

Why Comment? Congressional Oversight and Agency Responsiveness in Notice-and-Comment Rulemaking*

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Abstract

This paper examines congressional participation in notice-and-comment rulemaking, with a focus on the institutional and informational determinants of agency responsiveness to congressional comments. Utilizing a dataset of congressional comments on SEC proposed rules from 2010 to 2022 and subsequent citations of those congressional comments in the finalized rules, I find that the SEC is not more responsive to members of Congress with high levels of institutional power, such as committee chairs and majority party members, instead responding more to higher quality comments. The results suggest a limit to Congress's ability to compel responsiveness from agencies in regulatory policymaking, with the upside that increasing congressional capacity to write longer and more detailed comments would likely increase responsiveness. I then conduct an ancillary analysis of coalition formation between interest groups and Congress using the citation data, finding ideological congruence between the two groups and finding that bipartisan groups of members of Congress echo the concerns of a more diverse group of stakeholders than one-party groups.

Work in progress- comments are appreciated!

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1 Introduction

Congress and interest groups are both participants in lobbying federal agencies to change the direction of regulatory policy. Both of these groups of actors are policy-motivated yet have different comparative advantages when it comes to exerting policy control over federal agencies; interest groups are better resourced and have more specific information that agencies can use to adjust their policies, whereas Congress has the unique ability to punish federal agencies from deviating from their policy preferences through holding committee hearings, reducing the agency’s policy-making independence, and decreasing the agency’s budget.

The literature has typically studied the participation of these two groups in regulatory policymaking in isolation, in part because they often engage through separate mechanisms. However, interest groups and members of Congress both participate in notice-and-comment rulemaking, a common means of promulgating federal agency regulations which provides for a public comment period and time for the agency to respond to these comments in the final version of a rule, through the exact same mechanism—the submission of public comments. Much of the literature on notice-and-comment rulemaking has thus far focused only on interest groups, with only a few papers specifically focusing on congressional participation in notice-and-comment rulemaking (Lowande and Potter 2021, Molino and Essig n.d.).

This paper examines congressional participation in notice-and-comment rulemaking with a focus on the institutional and informational determinants of agency responsiveness to congressional comments. I analyze data on congressional comments on proposed Securities and Exchange Commission (SEC) rules from 2010 to 2022, finding that the submission of comments is primarily driven by members on committees with oversight jurisdiction over the SEC while not being dominated by any given party. I then implement a series of regression models to assess the institutional and informational predictors of the number of times a congressional comment is cited in the final rule, with citations serving as a measure of the extent to which the SEC considered and took into account

the viewpoints of comments. I find evidence that the SEC does not disproportionately cite comments by members of Congress with more power over the SEC, such as relevant committee chairs and majority party members, more than those members that do not. Instead, citation patterns are driven largely by informational aspects of the congressional comments, particularly page count.

The results suggest a limit to Congress’s ability to compel agency responsiveness through its statutory powers, with committee chairs and majority party members unable to compel more responsiveness from the SEC. Instead, Congress’s ability to achieve responsiveness in SEC policymaking is determined by its ability to provide useful information to the SEC, which is congruent with emerging literature on notice-and-comment rulemaking that characterizes agency responsiveness to interest group comments primarily as a function of comment quality and informativeness and the resources necessary to create those longer comments (B. Libgober and Rashin 2023). This further suggests that increasing congressional capacity to gather information, such as through hiring more committee staffers, would have a positive effect on agency responsiveness to congressional preferences in notice-and-comment rulemaking.

This paper also briefly examines coalition formation between Congress and interest groups in notice-and-comment rulemaking, utilizing citation data to assess the organizations that members of Congress ally themselves with in regulatory policymaking. The results are suggestive of ideological congruence between Congress and interest groups, with Republican members of Congress allying themselves more often with corporations and trade associations—organizations often characterized as having deregulatory preferences in the securities industry—than Democrats, and bipartisan groups of members of Congress allying themselves with a more diverse array of organizations than single-party groups.

2 Notice-and-Comment Rulemaking

The complexity of governance in the 20th and 21st centuries has rendered Congress’s policy-making job increasingly difficult and time-consuming solely due to the constraints

on the institution's time, resources, and expertise. As a result, Congress has increasingly delegated policy-making authority to federal agencies, allowing these agencies to promulgate rules with the same force of law as laws passed by Congress itself. This, of course, comes with the dilemma of Congress having to balance its delegation of policy-making with making sure that federal agencies do not stray too far from the policy preferences of Congress—a classic real-world case of a principal-agent problem.

One venue that lobbying can occur in is notice-and-comment rulemaking. To govern the increasing number of policies being written by the federal bureaucracy, Congress passed the Administrative Procedure Act (APA) in 1946, which outlined the rules and procedures that agencies must follow in the rulemaking process (Lubbers 2012). One key procedure provided for in the APA is the requirement that rules proposed by federal agencies, with a few exceptions¹, must have a public comment period in which interested individuals can submit comments before the rule is finalized, hence the phrase 'notice-and-comment rulemaking'. This is to allow for a form of transparency & public accountability like is present in the legislative process in Congress. Stakeholders as diverse as Fortune 500 corporations, liberal and conservative think tanks, academics, elected officials and everyday citizens submit comments during the public comment period on proposed federal rules.

Federal agencies are required to take into consideration the views provided in the public comment period when revising the proposed rule, though they are not required to implement said views (Lubbers 2012). To demonstrate compliance with this requirement to federal courts, agencies provide lengthy written justifications for the policy choices in the final versions of federal rules. These justifications include detailed summaries of the policy requests and perspectives put forward in public comments and responses to each of these requests, including whether the agency implemented the request or not. This often results in detailed narratives of the conflicting policy views between different stakeholders

¹There are exceptions provided for under the APA with which the agency can skip the public comment period for a rule, such as rules without the force of law like interpretative rules, rules focusing on specific topics such as military and foreign affairs, agency management and personnel, and public property, and most notably when an agency finds 'good cause' for the public comment period to be skipped (Coghlan 2025), though this exception appears to be used most for skipping the proposal phase of notice-and-comment rulemaking entirely.

and the reasoning behind which side the agency picked.

As an example, the Securities and Exchange Commission (SEC) proposed a rule in 2021 entitled “Share Repurchase Disclosure Modernization” that would update the disclosure requirements for when shareholders repurchase shares in a corporation. The proposed rule received 180 unique public comments, including 3 comments from members of Congress. A comment coauthored by Senators Marco Rubio (R-FL) and Tammy Baldwin (D-WI) expressed overall support for the proposed rule, including for the requirement that shareholders disclose their objectives and rationale behind their share repurchases. This specific policy view was cited in the final version of the rule under the sentence “A number of commenters supported the proposal to require an issuer to disclose its objective or rationale for its share repurchases, and the process or criteria used to determine the amount of repurchases” and was co-cited with comments from stakeholders such as Public Citizen, a progressive consumer rights think tank, Professor Lenore Palladino of UMass Amherst, and CFA Institute, a non-profit that provides education to investment professionals, indicating that these progressive-leaning groups also supported the increased disclosure requirements. In the final rule promulgated in 2023, the SEC kept the disclosure requirements largely the same as in the proposed rule, rebuffing requests by corporations and trade associations such as the U.S. Chamber of Commerce and PNC Financial Services Group to weaken the proposed disclosure requirements. This example illustrates the contrasting policy views that are expressed in the notice-and-comment period, including by members of Congress, how the expression of similar policy views creates policy-based coalitions between stakeholders, and how federal agencies decide which coalition of stakeholders to be responsive to.

3 Inequality and Responsiveness in Notice-and-Comment Rulemaking

The aforementioned example points to an overarching question in the literature on notice-and-comment rulemaking: do agencies take the views expressed in public comments

into consideration and, if so, whose views are they responsive to? The common finding is that agencies are most responsive to well-resourced interest groups. Most comments on rules are from interest groups (Figueiredo 2005), which have the most money to dedicate to lobbying, and interest group comments are typically much longer and more detailed than comments from individuals in part because of the resources they can utilize. Libgober and Rashin, in a study of public comments on rules from a number of agencies that handle financial regulations, finds that most public comments from interest groups are informational in nature, expressing policy concerns rather than threatening to involve a political principal such as Congress or the federal courts (B. Libgober and Rashin 2023). This parallels findings that agencies are most responsive to the side of a policy debate that dominates the public comment submissions (McKay and S. W. Yackee 2007). Studies also find that wealthy organizations, such as big businesses, are more successful at having their comments cited in federal rules (Ban and You 2019) and shaping the contents of federal rules (J. W. Yackee and S. W. Yackee 2006, Carpenter et al. 2024, though see Nixon et al. 2002) than less wealthy commenters, such as non-profit organizations and individuals (Balla et al. 2022), though others have found that organizational diversity of commenting coalitions can increase responsiveness from agencies, potentially mitigating this trend of inequality in notice-and-comment rulemaking (Dwidar 2022). There is even evidence for a circularity of the effect of wealth inequality on agency responsiveness, as a study shows that firms whom submitted comments and met with the Federal Reserve Board before the release of rules received unusual bumps in their share prices in excess of tens of billions of dollars, though this effect is primarily concentrated amongst meetings rather than comments (B. D. Libgober 2020a).

