorably responded to in each subsection of the rule. These regressions provide information regarding agency bias towards particular types of commenters, and how factors such as the consistency and number of commenters within a proposal affect rule outcomes.

In the following sections, I describe the rulemaking environment in the finance and healthcare sectors leading up to and immediately after Dodd-Frank and the ACA that make these laws and their related rules meaningful case studies. After that, I summarize the current literature on interest groups and the bureaucracy and theorize how public service agencies fit into current

theories. I then present an overview of the hypotheses, data, and methods that were used to collect, code, and analyze the data from the final rules and comments. Finally, I discuss the results from the data and suggest implications for future research and public policy.

### **Background on Dodd-Frank and the Affordable Care Act**

Early into President Obama's first term, work on the Affordable Care Act began while the country dealt simultaneously with the deepest financial crisis since the Great Depression. Though these events impacted different industries, they both would result in regulatory overhauls. By 2010, the Affordable Care Act and the Dodd-Frank Act were signed into law. As major pieces of legislation, these laws required significant changes and additions to existing rules. Consequently, both laws were heavily lobbied by interests, and many of those interests continued lobbying throughout the rulemaking process. However, to understand how these interests were affected, it is important to examine the previous regulatory landscapes in the finance and healthcare sectors.

Dodd-Frank upended a decades long pattern of deregulation in finance. Starting in the 1980s, financial regulators began deregulating the financial industry right as the industry was taking off. Banks became bigger, investments became riskier, and the finance sector's share of the economy grew tremendously (Hacker and Pierson 2007; Sherman 2009; Buffie 2016). Because of the lax regulation, the finance industry profited from policy drift as old statutes failed to regulate new products like collateralized debt obligations and credit default swaps<sup>1</sup>, and the regulatory agencies chose to let the banks, credit rating agencies, and market makers regulate themselves (See Commodity Futures Modernization Act and Voluntary Regulation Program at the SEC; Labaton 2008; Brush 2008; Sherman 2009). Agency capture followed suit as new laws such as the Gramm-Leach-Bliley Act of 1999 were enacted that allowed banks to merge commercial, investment, and insurance branches into one bank, while the regulatory agencies allowed for negligent industry developments. These policies fostered incentives to acquire short-term gains and make questionable decisions leading to systemic risk in the market. Then in 2008, that risk became reality when the stock market crashed, and the US economy sunk into The Great Recession. This prompted the government to create and pass the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, which restructured the regulatory agencies and pushed for increased accountability and transparency.

As a result of Dodd-Frank, the Securities and Exchange Commission along with other financial regulators were tasked with creating specific regulations to provide more oversight of asset-backed securities, credit rating agencies, and credit default swaps, which were all complicit in the financial crisis. Wilson (1989) defines bureaucracies like the SEC as entrepreneurial agencies in which interests are hostile to the mission of the agency. For this reason, the SEC's unique positioning as a low salience bureaucracy among the general public coupled with a well-connected and resourceful industry clientele make it a perfect example of "the regulatory bureaucracy" subject to agency capture (Nixon, Howard, DeWitt 2002; Macey 2010).

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<sup>1</sup> Collateralized debt obligations are financial products in which individual debts (car loans, mortgages, credit card debt, etc.) are aggregated and sold as securities to investors who receive payments based on the riskiness of the debt. Credit default swaps allow entities to "swap" various debts, interest rates, currencies, etc. through an intermediary eliminating the possibility of bilateral defaults. These relatively modern and advanced financial products contributed to the financial crises due to lax oversight of the riskiness of these products.

Furthermore, the SEC was one of the most affected agencies by Dodd-Frank because the law required the SEC to publish 86 rules, some of which brought previously unregulated entities into the SEC's domain (Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act 2016). With the threat of costly regulation looming, financial industries and trade associations increased their lobbying activity (Igan, Mishra, and Tressel 2012). Financial contributions to campaigns nearly doubled during this period, and undoubtedly, industries pushed their influence onto bureaucrats (Center for Responsive Politics 2016). The SEC's predisposition to agency capture and the looming costs for financial firms made these rules especially susceptible to a bias towards business.

The Affordable Care Act shook the healthcare industry just as Dodd-Frank affected the financial industry. However, the ACA was not passed in response to an unexpected industry crisis. The issues in the healthcare market including rising premiums and under coverage were well known years in advance, but finding a solution to these problems required overcoming political obstacles. The groundwork for healthcare reform began in the Clinton administration, which proposed a bill requiring employers to provide healthcare to employees through health maintenance organizations (Health Security Act 1993). However, negative advertising funded by conservative groups eventually prevented President Clinton's bill from passing due to concerns of complexity (Hacker 2008; McKay and Clark 2009). Republicans attempted to propose alternative bills requiring that individuals, not employers, purchase health care through individual mandates, but these bills failed to pass as well (McKay and Clark 2009). Nevertheless, the groundwork for reform was laid. Massachusetts was the first state to enact some of these provisions including an individual mandate and a state insurance exchange in 2006, which would later appear in the ACA (An Act Providing Access to Affordable, Quality, Accountable Health Care 2006).

By 2008, health care reform became a top political issue, and once President Obama was elected, the groundwork for the ACA was set in motion. Partisanship was a major obstacle, but eventually, the law was passed in 2010 on party lines. The law completely reshaped the healthcare industry. It expanded coverage through Medicaid, individual mandates, government subsidies, and insurance exchanges in addition to cutting health care costs through various cost programs and premium stabilization rules (Baker 2011). These considerable reforms impacted health care providers, insurers, and millions of healthcare consumers including employers who had significant stakes in the outcome of the law.

HHS was tasked with implementing the law, which included a variety of rules related to setting up federally facilitated health care exchanges, expanding healthcare coverage rules, and providing reinsurance payment and reporting requirements. In this case, the rules served to help administer and provide a public service rather than to regulate an industry.

In contrast to the SEC, HHS works in a high salience environment full of resourceful industry and consumer advocates all competing for favorable outcomes. Additionally, there are costs and benefits that are both dispersed and concentrated across various stakeholders. For example, covering pre-existing conditions leads to concentrated benefits for individuals with those conditions, but dispersed costs for insurers and all those in the insurance pool. Alternatively, the individual mandate, which requires individuals without health insurance to pay a tax, is a dispersed benefit for insurers who need to maintain premium costs, but a concentrated cost on those who do not have insurance. Therefore, regulations which include many specific proposals can elicit comments from many interested parties possibly diluting the influence of any one group of commenters. Wilson (1989) refers to this type of agency as an interest-group

agency where both high per-capita costs and high per-capita benefits are produced resulting in agency bias towards whichever side is most active in the debate.

Furthermore, because many of HHS' proposals deal directly with tangible benefits, HHS receives many requests to increase benefits rather than reduce costs, which also distinguishes it from the SEC. An agency will have less incentive to change a proposal if it will cost the agency money. The complex and dynamic nature of these comments and commenters likely results in HHS being unbiased towards any specific commenter (Olson 1965; Wilson 1989). Previously, very few studies have attempted to test this claim about public service agencies.

