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The Influence of Financial Unity on Federal Agency Rulemaking: the case of Customer Due Diligence Requirements for Financial Institutions

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Abstract

Interest group influence is an understudied area, and influence in the regulatory arena is even less observed. Conclusions for influence on policy outcomes vary, from the view that federal agencies allow for a diversity of viewpoints, to observing that federal agencies disproportionately favour certain interests. This discrepancy is especially concerning in the United States, where business and financial interests are observed as being especially dominant, and responsiveness to organised interests is noted as highly important to bureaucrats. This study focuses on the extent to, and the mechanisms through which private interests influence a regulatory outcome in the case of anti-money laundering. By analysing the comment papers submitted during the regulator's deliberations over the final rule, I find that private interests dominated the input given and influenced the final rule. When the majority of commenters is unified in a central message, the final rule is likely to reflect those interests. My research contributes to the body of work that evaluates lobbying influence on federal agencies in the United States, and the mechanisms through which private interests convey influence.

Introduction

As legislation becomes increasingly complex in modern democracies, politicians often pass broad legislation and leave the technicalities to unelected bureaucrats. This dynamic is particularly pronounced in the United States (US), where federal agencies passed 28 laws on average for every law passed by Congress (Crews, 2018). Opportunities are created for stakeholder input, even long after the relevant legislation was passed by Congress. Federal agencies, as unelected bodies with no constitutionally vested power, are highly dependent on the feedback of their stakeholders to justify their rulemakings and maintain their legitimacy (Yackee, 2006). This dynamic creates a tension for bureaucrats, as they need to be seen as responsive and effective. Bureaucrats may behave strategically to improve how the agency is perceived, enhance its power, and prevent potential criticism or court challenge (Chubb, 1983; Hrebenar, 1997; Carpenter, 2014). Federal agencies are irrevocably tied to their stakeholders, making them highly susceptible to certain lobbying interests.

Mandating bureaucrats to consult relevant stakeholders in theory should provide for a plurality of voices, but in practice the process is more complicated. Ideally, interactions with stakeholders should create a useful dialogue that results in effective, stable policy (Baumgartner & Jones, 1993; Baumgartner et al., 2009). However, the wider literature on interest groups in the US indicates a dominance of business interests, creating an asymmetrical dialogue for agencies to respond (Olson, 1965; Lindblom, 1977; Baumgartner & Leech, 2001). The financial sector in particular is considered to be highly influential in the American system (Broz, 1999; Cerny, 1994; Streeck, 2014). The potential effects of business dominance are not well known. The literature only recently gave attention to the matter of influence, with such topics as mobilisation and access given greater attention throughout the 20th century (Baumgartner & Leech, 1998; Mahoney, 2007). Even less is written about the direct interactions between federal agencies and stakeholders, and when this literature is considered, business and financial dominance is no longer as clear. While earlier works indicate that a diversity of voices are heard, more recent works indicate the dominance of business interests (Golden, 1998; Nixon et al., 2002; Yackee, 2005; Yackee & Yackee, 2006). Missing from the discussion is an in-depth look into the mechanisms through which influence is exerted, and what impact the influence has on the content of regulation.

When considering mechanisms to explain the dominance of business and financial interests in lobbying, the concept of unity is increasingly prevalent. Unity theorises that business will be able to overcome opposing groups, as business by its nature has greater resources to mobilise itself around a common goal (Smith, 2000). The effect is noted as particularly strong in the US, and in the financial sector (Hacker & Pierson, 2010; Young & Pagliari, 2015). While an increasing amount of the literature on interest groups continues to consider business unity in terms of how groups mobilise and articulate demands (Falkner, 2007; Roemer-Mahler, 2013, Young, 2012), little is written on the extent to which unity may influence policy outcomes. Given the strategic importance of bureaucrats to be responsive to their stakeholders, overrepresentation of business interests has the potential to result in ineffective regulations that reflect only certain interests at the expense of the wider public.

This study will address the question:

To what extent did financial interests influence federal regulation on banking secrecy in the United States?

By answering this question, this research aims to contribute to the limited literature on the mechanisms of when and how unity matters for business influence. I hypothesise that financial and business interests will exhibit a significant degree of influence on the observed regulation, while civil societal and governmental interests will carry little to no influence. I also expect to find that the preferences expressed by financial interests will bear a striking unity to each other, and that business interests will largely resemble financial interests. I employ a preference attainment and process tracing framework to evaluate how much financial and business interests influenced a regulatory outcome, and the degree to which they were unified throughout the process. This method involved reading through the over 250 comment papers submitted in response to the proposed rulemaking, creating a catalogue of the most frequently mentioned positions, and arranging them into coding categories. I also assessed each stakeholder for whose interests they represent and sorted them into nine categories, six of which represent various financial interests. I then coded the positions of stakeholders according to whether they argued for more or less regulation.

As anti-money laundering is increasingly a priority in the 21st century, the US is observed as sorely lacking in its domestic framework to combat banking secrecy (US Treasury Department, 2015; Transparency International, 2018). Anti-money laundering is a regulatory area in which the relevant federal agency has wide remit, as few major pieces of legislation have been passed, while the highly complex technical details have been left to multiple regulations devised by bureaucrats (Gouvin, 2003). I observed the degree of stakeholder influence over the regulatory process behind the 2016 final rule by the Financial Crimes Enforcement Network, *Customer Due Diligence Requirements for Financial Institutions*. The regulation clarifies three existing expectations of the Bank Secrecy Act and Patriot Act, and adds one new requirement. Among the clarified expectations are existing expectations of customer identification and verification, developing risk profiles of customers, and monitoring of customer activities for suspicious transactions and regularly maintaining and updating profiles based on the results. The new expectation is to extend identification and verification to the beneficial owners of accounts. I analysed the full process of the rule, beginning with the 2010 guidelines for beneficial ownership information that preceded the proposed rulemaking, moving to the two notices of proposed rulemaking released in 2012 and 2014, and ending with the final rule in 2016. I considered attempts at influence in the comment papers and assessed how unified these attempts were in the specific preferences expressed, the overall message sent, and the attainment of preferences.

