

Inequality in Administrative Democracy: Large-Sample Evidence from American Financial Regulation

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Abstract

Studies in inequality in American democracy typically focus upon the legislative process, largely sidestepping administrative policymaking, where rules have the effect of law and where vast amounts of money and mobilization are involved. Drawing upon an original database of over 300,000 comments submitted to U.S. agencies under the Dodd-Frank Act, we document several patterns: (a) commenting is disproportionately concentrated among wealthier nonprofits but not wealthier for-profits, (b) wealthier organizations generally advance more sophisticated comments (though the disparities emerge differently for nonprofits and for-profits), and (c) comment influence is increasing in the wealth of the commenting organization. While finance is but one case study, its policies affect tens of millions of Americans and trillions of their assets. The results suggest that inequality in the legislative process is reinforced, if not magnified, in administrative government.

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1 Introduction

Studies of political inequality have revealed profound and durable patterns of disproportionate influence of wealthier citizens, which Gilens (2012) calls the influence of affluence. Critical work in American politics by Bartels (2008), Baumgartner (2009), Hacker and Pierson (2010), Gilens (2012), Skocpol (2004), and Schlozman, Verba, and Brady (2012), among others, documents ties between economic and political inequality. Relatedly, Piketty (2014) and others in economics and the social sciences have demonstrated rising capital-based wealth inequality over the twentieth century, especially in the United States (e.g., Saez and Zucman 2020).

These studies convey important lessons about inequality and policymaking, especially in the legislative realm of the U.S. Congress. Yet considerable policymaking also occurs in the regulatory and administrative state (Potter 2019; Kerwin and Furlong 2018; Haeder and Yackee 2015). Research suggests that firms spend hundreds of millions lobbying after a bill has passed, both in the legislature and in the agencies entrusted to implement the legislation (You 2017; “Strategic Proposals, Endogenous Comments, and Bias in Rulemaking” 2020). Legislators who receive more Corporate Political Action Committee money from companies are much more likely to lobby federal agencies on behalf of those companies (Powell, Judge-Lord, and Grimmer 2022). These rules are meaningful to the public, as well as to the courts. Through the writing of rules, agencies convert congressional intent into regulatory policies with real human and economic effects. In contrast to the wealth of literature on inequality in lawmaking, however, research on inequality in administrative democracy is sparse, especially when one considers the bureaucracy’s most powerful policy tool: rulemaking

(but see, e.g., J. W. Yackee and Yackee 2006). Given the scale and importance of bureaucratic policymaking and the large volume of data on business and interest group participation, rulemaking presents opportunities to study inequalities in policy influence (Carpenter et al. 2020).

When policymaking occurs in the administrative realm, do inequalities in the legislative process persist or morph? Are they magnified or reduced? In this expansive study of financial rulemaking, we draw upon a database of over 300,000 comments submitted to U.S. agencies tasked with implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (hereafter Dodd-Frank). Our data cover over eight hundred regulatory actions¹ such as proposed and final rules on 239 discrete rulemakings. The Dodd-Frank Act has the advantage of having spurred historically abundant and significant rulemaking activity and, correspondingly, significant mobilization of interests to shape those rules. Beyond its provision of granular data, however, financial policymaking offers another reason for studying inequality; finance is perhaps an unparalleled site of interaction between economic inequality and unequal democracy.

As an indicator of the stakes of these developments, consider how media reporting in 2017 illustrated the political priorities of those at the very upper end of the income and power scale in the United States. During that year, major newspapers documented high-level gatherings between CEOs and officials at the Trump White House. For our purposes, what’s interesting about these meetings is that the existing inequality literature would likely have predicted America’s wealthiest business leaders and allocators of capital would direct their lobbying at Congress or at the president in the hope of indirectly influencing congressional lawmaking. As two former financial regulators worried aloud in this case, however, the business leaders and their lobbyists were, instead, targeting the Dodd-Frank rules being written by federal agencies.

The idea that inequality has affected financial policymaking is far from new. Reports

¹We define a regulatory action as the publication of a proposed or final rule by one agency. For accounting purposes, we consider a joint rule issued by the SEC and the Federal Reserve as two regulatory actions.

of CEO meetings and financial lobbying on regulatory policy issues raise important yet unanswered questions: how can we know what various interests are asking for in regulation; how can we get a handle on whether they are getting what they ask for; and how can we measure what regulation is worth to them? And, perhaps most importantly, what do answers to these questions tell us about political inequality?

We provide an answer to these questions by drawing on an original database of financial rules and comments between 2010 and 2018. Each rule implemented a component of Dodd-Frank. While our data focus squarely on financial regulation—and the interests involved with its promulgation, this research has considerable breadth. For instance, it spans the rulemaking of multiple federal agencies, including independent agencies such as the U.S. Securities and Exchange Commission (SEC) and Consumer Financial Protection Bureau (CFPB), and executive branch units such as the Department of the Treasury. Overall, the data represent the most comprehensive effort to date to understand the role of inequality during financial rulemaking.

Measuring the wealth of participants in rulemaking is difficult, in part because the kinds of surveys available to Bartels (2008) and Gilens and Page (2014) are not available for participants in rulemaking data. Our analyses of wealth are limited to organizations, leaving aside many individual commenters. We find that wealthier organizations are more likely to comment (a pattern restricted to the nonprofit sphere); that conditioned on commenting, wealthier organizations offer more sophisticated comments (as detected in language); and that wealthier organizations' comments appear to move rules more (as measured by novel text reuse algorithms (see, Rashin 2020)).

As with the inequality literature pioneered by Bartels and Gilens and others, we are not in a position to comment on the substantive merit or welfare effects of these patterns. On some issues, legislators and administrators may listen to wealthier Americans and organizations because their wealth is correlated with the expertise or value of their information (McCarty 2017; Libgober 2020). Yet, in other cases, the disparities we document may reflect patterns

where unequal levels of access to power lead to policies that favor wealthier constituents, organizations, and businesses. We note that we are only documenting inequality in part of the policymaking process; our findings should be combined with observations drawn from the legislative policymaking process to provide a fuller—and more accurate picture—of how political inequality manifests across decision-making in America’s key political institutions.

2 Theory

2.1 Prior Research

The past two decades have witnessed an outpouring of social science research on inequality in the United States and other nations, with a focus on national-level policymaking. While several scholars concentrated on the structural and technological determinants of inequality (e.g., Goldin and Katz 2009; Piketty 2014), others examined the political realm itself as a place where economic inequality shapes political outcomes, which plausibly generates further economic and social inequality.