The findings in the public commenting sphere parallel the broader lobbying literature in the United States, which find that wealthy interest groups are generally more successful at getting the attention of lawmakers and bureaucrats alike. Researchers have found that donations to political campaigns increase access to members of Congress (Kalla and Broockman 2016) and that interest groups target their contributions to members of Congress on key committee positions (Powell and Grimmer 2016). Interest groups that

meet with the President’s Office of Management and Budget (OMB), a key office close to the President that reviews new federal rules, are able to change the contents of federal rules, with this effect being stronger among wealthy business groups than public interest groups (Haeder and S. W. Yackee 2015). Interest groups also have significant influence on the content of federal rules during the rule development stage, which is before rules are published and opportunities are given for public comment (Naughton et al. 2009, S. W. Yackee 2012).

These findings are puzzling if one considers that most stakeholders have no direct means of sanctioning federal agencies for not being responsive to their interests. This is in spite of the perceived importance of participation in federal rulemaking among interest groups, with a 2002 survey finding that 75.7% of lobbyists view participation in rulemaking as either just as important or even more important than lobbying members of Congress (Furlong and Kerwin 2005). The two commonly cited mechanisms for interest group influence over bureaucratic policymaking are urging political principals, particularly Congress, to take action when agencies stray far from their preferences (McCubbins and Schwartz 1984) and providing information to both subsidize the expertise needed to write federal regulations and alert federal agencies of potential litigation that may stem from the current draft of a proposed rule (S. W. Yackee 2006). Libgober and Rashin synthesize the research on these two mechanisms and posit that comments contain two types of ‘goods’: information and threats, with the latter specifically involving threats to bring in Congress or the courts to punish an agency for a specific policy (2023). They find that the vast majority of comments on federal rules submitted by interest groups contain strictly informational content, even within their sample of comments on rules focusing on the implementation of the Dodd-Frank Act, a policy in an area with well-financed and litigious stakeholders. This implies that interest groups’ main mechanism of influence is their ability to provide relevant information to policymakers, which comports with other empirical studies on influence in notice-and-comment rulemaking that find that the submission of more comments, longer comments and more sophisticated comments results in an increase in agency responsiveness (Ban and You 2019, Dwidar 2022, Carpenter et al.

2024). This also comports with the finding that wealthy organizations are most influential in notice-and-comment rulemaking, as these organizations have the most resources with which to invest in hiring relevant experts, perhaps even from the regulatory agencies themselves.

Much of the literature on notice-and-comment rulemaking has primarily focused on the influence of interest groups, with relatively little focus on Congress itself². This is in spite of members of Congress frequently participating in notice-and-comment rulemaking and having statutory mechanisms to compel agency responsiveness with that interest groups do not have. Even among the existing research on congressional participation in notice-and-comment rulemaking, there is little analysis of variation between members of Congress in terms of their ability to compel responsiveness from federal agencies. In the next section, I describe congressional participation in notice-and-comment rulemaking and derive hypotheses about which members of Congress federal agencies will be most responsive to, with these hypotheses speaking to the ongoing scholarly debate about the mechanisms of influence that federal agencies are responsive to.

4 Congressional Participation in Notice-and-Comment Rulemaking

Among the many stakeholders that participate in notice-and-comment rulemaking, members of Congress frequently submit their own comments, either individually or in collective, on notice-and-comment rules. These comments range from procedural comments, asking for extensions to public comment periods or asking for documentation from the agency, to substantive comments, which can signal support or opposition to specific proposals within a rule, request that a change be made to the policy content of a rule, and/or signal that the rule is not within the guidelines provided by congressional statute. Members of Congress submit public comments regularly—from 2007 to 2017, they submitted 1517 comments on proposed rules from the Environmental Protection Agency

²See Lowande and Potter (2021) and Molino and Essig (forthcoming) for papers focusing on congressional participation in notice-and-comment rulemaking.

(EPA), including 1339 substantive comments and 178 comments requesting changes to the rulemaking procedures (Lowande and Potter 2021). These comments can be authored by individual members of Congress or coauthored by many members of Congress.

The literature has thus far largely focused on the role of interest groups in shaping federal rules, with few papers discussing the role of Congress. However, there may be reason to expect that agencies respond differently to public comments by members of Congress. Congress, unlike interest groups, has direct authority to overturn agency decisions and has other mechanisms to punish agencies, such as through limitation riders or hearings (Macdonald 2010, McGrath 2013), which may potentially compel agencies to be more responsive to their comments. Ban and You, in their study examining comment and citation patterns in Securities and Exchange Commission (SEC) rulemaking, find that public comments by members of Congress are among the most likely to be cited in the final version of a rule, perhaps reflective of increased attention to congressional preferences by federal agencies because of their statutory powers (2019). Lowande and Potter also examine the commenting patterns of members of Congress and find that high levels of disagreement with agency proposals lead to an increase in a member of Congress's likelihood to submit a procedural comment that slows down the process of promulgating a rule (2021), indicating that members of Congress use the public comment period to affect both the content of federal rules and the speed at which they are implemented.

Congress is also known to influence the rulemaking process outside of the submission of public comments, particularly in cases where rulemaking is highly significant (Chiou and Klingler 2023). This holds true even in spite of looming presidential influence, with Congress holding influence over agency rulemaking even when the agency and the President are in agreement (Acs 2019). Congress also has a formal mechanism to overturn federal agency rules in the form of the Congressional Review Act (CRA), which allows Congress to pass a joint resolution that, with the signature of the President, can overturn certain federal agency actions and rules, though the procedure has only been used 20 times between 196 and 2024 (Carey and Davis 2024). Finally, Congress has several other mechanisms through which it can control the actions of federal agencies, such as statute design

(Epstein and O’Halloran 1999, Huber and Shipan 2002) and limitation riders that limit bureaucratic spending discretion (Macdonald 2010), as well as non-statutory mechanisms, such as committee hearings (McGrath 2013), committee reports (Bolton 2022), and direct communications with federal agencies (Ritchie 2018, Ritchie 2023). This plethora of mechanisms to influence the bureaucracy gives federal agencies incentive to be responsive to congressional preferences in the rulemaking process.

However, much of the literature on congressional influence over bureaucratic policy-making focuses on mechanisms that require the approval of, say, a committee or the entire chamber before they can go into effect. This makes it difficult to analyze whether bureaucrats respond differently to congressional demands based on, say, whether a member is on the committee with oversight jurisdiction for a given agency³ or is in the majority party. With notice-and-comment rulemaking, however, there are no restrictions on which members of Congress can submit comments. In this regard, notice-and-comment rulemaking is a mechanism of oversight and policy control that is not gatekept by collective decision-making or the approval of committee chairs/other key powerful figures in Congress. This raises the possibility that participation in notice-and-comment rulemaking can act as a substitute for other, more formal, means of policy control for less powerful members of Congress, such as minority party members of Congress who are increasingly left out of the policymaking process and members who are not on the (sub)committee with oversight jurisdiction for a given federal agency and thus cannot participate in hearings on the given agency.

On the other hand, bureaucrats have strong incentives to be responsive to more powerful members of Congress, such as majority party members, committee chairs, party leaders, and members on the committee assigned with the task of overseeing the agency that they are housed in. These members are more credibly able to punish agencies for de-

³The ‘committee with oversight jurisdiction’ does not refer to the named House Committee on Oversight or the Senate Committee on Homeland Security and Governmental Affairs—it instead refers to the specific committee assigned oversight responsibilities for a given agency in the committee’s rules, such as the House Financial Services Committee for the SEC or the House Energy and Commerce Committee for the EPA. This does not mean that the aforementioned House and Senate Oversight Committees cannot conduct oversight of these agencies, however, they just conduct proportionally less of it than the committees with oversight jurisdiction. I will use this language throughout the paper to distinguish these committees from the aforementioned specific Oversight Committees.

viating from the policy directives of Congress by convening oversight hearings, restricting agency policymaking discretion in legislation, and potentially even slashing the agency's budget.

It is also important to note that federal agencies are housed in the executive branch and headed by presidential appointees, thus giving these agencies a line of accountability to the interests of the President. This gives agencies incentive to be responsive to presidential co-partisans in Congress insofar as the President's policy and electoral success rests on the cooperation of these members of Congress. A paper focusing on agency responsiveness to policy-related requests by members of Congress finds evidence that agencies strategically balance these competing interests: agencies prioritize the interests of majority party legislators while an increase in agency politicization increases agency responsiveness to presidential co-partisans in Congress (Lowande 2019).