### **Interests Groups and the Bureaucracy**

In America's pluralist democracy, there are many venues to sway leaders beyond casting a simple vote (Baumgartner and Jones 1993). Interest groups have developed expertise in infiltrating these avenues and use them to their advantage. They provide information to policymakers, mobilize communities to act, and fund political campaigns, all of which change policy outcomes. This can oftentimes be healthy in a democracy since interest groups help invoke change, but when interests are disproportionate in resources, there is need for concern. Wealthier, more resourceful interests, like big business and powerful membership-based groups, can overwhelm majority preferences even when they are in the minority (Baumgartner and Leech 1998, 2001; Yackee and Yackee 2006). Likewise, grant recipients have been shown to skew the distribution of government funds and services through lobbying efforts (Arnold 1979; Rich 1989). Therefore, studying the role of these groups in the policymaking process can help inform policymakers, politicians, and the public when interests are out of balance.

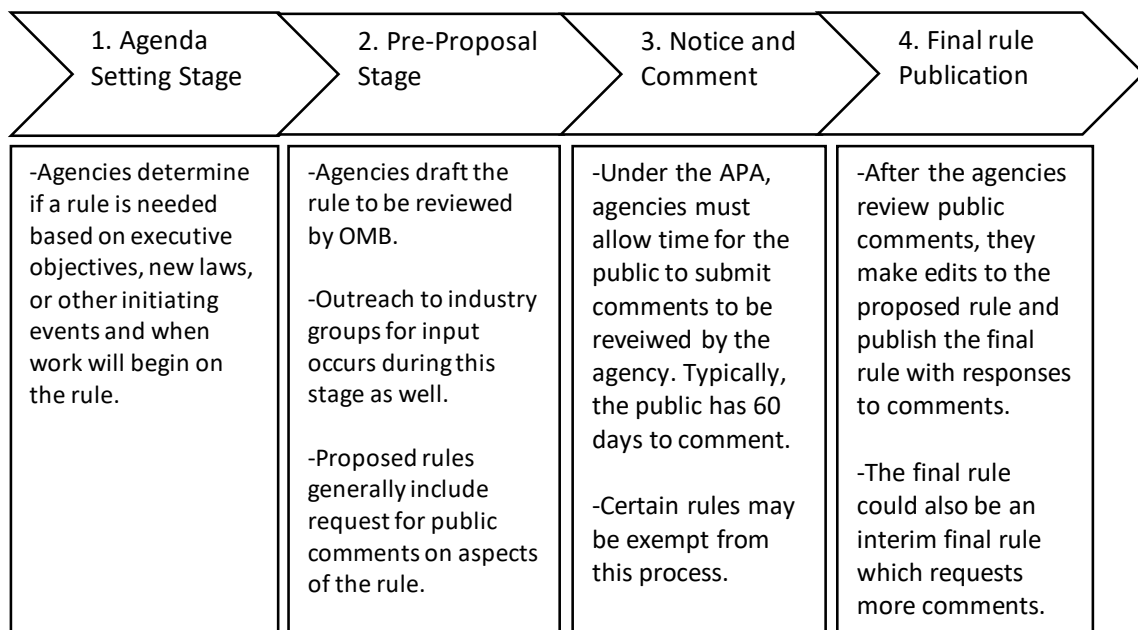
An abundant literature exists on the influence of interests on Congress, the presidency, and the courts. These studies have explained the avenues of influence and empirical studies have shown their effects. Previous research has shown that Congress is influenced through campaign contributions, informal issue networks, and lobbying (Smith 1984; Edsall 1988; Austin-Smith and Wright 1992; Smith 1995; Bonica, Igan, Mishra, and Tressel 2012; McCarthy, Poole, and Rosenthal 2013). Though theories have changed over time in regards to the magnitude of influence, most scholars agree that interests have some control over Congress. The presidency also is increasingly reliant on campaign contributions and frequently works with interest groups. Additionally, the presidency and executive branch officials often maintain networks with interest groups for consensus building and outreach (Scholzmann and Tierney 1986; Peterson 1992; Straus 2009). Finally, courts, though seemingly apolitical at the federal level, often are persuaded by amicus curiae briefs, especially those that come from the presidency's administration, which in turn, diminishes the credibility of the courts as neutral arbiters of the law (Caldeira and Wright 1988, 1990; Epstein 1994; McGuire 1998; Collins 2007).

While these studies made great strides in interest group research, they tend to omit one important and often overlooked branch of the government: the bureaucracy. The bureaucracies do more work than any other branch of government. They write and promulgate rules to implement laws and presidential directives, allocate federal grants and contracts, and enforce regulations often using their own administrative law courts (Kerwin 2007). These tasks are not minor affairs either. In 2014, over 75,000 pages of regulations were published and reports have shown that administrative law courts are becoming more common venues for court cases compared to federal courts (Choi, Gilley, and Marcus 2016; Eaglesham 2015; Regulatory Studies Center 2016). This makes the bureaucracies a very vital and significant part of the American government, and for that reason, they are exposed to many interests in addition to their political

overseers. Despite this, very few studies have examined these relationships and fewer have used empirical data.

It is well known that the bureaucracies are agents of the Presidency, Congress, and the Courts (Strauss 1984; Wilson 1989; Moe 1989). However, in addition to these principals, regulatory bureaucracies directly interact with interest groups and other external actors as well (Reenock and Gerber 2008). Kerwin, Furlong, and West (2010) proposed three traditional avenues of direct influence on bureaucracies. These are the agenda setting stage, the pre-proposal stage, and the comment-making stage. In addition, the enforcement behavior of bureaucracies can also be influenced by interests. Figure 1 describes this process.

**Figure 1: Overview of the Rulemaking Process**



In the agenda setting stage, bureaucracies set the agenda for the rules they plan to publish. Kerwin, Furlong, and West (2010) argue that there exist informal networks among leaders of the bureaucracies and interests that help to alter the agenda setting stage. Since grant recipients and business interests are immediately affected by regulation, they likely play a significant role in setting the agenda for new regulations when regulations are unclear or practices change (West and Raso 2013). Furthermore, members of Congress likely influence this stage as well by advocating on behalf of certain interest groups (Wilson 1989; West and Raso 2013).

The next stage of influence is the pre-proposal stage. In the pre-proposal stage, bureaucracies draft rules. When doing so, it is not uncommon for them to reach out to their industry clientele or consumer interest groups to determine what standards are appropriate in order to follow the objectives of their principals while also not imposing undue burdens on those they regulate (West 2004). Though this is an important and even necessary step, the extent of change that occurs during this period is relatively unknown among political scientists and public



administration scholars. However, many expect this influence to be significant (West 2004; Yackee 2012).

After the proposed rule is published, there is a period of time for interested parties to submit comments to request changes or offer support. This period is known as the notice-and-comment period and is the focus of this thesis. During this period, the general public attempts to change portions of the rule and prepare for any regulatory changes that will affect them. Once the comment period ends, the bureaucracy must review all the comments and summarize them in the final report. Any changes they make to the rule, must be noted as well. This requirement is mandated by the Administrative Procedures Act, and any failure to address this rule can result in judicial review. Furlong (1997, 1998) has determined that this is the most common form of participation in agency rulemaking.