In his pioneering book *Unequal Democracy*, Bartels (2008) established an important empirical case for political inequality by showing, among other findings, that legislative voting patterns in the U.S. Senate disproportionately reflect the preferences of those individuals at the highest levels of the income distribution. Hacker and Pierson (2010) described a “winner-take-all politics” by which wealthier Americans improved and secured their economic prospects under both liberal and conservative political leadership while the prospects of middle- and working-class Americans stagnated. In *Affluence and Influence*, Gilens (2012) further systematized these findings on political inequality using an innovative combination of survey data and legislative voting records. A range of work following from these studies that support and refines these empirical patterns (see, e.g., Baumgartner 2009; Winters and Page 2009; Kelly and Enns 2010; Schlozman, Verba, and Brady 2012; Page, Bartels, and Seawright 2013; Gilens and Page 2014; Witko et al., n.d.). These studies mark critical innovations in

our understanding, not only of inequality but also of U.S. political processes themselves.

Because important policy decisions are made in administrative agencies, however, our collective empirical portrait of political inequality in America remains sorely incomplete. Put differently, policymaking does not stop in Congress. Many critical choices are made in the executive and administrative branches, in part because the legislature delegates policymaking authority to agencies (Epstein and O'Halloran 1999; Huber and Shipan 2002; Haeder and Yackee 2020), and, in part, because some agencies have acquired sufficient legitimacy and expertise as to gain deference in program initiation, interpretation and policy proposals (Carpenter 2001, 2010). Beyond this, it is well known that moneyed interests spend considerable resources in attempts to influence administrative and executive decision-making (Haeder and Yackee 2015; You 2017). These dynamics are often studied under the concept of regulatory capture (Carpenter and Moss 2013), yet few regulatory capture projects speak to questions of political inequality, and likewise, few studies of political inequality address issues of capture.

This is a major omission, particularly within the financial regulation space. Specifically, because financial policymaking affects the aggregation, accumulation, and disposition of wealth and income so directly, its plausible role in increasing inequality is large. Numerous experts in financial policymaking have discussed the idea that political inequality affects financial policymaking. For example, as the 2008 financial crisis unfolded, Johnson and Kwak (2010) and Kwak (2013) pinpointed industry influence in financial regulation, including during the Obama Administration, as one of the main culprits of both the crisis and what they saw as the American government's problematic response to it. In their view, the very necessity of regulators spending time with banks, combined with the status, sophistication, and resource differentials between bankers and their regulators, resulted in a convergence of the regulator's frames, assumptions, vocabularies, and methods towards those of the regulated industry. A different literature examines financial firms' lobbying behavior. For instance, Igan, Mishra, and Tressel (2011) find correlations between lobbying behavior and pre- and post- financial

crisis loan activity.

Other critical research sheds light on the revolving-door dynamics often present within financial regulation. This occurs when federal financial agencies hire those from the regulated sector, and/or those who work at these agencies leave to work in banks and non-bank financial firms (Lucca, Seru, and Trebbi 2014; “The Revolving Door and the Sec’s Enforcement Outcomes: Initial Evidence from Civil Litigation,” n.d.; Cornaggia, Cornaggia, and Xia 2016). Many scholars have examined the development of coalitions between financial and non-financial interests (Young 2012; K. Young and Pagliari 2017; K. L. Young, Marple, and Heilman 2017; James, Pagliari, and Young 2021). Using network analysis techniques, K. Young, Marple, and Heilman (2017) focused on past and current employment ties between select business firms and the SEC and found that greater direct and indirect ties increase the likelihood of the firm engagement with SEC policy decision-making.

What this literature currently lacks, however, are measures of financial industry influence during one of the most important venues for political lobbying—agency rulemaking. Rulemaking is a critical—but understudied—part of the American political process. While Congress routinely passes statutes, their implementation almost always requires federal agencies, staffed primarily by civil servants, to devise legally binding standards and procedures (i.e., rules) that make the legislation practically effective. This kind of agency policymaking is pervasive; in 2018, for example, agencies finalized over 3,300 rules.

Moreover, under the main statute guiding agency rulemaking, there is a process for the public to share their policy concerns directly with agency officials. That statute, the Administrative Procedure Act of 1946 (APA), requires federal agencies, including the agencies charged with implementing Dodd-Frank, to solicit public comments on their draft policy proposals (called Notice of Proposed Rulemakings, or proposed rules) and to consider any comments before issuing the agency’s legally binding rule (called Final Rules). Agency officials may or may not make changes to the proposed rule text based on the public comments—leaving open the possibility that the commenting process creates an avenue for unequal influence.

Given the potential impact of agency-issued regulations, those individuals, firms, and other organizations most affected often attempt to influence regulatory policy content.

Unequal levels of power and access to the government may be especially acute in financial regulation, where Congress tends to rely upon government agencies to develop key regulatory concepts and instruments, and in doing so, to carry out legislative intent. In fact, many of the most important deregulatory decisions of the past three decades in finance were made in administrative agencies, such as reductions in regulatory capital requirements and the deregulation of mortgage and other consumer loans (Engel and McCoy 2011). Even while ostensibly re-regulating the financial sector, Dodd-Frank handed considerable authority to federal financial agencies (Carpenter and Krause 2012; Carpenter and Moss 2013). For instance, the law contains over 300 provisions authorizing agency rulemaking, and each provision could result in multiple rules (Copeland 2010). Each rule yields a fresh opportunity for the financial industry (and others) to lobby the government agency for policy change.

The traditional literature from bureaucratic politics has often shied away from both questions of inequality of influence during rulemaking and questions of financial policymaking. An older literature by McCubbins, Noll, and Weingast (1987) through Balla (1998) examined rulemaking as an important venue of policymaking, often debating whether legislative institutions (i.e., Congress) could use the APA to control administrative agencies. Other high-profile research focused on the legislature's delegation decision while largely leaving unanswered how administrative agencies respond to new grants of policymaking authority in practice (Epstein and O'Halloran 1999; Volden 2002; Huber and Shipan 2002). Still, other work focused on the politics of agency decision-making in the areas of enforcement or permitting decisions but not rulemaking (e.g., Wood and Waterman 1994).

These patterns shifted when scholars began placing increased attention on the role of public comments during rulemaking and attempted to correlate the requests made in comments with regulatory policy change (J. W. Yackee and Yackee 2006; Yackee 2006, 2012, 2015, 2019; McKay and Yackee 2007; Nelson and Yackee 2012; Golden 1998; West 2004). This focus led

to advancements in our understanding of political inequality during the agency rulemaking process, but without a specific concentration on financial regulation.