I will begin by providing an overview of the nature of federal agency lobbying and the significance of bureaucratic responsiveness and strategic behaviour, and how they are theorised to interact with business unity. I will then clarify the case selection and identify relevant stakeholders, before explaining how I coded the comment papers, calculated what degree of influence and preference attainment was achieved, and assessed a possible causal chain through process tracing. The analysis will present the structure of who participated, to what extent they managed to influence the final rule, and to what degree interests were united throughout the process. While I did find that financial and business interests influenced the final rule, while civil societal and governmental interests carried little influence, I found lower unity than I expected. Financial and business interests expressed fairly diverse preferences as to what the final rule should look like, but were unified in expressing that less regulation was needed because the ruling itself was too costly and unnecessary. I conclude that unity in specific issue preferences may not be as important as unity in the central message sent, which might be due to the legal requirements for responsiveness that cause agencies to be greatly concerned with their reputation. The increased salience of criticism in the form of legal challenge makes it highly important for bureaucrats to respond to the central message sent by a majority of stakeholders, even if the input received is highly biased towards certain interests.

Theoretical Foundations

There is ample literature that studies interest groups and how they interact with the government through lobbying. Lobbying is commonly accepted as the provision of information to decision-makers in order to convince them of one's side of an issue and influence the ensuing rule (Nownes, 2006). However, throughout the 20th century, little attention was given in the scholarship to the actual interactions held between interest groups and their respective agencies, instead choosing to focus on other aspects of interest groups such as mobilisation and access (Baumgartner & Leech, 1998). More recently, scholars have turned their attention to these interactions, but influence is often avoided due to the difficulties in operationalisation and measurement (Mahoney, 2007). As the scholarship moves away from a perspective that prioritises the rules of the game, towards one that focusses on the "extensive policy arrangements associated with modern governance", a better understanding of influence is more important than ever (Hacker & Pierson, 2014, p. 648). This study departs from the idea that influence after legislation has already been passed must be considered—namely, the strategic space occupied by federal agencies in rulemakings.

Lobbying effects on public bureaucracies are increasingly studied as they become more important to policy-making in the US and other modern democracies. Rulemaking carries substantial influence, with legislation too vague to be implemented, leaving important legally-binding choices to unelected bureaucrats (Kerwin & Furlong, 1992; Berry, 1989). Federal agencies are vested with powers to enact rules and the responsibilities to respond to stakeholders through the Administrative Procedures Act (APA) of 1946. The two main rules state that the agency must provide notice of a proposed rule in the Federal Register, and that the agency must both provide adequate opportunity to give input and consider the input given (APA § 553(b, c)). To ensure that bureaucrats make informed decisions, and are held accountable for them, "notice and comment"[1] proceedings are mandated for any rulemakings. These proceedings are important for two reasons: Firstly, they provide a textual record of the preferences of stakeholders, and how the regulator

[1] Federal agencies issue details on the proposed rulemakings, providing notice for stakeholders to submit their input through comment papers by a certain date (Yackee, 2005).

responded to them (Chubb, 1983). Secondly, they are intended to enable equal opportunities for all stakeholders to provide input (Croley, 2000). This rule provides the legal basis for bureaucrats to be strategically responsive, as it explicitly requires acceptance and consideration of input from any interested parties. Hacker and Pierson (2014, p. 644-5) note the importance of policy in the idea of "policy as prize", whereby actors invest substantial resources into attempting to influence policy in the hope of long-term advantages. Some scholars have even theorised that the process results in "regulatory capture", in which regulatory agencies by their nature benefit and serve regulated industries (Bernstein, 1955; Lowi, 1969; Stigler, 1971; Carpenter, 2004). Potential influence on regulatory outcomes is important in both the short and the long term, as immediate impacts and overall trajectories of policy are shaped by those who provide input.

The position of federal agencies is complicated by the multiple stakeholders and audiences that the agency must please in order to maintain rulemaking legitimacy without the concurrent constitutional or electoral authority. It is theorised that public agencies interact with interest groups in the interest of obtaining "policy goods", resources for which the agency must depend on interest groups to supply (Braun, 2012). An often-cited prediction drawn from agency dependence on policy goods is that of *resource dependence theory*, whereby interactions are dictated by the agency's need for survival and thus strategically determined by the relative importance of resources to an organisation and the concentration of these resources in the wider environment (Pfeffer & Salanick, 1978). It is this dynamic that encourages responsiveness, but at the same time fuels bureaucrats acting strategically. While bureaucrats would ideally behave in an entirely objective fashion during rulemakings, an increasing body of research points to them as strategic actors in their own right (Chubb, 1983; Balla, 1998; Yackee, 2006). The information and resources provided by interest groups are seen as particularly useful in reducing uncertainty about the consequences of legislation (Rourke, 1984; Hrebenar, 1997; Wright, 1996). Bureaucrats can then use this information to their own various strategic ends, whether it be to influence public opinion, avoid criticism, maintain control over their rulemakings, or disagree with the executive (Hrebenar, 1997; Rourke, 1984; Wilson, 1989, Carpenter, 2014). Bureaucrats are strategic actors in their own right, and the incentives presented to them in rulemakings must be considered.

The interactions between federal agencies and interest groups are further complicated by the potential effects of judicial involvement. The goals of the APA to increase transparency, accessibility and accountability in the rulemakings of agencies are the responsibility of the judiciary to uphold through the opportunity for judicial review (Croley, 2000). Most significantly, the textual record of the notice and comment proceedings provides a useful body of evidence to legally challenge new rules. Rules are automatically subject to judicial review to ensure that they are within the agency's mandate and properly follow from the applicable legislation (Funk et al., 1997). Bureaucrats have a significant incentive to show responsiveness to comments, as "failure to adequately acknowledge or respond to a comment is grounds for judicial appeal, and ultimately remand or even reversal" (Nixon et al., 2002, p. 65). The pressure to accept influence in order to avoid legal challenge is so great that William West even termed the dynamic the "judicialization" of rulemaking (West, 1984, p. 390). The threat of legal challenge adds salience to the strategic responsiveness of bureaucrats, as they are legally bound to be able to show that stakeholder input was incorporated into the rule. This dynamic creates a system of shared control, whereby agencies must be attentive to and are influenced by the Congress, President, public, and courts (Yackee, 2006). However, when a majority of comments represent private interests, it begs the question of how the regulator can manage to be effective while also incorporating heavily biased input.