Lastly, the final rule is published. It is generally reviewed by the Office of Management and Budget and Congress for final approval. Typically, the final rule goes into effect 30 days after publication, or 60 days thereafter, if the rule is deemed significant. Once the rule is in effect, bureaucracies will often enforce the rule themselves. Just like federal prosecutors, the bureaucracies have a lot of discretion to decide which cases to pursue and what charges or damages to claim (Park 2012; Eaglesham 2014). This discretion may lead to potential biases between regulated entities. For example, the SEC often allows those they prosecute to pay fines without admitting guilt, which is a discretionary choice on their part (Eaglesham and Ackerman 2013). The reasoning behind this, however, remains opaque. More research is needed to discover any effects of this bias.

As noted, this thesis focuses specifically on the notice-and-comment period. Though interest groups may exert significant influence during the pre-proposal and agenda setting stages, the notice-and-comment period provides observable changes from the submission of comments due to the Administrative Procedures Act. This allows for better data and empirical analysis. Despite this, few studies have looked at how comment submissions have affected agency rulemaking behavior. Studies that have approached this topic made important strides in creating methodology for analysis, yet most cover a wide range of regulatory agencies without focusing on specific regulated industries or significant regulatory events or time periods.

Golden (1998) conducted a descriptive study of comment letters of National Highway Traffic and Safety Administration (NHTSA), Department of Housing and Urban Development (HUD), and the Environmental Protection Agency (EPA). This study concluded that there was no discernable influence on the agencies from any particular type of commenter. While this study provided a framework for studying comment letters and comparing different types of agencies, it was limited mostly to descriptive analysis. Furthermore, the rules studied were all “typical rules” rather than salient rules to determine who participates in an average rule-making procedure.

Yackee and Yackee (2006) used comment letters to analyze 30 different rules over a period of 7 years to determine if a bias towards business exists in responding to comments. Previous literature suggests that businesses enjoy an advantage in the policymaking process (Schlozman and Tierny 1986; Baumgartner and Leech 1998). They find that business interests do have more potential to change regulation with consistency and strength in numbers. However, by focusing on the influence of business commenters on agencies that generally regulate businesses, Yackee and Yackee (2006) are not able to compare how different types of agencies, especially those that provide services, are influenced by different types of commenters such as consumer groups. Additionally, they attempt to study “average” rules instead of rules published during

periods of regulatory change. While there is merit to understanding a baseline level of influence over time, studying the extent to which commenters can influence bureaucracies by looking at high salience rules where industries undergo more intense lobbying efforts is also important.

Nixon, Howard and DeWitt (2002), instead of looking at actual comment letters, reviewed mentions of comments within final rules published by the Securities and Exchange Commission (SEC) in 1998. This method allows for a much more nuanced analysis because the mentions in the rule are linked directly to the agency's response. Furthermore, the APA requires federal agencies to review and respond to all comments, so the mentions of comments in the rule should be representative of the actual comment letters. The study found that business interests had no discernable advantages and that increased numbers of commenters did not increase the likelihood of rule changes, likely due to the SEC's bureaucratic expertise and culture of protecting investors.

While these previous studies and many others have made important contributions to the literature on interest group influence, they have focused almost exclusively on regulatory agencies that impose regulatory costs on businesses. This is likely because many organized interests tend to be business interests trying to reduce regulatory burdens by submitting comments that oppose strict regulation. However, not all regulations are intended to stymie business in the interest of the public. Many regulations dictate the rules which determine how public services are allocated and administered by federal agencies such as those distributed by the Department of Housing and Urban Development, the Department of Education, and of course, the Department of Health and Human Services.

Much like with grant-making, Congress will provide an authorization and a general outline for the provision of public goods, but bureaucrats will fill out the eligibility criteria and allocation mechanisms through the rulemaking process (Rich 1989). This level of decision-making makes it worthwhile for service/good-recipients to focus their lobbying efforts on bureaucracies in addition to Congress. Previous research has shown that grant recipients with experience in grant writing, lobbyists, or offices dedicated to writing grant applications are more effective in receiving grants (Pelisserro and England 1980; Cingranelli 1984). It is not a far stretch to imagine that these experienced players also evaluate and participate in the rulemaking process administering these programs.

Rules regarding public services often fall into two categories. The first category includes eligibility criteria and allocation procedures. These types of regulations determine who receives public benefits. For example, allocation could be based on "fair share" systems where money is allocated evenly or "worst first" type systems where money is distributed to the beneficiaries most in need (Chubb 1985). Additionally, certain criteria are often imposed on providers such as using only American goods to supply the benefits (Wilson 1989).

The second category is reporting requirements. These rules determine the types of reporting, both programmatic and financial, that the recipient must adhere to. They may also include auditing requirements and on-site visits depending on the program (Grants.gov n.d.). Both types of regulation can affect who will receive money and what costs they will bear if they do receive it. Therefore, many potential service/good recipients organize to lobby rules through the rulemaking process.

One way in which these organizations can lobby federal agencies to alter these rules is through comment submissions as previously discussed. Organizations that submit comments for these types of rules are trying to make the regulatory environment for acquiring funding or providing services more favorable instead of trying to reduce regulatory costs as business

interests often do. In the case of HHS, stakeholders often submit comments to expand eligibility criteria or reduce costs associated with providing healthcare.

## Hypotheses

Bureaucrats likely consider several factors when deciding to change a proposed rule based on comments. For the most part, they probably review the merits of a comment and the evidence supporting the commenter's position. However, other factors may be at play too. I expect that bureaucrats also consider attributes of the comments and the commenters themselves to determine which positions to align with. These attributes could include the type of commenter, previous relationships with the commenter, the number of commenters on a proposal, and the overall consistency of commenters positions. Previous research has tested these claims for regulatory bureaucracies and found that these types of attributes are statistically significant predictors of rule changes or outcomes (Golden 1998; Nixon, Howard, and DeWitt 2002; Yackee and Yackee 2006; Shapiro 2008).

Furthermore, since the SEC and HHS are different types of bureaucracies, they may also exhibit different types of bias. Since HHS acts as a public service provider, their comment letters and the agency responses to them may actually be quite different than those of the SEC. They are likely to include a broader range of commenter types since the ACA affected a broader range of stakeholders, and this may make HHS less receptive to any one type of commenter or perhaps more receptive to commenters outside of business interests. Based on this, I have developed five hypotheses to test which factors result in favorable outcomes for the commenters. Favorable outcomes are defined as an agency response that aligns with the commenter's request to either keep the rule the same or change the rule.

### *H1: More frequent commenters have more success achieving favorable outcomes*

Commenters who have sustained relationships with an agency probably have more influence when writing comments, since the agencies regularly work with these commenters and may even know individuals within the rulemaking agencies. Previous literature has suggested experienced grant writing agencies and agencies with more grant-writing resources are more successful in receiving federal funds (Pelisserro and England 1980). If this is true, then it is also reasonable to think that recipients with a history of commenting and ties to the agency may be more effective in changing proposed rules.

### *H2: More privileged commenters have more success achieving favorable outcomes*

Some categorical characteristics of the commenters may impact their influence such as their resources, expertise, and name recognition. For this reason, comments from trade associations, corporations, consumer advocate organizations, and states likely have more influence because these types of commenters have more resources, name recognition, and stakes in the rule outcomes than individuals or small entities.