For example, J. W. Yackee and Yackee (2006) asked whether business interests could, by commenting on proposed regulations, induce greater changes in proposed rules than non-business interests, and they observed that business comments better predicted subsequent changes to federal rules in their sample of transportation and labor regulations. Haeder and Yackee (2015) similarly focused on political inequality in rulemaking but within the U.S. Office of Management and Budget’s (OMB) review of important agency rules. They found more regulatory policy movement occurring during OMB review when business interests dominated other types of lobbying entities. Recent work has suggested a mechanism by which traditionally disadvantaged interests may combat business bias during rulemaking: band together to lobby in diverse coalitions (Dwidar 2021b, 2021a). However, these studies point to continued inequalities, including that only certain types of coalitions appear to hold policy influence over agency rules, including those that have greater financial capacity.

When we focus on the small subset of existing financial rulemaking studies, we uncover a more mixed portrait of the policy impact, if any, of inequality. As a result, these studies—which tend to focus on one rule or one agency—raise important questions for future scholarship. Ban and You (2019), for instance, studied lobbying and agency rulemaking on a sample of SEC rules after Dodd-Frank. They conclude that the “amount of resources” that an organization can devote to lobbying appeared to influence the likelihood that the SEC would cite the name of the organization in its Final Rule (p. 282). However, in contrast, Rashin (2020), who examined over 47,000 public comments to hundreds of recent SEC rules, found that organizational resources do not appear to be correlated with the commenter’s efficacy in securing policy changes. Instead, he demonstrated that other factors, including the amount of data provided in the comment, were more closely related to regulatory modification.

Similarly, Krawiec (2013) studied public participation patterns early in the rulemaking process in section 619 of Dodd-Frank—commonly known as the Volcker Rule. She found

that comments from financial institutions and industry were often detailed, complex, and lengthy during the pre-proposal stage, while other commenters—who generally favored stricter regulation—often signed on to form comments or provided feedback that lacked the type of specificity and detail agencies needed to change policy. Yet, Ziegler and Woolley (2016) reached a different conclusion. When focusing on macroprudential supervision and derivatives trading rules, they were more optimistic that non-industry group participation was actionable—and potentially influential—on Dodd-Frank regulatory content. Specifically, Ziegler and Woolley concluded that small advocacy groups tended to prevent industry domination in the financial regulation space.

Gordon and Rosenthal (2020) demonstrated that a diverse coalition of actors could come together to counter the role of larger and more established regulated entities—in their case, in the area of credit risk retention regulation in the post-Dodd-Frank environment. As a result, their work, like Ziegler and Woolley’s, suggested a more complicated explanation than traditional regulatory capture accounts. In doing so, it aligned with Nixon, Howard, and DeWitt (2002) older analysis of SEC rule changes, which did not suggest a severe bias toward what they called “privileged” interests. That said, other research points to the difficulty of diverse and non-industry coalitions coming together. K. Young and Pagliari (2017), for instance, found that such coalitions may not form with great frequency in the financial sector; their research demonstrated that the voices outside the affected firms were less likely to mobilize, especially when the regulation is technically complex.

In sum, the existing literature yields mixed results on the question of political inequality and thereby leaves open critical questions about the plausible effects of firm behavior upon regulatory policymaking in the financial regulation space.

2.2 Hypotheses

Overall, our theory leads us to anticipate that among both for-profit and nonprofit organizations, wealthier entities will comment more often, with greater sophistication and with

greater influence. These intuitions yield several hypotheses:

H1. Mobilization of Expertise Wealthier entities will utilize greater expertise and sophistication in their comments. Large financial firms and bank-holding companies will comment separately (and in addition) to trade associations and other nonprofits. When they do so, their comments will differ from their trade associations' comments in observable ways. Large financial firms will marshal legal and technical expertise disproportionately to write complex and sophisticated comments to rules in which they are interested. We expect them to be more highly sophisticated, reflecting greater legal expertise, and more technically supported. Large financial firms may also marshal different mixtures of lobbyists and legal experts in their comments, drawing upon ties to lobbying firms and to other financial institutions.

Our first hypothesis poses testable assertions about the strategies of commenting upon which different organizations rely.

- *H1.* Organizations with more resources will use more technical and legal language when commenting on proposed rules.

Second, our theory leads to expectations about variation within the population of organizations that comment on proposed policies.

H2. Differential Participation We theorize that larger and wealthier financial sector interests will participate more frequently in consumer protection, labor, public interest, and smaller financial groups. This differential commenting behavior leads some organizations to be more influential than others. The legal and technical complexity of rulemaking processes may create financial barriers to participation, with unequal levels of participation leading to unequal influence. Specific, testable assertions include:

- *H2* Overall, the organizations that comment on more rules will be wealthier than organizations that comment on fewer rules.

- *H2.1* Nonprofits with more assets will comment more frequently than nonprofits with lesser assets.
- *H2.2* Among nonprofits that participate in financial rulemaking, nonprofits with more assets will comment on more proposed rules.
- *H2.3* Firms with more assets will comment more frequently than firms with lesser assets.
- *H2.4* Among firms that participate in financial rulemaking, firms with more assets will comment on more proposed rules.

Our second set of hypotheses extends existing research to the financial regulation arena but does so in a particular way. One expectation from J. W. Yackee and Yackee (2006) and related work is that industry comments, in general, will move rules more than non-industry comments. Yet because any industry, not least the financial industry, is composed of companies smaller and larger, as well as wealthier and poorer, we seek to understand whether larger and wealthier firms have more commenting influence than do smaller firms. In general, we seek to understand if wealthier organizations are more influential.

H3. Differential Commenting Influence

- *H3.* The comments that suggest language identical to language added to the final rule will be from organizations that are wealthier than the organizations that submitted comments that are less aligned with the changes made to rules.

Finally, we link the first and third sets of expectations with hypotheses about our proposed mechanism of influence: legal and technical sophistication. We theorize that organizations with more resources are more influential because they have the capacity to produce more sophisticated comments and that more sophisticated comments are more influential.

H4. The Dividends of Sophistication.

- *H4.* The language suggested by comments with more legal and technical language will be more likely to appear in text added between draft and final rules.

3 Data

To study of participation in financial rulemaking draws together numerous data streams. Our sampling frame for Dodd-Frank rules was based on prior work by the law firm Davis Polk LLP, which maintains a tracker for regulatory actions under the Dodd-Frank Act. This tracker was scraped throughout 2017 and early 2018 while we collected other data about these rules, most importantly tracking down the web location of dockets and their rule texts. Our final set of rules covers the set of Dodd-Frank rules after enactment on July 20, 2010, and before July 8, 2018, the date when our outside data collection reached currency with Davis Polk’s tracker, and we, therefore, ceased additional collection.