The common theme of the dominance of business interests in the literature on interest groups, especially in the context of the US, causes great concern for the dynamic presented in interactions between federal agencies and stakeholders. The traditional assumption is that business interests will dominate in influencing policy-making because they have significant advantages in the provision of information and have lower costs to mobilise than other groups (Olson, 1965; Kerwin, 2003). Other scholars also highlight the important role played by business in the economy, particularly when it comes to financial interests, as other businesses depend on financial services for their own activities (Lindblom, 1977; Broz, 1999; Cerny, 1994). This dominance is identified by scholars as particularly pronounced in the US (Baumgartner & Leech, 2001; Schlozman, 1984). The US sees less compromise and more cases where one side reaps absolute victories while the other suffers absolute losses, with the winners representing business interests the majority of the time and citizen groups often achieving none of their goals (Mahoney, 2007). This trend is particularly troubling in the case of rulemakings, as if bureaucrats are responsive to business interests, regulations will reflect the preferences of certain interests at the expense of the public interest.

An increasingly prevalent explanation for the disproportionate influence of business interests is that of unity. James Wilson (1989) was one of the first scholars to note the importance of unity for interest groups, as he notes that since group preferences are similar, so too will be the costs and benefits, incentivising cooperation. The *business unity* theory predicts that business has the capacity to overcome the demands of opposing groups due to their superior ability to overcome collective action problems and remain unified (Smith, 2000). However, there remains debate as to what degree of consensus is required—whether specific preferences must be aligned, or whether a united message is enough. Some scholars highlight the dissent within the business community itself, claiming that between the dissent within the ranks, and dissenting voices of other groups, unity cannot be automatically assumed (Truman, 1951; Lowery & Gray, 2004). Yackee (2006, p. 740) concluded both that agencies disproportionately favoured business interests, and that consensus in a central message is more important than the degree of consensus in the comments overall, directly contradicting the predictions of Wilson. However, a number of conditional factors have been identified that lessen business influence and unity, namely: high public salience, which increases the salience of the voice of the public; high Congressional or Presidential attention, which can cause policy-makers to turn a blind eye to interests not in-line with theirs and favour their supporters; or a high mobilisation of outside groups, which multiplies the voices, demands and pressures on policy-makers to be responsive and creates more possible coalitions around which to unify (Culpepper, 2011; McCubbins et al., 1987; Smith, 2000). Business unity is agreed as an important factor in influencing policy-makers, but uncertainty remains as to when and how unity matters. It is important that our understanding of unity as a vehicle for influence is developed in order to improve our ideas of how the strategic interests of bureaucrats and the resulting rule are influenced.

When discussing business dominance and unity, scholars increasingly identify the financial sector as exhibiting greater unity and influence than other sectors. Again, the effect is identified as particularly salient in the US, where extreme inequality and a lack of compromise in policy-making emphasises the ample resources and high organisational capacity of finance (Hacker & Pierson, 2010). The role of information is particularly salient in matters relating to financial regulatory decisions, as the complexity of the environment and seriousness of unintended consequences causes politicians to turn to the wisdom of stakeholders and experts (Pagliari & Young, 2012). However, some research since the financial crisis argued that financial lobbying has weakened, mainly due to the greatly increased public salience of finance (Baker, 2010; Woll, 2013). Young and Pagliari (2015) evaluate overall business unity in regulatory politics, giving particular attention to the unique position held by finance, and find that the financial sector does attract higher levels of business unity than other sectors. However, Clapp and Helleier (2012) argue that high mobilisation of outsiders in lobbying can manage to outweigh the voice of finance, rather than supporting their interests. One explanation offered for this effect is the rise of finance capitalism, whereby the infrastructural role played by financial groups strongly situates them to influence other business groups and policy-makers (Streeck, 2014). Given the privileged position of finance and its potential for increased unity, there are significant opportunities to influence outcomes in the short and long term towards financial interests.

Unlike the scholarship on interest groups more generally, which consistently highlights the advantages of business interests, consideration of notice and comment procedures has yielded more diverse results. Earlier works generally conclude that business interests are not favoured, supporting the assumption that notice and comment procedures provide an equal opportunity for input (Magat et al., 1986; Cropper et al., 1992; Golden, 1998; Nixon et al., 2002). However, more recent assessments of notice and comment proceedings mainly conclude that business interests are favoured, though without agreement on why or how. In analysing the influence of comment papers on federal agency rulemaking, the authors concluded that the submission of interest group comments does directly affect the content of federal agency rules, and that comment periods are likely to be dominated by business interests (Yackee, 2005; Yackee & Yackee, 2006). Heightened unity was observed by Young and Pagliari (2015), who found that financial sector regulation is associated with consistently higher levels of business unity than any other sectors, despite there being a diversity of interests present. Missing from the discussion is an in-depth look into the mechanisms through which business or finance carry influence. Many studies over-rely on process tracing to establish influence, or apply overly-simple measures of "success" that fail to adequately capture the dynamic (Kluver, 2011). Studies evaluating influence also often evaluate business influence more generally, rather than focussing on the unique dynamics within the financial sector. It is curious that more attention has not been given to the topic of financial regulation, as the evidence indicates that finance is an area particularly prone to be captured by the influence of special interests (Pagliari & Young, 2012). This study aims to fill the gap in our understanding of interactions between federal agencies and their stakeholders, and how unity among stakeholders may influence bureaucrats to produce rules largely reflecting private interests.

In this vein, I will investigate to what extent financial interests influenced federal regulation on banking secrecy in the United States. Given the literature indicating the dominance of private interests, I expect that financial and other business interests influenced the final ruling towards less regulation, largely through presenting a unified front in the notice and comment proceedings.