### *H3: Number of comments increases the likelihood of favorable outcomes*

If the number of commenters on a proposal increases, the attention directed towards that proposal should also increase, thus increasing the likelihood of a change (Shapiro 2008).

*H4: Consistency of comments increases the likelihood of favorable outcomes*

As the percentage of commenters opposed to a rule increases, the agency may be more incentivized to change the rule due to a general consensus on the proposal and vice versa.

*H5: The SEC responds more favorably to interests than HHS*

Because the SEC generally writes rules imposing concentrated costs on the financial industry with dispersed benefits for the general public, they are more likely to suffer from agency capture than HHS, which has a much more dynamic cost/benefit relationship with stakeholders reducing the impact of any one particular commenter. Furthermore, HHS likely receives more comments asking for an expansion of their services, but they may have less incentive to do so due to budget constraints. This means that they may be less likely to produce favorable outcomes among all commenters.

### **Data and Methodology**

To test these hypothesis, I look at the mentions of comments within the final rules published by the Securities and Exchange Commission and the actual comments submitted to the Department of Health and Human Services. The scope of data was limited to rules published in the 113<sup>th</sup> session of Congress to control for any general differences that may exist over time due to changes in government officials and staff.

To determine the impact of organized interests on the SEC, final rules on Dodd-Frank published by the SEC in 2014 were reviewed. Consistent with Nixon, Howard, and DeWitt (2002) and Golden (1998), I restricted the study to one year of observations so that all rules were published under the same administration and SEC leadership. The SEC commissioners at the time were all appointed in 2013 and served throughout 2014. There were fourteen rules that were published in 2014, and seven of these rules requested comment submissions. Of these, three were coded and included in the study. Those that were excluded either did not include specific data regarding who the commenters were or contained too many comment mentions to code within the time frame of this study. With the remaining data, I coded 923 comment mentions within the final published rules.

Within these rules, there were generally subsections containing specific proposals. These proposals explained the proposed portion of the rule, provided an overview of the comments received on the proposal, and described the SEC's responses to the comments. Each of these proposals served as a broader unit of analysis for the individual comment mentions.

The proposals provided a very detailed analysis of the comments received. The SEC would typically mention how many commenters supported and opposed the proposal and then go into more detail about certain comments that were more specific and salient to the issue. The SEC included both comments that persuaded them to change the rule and comments they disagreed with. Figure 2 provides an excerpt from a proposal with comment mentions and the agency's response from the Nationally Recognized Statistical Rating Organization Rule published by the SEC that proposes separating sales and marketing functions of credit rating agencies from their ratings functions.

## Figure 2: Excerpt from a Proposal in the Nationally Recognized Statistical Rating Organization Rule Published by the SEC

Several commenters suggested that the requirements in the proposed amendment should be stronger.<sup>[307]</sup> Commenters raised concerns that the amendment as proposed would not prohibit managers from seeking to inappropriately influence credit analysts and the personnel who develop and approve rating procedures and methodologies.<sup>[308]</sup> For example, one commenter stated that the proposal could “be strengthened by barring NRSRO management from taking negative actions against analysts due to client complaints seeking better ratings, more lenient treatment of their products, or relief from providing information about a product being rated” and that such actions “inevitably lead to inaccurate and inflated ratings.”<sup>[309]</sup> A second commenter stated that the requirement needs to apply “more broadly to any action by any rating agency employee that has the intent or effect of allowing sales and marketing considerations, including concern over building market share, to inappropriately influence the rating process or undermine ratings accuracy.”<sup>[310]</sup> The commenter stated that this was necessary to address practices such as “basing analysts’ performance evaluations or compensation on their success in building market share, allowing investment bankers to influence the selection of analysts involved in rating their deals, and delaying revisions to rating models because of concerns about their impact on market share.”<sup>[311]</sup> A third commenter stated that motivations by management to increase profits and market share can lead to top-down policies and practices that emphasize higher credit ratings over improved accuracy and reliability.<sup>[312]</sup>

Other commenters suggested that the proposed requirement be less restrictive.<sup>[313]</sup> These commenters recommended, among other things, that the proposed amendment require procedures to manage the conflict,<sup>[314]</sup> or apply only when sales and marketing considerations “influenced” the production of the credit rating.<sup>[315]</sup>

□

After considering these comments, the Commission is revising the rule text to incorporate into the rule language that is both consistent with the statutory language and with the requirement in paragraph (a)(1)(iii) of Rule 17g-7<sup>[316]</sup> (discussed in section II.G.4. of the release), which would address sources of influence with respect to sales and marketing considerations in addition to persons involved in sales and marketing activities. Accordingly, the final amendment modifies the proposal to provide that an NRSRO is prohibited from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.<sup>[317]</sup>

Magat, Krupnick, and Harrington (1986) in a study on EPA regulations made the conclusion that major points in the original comments appear to be well represented in the Federal Register, so comment mentions are a useful proxy for actual comment letters, but can serve as more granular data when determining the specific changes made in response to comments. From a general overview, it appeared the SEC fairly represented commenters’ letters throughout the final regulations. In one rule, virtually all commenters were mentioned in the comment mentions while the other rules hovered around seventy-five percent representation in the mentions (Since comments often express very general positions or are not germane to the rule, usually not all comments will be referred to). Though this a crude measure, it indicates that

the agencies' comment mentions in the final rule are a useful proxy for the actual requests located in the comments.

Each comment mention almost always contained a footnote listing the specific commenters referenced and an explanation of the comment's content. This information was used to code the commenter name, type, and position. Only comment mentions that included a position on the proposal were included in the coding. To give an example, a comment mention such as "we received 10 comments based on this request" or "commenters asked for clarification on this issue" were not included because they did not express a particular position on the issue. However, comment mentions that indicated general support or opposition to the proposal were included as were more detailed comment mentions that included a description of the comment's reasoning and position.

For each comment mention, I coded the proposed regulation, the rule, the number of commenters determined by the referenced comments in the footnotes, the comment position measured by support or opposition to the current proposal, whether the comment mention included evidence or reasoning to support the comment position, who the commenters were, the type of commenter, whether or not the SEC changed the rule in the direction the commenter wanted or did not change the rule, and the text of the comment mention.

To analyze the impact of commenters on the Department of Health and Human Services, actual comment letters were used instead of comment mentions in the final rules. Though the Department of Health and Human Services referenced comments throughout the final rule, it did not specify who the commenters were. Therefore, actual comment letters were coded to gather this data. This methodology aligns more closely with the Yackee and Yackee (2006) study previously mentioned. The coding from both methodologies should yield comparable data given that comment mentions accurately represent the underlying comment letters as previously mentioned, and both the comment mentions in the final rule and requests within the comments themselves are similar units of analysis.

Three of the published HHS regulations in the period from 2013-2014 were coded and analyzed for commenter type. All of these rules were published under the same leadership at the Department of Health and Human Services and under the same administration. Rules that were specific to one topic were dropped in order to keep the analysis broad in scope. Only one rule, however, was coded for comment requests and agency responses due to the significant time involved in coding the actual comments. However, the complexity of the rule and diverse set of commenters allowed for a robust analysis. 755 comment requests were coded for 395 commenters. Many of these comments included individuals requesting an extension of the comment period, which was 30 days instead of the usual 60. There were also many commenters with substantive and specific comments. Overall, the rule was broad enough in scope that it attracted a variety of commenters on 83 different proposals to analyze. Figure 3 is a snapshot of an electronic comment letter requesting an extension of the comment period. Other comments included attachments with multiple pages of specific requests.