Political control of the bureaucracy comes at a cost, however, which may compel members of Congress to hew away from punishing agencies for not always responding to their policy demands. A long theoretical and empirical literature finds that political control reduces agency expertise and efficacy (Gailmard and Patty 2007, Bertelli and Lewis 2013, Gailmard and Patty 2013, Richardson 2019, among others). Bureaucrats, particularly career civil servants with high levels of technical and policy expertise, will reduce their investment in expertise acquisition and exit civil service for the private sector when shut out of the policy-making process, such as when their agency is highly politicized (Andersen and Moynihan 2016, Richardson 2019). Insofar as Congress is concerned with the negative effects on agency expertise that political control induces, they may shy away from punishing federal agencies for adopting unwanted policies. This reduces the incentive for agencies to be differentially responsive to more powerful members of Congress than less powerful members of Congress or other stakeholders in notice-and-comment rulemaking, as the only credible 'good' that can be transmitted through the comment is information, a resource that Congress does not have a monopoly on vis a vis other participants in notice-and-comment rulemaking.

Commenting on federal rules is also only one mechanism through which Congress

can influence bureaucratic policymaking, as mentioned earlier. Some of these mechanisms of political control, such as through writing more detailed statutes that restrict agency policymaking discretion, can preempt agencies by restricting their ability to propose rules that diverge from congressional preferences, reducing or eliminating the need to submit comments on federal rules in the first place. Likewise, if an agency is entirely independent of outside influence or fully captured by interest groups, the ability for a comment to subsidize the informational costs of drafting a rule or change the ideological content of a rule is so low that submitting a comment is not worth the cost (B. D. Libgober 2020b). This suggests that members of Congress submitting comments is consistent with a ‘middle-ground’ level of agency responsiveness, where Congress has not fully restricted the independence of the agency and the agency has not been fully captured by some competing interest group(s).

In summary, there are compelling theoretical cases to be made for multiple levels of agency responsiveness to members of Congress in notice-and-comment rulemaking, both compared to other stakeholders and other members of Congress. In the congressional control perspective, agencies are most responsive to comments submitted by members of Congress with statutory influence over the agency, such as majority party members, committee chairs, and members on the relevant committee tasked with conducting oversight of the agency. In the presidential alignment perspective, agencies are most responsive to comments submitted by presidential co-partisans, irrespective of their power within Congress itself. Finally, if agencies do not view Congress’s ability to punish as credible, agencies may not exhibit any differential responsiveness to comments by different members of Congress based on their institutional status, only prioritizing comments by members of Congress when they provide useful information, consistent with emergent research highlighting the lack of threats to bring in Congress in comments by interest groups (B. Libgober and Rashin 2023). The presidential alignment perspective and the other two perspectives are not mutually exclusive, as the mechanism runs through the president’s own tools for political control and is compatible with agencies being either responsive or unresponsive to Congress’s statutory power. I present a summary of the

perspectives and accompanying empirical predictions in Table 1.

Table 1: Predictors of Agency Responsiveness to Congressional Comments

Predictors	Responsiveness Perspectives		
	Congressional Control	Presidential Alignment	Information only
Majority Party Status	+		Null
Chair of SEC Jurisdiction (Sub)Committee	+		Null
Presidential Co-partisan		+	
Quality of Comment			+

Note: Null is an expected null result.

In this paper, I utilize data on congressional comments on SEC rules to assess these perspectives on agency responsiveness to Congress. In the next section, I describe the data in more detail and present descriptive evidence and regression tables that speak to both the role that congressional participation in notice-and-comment rulemaking play in the broader process of congressional oversight and the considerations that agencies take into account when deciding their responsiveness to comments by members of Congress.

5 Data & Empirics

I assess these perspectives on agency responsiveness listed in Table 1 using data on congressional comments on proposed Securities and Exchange Commission (SEC) rules from 2010 to February 2023, with comments on these rules spanning from 2010 to 2024. Specifically, I utilize data on citations of congressional comments in the finalized versions of SEC rules as a measure of agency responsiveness to congressional comments, a measure that, though not fully capturing policy implementation, captures the degree to which agencies are considering and taking into account the policy viewpoints shared by members of Congress in notice-and-comment rulemaking (Ban and You 2019). I describe in more detail the data on congressional comments in Section 5.2 and the data on citations of congressional comments in Section 5.3.

The time period of the dataset covers a number of high-profile periods of rulemaking activity by the SEC, including a series of rules to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) during the Obama administration and rules focusing on disclosure of climate-related activities by corporations during the Biden administration (Su 2023). The rules cover a wide spectrum of political salience, a factor found to impact differential levels of responsiveness to political principals by federal agencies in notice-and-comment rulemaking (Chiou and Klingler 2023).

Financial regulations are also, in general, a politically salient issue area, with high-profile policy proposals from politicians such as Senator Bernie Sanders’ ‘Wall Street’ tax on securities trading (Zaroli 2016) and Senator Jon Ossoff’s ban on members of Congress buying & selling stocks (Burns 2024) serving as examples of the issue’s political salience, both to members of Congress and to their voters. This mix of overall issue area salience and varied rule-level salience make the SEC a good case for examining how member of Congress-level factors affect commenting behavior.

5.1 SEC Rules

183 rules were proposed during the period of the study. 92 of these rules were proposed under the Obama administration, 54 were proposed under the Trump administration, and 37 were proposed during the first two years of the Biden administration. Of these 183 proposed rules, 152 were finalized, with the others being withdrawn. These finalized rules include high-profile and controversial rules such as ‘Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds’, a rule proposed and finalized during the Obama administration that enacts a requirement from the Dodd-Frank Act that would restrict banks from engaging in proprietary trading⁴ or having financial relationships with so-called ‘covered funds’⁵; this requirement is part of what is commonly known as the ‘Volcker Rule’, one of the most controversial and consequential policy outcomes of the Dodd-Frank Act (Miller

⁴Proprietary trading is when a bank uses its own funds, rather than funds from customer deposits, to trade in financial securities such as stocks, derivatives, bonds, etc.

⁵Covered funds are the category of financial institutions that banks are prohibited in investing in under this rule; this category mainly includes hedge funds and private equity funds.

2018). This rule received 531 unique comments⁶ from stakeholders as diverse as liberal public interests groups like Better Markets, conservative trade associations like the U.S. Chamber of Commerce, and 28 unique comments by members of Congress, with comments staking diverse positions on the rule such as requesting that insurance companies be allowed to invest in ‘covered funds’, eliminating hedging exclusions from the restriction on banks investing in private funds, and more.

However, not all rules were as high-profile or controversial as the above example. An example of a relatively low salience rule is ‘Inline XBRL Filing of Tagged Data’, a rule proposed and finalized under the Trump administration requiring the usage of the Inline eXtensible Business Reporting Language (XBRL) format, a machine-readable data format, when corporations submit financial statements to the SEC. This rule received only 38 public comments, including a short comment by a bipartisan group of members of Congress expressing general support for the proposal. These examples illustrate the diversity of the regulatory agenda under the SEC during this time period, which provides a good backdrop with which to study congressional participation and agency responsiveness in notice-and-comment rulemaking in spite of the study’s focus on a single agency.