H1: Financial and business interests will directly affect the content of the final rule.

H2: Governmental and nongovernmental interests will not directly affect the content of the final rule.

In observing the expressed preferences of stakeholders, the striking unity observed among business and especially financial interests leads me to expect that

H1a: Financial interests will closely resemble each other.

H1b: Business interests will closely resemble financial interests.

Data and Method

I observed the degree of stakeholder influence over the regulatory process behind the 2016 final rule by the Financial Crimes Enforcement Network (FinCEN)[2], *Customer Due Diligence Requirements for Financial Institutions*. I selected this regulation for a number of reasons: Firstly, it is a regulation for which FinCEN has complete legal autonomy. The initiative for the legislation originated within FinCEN itself, ensuring that I have not missed influence carried at the Congressional level. Secondly, customer due diligence legislation was long overdue, having been already implemented in other developed states, but the final rule still showed significant gaps for the flow of illegal money (Transparency International, 2016). Thirdly, this piece of legislation is one that is highly technical and exerted significant costs specific to financial institutions, while other businesses would remain unaffected. Thus, it is an area in which businesses should not be expected to unify their interests with those of finance (Young & Pagliari, 2015). Finally, on a scholarly level, the realm of tax and regulatory provisions, being a highly technical area with little

[2] FinCEN is the wing of the US Treasury Department that is delegated the responsibility to issue regulations under the Bank Secrecy Act.

attention, is understudied as scholars choose to investigate the most controversial questions, such as abortion, civil rights, or gun control (Smith, 2010). The regulation is also a useful one in that it provides multiple time points for analysis. This is advantageous from both a scholarly and a methodological standpoint. The majority of the literature only looks at a single timepoint, and therefore does not capture any changes in dynamics during the process. In observing both influence and unity, I can observe the shift, or lack thereof, of the regulator towards more or less regulation, and I can observe what different coalitions among interest groups form at different stages in the rulemaking process.

I used the following criteria to differentiate between financial, business, governmental, and nongovernmental interest groups: Financial interest groups are defined according to the covered institutions of the ruling. These groups include banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities (FinCEN, 2016, p. 29398). I chose a restrictive definition of financial groups, because while the Bank Secrecy Act and Patriot Act have a wider remit of institutions, it is important to differentiate between those groups that will be directly affected by the regulation, and those groups that may simply wish to mitigate unintended consequences or to make sure that their preferences are recorded in the register. I divided actors into these groups based on their self-representation in the comment paper preamble, or for the few papers that this was not available, used the "About Us" section on their website. All business actors that engage in the comment letters, but are not a part of the covered financial sector, are defined as non-financial actors. Any non-affiliated individuals, non-governmental organisations, or international organisations in the comment letters will be defined as civil society groups. Finally, any submissions from politicians or other governmental employees will be defined as governmental interest groups.

I drew my data from the publicly-available online comment papers. The process includes two comment paper submission periods, amounting to 93 comment papers issued between March and July of 2012, and 163 comment papers issued between August 2014 and January 2016. Comment papers are an appropriate choice for gauging the influence of interest groups on regulation, as comment submission is both the most commonly used and the most effective tactic for interest representation in the regulatory arena (Furlong, 1997). The method through which I will gauge the influence of stakeholders is outlined below.

Measuring influence is an ambitious endeavour, as it cannot be effectively gauged by simple evaluation of whether a lobbyist is successful in achieving their goals. Influence is defined as "a causal relation between the preferences of an actor regarding an outcome and the outcome itself" (Nagel, 1975, p. 29). This definition indicates the importance of establishing causality between actor preferences and the final rule promulgated. Collier et al. (2010) emphasise the significance of basing inferences on both data-set and causal-process observations, meaning I must consider the data itself, as well as how it fits together. To reliably establish causality, I combined measuring the degree of preference attainment based on coding of the comment papers and connecting events through process tracing.

To assess the degree of preference attainment, I used a five-point scale resembling that used by Yackee (2005). This method involves two dependent variables: *regulatory change*, which measures the change in the final rule from the proposed rule, and *suggested change*, which measures the responsiveness of the agency to the suggestions made in comment papers. The independent variable, *interest groups' suggested change*, evaluates how much each stakeholder wants the rule to change based on their ideal preferences. The three variables were measured on a five-point scale in which 1 represents a moderate shift towards more governmental regulation, 0.5 indicates a weak shift towards more governmental regulation, 0 represents no shift in the amount of regulation, -0.5 indicates a weak shift towards less regulation, and -1 indicates a moderate shift towards less regulation (Yackee, 2005).

I read through all 256 comment papers and identified the top changes suggested by commenters. I then created a catalogue of all major changes suggested and identified the most frequently addressed issues, which were selected as the main issue categories. I noted the positions taken by every actor regarding the main issue categories. I arranged the positions taken according to whether they advocate for "less" or "more" regulation. I decided what constituted less or more regulation based on the stated position of FinCEN, since actors argue against the notice of rulemaking, and not what the current standards are. A copy of the coding scheme is included in the appendix. To construct the suggested change variable, I coded all comment papers according to these positions. To ensure accurate coding, I assessed every comment paper twice and maintained complete and detailed notes of my decisions[3]. I took the mean of an actor's expressed positions to be their ideal position.

Regulatory change is measured according to the measure of success advanced by Bernhagen et al. (2014):

$$sij = Q - |\ xij - Oj\ |$$

This formula[4] is interested in the difference between an actor's ideal point and the final outcome. Where sij is the success of an individual actor, Q is the distance between the minimum and maximum of the coding scale, xij is the actor's ideal point on the issue, and Oj is the final regulatory outcome of the issue. Success is defined as a regulatory outcome closer to the ideal point, meaning that the higher the value of s, the greater the success.

The suggested change variable operates on the assumption that if commenters are in agreement, the regulator will be more likely to address their concerns (Yackee, 2005). To construct this variable, I take the overall average position expressed in the comment papers for each identified issue, and compare it to the change in FinCEN's position between comment periods. For instance, if FinCEN was coded as a 0 in 2012, but is coded as a -0.5 in 2014, it will have an observed regulatory change of -0.5. If the overall position of the papers argued for less regulation, I consider that to indicate that some influence was exerted in that category. However, if FinCEN did not exhibit regulatory change, or moved in the opposite direction suggested in the papers, I will consider it as no influence.