### Figure 3: An Example Comment Request from the Payment Parameters Rule Published by HHS

**Josephs, Joe**

This is a Comment on the **Centers for Medicare Medicaid Services (CMS) Proposed Rule: Patient Protection and Affordable Care Act: Benefit and Payment Parameters for 2014**

For related information, [Open Docket Folder](#)

Comment Period Closed  
Dec 31 2012, at 11:59 PM ET

**Comment**

You have not given the American public sufficient time to read, digest or respond to this proposed rule as required by the federal Administrative Procedures Act. I request that you extend the comment deadline by 60 days.

**Document Information**

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The structure of the rules themselves were very similar to the SEC regulations. They included a subsection of the rule asking for comments on a specific proposal, explained any changes that were adopted in the final rule, and addressed and responded to the comments they received. For each comment, the specific requests of the commenters were coded. I refer to these as comment requests. Based on the context of the request in the comment, the corresponding proposal could be located in the final rule and a determination could be made as to whether or not the final rule was changed in response to the request. For example, if a commenter requested in a comment letter that an employer should not have to offer multiple health plan variations on a federally facilitated exchange, that request could be traced back to a proposal in the final rule, and the rule would almost always address the specific request with a response. For commenters that did not refer to a specific portion of the rule, I coded the request as a general category rather than a specific proposal. Additionally, I did not code requests that simply asked for clarification or additional information on an issue to be consistent with the SEC data.

For each comment request, I coded the the rule, the comment position measured by support or opposition to the current proposal, whether the comment request included evidence or reasoning to support the comment position, who the commenters were, the type of commenter, whether or not HHS changed the rule in the direction the commenter wanted or did not change the rule, and the text of the comment request and HHS response. Table 1 includes an overview of the rules that were coded for the SEC and HHS, and Table 2 is a summary of the variables that were coded. These include dummy variables for favorable outcomes, evidence provided, frequent (repeat) commenters, and various types of commenters.

**TABLE 1: Overview of Rules Studied**

Agency	Regulation Name	Date Published	Topic	Number of comment Letters*	Rule Proposals	% commenters requesting changes (% Rule Changes in Response to Requests)
SEC	<i>Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities;</i>	9/8/2014	Establishes new regulations for "security-based swap dealers" and "major security-based swap participants"	36	14	76% Requesting Changes (36% Changes in Response to Requests)
SEC	<i>Republication Nationally Recognized Statistical Rating Organizations</i>	9/15/2014	Establishes new regulations for Statistical Rating Organizations	67	13	
SEC	<i>Asset-Backed Securities Disclosure and Registration</i>	9/24/2014	Disclosure, reporting, registration, and offering processes for asset backed securities	250	30	
HHS	<i>Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014</i>	8/12/2014	Fees for federal exchanges and national reinsurance programs; conditions for plans and states to set up exchanges	420	83	79% Requests Requesting Changes (17% Changes in Response to Requests)
HHS	<i>Medicaid Program; Increased Federal Medical Assistance Percentage Changes Under the Affordable Care Act of 2010</i>	4/2/2013	Federal Medical Assistance Percentage rates certain populations under states' Medicaid programs	813	N/A	N/A
HHS	<i>Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity</i>	3/12/2014	Regulations regarding the setup and operations of Basic Health Programs including transfer of funds to participating states and federal oversight	168	N/A	N/A

\*The number of comment letters posted on regulations.gov and the SEC website varied from the stated number of comments received in the final rule.



**Table 2: Summary Statistics<sup>2</sup>**

	HHS Variables			SEC Variables		
	Obs	Percentage	Std. Dev	Obs	Percentage	Std. Dev
Favorable Response	464	47.0%	0.500	885	56.0%	0.500
Evidence	744	40.0%	0.490	888	70.0%	0.460
Repeat Commenter	755	15.8%	0.365	923	48.3%	0.500
Association	755	9.1%	0.288	923	40.2%	0.491
Consumer Group	755	10.3%	0.305	923	73.0%	0.260
Government	755	6.1%	0.239	923	1.4%	0.118
Industry	755	6.2%	0.242	923	51.2%	0.500
Individual	755	31.1%	0.463	923	6.5%	0.247
International				923	2.8%	0.166
Academic	755	3.7%	0.189			
Legal	755	0.9%	0.096			
Health Care Industry	755	25.2%	0.434			

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<sup>2</sup> See Appendix for an overview of the coding methodology for these variables.

## Results

The data yielded a number of interesting findings, both descriptively and statistically, regarding commenter positions, agency responses, the distribution of commenters, agency bias, and the effect of commenter consistency on rules. The contrast between the SEC and HHS was substantial based on these metrics as well.

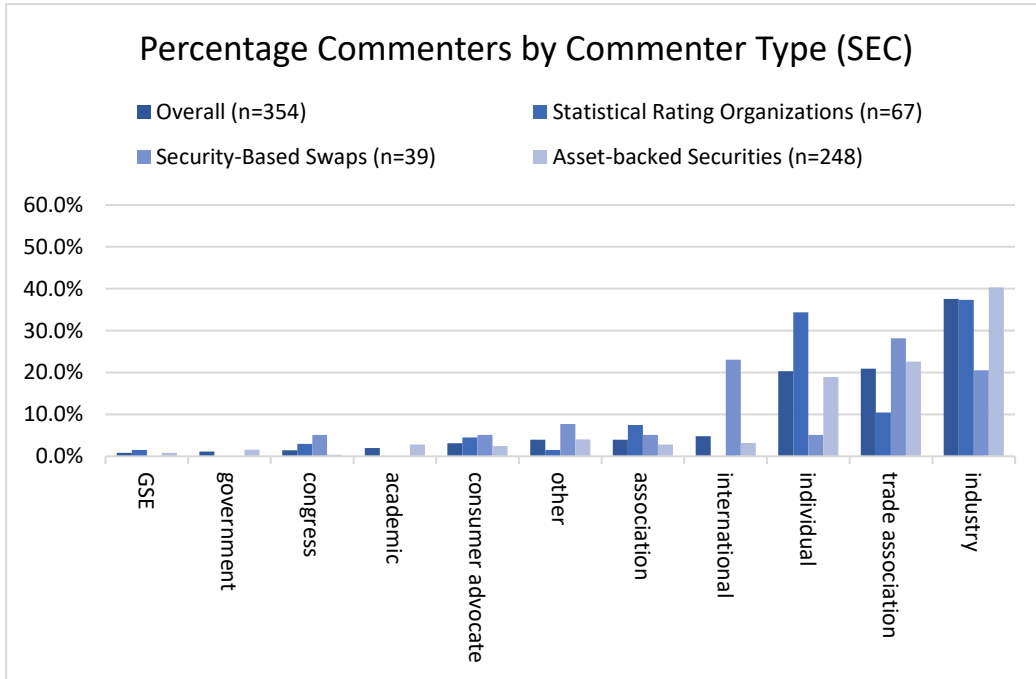
As previously mentioned, Table 1 displays the rules that were coded and a brief overview of each rule. The number of comments per rule ranged from 36 to 813. There were generally more commenters on HHS rules compared to the SEC rules, which is expected considering HHS has a broader range of stakeholders. Within each rule, the number of proposals ranged from 13 to 83, so all the rules covered a variety of specific proposals.