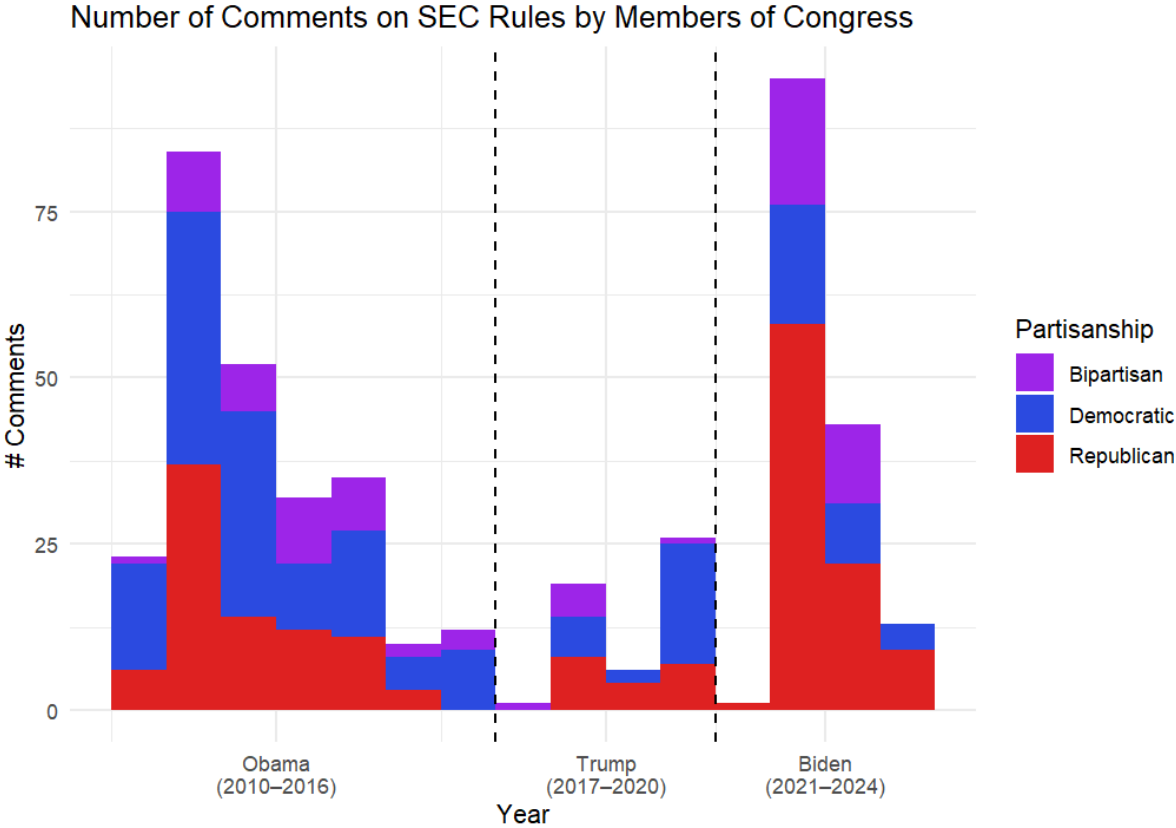
5.2 Congressional Comments Data

Across all 183 proposed SEC rules in the dataset, members of Congress submitted 451 comments on 101 of the 183 proposed SEC rules, with the other 82 proposed rules not receiving any comments by members of Congress. There were 3639 unique MC-Comment pairs, with each observation representing a member of Congress who signed onto a comment. These comments ranged the gamut of comment length, sentiment, substance, and the partisanship of the members of Congress whom signed onto the comment. The median comment was two pages long and signed onto by two members of Congress, though comment length can range anywhere from 1 to 54 pages long and can have anywhere from 1 to 282 members of Congress signed onto the comment. Most comments were signed strictly

⁶There were 65609 total comments, but the vast majority of these comments were duplicate comments submitted under a common form. The SEC groups these comments together under the label ‘Form Letter’ with a letter to distinguish each unique one.

by members of the same party, with 181 comments being authored by Democrats, 192 comments by Republicans, and the remaining 78 authored by some bipartisan grouping with at least one member of both parties. Submission of comments was not overwhelmingly dominated by the party in opposition to the President at any given point in time, however, as illustrated below in Figure 1.

Figure 1: Number of Congressional Comments on Proposed SEC Rules by Partisanship (2010-2024)



Note: Bipartisan comments are those coauthored by at least one member of both parties.

Despite the diversity in commenting behavior with respect to partisanship, there is disproportionate participation in notice-and-comment rulemaking among members of Congress on the committee with oversight jurisdiction for the SEC, that being the House Financial Services Committee and the Senate Banking, Housing, and Urban Affairs Committee⁷. This is also true for members on the subcommittees within those committees

⁷Notably, these committees played a large role in the passage of the Dodd-Frank Act whose provisions the SEC proposed rules to implement during the time period of the study. The bill was introduced by, and named after, the respective chairs of these committees in the 111th Congress—Senator Chris Dodd (D-CT) and Representative Barney Frank (D-CA).

Table 2: % Congressional Commenters on Proposed SEC Rules by Committee Status

Status	All Signatories	First Signatories
Not on SEC Jurisdiction Committee	1934 (53.1%)	175 (38.8%)
SEC Jurisdiction Committee Member	635 (17.4%)	53 (11.8%)
SEC Jurisdiction Committee Chair	31 (.9%)	24 (5.3%)
SEC Jurisdiction Committee Ranking Member	68 (1.9%)	41 (9.1%)
SEC Jurisdiction Subcommittee Member	846 (23.2%)	131 (29.0%)
SEC Jurisdiction Subcommittee Chair	49 (1.3%)	14 (3.1%)
SEC Jurisdiction Subcommittee Ranking Member	76 (2.1%)	13 (2.9%)
Total	3639 (100%)	451 (100%)

Note: The SEC Jurisdiction Committees are the House Financial Services Committee and the Senate Banking Committee, and the SEC Jurisdiction Subcommittees are the House Subcommittee on Capital Markets and the Senate Subcommittee on Securities, Insurance and Investment. Also note that ‘SEC Jurisdiction Committee Member’ does not include chairs, ranking members, or jurisdiction subcommittee members so that the totals in each column add up to 100%.

that have oversight jurisdiction for the SEC, that being the House Financial Services Subcommittee on Capital Markets and the Senate Banking Subcommittee on Securities, Insurance, and Investment. Table 2 lists the number and percentage of congressional commenters by committee status, with one column listing all signatories on congressional comments and the other column just listing the first signatory of each comment⁸.

Among all signatories, 46.9% were a member of the relevant committee with oversight jurisdiction over the SEC, with 26.6% of them being on the subcommittee with oversight jurisdiction over the SEC. This is in spite of these members being a much smaller proportion of overall members of Congress, with only 16% of members of Congress being on either of these committees in the 115th Congress and 8% being on the SEC jurisdiction subcommittees in the 115th Congress. This gap only becomes larger when one looks at the first signatory on a comment, which can be considered a proxy for the member on the comment who contributes the most to the drafting of the comment. Among first signatories, 61.2% of them were on an SEC jurisdiction committee and 35% of them were on an SEC jurisdiction subcommittee.

This, combined with the disproportionate participation among chairs and ranking

⁸For example, if a comment was co-authored by members of Congress X, Y, and Z, with their names listed in that order, the first signatory would be X.

members, highlights something important about congressional participation in notice-and-comment rulemaking: commenting is done primarily by those with some ability to participate in committee-level oversight of the Securities and Exchange Commission, including committee hearings and the accompanying information gathering by committee staff. Earlier, I posited that commenting on federal rules could act as a substitute mechanism of oversight for less powerful members of Congress, particularly those not on committees that allow them to participate in committee-level oversight of a specific agency, and while that may be the case for the members not on the committees with oversight jurisdiction of the SEC, it also appears that commenting on federal rules is an important tool alongside committee-level oversight among members who are on oversight jurisdiction committees. Comments serve to highlight information to the agency and express policy positions by committee members, perhaps to pre-empt the need for a costly committee hearing by ensuring that the agency implements the committee's preferred policy positions before the finalization of the rule. More work needs to be done to further characterize commenting's role in the oversight toolkit of Congress, but these descriptive findings suggest that notice-and-comment rulemaking can serve as a low-cost substitute for higher-cost means of conducting agency oversight, both among members of Congress with limited institutional power to engage in agency oversight and among members with higher institutional power who need to carefully allocate their committee's resources.

Next, I coded each comment with whether the comment expressed substantive commentary on the policy content of the proposed rule, had a procedural request (i.e. a request to change the procedures under which a rule is considered, such as an extension to the comment period (Lowande and Potter 2021)), or both. Among comments with substantive commentary on the proposed rule (referred to as substantive comments from henceforth), I coded the comment's sentiment towards the proposed rule (Negative, Mixed, Positive) and the level of regulation that the comment desired with respect to the proposed rule (Less, No Change, More) to capture the policy-level sentiments expressed by members of Congress on the proposed rule. The latter follows closely with established practice in research that classifies comments by their desired level of regulation relative

Table 3: Requested Change of Proposed Rule by MC Comment-Level Partisanship

	Less	No Change	More	No Substantive Request	Total
Republican Comment	123	11	8	50	192
Bipartisan Comment	41	12	18	7	78
Democratic Comment	73	23	71	14	181
Total	237	46	97	71	451

to the proposed rule (J. W. Yackee and S. W. Yackee 2006, Lowande and Potter 2021).

A common type of request that would fall under the category of ‘less regulation’ is if a comment advocates for an exemption to a new regulation for a certain category of individuals/firms. A comment by Senator Amy Klobuchar (D-MN) on a proposed rule on climate-related disclosures proposed under the Biden administration expressed concerns that the reporting requirements of the proposed rule would be too burdensome for small businesses in the agriculture industry, requesting that the SEC ensure that “farmers, ranchers, and small agribusinesses are not unduly burdened by data collection requirements”. On the other hand, a comment on the same rule co-authored by 26 Democratic representatives from California advocated for more regulation relative to the proposed rule, urging the Commission to “follow California’s lead and specifically include Scope 3 disclosure requirements in addition to Scope 1 and 2.”