Through process tracing, I established the steps through which stakeholders impact outcomes. Process tracing entails: evaluating group preferences, how groups attempted to

[3] A stronger reliability check was attempted based on the quantitative text analysis using Wordfish advanced by Kluver (2009). Wordfish is a statistical scaling model that estimates policy positions of texts based on their word frequencies (Kluver, 2009). The model is considered particularly appropriate for interest groups because it does not require reference documents to establish positions, as these documents are generally not available in the interest group context (Kluver, 2009). Kluver (2009) further found that Wordfish is an appropriate method to cross-validate hand codings of policy positions. However, the highly technical nature of the comment papers and short length of papers resulted in unusable figures. Wordfish is observed to be less suitable when documents are not sufficiently similar, such as in the case for highly technical texts with a high proportion of unique words, and when documents have fewer than 1000 words, which was the case for the majority of comment papers (Egerod, 2016).

[4] Bernhagen et al. (2014) also advance two other measures of success, "Improvement compared to reversion point" and " Relative improvement". Given that these measures returned similar results to the above measure of success, and Bernhagen et al. (2014) concluded that all three measures adequately capture success, I proceeded with the most simple measurement for my analysis.

influence decision-makers, how decision-makers responded to attempted influence, and the degree to which preferences are reflected in the final rule (Dür, 2008). This method allowed me to consider nearly all sources of influence and trace them through a causal chain.

To further establish causality, I considered my results in light of alternative explanations offered by the literature on financial and business lobbying of regulatory bodies: Presidential and Congressional attention, issue salience, and the diversity of outside groups involved. High Presidential and Congressional attention can structure the incentives of bureaucrats to favour certain interests (McCubbins et al., 1987). While rulemakings generally originate in Congress or with the President, it is important to note that many agencies can initiate a rule themselves "when the rule furthers the agency's underlying organizational mission" (Yackee, 2006, p. 725). To avoid the effects of high Presidential or Congressional attention, I selected a rule that originated within FinCEN, meaning that neither the President nor Congress has invested interests in the ruling.

In times of high public salience, mounting public opinion pressures politicians and bureaucrats to enact reform, even against the strong dissent of business and/or financial lobbies (Culpepper, 2011). To approximate salience, I drew from the work of Mahoney (2007) and took the number of *New York Times* (left-wing) and *Fox News* (right-wing) articles each month between 2010 and 2016 on the topic of bank secrecy, money laundering, or tax evasion from the Factiva database. To my knowledge, no appropriate public opinion polls exist to approximate public opinion alongside the salience of the issue.

The diversity of outside groups also has the potential to impact the amount of influence carried by financial and business lobbies. Advocates are more likely to carry influence with fewer invested parties, as their preferences can be represented with little opposition (Mahoney, 2007). Greater representation of interests may also contribute to a lower degree of financial and business unity, as the wider effects of regulation, apart from the directly impacted sectors, are represented (Young & Pagliari, 2015). Outside groups are defined in the private sector as groups for whom the proposed regulation will not apply. I base this definition on the work of Young and Pagliari (2015) and Rasmussen and Carroll (2013), who consider diversity in groups to be those that mobilise outside of the regulated sectors. In the public sector, I define comments made by civil society groups that are not directly involved in the promotion of financial transparency to be made by outsider groups. While a case could be made to consider individual commenters an outsider group, there is not enough information included about who the individual behind the comments is to draw any conclusions about potential “outsiders” among individuals. I considered any change in the number and diversity of interested groups throughout the period.

With this design, I have also attempted to address potential limitations with measuring influence. Issues in process tracing lobbying influence include: difficulties in establishing the causal chain between influence attempts and their outcome, resulting in an under-estimation of influence; difficulties in assessing the degree of influence due to no comparable measurement of influence; and mistakenly equating the level of interest group activity to the level of influence, resulting in an under-estimation of influence (Dür, 2008). Issues in assessing the degree of preference attainment include failure to accurately determine the preferences of relevant stakeholders and control for alternative factors, resulting in an over-estimation of influence; failing to specify the channels through which influence travels; and mis-quantifying the degree of influence due to overly-complex topics or under-consideration of the degree of public salience (Dür, 2008). In combining the two methods, I was conscious of these issues and attempted to explicitly use each method to alleviate issues in the other.

Analysis

Federal Agency Rulemaking: The Case of FinCEN

One area in the US in which the bureaucracy has carried significant influence in making and enforcing rules is in anti-money laundering (AML) rules. Money laundering is defined as the process whereby criminals can conceal the illegal sources of their funds and make them appear legitimate and therefore usable in the economy (FATF, 2018). A key component of laundering money is concealing the identity of the true owner of the funds, complicating criminal investigations (Findley et al., 2014). The two relevant pieces of legislation that define what is “appropriate” for the regulator to pursue in terms of AML are the Bank Secrecy Act (BSA) of 1970 and the Patriot Act of 2001. The BSA requires banks and other covered financial institutions[5] to maintain records of their customers, and vests the Secretary of the Treasury with the power to enforce reporting requirements and issue compulsory requests for information to covered

[5] Defined as banks and depository institutions, casinos and card clubs, broker-dealers, and investment companies (31 U.S.C. § 5312(a)(2)).

institutions (U.S.C. § 5313(a)). The Patriot Act expands the scope of covered institutions[6], still under the discretion of the Treasury, and expands the information that institutions must collect and maintain on their customers to reasonable verification of identity and ensuring that the individual is not a known terrorist (USAPA § 326(a)(2)). The most significant effect of these AML rules is that what was once considered a right to "customer confidentiality" is now seen with a negative connotation as "bank secrecy", which facilitates global drug trafficking and terrorism[7] (Levi, 2002). Identity information is now not only a legal requirement, but under international best practices, goes further than just the individual who opens the account, as financial institutions are also expected to have an idea of who actually controls the assets by identifying what is termed as the "beneficial owner" (FATF, 2018).