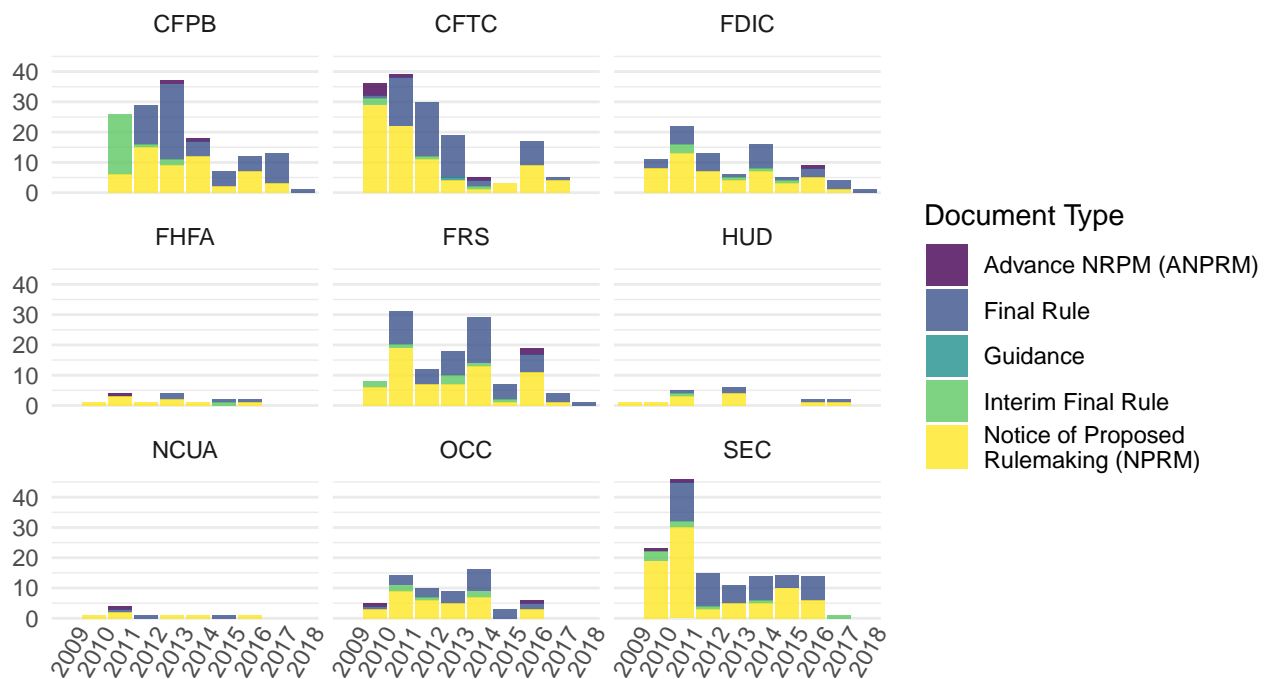
3.1 Rules

Rulemaking involves a series of related regulatory actions. Figure 1 shows policy the number of actions that key agencies took to implement the Dodd-Frank Act from 2009 to 2018. These actions include advance notices of proposed rulemaking (ANPRMs), proposed rules (NPRMs), interim rules, final rules, and others. Multiple of each kind of action may appear in some rulemakings, but none necessarily appears in any rulemaking. The range of possible action sequences creates semantic challenges for social scientists. Defining operationally how many rules were made or in the making by financial regulators sometimes requires complex choices. In our study, we define a “rulemaking” (or “rule”) as a set of regulatory actions that are connected via shared Regulation Identifier Number (RIN).² Using this definition, we found that between 2010 and July 8, 2018, there were 239 rulemakings by 21 regulators involving 802 regulatory actions. Some agencies, like the Department of Veterans Affairs, were not involved in more than a small number of rules. When they were, they usually engaged in a

²RINs are assigned by OIRA to (almost) all actions by each agency and are usually preserved through rulemaking. We consider two RINs to be “directly connected” if there is a regulatory action (i.e., a document like a proposed rule) where those RINs appear together. Two RINs are “indirectly connected” or more simply “connected” if there is a way to start from one RIN and go from direct connection to direct connection and eventually arrive at the other RIN.

collaborative fashion with other agencies. Therefore, for the purposes of collecting data on comments, we focused our attention on the primary financial regulators: the Federal Reserve, the Consumer Financial Protection Bureau, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the National Credit Union Administration. For each Dodd-Frank rulemaking that reached the stage of a proposed or final rule, we collected draft and final policies from the Federal Register.

Figure 1: Dodd-Frank Act Implimenting Actions by Agency, Including the Consumer Financial Protection Bureau (CFPB), Commodity Futures Trading Commission (CFTC), Federal Reserve (FRS), National Credit Union Administration (NCUA), and Securities and Exchange Commission (SEC)



3.2 Comments

The authors and research assistants scraped all available public comments from each financial regulator’s website or regulations.gov for all Dodd-Frank rules. In doing so, we collected key metadata include the name of the individual and organization submitting comments and the date of their submission. We used the open-source software tesseract to OCR comments that were not machine-readable on the Open Science Grid computing cluster.

We then collected data about the relative resources of potential participants in rulemaking and matched these data to organizations that submitted comments. Given the varied types of organizations that participate in rulemaking (including small nonprofits and large corporations), no single database contains data on the resources available to all types of participants. However, we were able to systematically collect data on organizational resources for particular types of organizations.

Following (“Strategic Proposals, Endogenous Comments, and Bias in Rulemaking” 2020), we collect information on public companies listed on U.S. exchanges during this time period and gather commonly reported financial data, for example, market capitalization from the Federal Deposit Insurance Corporation (FDIC). Compustat and Thomson Reuters from the Wharton Research Data Service. From the Compustat data, we selected a key measure of corporate size: the firm’s total assets, which represents a company’s reported assets and liabilities. For bank and bank-like entities that report to the Federal Financial Institutions Examinations Council (FFIEC), we also collected a measure of their total assets under management.

To capture the resources of nonprofit organizations that do and do not engage in financial rulemaking, we download all Internal Revenue Service (IRS) reports from nonprofits from 2012, the midpoint of our study period. We also collect data on Political Action Committee (PAC) donations and lobbying expenses from companies profiled by the Center for Responsive Politics using the Center’s bulk data files.