The breakdown of requested changes to the proposed rule by comment-level partisanship are shown below in Table 3. Most comments, particularly those by Republicans, advocated for less regulation relative to the proposed rule, whereas Democratic comments were about evenly split between advocating for more regulation and advocating for less regulation relative to the proposed rule. This indicates some ideological congruence in notice-and-comment rulemaking, though a full characterization of ideological behavior in notice-and-comment rulemaking would require data on congressional preferences vis-a-vis the status quo policy as well as the proposed rule⁹.

Finally, I code comments for other informational characteristics. I code the page count of the comment¹⁰ and the number of footnotes in the comment as measures of

⁹See Lowande and Potter (2021) and forthcoming work by Molino and Essig for research engaging in ideal point estimation using comments on federal rules (Molino and Essig n.d.).

¹⁰I exclude pages that only have signatures in them to avoid artificially inflating the page counts of

comment quality. I also code for whether the comment states that the proposed rule is, in some way, against the intention of Congress. Federal agencies are required to promulgate their rules in pursuant of a statute created by Congress and can have their rules overturned in court if the rule does not sufficiently follow delegations of authority by Congress, so members of Congress frequently express their opinions over whether certain policy proposals in proposed rules are against the intentions of Congress in their comments. I expect that comments stating that the proposed rule is against the intention of Congress will be more likely to be cited in the final rule.

5.3 Citations of Congressional Comments

To measure agency responsiveness to comments by members of Congress and test the predictions outlined earlier in Table 1, I measure the number of times that each comment in the dataset was cited in the final version of the rule¹¹. I achieved this by searching for citations of each congressional comment in my dataset in the finalized version of the rule on the Federal Register. As described earlier in Section 2, finalized rules often have detailed narrative sections where they meticulously describe the policy positions held by commenters in the notice-and-comment period and describe the changes implemented, if any, by the agency in response to these comments. The SEC goes further than most agencies in documenting these policy debates by citing specific comments on certain policy debates. For example, in Figure 2, the SEC describes how several commenters supported a specific disclosure requirement in the rule entitled “The Enhancement and Standardization of Climate-Related Disclosures for Investors” promulgated by the Biden administration. Among the listed commenters who were cited as supporting this specific disclosure requirement is a comment submitted by Representative Kathy Castor (D-FL) and 130 other members of the House of Representatives. The citation of this comment indicates that the SEC considered the views put forward in the comment and used them

comments with a large number of co-signatories.


¹¹I borrow this approach from Ban and You’s study on citations of comments in SEC rules (2019). Though we use the same outcome measure and have a large amount of overlapping data, their study examines variations in responsiveness across types of organizations rather than between different types of members of Congress.

to guide the revision process to the rule, though it does not necessarily mean that the policy requests by the cited commenter were implemented into the final rule. If a comment does not get cited at all, I posit that the comment did not factor deeply enough into the agency’s decision-making to influence the policy outcomes of the final rule either way.

Figure 2: Citation of Comments in Final Rule example

Several commenters supported the proposed rule requiring a registrant to describe any analytical tools, such as scenario analysis, that the registrant uses to assess the impact of climate-related risks on its business and consolidated financial statements, and to support the resilience of its strategy and business model in light of foreseeable climate-related risks.^[539] One commenter stated that scenario

539. See, e.g., letters from American Institute of CPAs (June 15, 2022) (“AICPA”); AllianceBernstein; Amer. for Fin. Reform, Sunrise Project et al.; Bloomberg; CalSTRS; Ceres; CFA; Council of Institutional Advisors (May 19, 2022) (“CII”); Eni SpA; IAC Recommendation; ICGN; ICI; J. McClellan; Morningstar; Norges Bank; NRDC; Paradise Invest. Mgmt.; Member of the U.S. House of Representatives Kathy Castor and 130 other House Members (Jun. 17, 2022) (“U.S. Reps. Castor et al.”); San Francisco Employees’ Retirement System (June 17, 2022) (“SFERS”); Unilever; Vodafone; and Wellington Mgmt.

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Notably, the Castor comment was one of only 8 congressional comments on the rule that received at least one citation in the final rule out of 41 congressional comments on the rule in total. In fact, many congressional comments do not receive any citations in the finalized versions of the rule, which is curious when one considers that Congress holds punitive power over federal agencies in a way that most interest groups don’t have. This implies that agencies are not strictly responding to the statutory powers that Congress has in making their decisions on which comments of theirs to be responsive to.

To assess the determinants of a congressional comment being cited in the final rule, I subset the dataset of comments according to a few criteria. I first filter out comments on rules that were never finalized. If a rule is never finalized, the outcome variable can’t be observed in the first place. There is some degree of responsiveness that is being missed with this filtering however, as some congressional comments outright call for the withdrawal of a proposed rule. Next, I filter out comments on final rules where there were no citations of any comments whatsoever—this is indicative of a choice made by the agency to not cite specific comments in the rule rather than the agency not responding to any public comments whatsoever. Finally, I subset to substantive comments that were

issued before the issuance of the final rule to filter out comments that were submitted after the issuing of the final and to remove procedural comments whose requests were focused on the method of consideration of rules rather than the actual substance of the rule. The final dataset consists of 255 comments across 63 rules, with 149 of these comments being cited at least once. In total, these 149 comments that received at least one citation were cited 1018 times, or about 7 times each on average. Figure 3 outlines the structure of the data and Figure 4 plots the distribution of citations among this dataset of 255 comments.

Figure 3: Structure of Comment Citation Analysis Dataset

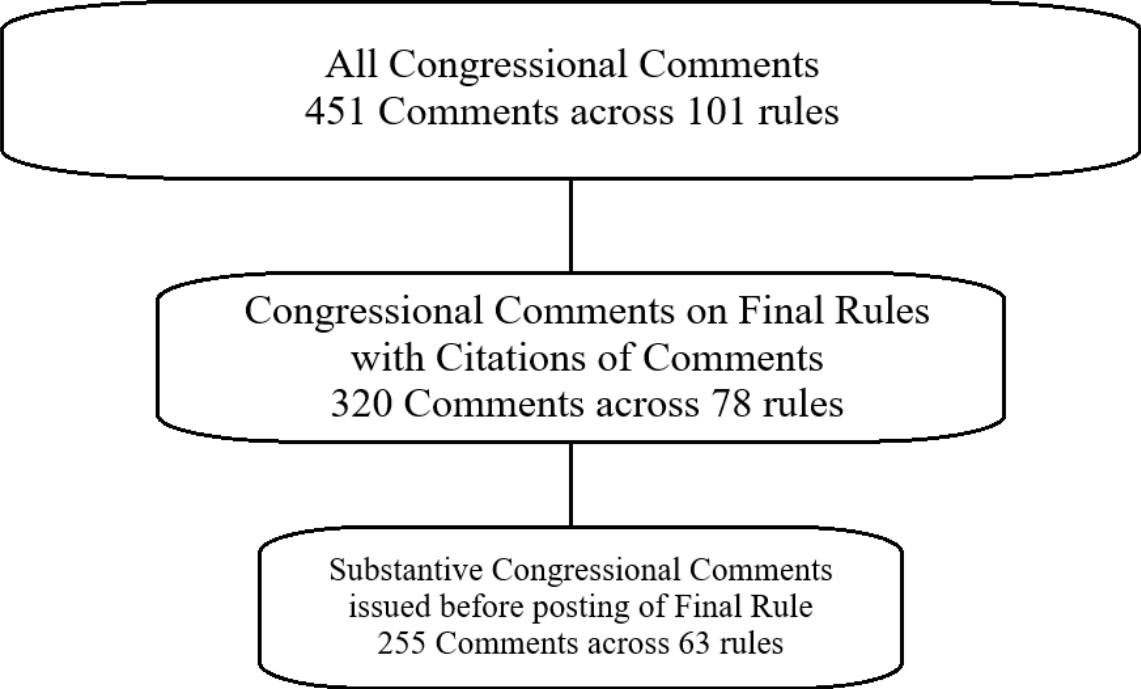
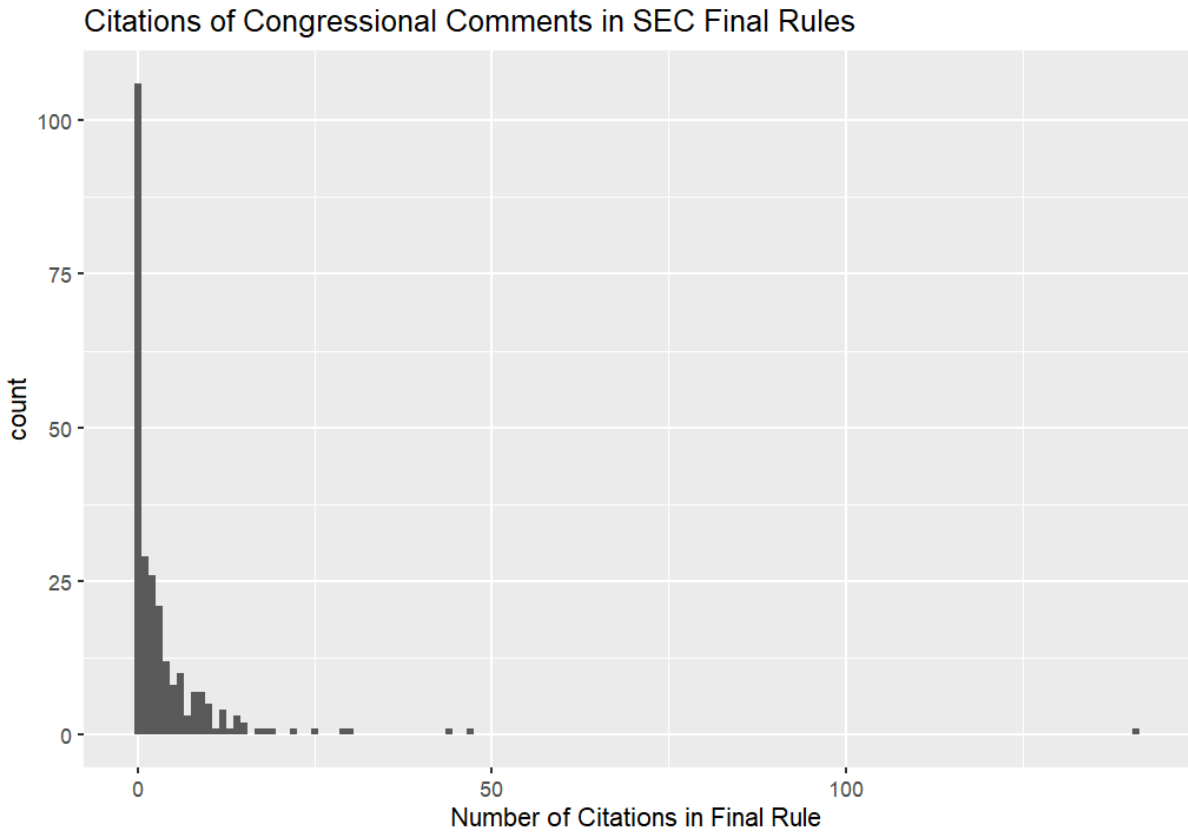