Despite the high level of Congressional and Presidential attention to the issue, and numerous rulemakings by FinCEN, the US fails to adequately collect information on the identities of those opening accounts. Despite the high international standards aggressively promoted by the US, the 2015 Financial Secrecy Index, measured across fifteen indicators of secrecy across 102 nations, ranked the US third for financial secrecy, only after Switzerland and Hong Kong (Sharman, 2011; Tax Justice Network, 2015). Financial institutions are observably not holding themselves to identification standards, as a 2014 study found that anonymous companies are easily available in the US (Findley et al., 2014). The US Treasury Department (2015, p. 3) itself observed that money-laundering vulnerabilities remain "largely the same" as in 2005. While other countries have raised standards in collecting and sharing beneficial ownership information, the US remains dead last for requiring companies to collect and maintain beneficial ownership information (Transparency International, 2018). Readily available and accurate beneficial ownership information is central to effective anti-money laundering legislation, leaving American financial institutions held to lower standards than in similar jurisdictions. Given the importance to the US and wider international community of anti-money laundering, it is surprising that more effective rules have not been passed.

[6] The definition in the BSA of "financial institutions" is extended to most notably credit unions, futures commission merchants, commodity trading advisors, and commodity pool operators (31 U.S.C. § 5312(a)(2)(2003))

[7] For more information on the detrimental effects of bank secrecy, see: OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, Paris, 2001.

Results

I find strong evidence that the comment papers submitted by financial and non-financial actors influenced the final rule in both the regulatory and suggested change variables. Hypotheses 1 and 2 are confirmed, as financial and non-financial actors directly affected the content of the final rule, while civil societal or governmental actors did not. The results indicate that FinCEN made adjustments for less regulation in the majority of identified issues in response to the ideal positions of actors in the comment papers. Hypotheses 1a and 1b are partially confirmed, as financial and non-financial interests were more unified than those of civil society and all argued for less regulation, but specific preferences diverged more than was expected. I will show that financial and non-financial interests dominated the comment periods and influenced FinCEN towards less regulation, before observing where their specific preferences diverged and where their central message was unified. I then discuss how unity in a central message can be especially effective when combined with the strategic responsiveness of bureaucrats.

Stakeholders: Who participated?

Both comment periods were dominated by groups representing the financial or non-financial sectors. Financial groups comprised banks, bank associations, credit unions, credit union associations, money services, and mutual funds and securities. While the comment papers submitted by civil society appear to show significant growth in 2014, 51% were submitted by individuals who identify themselves as being associated with the financial sector. The high proportion of individuals who self-identified as a member of the financial industry among comment papers submitted by individuals contributed to the low level of unity exhibited by civil society.

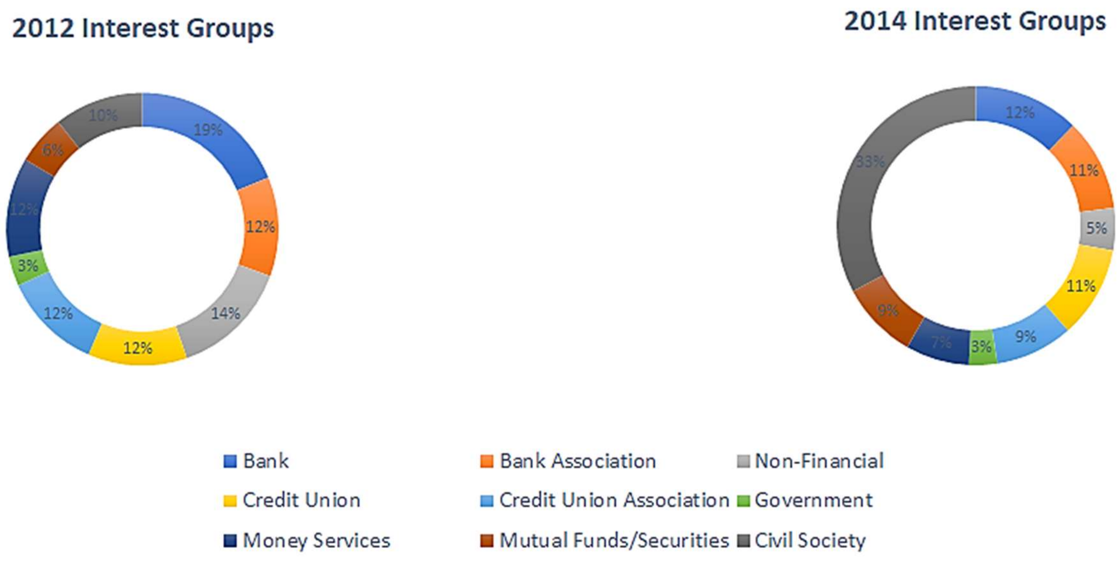


Figure 1: Interest Group Composition in 2012 and 2014

The high proportion of financial and non-financial interests represented in the comment periods is significant in light of the necessity for bureaucrats to appear responsive to stakeholders. The literature also empirically observes that bureaucrats will be responsive to the message articulated by a majority of stakeholders (Nixon et al., 2002; Schmidt, 2002; Yackee, 2005; Yackee & Yackee, 2006). I will now examine to what extent these actors managed to influence the resulting legislation, and how unified they were in doing so.

Evaluating Influence

The graphs below show the relationship between ideal preference points and actual preference attainment. A majority of preference points fall between 0 and -1, meaning that most actors argued for less regulation. Lower preference position scores are accompanied by higher preference attainment scores, showing that arguing for less regulation generally garnered a higher score for preference attainment. Governmental and civil societal actors are clustered near the bottom-right of the graph, since they are the only actors that mostly argued for more regulation, and exhibited lower levels of preference attainment. The effect is more pronounced in 2014 than in 2012. In 2012, some financial and non-financial actors attained a similar amount of preferences as civil society and government. In 2014, civil society and government remained with relatively low preference attainment, while all financial and non-financial actors achieved a higher level of preference attainment.