Finally, we use a probabilistic matching algorithm to match comments to organizations in these databases. First, we identified comments that were likely from an organization, excluding those that were likely from an individual or public pressure campaign (“mass comments”). Each of the remaining comments was then linked to the organization with the best matching name (or no organization, where the matching algorithm did not identify any high-probability match in any of the datasets discussed above). The vast majority of comments that we did not match to an organization were submitted by individuals and thus

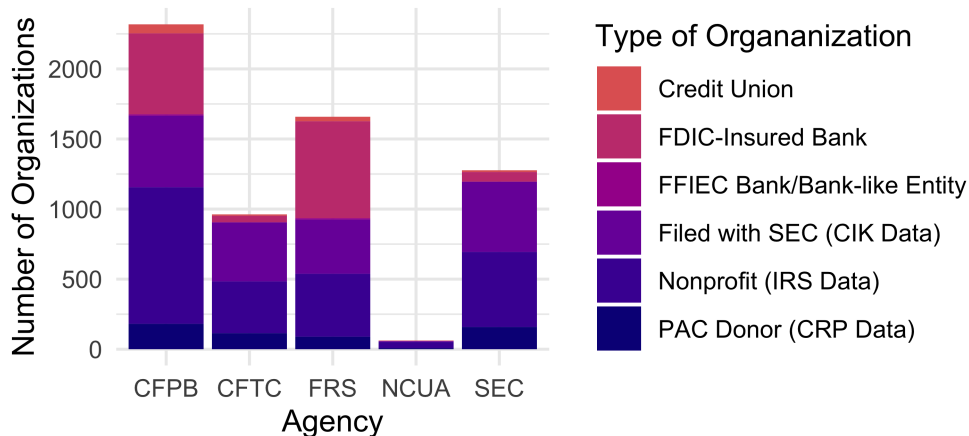
beyond the scope of this study.

Our main dataset thus includes all comments that matched to either an FDIC-insured bank, a bank or bank-like entity that reports to the FFIEC, an organization that reports to the SEC, additional companies that appear in the Compustat database, and or an IRS compliant nonprofit organization. To some degree, these categories may overlap. For example, some but not all banks are publicly traded. Credit unions are a class of nonprofits that also report to the FFIEC. At the same time, each data source delimits a category of related entities that plausibly constitutes a sampling frame for making relevant comparisons.

This new dataset includes financial data on over 3,500 distinct organizations that submitted 21,589 unique comments on the Dodd-Frank rules in our database.

3.3 Types of Organizations

Figure 2: Number of Organizations by Type and Agency to which they Commented, Including the Consumer Financial Protection Bureau (CFPB), Commodity Futures Trading Commission (CFTC), Federal Reserve (FRS), National Credit Union Administration (NCUA), and Securities and Exchange Commission (SEC)



Because each database contains qualitatively different types of organizations, we can compare patterns of commenting within each type and across types. This is what we do in the next section. The remainder of this section describes the distribution of these data, which are not equally distributed across agencies, rules, and commenter types. Figure 2 shows the

number of unique commenting organizations matched to each database by the agency or agencies to which they submitted comments.

Across all agencies except for the Federal Reserve (FRS), the majority of commenting organizations are nonprofits. The next most common federally-insured (FDIC) banks. Organizations that report to the SEC (CIK) and donors to PACs were less common.

Figure 3: Number of Comments by Authoring Organization Type and Agency, Including the Consumer Financial Protection Bureau (CFPB), Commodity Futures Trading Commission (CFTC), Federal Reserve (FRS), National Credit Union Administration (NCUA), and Securities and Exchange Commission (SEC)

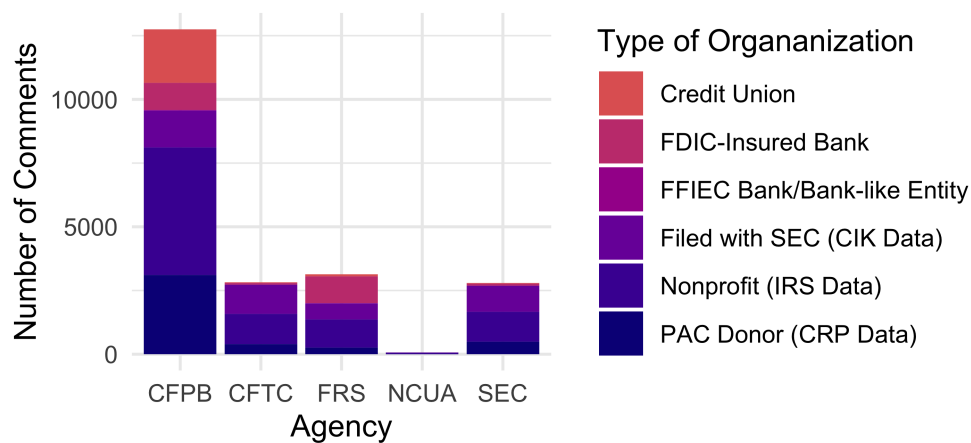


Figure 3 shows the number of comments submitted to each agency by an organization matched to each database described above.

4 Results

In this section, we test our hypotheses about wealth and access to the policy process using two broad sets of comparisons. First, we compare organizations that did and did not comment on Dodd-Frank rules. Because our data included data on a full population of similar organizations that could submit comments (e.g., all FDIC-insured banks and all tax-exempt nonprofits), only some of which matched to one or more comments, we are able to compare commenters to similar organizations that did comment—for example, FDIC-insured banks that did and did not comment. Second, we assess our hypotheses within the population of organizations

that did comment. These analyses give us even more certainty that we are comparing similar organizations with similar interests—all commented on at least one Dodd-Frank rule, but some commented more frequently, with more sophisticated language, and addressed comments to more agencies than others. Moreover, phrases from the texts of some comments are much more likely to be added to final rules than others. We explore whether each of these types of variation is related to wealth.

4.1 Variation Across Commenters and Non-Commenters

First, we compare levels of resources among commenting organizations and similar organizations that did not comment.

4.1.1 *Commenting is disproportionately concentrated among wealthier nonprofits but not wealthier for-profits,*

Figure 4: Financial Resources of Organizations that Did and Did Not Comment

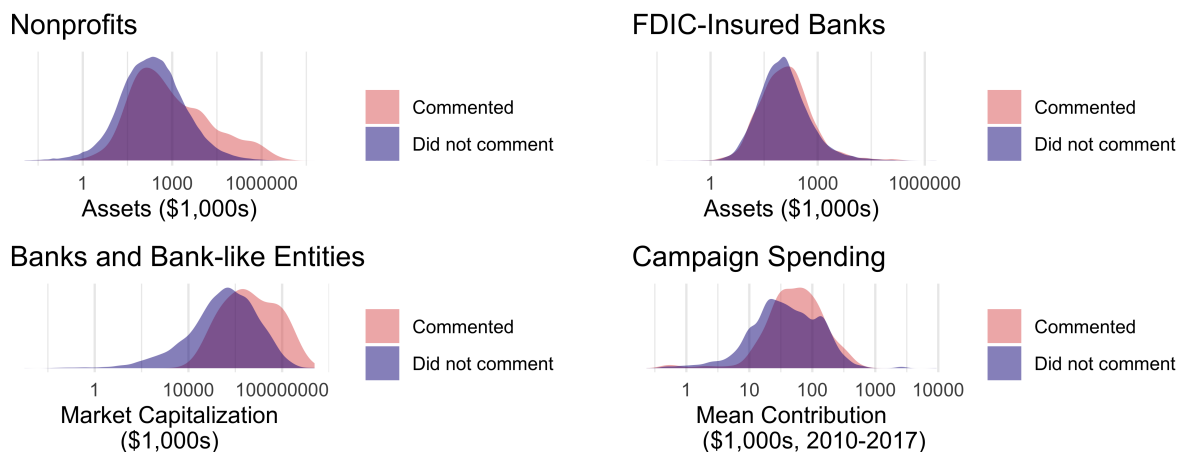


Figure 4 shows the distribution (on a log scale) of organizations’ financial resources for commenting organizations that matched in our comment database compared to other, similar organizations. The top left panel in Figure 4 shows that nonprofits that comment on proposed financial regulations tend to be significantly better-resourced than we would expect from a random sample of nonprofits. The average nonprofit that did not comment has about \$7.5