Figure 4: Distribution of Citations of Congressional Comments in Final Rules



Next, I conduct a series of regression models to test the predictions in Table 1 with the citations data forming the outcome variables of interest. I use the following general regression model structure and ordinary least squares estimation:

$$Y_{Citations_c} = \beta_1 \text{Signatory Characteristics}_c + \beta_2 \text{Comment Characteristics}_c + \alpha_r + \epsilon_{rc}$$

where subscript r represents a rule and c represents a comment. I estimate each model with rule fixed effects to control for rule-level characteristics such as salience, issue area, and the characteristics of the agency at the time of the finalization of the rule such as the partisan makeup of the SEC’s five appointed commissioners. I separate out the predictors into two categories, Signatory Characteristics and Comment Characteristics, with the former roughly correlating with the Congressional Control and Presidential Alignment predictions in Table 1 and the latter correlating with the Information predictions. I estimate each category of predictors separately with their own model and then combine

them into one combined model to assess the relative effect that congressional control and information have on determining agency responsiveness to congressional comments.

The first category of predictors, Signatory Characteristics, includes variables measuring the institutional position and partisanship of the members of Congress whom signed onto the comment. This category includes a binary indicator of whether the chair of the SEC jurisdiction (sub)committee signed onto the comment¹², a count variable of the number of members of Congress whom are co-signed onto the comment, a three-stage indicator variable from -1 to 1 indicating the degree to which the members signed onto the comment are co-partisan with the President, a variable capturing the percentage of co-signed members whom are of the majority party, an indicator variable capturing whether the comment was signed by at least one member of both parties, and the percentage of cosignatories that are senators. Importantly, these predictors are measured at the time of the issuance of the final rule, which is when we observe the citations. This is to account for the fact that rules take a long time to finalize, sometimes multiple years, which means that a comment authored by the committee chair at the time of the publication of the proposed rule could become a comment authored by a ranking member or a member who isn't even in Congress anymore if the rule is finalized in a subsequent Congress.

The second category of predictors, Comment Characteristics, includes characteristics of the comments themselves, including the sentiment of the comment towards the proposed rule (negative, mixed, or positive), the expressed desire for more, less, or no change to the regulatory stringency of the proposed rule, an indicator variable for whether the comment expresses that the proposed rule is against congressional intent, and the logged page count and number of footnotes in the comment to capture the quality of the comment. The sentiment and regulation desire variables are particularly helpful as they reduce bias that might result from the SEC being disproportionately responsive to commenters advocating for a specific regulatory vision of the rule, which may be possible given the SEC's secular

¹²As a reminder, the SEC jurisdiction committees are the House Financial Services Committee and the Senate Banking Committee, and the SEC jurisdiction subcommittees are the House Subcommittee on Capital Markets and the Senate Subcommittee on Securities, Insurance and Investment. These are not the only (sub)committees that conduct oversight of the SEC, but I posit that agencies will expect to be overseen by members on these committees more than other committees with more diffuse oversight responsibilities, such as the House and Senate Oversight Committees.

conservative ideological leanings (Richardson, Clinton, and Lewis 2018).

Finally, the outcome variable is measured in two ways: the first is a binary indicator for whether a comment was cited at all, and the second is the logged number of citations per comment. I estimate three models for both of these outcome measures, one with just the signatory predictors, one with just the comment predictors, and one with all predictors combined. The results are presented below in Table 4. I also estimate a negative binomial version of this model with the same predictors and a raw citation count outcome variable—the results are largely consistent with the OLS models and can be seen in Table 11 in Appendix A.

Table 4: Predictors of Citations of Congressional Comments in SEC Final Rules (2010-2024)

	(1)	Cited (2)	(3)	(4)	ln(Cites+1) (5)	(6)
<i>Signatory Characteristics</i>						
SEC Jurisdiction Chair Co-sign	0.046 (0.164)		0.001 (0.158)	0.165 (0.274)		-0.033 (0.252)
SEC Jurisdiction	-0.026 (0.136)		-0.033 (0.131)	0.177 (0.266)		0.083 (0.224)
Subcom Chair Co-sign						
% Majority Party Cosignatories	-0.092 (0.063)		-0.078 (0.059)	-0.002 (0.105)		0.069 (0.095)
Presidential Alignment	0.035 (0.050)		0.027 (0.048)	0.065 (0.073)		0.027 (0.072)
# of Cosignatories	0.001 (0.001)		0.001 (0.001)	0.003 (0.002)		0.004 (0.002)
Bipartisan Cosignatories	-0.111 (0.083)		-0.130 (0.086)	-0.255+ (0.140)		-0.315+ (0.172)
% Senator Cosignatories	0.025 (0.054)		-0.026 (0.055)	0.300** (0.098)		0.096 (0.091)
<i>Comment Characteristics</i>						
ln(Page count)		0.171* (0.071)	0.174* (0.079)		0.805*** (0.207)	0.786*** (0.208)
ln(Footnotes in comment+1)		-0.019 (0.035)	-0.008 (0.039)		-0.081 (0.078)	-0.069 (0.087)
Against Congressional Intent		0.102 (0.112)	0.076 (0.115)		0.329+ (0.177)	0.328+ (0.186)
Negative Sentiment		-0.012 (0.075)	-0.013 (0.083)		0.013 (0.151)	0.043 (0.158)
Positive Sentiment		-0.015 (0.152)	-0.044 (0.164)		0.288 (0.235)	0.231 (0.236)
Less Regulation		-0.043 (0.199)	-0.040 (0.221)		0.301 (0.298)	0.237 (0.332)
More Regulation		0.068 (0.132)	0.068 (0.148)		0.595** (0.180)	0.549** (0.196)
Observations	255	255	255	255	255	255
R ²	0.559	0.580	0.594	0.539	0.684	0.695
Rule Fixed Effects	✓	✓	✓	✓	✓	✓

+p<0.1; *p<0.05; **p<0.01; ***p<0.001
Standard errors are clustered by rule.

Note: Excluded categories for sentiment and regulation variables are mixed sentiment and ‘no change’ respectively.

As shown above in Table 4, the Congressional Control and Presidential Alignment predictors in Table 1, that being SEC Jurisdiction (Sub)Committee Chair Co-sign, % Majority Party Cosignatories, and Presidential Alignment, are null across all specifications of the model. None of the signatory characteristics achieve full significance in models 3 and 6 with the comment characteristics included. This implies that agencies are not disproportionately responsive to members of Congress on the basis of their statutory ability to oversee or sanction the agency or their alignment with their other major political principal, the President.