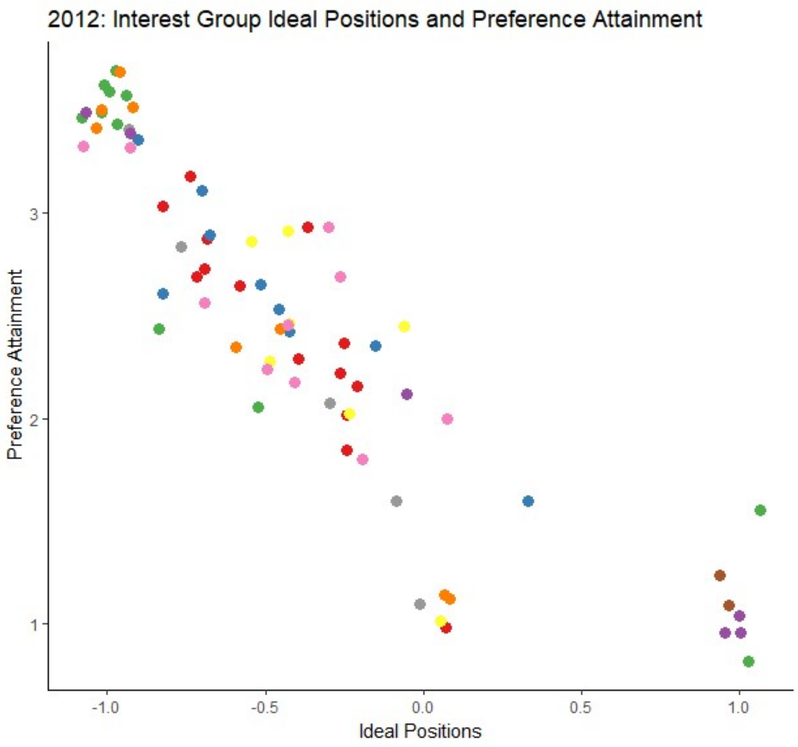


Figure 2: Ideal Preference Points and Preference Attainment in 2012

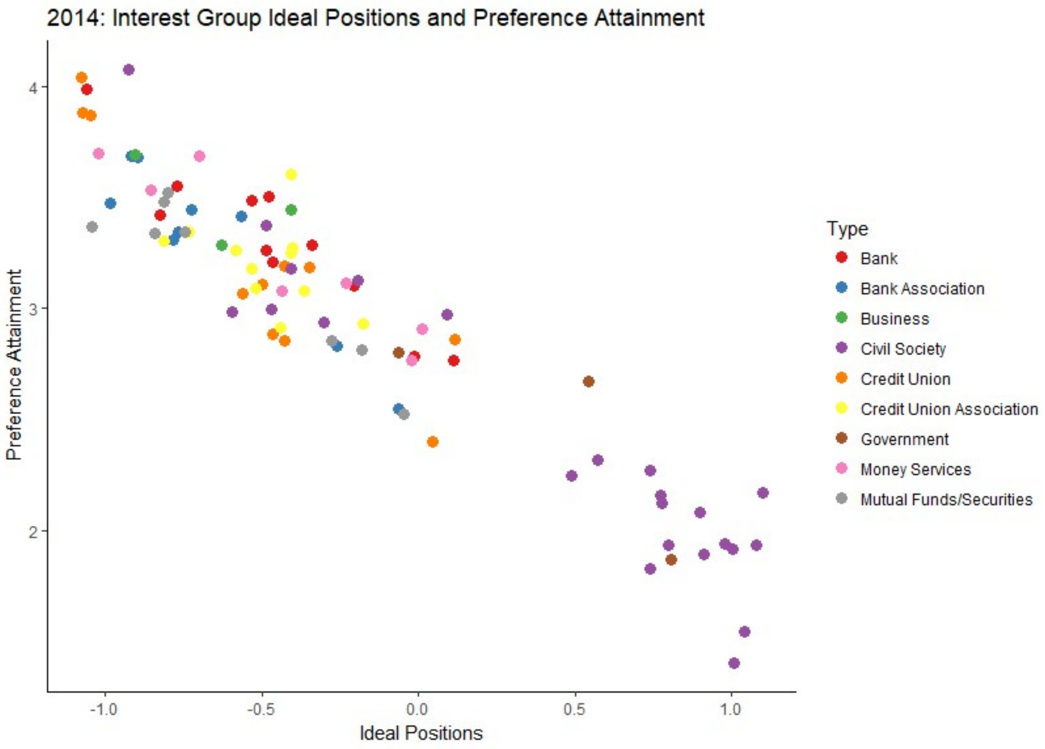


Figure 3: Ideal Preference Points and Preference Attainment in 2014

Note: Due to a large number of interest groups sharing the same ideal position and preference attainment, minor jittering was applied to both graphs.

The below table shows ideal preference positions and the level of preference attainment divided by group. In both comment periods, financial and non-financial interests argued for less regulation, while government and civil society argued for more. Financial interests are highlighted in orange, non-financial are in yellow, and government and civil society are in green.

Table 1: Group Ideal Preference Position and Preference Attainment

Interest Group	Ideal Preference Position (Mean)	Ideal Preference Position (Median)	Preference Attainment (Mean)	Preference Attainment (Median)
2012				
Banks	-0.43	-0.33	2.42	2.52
Bank Association	-0.53	-0.50	2.73	2.60
Non-Financial	-0.57	-1.00	2.86	3.50
Credit Union	-0.62	-0.75	2.56	2.87
Credit Union Associations	-0.29	-0.33	2.26	2.33
Government	1.00	1.00	1.22	1.22
Money Services	-0.49	-0.50	2.59	2.50
Mutual Funds/Securities	-0.41	-0.33	2.19	2.17
Civil Society	0.17	0.50	2.09	1.67
2014				
Bank	-0.45	-0.50	3.26	3.25
Bank Association	-0.63	-0.67	3.32	3.42
Non-Financial	-0.70	-0.60	3.43	3.50
Credit Union	-0.52	-0.50	3.19	3.00
Credit Union Association	-0.53	-0.50	3.24	3.25
Government	0.42	0.50	2.39	2.50
Money Services	-0.46	-0.40	3.22	3.20
Mutual Funds/Securities	-0.54	-0.72	3.22	3.50
Civil Society	0.40	0.80	2.39	2.00

Note: A higher score in preference attainment means more influence, min=1 max=4.