million in assets, whereas the average nonprofit that did comment has \$74.1 million in assets, ten times larger. This supports the *Differential Participation* Hypothesis (H2), specifically H2.1.

In contrast, the top right panel in Figure 4 shows that large (FDIC-insured) banks that comment on proposed financial regulations are not significantly better-resourced, on average, than we would expect from a random sample of large banks. The x-axis shows assets in the (in hundreds of dollars). This does not support the *Differential Participation* Hypothesis (H2), specifically H2.3.

While most firms in our data were banks that matched in the FDIC database, other commenting firms that matched in the Compustat database differed more from their peers than FDIC-insured banks. The bottom left panel in Figure 4 shows that banks and bank-like entities that file with the Securities and Exchange Commission that comment on proposed financial regulations are better-resourced than we would expect from a random sample of these organizations. The bottom right panel in Figure 4 shows that organizations profiled by the Center for Responsive Politics (generally, those that donate to Political Action Committees) that comment on Dodd-Frank rules are better-resourced than we would expect from a random sample of political donor organizations. This aligns with the *Differential Participation* Hypothesis (H2), specifically H2.3. However, this difference is fairly small: the average campaign spending per 2-year cycle was \$80.1 thousand for donors organizations that did not comment, and the average for a donor organization that did comment on a Dodd-Frank rule was \$83.4 thousand.

The main takeaway from this analysis is that resources are correlated with the commenting behavior of nonprofits but not large banks. That is, wealthy nonprofits are represented more than less wealthy nonprofits. Additionally, campaign donations are correlated with commenting on Dodd-Frank rules.

4.2 Variation Within Commenting Organizations

4.2.1 Number of Rulemaking Dockets

Figure 5: Frequent and infrequent commenters (By Percentile of the Number of Dockets on which the Organization Commented) by Resources (Log Scale)

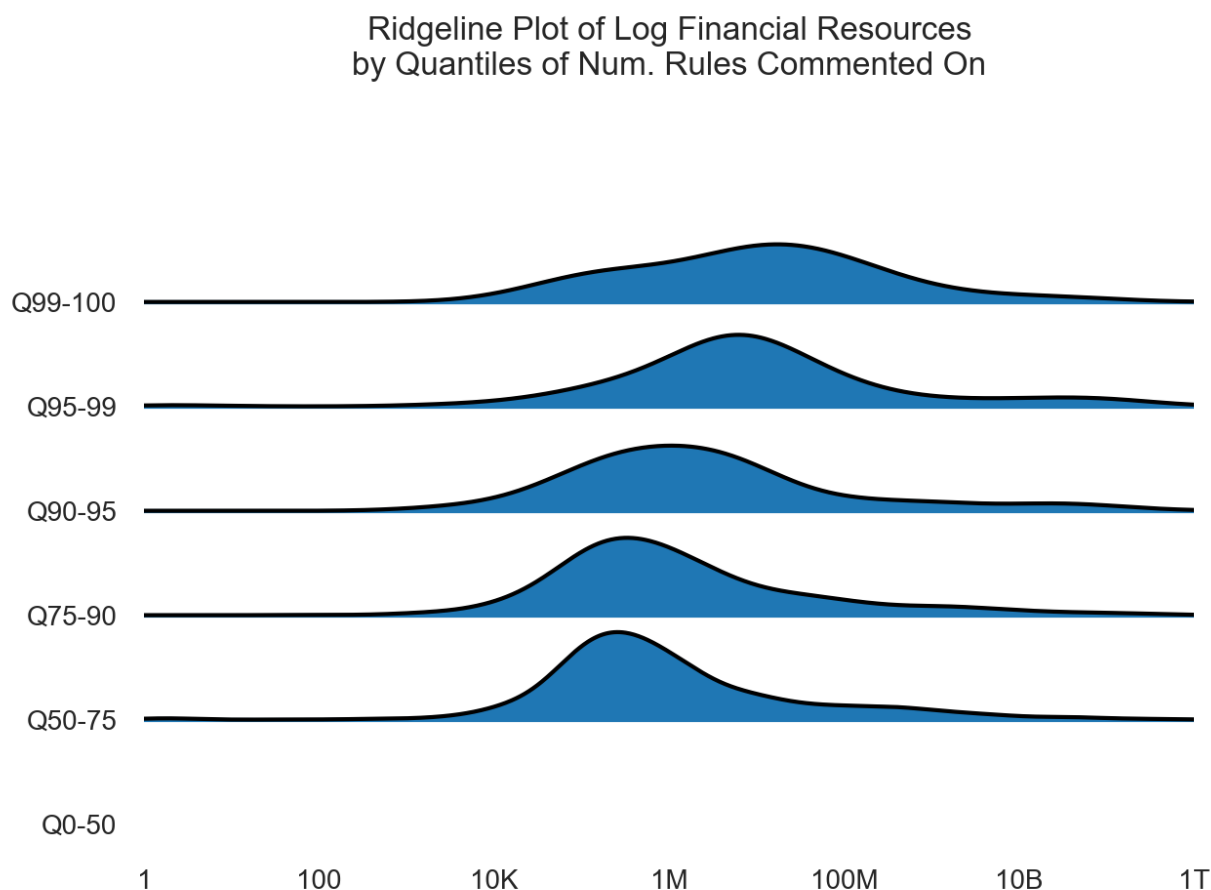


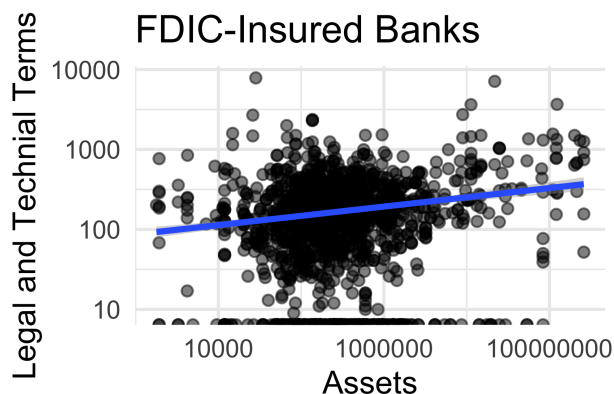
Figure 5 shows that organizations that comment on more rulemaking dockets tend to be wealthier.[^] [Note that this does not necessarily imply that wealthier organizations submit more comments. Many wealthy organizations only submit one comment on a docket, where other organizations may submit many comments on the same rule. For example, Axxess Financial (a payday lending company) and Advance Financial (a credit union) both mobilized over 1000 comments from their stores on the Consumer Financial Protection Bureau’s Payday Loan Rule. These are not the wealthiest organizations. More specifically, it shows that organizations