Overall, 76% of comment mentions on the SEC rules did not support the rule. In response to the requests, however, only 36% of the requests resulted in a rule change indicating that a little under half the requests for changes resulted in favorable outcomes. 79% of comment requests did not support HHS rules, which was surprisingly very similar to the SEC statistic. HHS, however, only responded to 17% of these requests; about half the response rate of the SEC, indicating that HHS is generally less likely to make changes to their rules. This is consistent with the hypothesis that as a public service agency, more requests involve expanding or increasing services, which would increase government spending, thus limiting the agency's ability to produce favorable outcomes for commenters. It is also possible that with a more robust interest group environment fighting over different outcomes, HHS may feel less pressure to change their rules.

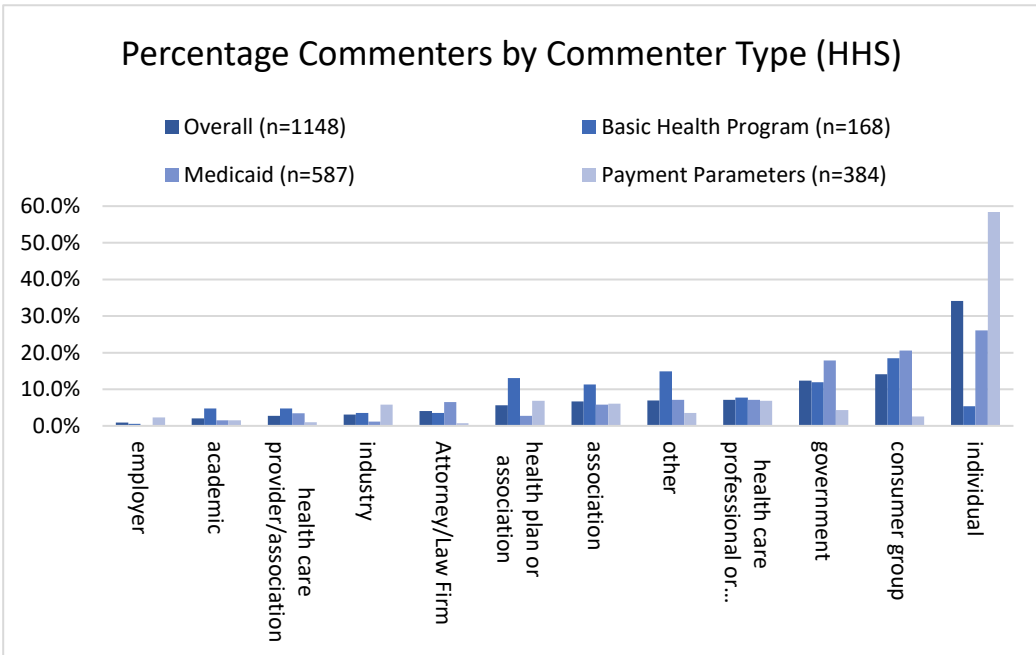
Figure 4.1 and 4.2 show how the interest group environments differ among HHS and SEC commenters. Overall, these distributions of commenters are consistent with the stakeholders of each agency. The SEC generally regulates businesses in the financial industry, so financial industry commenters and financial companies make up the majority of commenters. Industry and trade association commenters are the top commenter types, but individuals comment frequently as well. HHS creates rules that govern the implementation of health care services that affect insurers, health care professionals, states, employers, and individuals, and consequently, this broad array of stakeholders is reflected in the distribution of HHS commenters. Individuals, consumer advocates, and government entities comment the most frequently followed by various stakeholders in the healthcare industry.

There is some variation within the rules as well indicating that different rules attract different types of commenters. For instance, the SEC rule on security-based swaps drew in a lot of international commenters such as European and Japanese financial associations. Currencies can be traded in the swap markets so that could explain the spike in international commenters. Similarly, the Payment Parameters Program rule attracted many individual commenters and fewer government commenters compared to other rules. This rule established user fees for federally facilitated exchanges and helped to establish reinsurance, premium tax credit, and cost sharing reductions which affected the individual market for health care consumers. Many of the individual commenters on this rule were asking for an extension of the comment period from 30 to 60 days. Mass comments by individuals like these frequently appeared in the HHS rules which helps to explain why there were so many individual commenters. In general, commenters tend to focus their comments on rules that will have a direct effect on them.

**Figure 4.1**



**Figure 4.2**



Some commenters, however, seem to reappear from rule to rule in both agencies. WellPoint, Community Catalyst, Federation of American Hospitals, and Families USA commented on all three HHS rules. The American Bar Association, Americans for Financial Reform, American Securitization Forum, and a few others commented on all of the SEC rules. Repeat commenters are significant because if an organization frequently comments, an agency may trust that commenter more and pay closer attention to their requests. The SEC had more repeat commenters and a higher proportion of repeat commenters overall. 48% of comment mentions across the three SEC rules came from commenters who commented on 2 or more of those rules, whereas only 15.8% of HHS comment requests came from commenters who comment on 2 or more rules (See Table 2: Summary Statistics). This is a striking statistic indicating that the SEC has a larger base of frequent commenters. Because these commenters are consistently participating in the rulemaking process, it is possible that the SEC tends to favor their requests over others. The following model tests this claim.

Table 3 is a linear probability model using OLS that assesses how particular types of commenters, comment requests that include evidence (a dummy variable for data or relevant information provided with a request), and repeat commenters (a dummy variable for commenters that comment on two or more rules) affect favorable outcomes. Favorable outcomes are a binary variable measured by agency responses adhering to commenter requests. For example, if a comment request supported a proposal and the agency kept the rule the same, this would be coded as a 1 for a favorable outcome. If the agency changed the rule, a 0 was coded. Similarly, if a comment request or mention asked for a change to the proposal, and the agency changed the proposal accordingly, this was coded as a 1 for a favorable outcome. If the agency did not change the rule or changed the rule in a opposite direction to the request, this was coded as a 0. Two models were created; one for HHS and one for the SEC. The HHS model uses data from specific comments whereas the SEC model uses data from comment mentions in the final rule.

Though the model is not particularly sophisticated, it allows a simple distinction to be made about agency bias towards particular types of commenters and is easy to interpret as opposed to a logit or probit model. As a result, the model is not a great predictor of rule outcomes with an R-squared of about 9% for HHS and 2% for the SEC. But for a model using predominantly agency type to explain favorable outcomes, this is expected. Robust standard errors were also used to address heteroskedasticity in the model. Overall, both models were statistically significant.

For HHS, consumer groups and academics have statistically significant and positive correlations with favorable outcomes. If a comment request comes from a consumer group, the probability that there will be favorable outcome (favorable outcome =1) increases by 21%, and if a comment request comes from an academic, the probability of a favorable outcome increases by 23%. This is substantial premium on favorable outcomes for these types of commenters. Why this is the case is difficult to discern. It is possible that HHS may have a culture favoring the beneficiaries of its services rather than the industry it regulates. Academics may also provide a source of impartial opinions that HHS values. More tailored analyses are needed to determine the exact casual mechanism. Either way, these results indicate that the hypothesis that HHS will not be biased towards any particular commenter is incorrect.