On the other hand, longer comments are significantly more likely to be cited in the final rule across all model specifications, and comments advocating for more regulation are significantly more likely to receive citations in models 5 and 6. The former implies that comments by members of Congress that convey more information receive more citations, whereas the latter may be due to the need to spend more time discussing comments requesting more regulation because of these comments bringing up new policy alternatives instead of just advocating for, say, exemptions to proposed policies in the proposed rule.

Taken together, the results imply that the SEC is not differentially responsive to members of Congress on the basis of their power over the agency. Instead, the SEC is only responsive to the information contained within the comments themselves, meaning that Congress can only compel increased responsiveness from agencies in notice-and-comment rulemaking if they submit more informative comments. This runs counter to existing research in other settings that finds that agencies respond differentially to members of Congress on the base of their power in the chamber and alignment with the president (Lowande 2019).

Taken together with the literature on notice-and-comment rulemaking that finds comment quality and informativeness to be the most consistent predictor of agency responsiveness (Ban and You 2019, Dwidar 2022, B. Libgober and Rashin 2023, Carpenter et al. 2024), the evidence in this paper is congruent with the notion that agencies are most responsive to more informative comments in general even when examining comments from all types of stakeholders, though a study combining detailed congressional comment

data and interest group comment data would be best able to test this comprehensively. The results are also suggestive of the SEC’s relatively high levels of independence from Congress and the President protecting SEC policymakers from disproportionately considering short-term political interests in policymaking, though an extension of this study to another agency with less political independence would better be able to tease out if this lack of responsiveness to political concerns is due to the SEC’s statutory features that protect its independence, such as the agency being headed by a multi-member commission instead of a singular official, or a product of some feature of notice-and-comment rulemaking more generally such as the long time periods over which rules are considered.

6 Coalition Formation between Congress and Interest Groups

In this section, I present an ancillary and preliminary examination of coalition formation between Congress and interest groups in notice-and-comment rulemaking. Most empirical studies of agency responsiveness to these two groups only examines one of these groups at a time and existing theoretical work on cooperation between Congress and interest groups depicts the cooperation as asymmetric—interest groups ‘pull the fire alarm’ and alert Congress, thus starting the process of congressional oversight (McCubbins and Schwartz 1984). However, notice-and-comment rulemaking is unique in that Congress and interest groups engage in lobbying federal agencies using the exact same tool, that being the submission of public comments. This provides a unique opportunity to examine which interest groups’ concerns are being shared by Congress in the regulatory process.

To gather data on coalition formation, I utilize the citations of comments on policy-related statements in final rules to create a list of unique organizations that are co-cited at least once with a given congressional comment. Recall in Figure 2 that organizations such as Americans for Financial Reform, Bloomberg, and the San Francisco Employees’ Retirement System are listed under the same citation as the comment submitted by Representative Castor et al. Since the citation links to a statement describing the policy

viewpoints of commenters, it can be said that all of these co-cited organizations share the same described policy viewpoint as the comment by Representative Castor et al. I leverage this unique property of citations in SEC rules to attach organizations with congressional comments and assess if the composition of these coalitions differs on the basis of the partisanship of the members of Congress or the direction of regulation that they're advocating for (less, more, or no change).

Worth noting is that this process induces selection effects because these measures of organizational alliances with members of Congress rely on comments being cited in the first place. This means that the observed coalitions will be built from the subset of congressional comments that have been cited at least once. I posit that this creates conservative bias, as the results in the literature show that certain types of organizations are more likely than others to be cited (Ban and You 2019, Carpenter et al. 2024), thus resulting in more homogeneous observed coalitions. The analyses in this section find strong effects of congressional comment partisanship and desired levels of regulation on the composition of a congressional comment's co-cited organizational coalition.

My data process proceeds as follows: First, I took all of the citations of comments in final rules and parsed through each of them to make sure that the citation is attached to a statement expressing some kind of directional preference or criticism of the policy substance of the proposed rule. An example of a statement I ruled out is this one on the rule entitled "Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants". The statement reads "The Commission received 40 comments on the Proposing Release, of which 9 were comments submitted in response to the Reopening Release.(5)", and 40 comments were cited under footnote 5, including a letter by Democratic senator Carl Levin advocating for more regulation and a letter by Representative Barney Frank (D-CA) and Senator Tim Johnson (D-SD) advocating for less regulation. The assumption that these 40 comments share the same policy stance could not be made in this instance, as the statement does not convey a directional preference or substantive criticism of the policy content of the proposed rule.

Next, I parsed out all of the co-cited comments in each citation and classified each

Table 5: Examples of Organization Types

Organization type	Examples
Corporations	Nvidia Corporation; Publix Super Markets, Inc.
Trade Associations	U.S. Chamber of Commerce; Professional Services Council
State/Local Governments	Attorney General of the State of Georgia
Law/Lobbying Firms	Simpson Thacher & Bartlett LLP
Non-profit Organizations	Americans for Financial Reform; Cato Institute
Academics/Professors	Alex Edmans, Professor of Finance at London Business School
Labor Unions/Groups	AFL-CIO
Individuals	Donnell Brunson, Individual Investor

of them with an organization type roughly following the same coding rules as Ban and You (2019). Finally, I merged together the unique organizations that were co-cited at least once with each congressional comment and constructed a measure of the proportion of each organization type that is in a citation coalition with a congressional comment, giving each congressional comment observation a measure of the number of, say, trade organizations it was co-cited with as a ratio of all organizations the congressional comment was co-cited with. The organization types I coded are listed below in Table 5.

Given the high levels of participation among well-funded corporations and trade associations in the securities industry in SEC notice-and-comment rulemaking, I posit that Republican comments and congressional comments advocating for less regulation will be most likely to echo the concerns of corporations and trade associations. On the other hand, Democratic comments and congressional comments advocating for more regulation will be most likely to echo the concerns of non-profit organizations and academics, as these stakeholders have less to lose if securities regulations become more stringent. Tables 6 and 7 show the percentage of each organization type for each category of comment partisanship and requested direction of regulation respectively, with Tables 12 and 13 in Appendix B listing the five most common organizations according to those same categories.

Table 6: Co-cited Organization Types by MC Comment Partisanship

Party	Corporations	Trade Orgs	Non-profits	Individuals	Governments
Republican	0.345	0.433	0.098	0.047	0.004
Bipartisan	0.240	0.397	0.115	0.114	0.063
Democratic	0.291	0.280	0.200	0.068	0.073
Party	Law Firms	Academics	Labor	Other	
Republican	0.043	0.019	0.001	0.010	
Bipartisan	0.021	0.012	0.018	0.022	
Democratic	0.020	0.029	0.020	0.018	

Table 7: Co-cited Organization Types by Direction of MC Comment

Direction	Corporations	Trade Orgs	Non-profits	Individuals	Governments
Less	0.346	0.465	0.074	0.028	0.033
No Change	0.321	0.176	0.181	0.109	0.075
More	0.225	0.235	0.271	0.113	0.061
Direction	Law Firms	Academics	Labor	Other	
Less	0.027	0.017	0.003	0.009	
No Change	0.042	0.026	0.042	0.028	
More	0.024	0.032	0.016	0.023	

The descriptive trends comport with the predictions outlined earlier, with corporations and trade organizations tending to side with Republicans and advocates for less regulation and the converse generally being true for non-profit groups and academics. To further confirm these trends, I also conduct OLS regression analyses at the comment level to assess if the partisanship and regulatory preferences of congressional comments significantly shift their co-cited organizational composition. The results are shown below in Tables 8 and 9 and they largely comport with the findings in the earlier descriptive tables.

Table 8: Predictors of Co-cited Organizational Composition of Congressional Comments in SEC Final Rules (2010-2024)

	(Corp)	(Trade)	(Non-profit)	(Individual)	(Gov't)	(Law)	(Prof)	(Labor)	(Other)
% Democratic Co-signatories	-0.129** (0.040)	-0.147*** (0.034)	0.170*** (0.035)	0.006 (0.017)	0.076+ (0.045)	-0.008 (0.007)	0.012 (0.009)	0.012 (0.008)	0.007 (0.014)
# Unique Organizations	0.001 (0.001)	-0.001+ (0.001)	-0.000 (0.001)	0.000 (0.000)	-0.000 (0.001)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000* (0.000)
SEC Jurisdiction Cmte Member Co-sign	-0.051** (0.019)	-0.055* (0.026)	0.053 (0.035)	-0.008 (0.017)	0.030 (0.021)	0.007 (0.006)	0.002 (0.007)	0.004 (0.004)	0.018+ (0.011)
Observations	137	137	137	137	137	137	137	137	137
R ²	0.807	0.879	0.678	0.742	0.669	0.708	0.638	0.830	0.532
Rule Fixed Effects	✓	✓	✓	✓	✓	✓	✓	✓	✓

Note:

+p<0.1; *p<0.05; **p<0.01; ***p<0.001
Standard errors are clustered by rule.