that comment infrequently are more likely to have less financial resources (less than a million dollars in assets). In contrast, the top five percent of the most frequent commenters tend to have well over ten million dollars in assets. Organizations in the top percentile of most frequent commenters have assets closer to 100 million dollars on average. A substantial share of organizations that are in the top ten percent of most frequent commenters have over \$10 billion in assets, while only a tiny share bottom fifty percent of commenters have that level of wealth. In line with Hypothesis 2.5, frequent commenters tend to be wealthy organizations.

4.2.2 *Wealthier organizations are more sophisticated at lobbying*

Wealthier organizations generally advance more sophisticated comments. This aligns with the *Mobilization of Expertise* Hypothesis (H1). Figure 6 shows that comments from wealthier organizations tend to include more technical language. Specifically, it shows that FDIC-insured banks with more assets use more legal and banking terms.

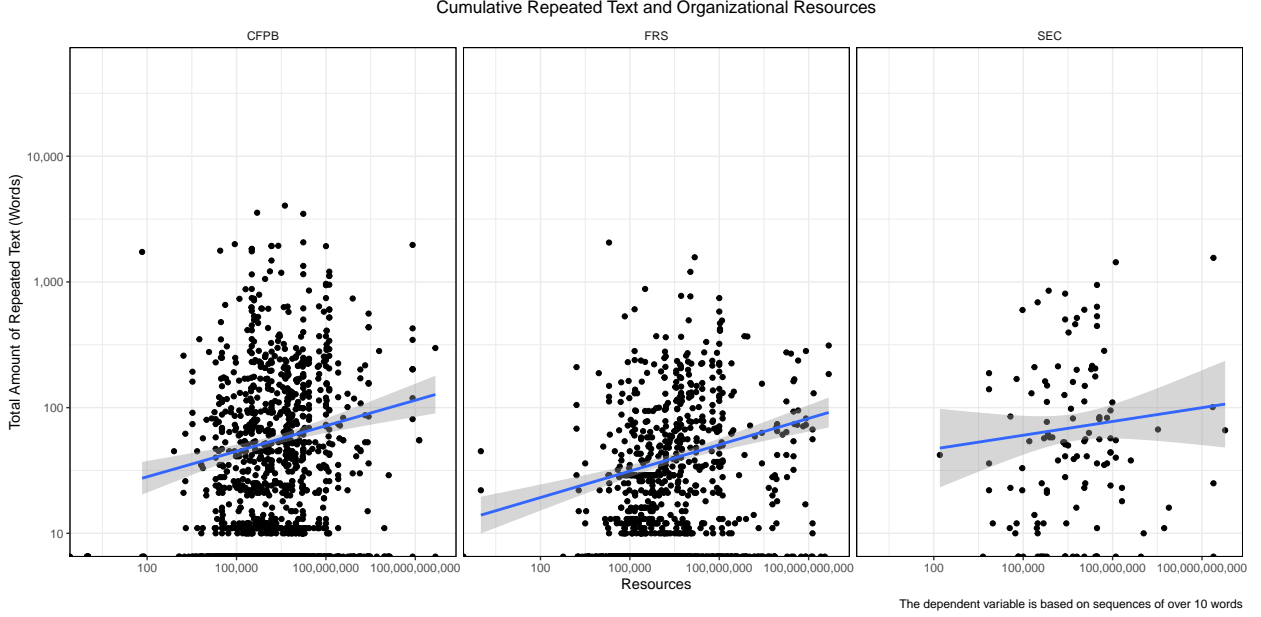
Figure 6: Amount of Legal and Technical Language by Assets (Among Comments from FDIC-Insured Banks on Dodd-Frank Rules)



4.2.3 *Wealthier commenters are more influential*

Our measure of comment influence increases with the wealth of the commenting organization. Figure 7 shows the number of words that appear in 10-word phrases in both a comment and the final rule but were not present in the draft rule. This measure captures the extent