Alternatively, government and individual commenters do not seem to achieve favorable results with HHS. If a comment request comes from a government commenter, the probability of a favorable outcome decreases by about 24%, and comments coming from individuals decrease the probability of a favorable outcome by a striking 39%. This is likely due to the fact individual

comments are less sophisticated and more general than other comments. Government commenters may not have as much success with HHS because state governments and local governments are less supportive of proposals. Only 10% of government commenters support rule proposals, and because HHS, overall, is unlikely to change a proposal, government commenters have worse outcomes. Other types of commenters did not produce statistically significant results perhaps because of the diverse set of opinions among the health care industry, associations, and business commenters leading to mixed results at the commenter type level.

In the SEC model, trade associations and industry commenters have statistically significant and positive correlations with favorable outcomes. This could possibly be due to the concentration and similarities of these interests acting on the SEC compared to HHS. If a commenter is an association, the probability of a favorable outcome increases by about 10%. Likewise, if a commenter is an industry commenter, the probability of a favorable outcome increases by about 9%. Though these magnitudes are relatively small, the results seem to support the hypothesis that the SEC exhibits a bias towards business.

Frequent commenters did not produce statistically significant results which seems to suggest that commenters who consistently comment on rules do not have a per se advantage over other commenters. Additionally, evidence does not have a statistically significant effect in the SEC model, but does have a statistically significant and negative correlation with favorable outcomes in the HHS model. Evidence is a dummy variable that measures the inclusion of data, examples, or extensive reasoning in a comment request or mention. Because of the simplicity of the measure, it is difficult to discern why this may be. It is possible that commenters citing evidence generally disagree with a proposal, and because HHS rarely changes their rules, there is a negative correlation.

The second model averages the favorable outcome data at the proposal level. The dependent variable is the percentage of favorable outcomes, and the dependent variables are the percentage of commenters supporting the proposal (Average Position), the average number of commenters providing evidence (Average Evidence), and the total number of commenters on the proposal (Number of Commenters). For the SEC data, the variables are weighted to account for the number of commenters on each comment proposal since a comment mention can reference multiple commenters. In other words, with the weighting, the dependent variable measuring support is the percentage of *commenters* supporting the proposal rather than the percentage of *comment mentions* supporting the proposal. The results are presented in Table 4.

For both agencies, a higher percentage of commenters supporting a proposal is statistically significant and results in higher average favorable outcomes. For every 10% increase in the percentage of commenters supporting the rule, there is an 7-8% increase in the percentage of favorable outcomes. Evidence is only statistically significant in the HHS model. A 10% increase in the percentage of comment requests with evidence results in a 3.3% increase in the percentage of favorable outcomes. Evidence is likely not significant for the SEC comment mentions because for the SEC data, the evidence variable was coded when the agency relayed that evidence in the final rule, not in the actual comment. That may have limited the true effect evidence in an actual comment may have had. Additionally, the number of commenters on a proposal was significant for the SEC, but did not make a meaningful difference to the percentage of favorable outcomes. This indicates that neither agency responds favorably to commenters based on the salience of the proposal measured by the number of commenters.

**Table 3: Regression Results for Agency Bias**

<b>Model 1</b>		
	<b>HHS Results</b>	<b>SEC Results</b>
	<u>Favorable Outcome*</u>	<u>Favorable Outcome*</u>
Evidence	-0.088 (0.049)*	-0.019 (0.038)
Repeat Commenter	0.005 (0.056)	0.041 (0.038)
Individual	-0.393 (0.106)**	0.024 (0.073)
Association	0.064 (0.105)	0.095 (0.044)**
Consumer Group	0.208 (0.095)**	-0.093 (0.073)
Government	-0.235 (0.106)**	0.169 (0.146)
Industry	-0.126 (0.110)	0.087 (0.043)**
Health Care Industry	0.010 (0.089)	
Academic	0.234 (0.127)*	
Legal	-0.087 (0.213)	
International		-0.106 (0.113)
Constant	0.508 (0.086)**	0.471 (0.051)**
Adjusted R-Squared	0.094	0.019
N	463	863
F(10,452)/F(8,854)	7.78	2.28
Prob >F	0.0000	0.0207

\*\*p<0.05, \*p<0.10

\*(1-favorable, 0-unfavorable)

**Table 4: Regression Results for Consistency and Number of Commenters**

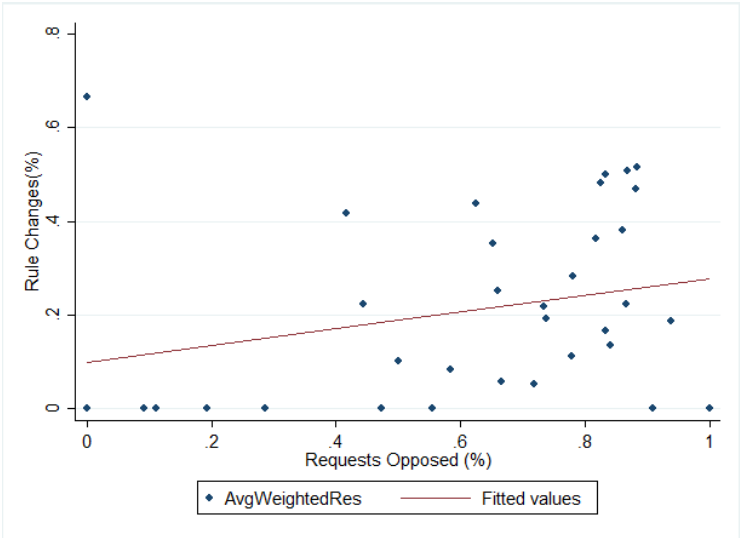
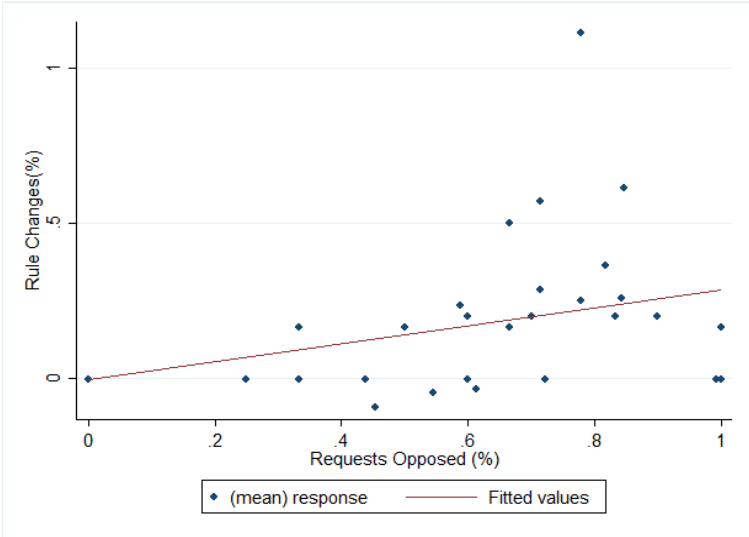
Model 2		
	HHS Regression Results	SEC Regression Results
	Favorable Outcome*	Favorable Outcome*
Average Position	0.802 (0.128)**	0.730 (0.094)**
Average Evidence	0.326 (0.140)**	-0.060 (0.087)
Number of Commenters	0.000 (0.000)	0.002 (0.001)**
Constant	0.02 (0.131)	0.273 (0.093)*
Adjusted R-Squared	0.63	0.65
N	29	35
F(3,25)/F(3,31)	127.61	26.65
Prob >F	0	0