Table 9: Predictors of Co-cited Organizational Composition of Congressional Comments in SEC Final Rules (2010-2024)

	(Corp)	(Trade)	(Non-profit)	(Individual)	(Gov't)	(Law)	(Prof)	(Labor)	(Other)
Amount of Regulation Requested	-0.145*	-0.208***	0.289***	0.044*	0.003	-0.017	0.015	0.010	0.009
	(0.069)	(0.055)	(0.083)	(0.020)	(0.024)	(0.017)	(0.015)	(0.010)	(0.022)
# Unique Organizations	0.001*	-0.001	-0.001	-0.000	-0.000	0.000	0.000	0.000	0.000**
	(0.001)	(0.001)	(0.001)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
SEC Jurisdiction Cmte Member Co-sign	-0.032	-0.031	0.023	-0.011	0.024	0.008	-0.000	0.002	0.017
	(0.024)	(0.019)	(0.028)	(0.016)	(0.021)	(0.005)	(0.007)	(0.004)	(0.011)
Observations	137	137	137	137	137	137	137	137	137
R ²	0.798	0.888	0.733	0.751	0.610	0.712	0.638	0.824	0.532
Rule Fixed Effects	✓	✓	✓	✓	✓	✓	✓	✓	✓

Note:

+p<0.1; *p<0.05; **p<0.01; ***p<0.001
Standard errors are clustered by rule.

Finally, I calculate the organizational diversity of each of these co-cited organization coalitions for each congressional comment to assess if bipartisan comments also align themselves with a more diverse group of stakeholders in the regulatory process. I implement the same normalized Shannon’s H index used in Dwidar’s article on organizational diversity and agency responsiveness (2020), defined as follows:

$$H(X) = -\frac{1}{\ln(n)} \sum_{i=1}^n (p_i) * \ln(p_i)$$

where i represents an organization type as defined in Table 5, p_i is the proportion of unique organizations in a co-cited organization coalition that belong to organization type i , and n is the total number of unique organizations listed in a given citation. I then implement this measure as an outcome variable for an OLS regression model, where the main predictor is a continuous variable from 0 to 1 where 0 represents a comment authored only by members of one party and 1 represents a comment authored by an even split of members of both parties. The results are presented below in Table 10, with evidence suggesting that bipartisan congressional comments tend to echo the concerns of a more diverse group of stakeholders in the regulatory process than strictly partisan congressional comments.

Table 10: Predictors of Organizational Diversity of Congressional Comments on SEC Rules (2010-2024)

	Outcome: Organizational Diversity (1)
Bipartisan Comment	0.020* (0.010)
SEC Jurisdiction Cmte Chair Co-sign	-0.035 (0.046)
SEC Jurisdiction Subcmte Chair Co-sign	0.002 (0.040)
# Unique Organizations	0.003*** (0.001)
# of Cosignatories	-0.001 (0.001)
Less Regulation	-0.043 (0.056)
More Regulation	-0.019 (0.053)
ln(Page count)	0.036+ (0.019)
# Citations in Final Rule	0.001 (0.001)
Observations	137
R ²	0.905
Rule Fixed Effects	✓

Note:

+p<0.1; *p<0.05; **p<0.01; ***p<0.001
Standard errors are clustered by rule.

Note: Excluded categories for sentiment and regulation variables are mixed sentiment and ‘no change’ respectively.

7 Conclusion

Who are agencies responsive to in notice-and-comment rulemaking? The results of this paper suggest that agencies are less responsive to their political principals, both Congress and the President, than would be expected of perspectives emphasizing political control as a driver of agency behavior. Instead of responding disproportionately more to members of Congress in the majority party, members of Congress who share the same partisan affiliation as the President, or members of Congress who chair committees with oversight jurisdiction over the Securities and Exchange Commission, the SEC prioritizes

comment quality and information above all else, which is congruent with emergent literature on notice-and-comment rulemaking that finds information and comment quality, and the resources necessary to write higher quality comments, characterizing commenting behavior and responsiveness from agencies (Ban and You 2019, Dwidar 2022, B. Libgober and Rashin 2023, Carpenter et al. 2024). More research is needed to confirm if this political independence in notice-and-comment rulemaking is due to the SEC's relatively high degree of overall political independence (Selin 2015) or is a common feature across all agencies that engage in notice-and-comment rulemaking.

However, the results do not say that congressional participation in notice-and-comment rulemaking is ineffective or useless. Descriptive data on congressional comments on SEC rules show disproportionate participation among members in, and chairs of, (sub)committees with oversight jurisdiction over the SEC, implying that these comments serve an important part in the oversight role that these members play. Likewise, the policy solution to increasing agency responsiveness to Congress would be to simply increase the resources available to Congress to submit longer, higher quality comments, such as by increasing staffers employed in committees.

This paper is a first cut draft; more work is needed on expanding the number of agencies in the dataset to analyze agency-level variation in responsiveness to congressional comments. Likewise, integration of data on comments from non-congressional organizations would help further characterize the differences in the content of congressional comments vs non-congressional comments, which would further characterize the strategies engaged by members of Congress in notice-and-comment rulemaking, and allow for the examination of the extent to which interests groups allying with Congress can serve as a substitute for allying with other wealthier, better resourced interest groups. However, even these preliminary results are suggestive of a limit to Congress's power to compel agency responsiveness through its statutory powers.

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A Alternative Specification for Citation Analysis

Note that the sample size in Table 11 is slightly smaller than in Table 4. This is because some of the rules in the dataset do not cite any congressional comments at all, meaning that there is no within-rule variation on the outcome variable for these few rules. These observations were dropped from the negative binomial model estimation automatically, though the significance of the coefficients in Table 11 are almost exactly the same as in the OLS models in Table 4.

Table 11: Predictors of Citations of Congressional Comments in SEC Final Rules, Negative Binomial Model (2010-2024)

	Outcome: # Cites		
	(1)	(2)	(3)
<i>Commenter Characteristics</i>			
SEC Jurisdiction Chair Co-sign	0.870 (0.520)		0.365 (0.388)
SEC Jurisdiction	0.496 (0.627)		0.210 (0.567)
Subcom Chair Co-sign	0.110 (0.222)		0.029 (0.199)
% Majority Party Cosignatories	0.302 (0.183)		-0.009 (0.125)
Presidential Alignment	0.011** (0.004)		0.011 (0.010)
# of Cosignatories	-0.934** (0.277)		-0.643 (0.392)
Bipartisan Comment	0.950*** (0.234)		0.238 (0.143)
<i>Comment Characteristics</i>			
ln(Page count)		1.265*** (0.295)	1.233*** (0.281)
ln(Footnotes in comment+1)		-0.071 (0.157)	-0.092 (0.155)
Against Congressional Intent		0.558* (0.255)	0.525+ (0.300)
Negative Sentiment		0.075 (0.280)	0.139 (0.287)
Positive Sentiment		0.536 (0.476)	0.479 (0.460)
Less Regulation		0.362 (0.477)	0.275 (0.563)
More Regulation		0.898* (0.349)	0.863+ (0.453)
Observations	226	226	226
R ²	0.129	0.229	0.241
Rule Fixed Effects	✓	✓	✓

+p<0.1; *p<0.05; **p<0.01; ***p<0.001
Standard errors are clustered by rule.

Note: Excluded categories for sentiment and regulation variables are mixed sentiment and ‘no change’ respectively.

B Most Commonly Cited Organizations by Congressional Comment Partisanship and Regulatory Desires

Table 12: Most common co-cited organizations by MC comment partisanship

Rank	Republican	Bipartisan	Democratic
1	Securities Industry and Financial Markets Assoc.	American Bar Assoc.	CFA Institute
2	American Bar Assoc.	Securities Industry and Financial Markets Assoc.	Americans for Financial Reform
3	National Retail Federation	Better Markets	Better Markets
4	Managed Funds Assoc.	CFA Institute	Calvert Investments
5	National Assoc. of Manufacturers	Fidelity	Forum for Sustainable and Responsible Investment

Table 13: Most common co-cited organizations by MC comment direction

Rank	Less	No Change	More
1	Securities Industry and Financial Markets Assoc.	Calvert Investments	Better Markets
2	Risk Management Assoc.	Forum for Sustainable and Responsible Investment	Americans for Financial Reform
3	American Bar Assoc.	Oxfam	CFA Institute
4	U.S. Chamber of Commerce	Trillium	California Public Employees Retirement System
5	National Retail Federation	California Public Employees Retirement System	Forum for Sustainable and Responsible Investment