Figure 7: Amount of Text Repeated in Final Rules by Commenter Resources

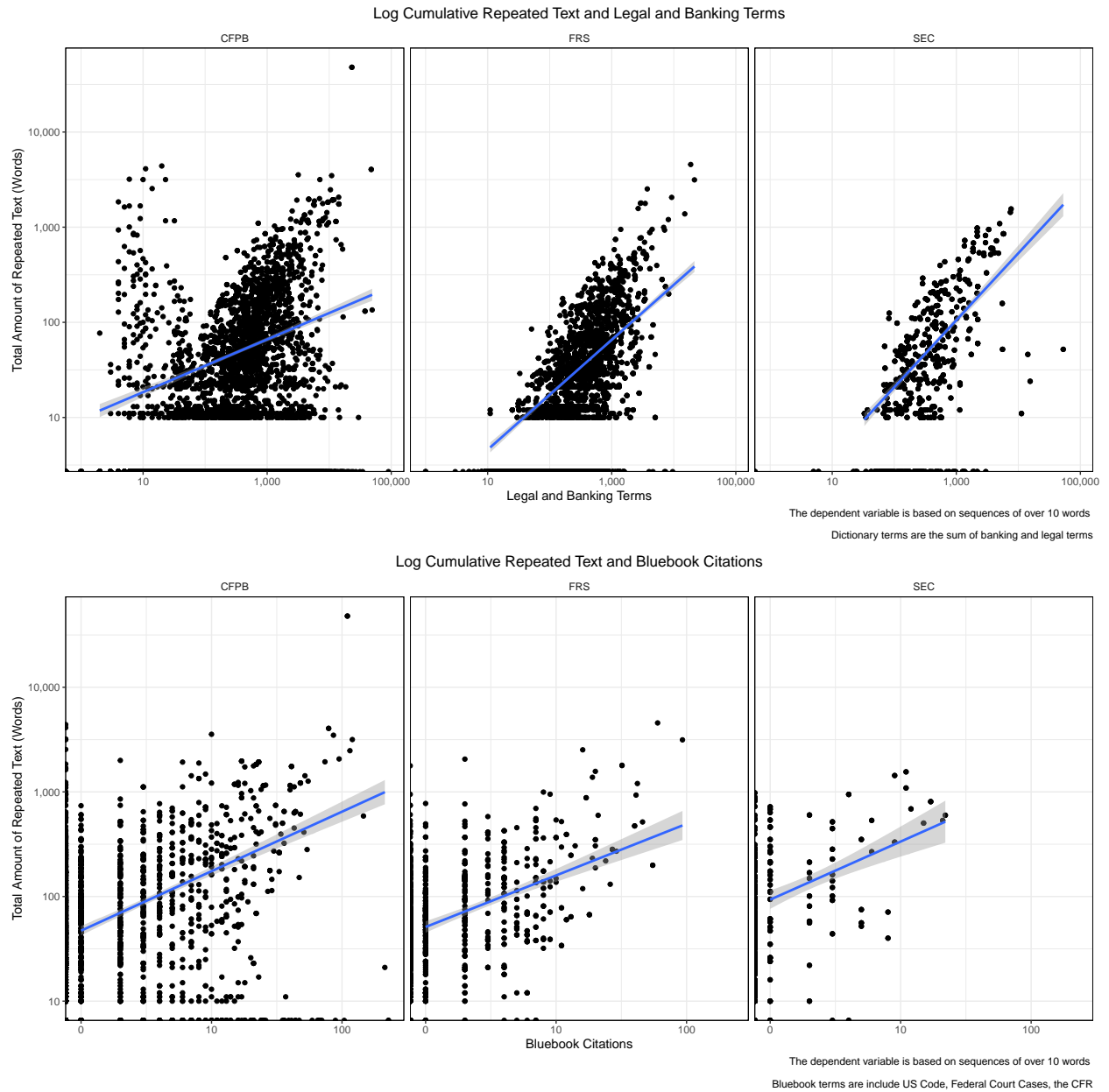


to which text added to final policy documents contains exact phrases used or suggested by a particular commenter. While this does not necessarily represent a causal relationship (for example, both the commenter and regulator may have copied the phrase from a third source), it shows the alignment of specific comments and policy changes. Ten-word phrases are long enough that they rarely co-occur by chance and are thus a well-validated measure of textual similarity (Wilkerson, Smith, and Stramp 2015; Casas, Denny, and Wilkerson 2019; Judge-Lord 2017; Rashin 2018). The strong positive correlation between an organization’s wealth and its comment’s similarity to text added to the final rule aligns with the *Differential Commenting Influence* Hypothesis (H1).

4.2.4 More Sophisticated Comments are More Influential

To investigate our proposed mechanism for unequal influence, we assess the relationship between legal and technical sophistication and policy influence. Figure 8 shows that comments that use more sophisticated legal and technical language are more likely to contain phrases that were added to the final rule. This aligns with the *Dividends of Sophistication* Hypothesis (H4). We measure the sophistication of comments in two ways and observe similar results. The

Figure 8: Amount of Text Repeated in Final Rules by Comment Sophistication



top panel of Figure 8 shows a positive correlation between the number of legal and banking terms and the amount of text a comment shares with the final rule. To capture sophistication with respect to the use of finance and banking jargon, we use the Oxford Dictionary of Finance and Banking, which includes 5260 finance and banking terms. To capture sophistication with respect to legal jargon, we use the Merriam-Webster law dictionary, which includes 10,172 legal terms.

To be clear, these relationships do not necessarily imply a causal relationship between sophistication and policy influence. The processes that lead commenters to include particular phrases in comments may be endogenous to policy outcomes. For example, because comments are explicitly responding to proposed policy texts, they often reference phrases and ideas that are already under consideration.

In dealing with endogeneity, one methodological choice merits elaboration: we chose to exclude text from the proposed rule when measuring influence but not when measuring sophistication. This choice rests on the underlying concepts we are attempting to measure. In measuring text reuse, we aim to capture ideas that are not yet in the policy. Thus, text copied from the agency’s proposal must be excluded. Indeed text that appears in both the draft and final rule is precisely what did *not* change. If a commenter attached a marked-up version of the proposed rule, we aim to exclude all but their suggested changes.

In contrast, in measuring sophistication, we aim to assess the extent to which the commenter is utilizing expertise to engage in legal and technical policy debates. Here, when attaching a marked-up version of the proposed rule does capture the underlying concept of sophistication. Thus, our counts of legal and banking terms and bluebook citations do not exclude the text of the draft rule. Even if they are the agency’s own terms and citations, engaging with the agency’s texts indicates sophistication. For example, the comment with by the most bluebook/legal terms from an FDIC-insured bank contained a 4-page comment and 112 pages of attachments, 105 pages of which were the full proposed rule. These 105 pages were excluded from our measure of text reuse but included in the count of legal and banking terms.

5 Conclusion

By combining multiple methods and sources of data, this paper offers a new and systematic perspective on inequality in bureaucratic policymaking. Our systematic approach, covering all rules across multiple agencies implementing the same landmark piece of legislation (the Dodd-Frank Act) and rich data on multiple kinds of participants, allows unique comparisons within and across agencies and types of organizations. This new dataset allows us to assess the relative level of access and influence that different types of organizations enjoy across policymaking institutions.

We have shown that commenting is disproportionately concentrated among wealthier nonprofits but not wealthier for-profits. One possible explanation for this finding is that all large banks have the basic resources to engage in policymaking when it fits their interests. In contrast, many nonprofits do not have the baseline level of resources to engage in sophisticated lobbying. An alternative explanation may lie in the correlation between nonprofit wealth and issue area. It is possible that nonprofits that work on financial regulation are wealthier, on average, than other nonprofits. Further research could dig deeper into the resource constraints among nonprofits and compare the wealth of nonprofits that focus on financial issues to others in order to assess these competing hypotheses. Both explanations (that nonprofits lack resources to participate or that finance-focused nonprofits are wealthier) have implications for the American political economy and representation.

Our finding that wealthier organizations generally advance more sophisticated comments suggests that wealth is correlated with exactly the kind of lobbying behavior that past studies have found to be most influential. Sophisticated and technical lobbying strategies are effective. Indeed this has been a common explanation for why businesses enjoy unique levels of access and influence in agency rulemaking (J. W. Yackee and Yackee 2006). Our results lend support to this theory. Where previous studies generally assume that businesses are wealthier, we show not only that businesses are wealthier, but that within and across types of

organizations—including businesses—organizations with more engage in more sophisticated and technical lobbying efforts.

Finally, we have shown that wealth is also positively correlated with the best available quantitative measures of commenter influence. Given previous research and our analysis into commenter sophistication, this finding may not be surprising, but the magnitude of these relationships have implications for future research and policy reforms.

Appendix

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