\*\*p<0.05, \*p<0.10

\*(averaged over rule proposal)

Similar to increases in the percentage of commenters supporting a rule, there is a trend between increased opposition to a proposal and the percentage of rule changes. If more commenters are opposed to a proposal, the agency is more likely to change the proposal. Figure 5 is a scatterplot of rule proposals. The x axis represents the percentage of commenters opposed to a proposal, and the y axis represents the percentage of changes made in response to commenters’ requests. There is a positive correlation between the two. This finding indicates that stakeholders should try to build coalitions of support or opposition when commenting on a proposal to achieve favorable outcomes.

**Figure 5: Scatter Plot of Percentage Commenter Opposition by Percentage Rule Changes (Left-HHS, Right-SEC)**



## Conclusion

After Dodd-Frank and the Affordable Care Act became law, the Securities and Exchange Commission and the Department of Health and Human Services were tasked with implementing two major policy overhauls. The new laws undoubtedly caught the attention of organized interests and individuals alike who viewed them as either major costs or major opportunities. This thesis examined the effects that heightened salience had on how agencies respond to public comments, what factors influence those responses, and what biases the agencies exhibit toward commenters. Furthermore, by comparing the effects of comment types and comment-specific variables on rule outcomes between a traditional regulatory bureaucracy and a public service agency, this thesis has shown that not all bureaucracies are lobbied in the same way, and as result, they exhibit different types of biases towards their stakeholders.

Overall, privileged commenters like large businesses, consumer advocates, and associations with resources and staff dedicated to submitting comments were able to achieve favorable outcomes more so than other groups. HHS seemed to favor consumer groups whereas the SEC favored business interests. Surprisingly, frequent commenters did not receive any preferential treatment by either agency despite having an ongoing relationship with the agencies. This suggests that agencies may avoid the impulse to side with frequent commenters. The number of comments on a proposal, did not result in favorable outcomes for commenters either. Though agencies may still give more consideration to proposals with high salience, the number of commenters on a rule does not result in more favorable outcomes. The consistency of commenters, however, is a meaningful predictor of favorable outcomes. When a high percentage of commenters support a proposal, the agency is more likely to keep the proposal as is. This makes sense because an agency may tend to side with commenters that agree with them. However, if a high percentage of commenters oppose a proposal, the agency is also more likely to change the rule. In either case, these results show that interests have an incentive to build coalitions when commenting on rules to express a high level of support or opposition to a proposal in order to achieve results.

Beyond the general trends, a comparison between the SEC and HHS results showed a stark contrast between a traditional regulatory agency and a public service agency. HHS was less likely to change their rules, whereas the SEC changed their rules over twice as many times. Furthermore, the SEC and HHS had distinctly different distributions of commenters. HHS regulates a broad group of stakeholders including individuals, states, insurers, and providers of health care, which were all represented in the comments. Individuals, consumer groups, and government commenters commented the most. As a financial regulatory agency, the SEC's commenter base was more narrow, predominantly consisting of associations and industry commenters in the finance industry.

Testing for agency bias confirmed that the two types of agencies exhibit different types of biases towards commenter types. The SEC exhibited a bias towards its industry clientele of financial companies and associations, while HHS exhibited bias towards consumer groups and academics. This finding supported the hypothesis that the SEC has a bias towards business, but refuted the hypothesis that HHS would not be biased towards any particular type of commenter.

While these biases are important to consider, the type of commenter is not a good predictor of favorable rule outcomes, which indicates that other factors change agencies' minds about proposed rules. This is a reassuring finding. It may indicate that the SEC and HHS mostly change rules based on the context of a commenter's argument. If this is the case, then organized interests do not have a substantial influence over the SEC or HHS. Nevertheless, bureaucrats



should attempt to limit bias by adhering to professional standards and carefully monitoring their decisions.

Further research needs to continue expanding our knowledge of the bureaucracies and how they operate. Because this thesis only examines specific rules from a small sample of agencies over the course of two years, little can be said about the bureaucracy as a whole. By expanding the data across time and organizations and incorporating more robust models to analyze casual mechanisms, researchers can shed more light on what influences bureaucrats' decisions. And as time changes, so do bureaucracies, which will require a constant oversight of their operations and potential sources of influence. As the largest and arguably most integrated part of the government in our daily lives, understanding the bureaucracies are paramount to a high functioning society. Dedicating time to this research will not only ensure a better understanding of how bureaucracies work and how they can improve, but also shed light on their democratic accountability and ability to carry out their mission.

## Appendix: Coding Methodology

*Commenter Position:* This dummy variable measured whether a comment request or mention supported or did not support a rule.

- 0-comment request/mention doesn't support the rule
- 1- Comment request/mention supports the rule

*Agency Response:* This dummy variable coded the agency's response to a request and was used to determine favorable outcomes.

- 1-rule changes in opposite direction of commenter's request/mention
- 0-rule does not change
- 1-rule changes in favor of commenter's request/mention

*Favorable Outcomes:* A dummy variable measuring whether an agency response was favorable to comment request/mention.

- 0- Agency response was unfavorable to a comment request/mention (If a commenter supported the rule, and it was changed, or if a commenter opposed the rule, and it was not changed or changed in the opposite direction the commenter wanted).
- 1- Agency response was favorable to a comment request/mention (If a commenter supported the rule, and it was not changed, or if a commenter opposed the rule, and it was changed accordingly).

*Evidence:* A dummy variable measuring whether a comment request/mention had some reasoning, data, or example(s) supporting the commenter's position.

- 0-no evidence
- 1-some form of evidence

*Repeat Commenter:* A dummy variable measuring whether a comment request/mention came from a commenter who commented on two or more rules published by that agency or re-openings of comment periods on those rules from the dataset.

- 0-Comment request/mention came from a commenter who commented only once
- 1-Comment request/mention came from a commenter who commented more than once

*Type of Commenter:* Dummy variables for particular types of commenters.

- 0- comment request/mention did not come from a particular type of commenter
- 1- comment request/mention came from a particular type of commenter

*Individual-*Commenter was a single person

*Association-* Commenter was a trade or professional association, labor union, etc.

*Consumer Group* – Commenter represented consumer or public interests

*Government* – Commenter belonged to a local, state, or federal government

*Industry-* Commenter was a business or corporation

*Health Care Industry-* includes health care plans, associations, and professionals. The comment letters did not distinguish these categories so they were grouped together specifically for the HHS data.

*Academic-* Commenter was a think tank, professor, or academic institution

*Legal-*Commenter was an attorney/law firm

*International-* Commenter was an organization or government located outside the United States

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