Groups had higher preference attainment overall in 2014, while their positions mostly remained the same or moved towards less regulation. Financial and non-financial interests consistently had a higher level of preference attainment than governmental and civil societal actors. The influence held by financial and non-financial interests is also confirmed by the suggested change variable, which indicates that FinCEN generally moved in the same direction as was suggested by a majority of commenters.

Table 2: Suggested Change by all Interests

Category	Mean – Ideal Positions	Median – Ideal Positions	Observed Regulatory Change
2012			
Risk Basis	-0.08	0.00	1.00
Definition Beneficial Ownership	-0.12	-0.50	0.00
Exemptions	-0.46	-1.00	-0.50
Verification	-0.08	0.00	-0.50
Existing Customers	-0.45	-1.00	-0.50
2014			
Definition Beneficial Ownership	-0.02	0.00	-0.50
Certification Form	-0.01	0.00	-1.00
Verification	-0.17	-0.50	-1.00
Exemptions	-0.45	-1.00	-1.00
Existing Customers	-0.46	-1.00	-100
Monitoring	-0.28	0.00	-0.50

In many categories in the above table, it appears that FinCEN moved even further towards less regulation than was suggested in the comment papers. Large gaps also appear between the mean and median in ideal positions. However, the picture is much clearer once the ideal positions of governmental and civil societal actors are removed, as shown in the following table.

Table 3: Suggested Change by Financial and Non-Financial Interests

Category	Mean – Ideal Positions	Median – Ideal Positions	Observed Regulatory Change
2012			
Risk Basis	-0.20	0.00	1.00
Definition Beneficial Ownership	-0.36	-0.50	0.00
Exemptions	-0.58	-1.00	-0.50
Verification	-0.32	-0.50	-0.50
Existing Customers	-0.82	-1.00	-0.50
2014			
Definition Beneficial Ownership	-0.38	-0.50	-0.50
Certification Form	-0.23	0.00	-1.00
Verification	-0.53	-0.50	-1.00
Exemptions	-0.60	-0.50	-1.00
Existing Customers	-0.79	-1.00	-1.00
Monitoring	-0.38	0.00	-0.50

Hypotheses 1 and 2 are confirmed: financial and non-financial interests influenced the content of the final rule, while governmental and civil societal interests had little effect on the final rule. Two examples from my identified issue areas are useful in illustrating how bureaucrats may act strategically in their responsiveness.

The agency exhibited limited responsiveness in the "Risk Basis" category—the only issue area for which FinCEN moved towards more regulation. This category involves responses to the question of when beneficial ownership information should be required. This part involved the *only* new expectation established by the rule and is considered a "key element of a broader U.S. Department of the Treasury strategy to enhance financial transparency" (FinCEN, 2012, p. 13047), as previously, identification was limited to the account holder and did not include consideration of who actually controls the funds. All other issue areas were framed as "codifying, clarifying and strengthening existing [customer due diligence] expectations", making them less central to justifying the rule (FinCEN, 2012, p. 13047). This issue area was therefore one of key interest for the regulator, as any move towards less regulation, or even remaining at the same amount, would defeat the main stated purpose of the proposed rule. Withdrawal of the rule would reflect poorly upon the agency: significant resources are already invested in preparing the notice of rulemaking, and FinCEN exercised its own autonomy in initiating the rule, meaning that to remove it would send a message of its own shortcomings in expertise (Naughton et al., 2009; Carpenter, 2014). The benefits of responsiveness were limited in this issue category, causing FinCEN to behave strategically and continue with its original intention.

FinCEN was responsive to a majority of voices in its move towards less regulation in one of the aspects of its definition of beneficial ownership. In the 2012 advance notice of proposed rulemaking, FinCEN places the threshold ownership level to be considered a beneficial owner at above 25%. A common preference throughout the civil societal and governmental papers is for this threshold to be lowered to 10%, since 25% will make it too easy for criminals to restructure ownership and avoid identifying themselves. This suggestion is taken into account in the 2014 notice of proposed rulemaking, which emphasises that the outlined obligations are only the *minimum*, noting that a lower percentage, "such as 10 percent" can be warranted "based on [an institution's] assessment of risk" (FinCEN, 2014, p. 45158). While governmental and civil societal comment papers in response continued to argue that this standard is not stringent enough, financial actors took major issue with the mention of 10%, arguing that it opens the door to inconsistent examiner interpretation and the slow over-extension of regulations. In the final rule, 10% is no longer suggested as a risk-based lower threshold, and is instead only mentioned in terms of FinCEN denying the change. The language used to deny the change echoes the arguments made by financial actors, who protested against the fact that "as many as eleven beneficial owners" would need to be identified, argued that current US and international standards only require 25%, and that the benefits of such a threshold would be outweighed by the costs (FinCEN, 2016, p. 29410). The domination of financial interests in the comment period, both in sheer numbers and in the influence exerted, reflects the simple arguments made by Nixon et al. (2002), Yackee (2005), and Yackee and Yackee (2006), who contended that strength in numbers is effective in changing regulatory outcomes. However, it is still not clear how voices that were disunified in specific preferences managed to influence FinCEN towards less regulation.

Evaluating Unity

I now turn to my expectations for financial and non-financial unity in Hypotheses 1a and 1b, which are partially confirmed. While private interests were united in disagreeing with the need for more regulation and arguing that the costs of the regulation far outweighed the benefits, the comments were more diverse in the specifics of these positions. In the next sections, I will first illustrate how specific preferences diverged, before turning to how these differences were deemphasised through an effective central message.

Unity: In Preferences

The table below shows different measures of unity across ideal preference positions and preference attainment positions. Since each variable is significantly non-normal, I assess unity across three measures: a large difference in the mean and median, a large range, and a large standard deviation.

Table 4: Unity in Ideal Preference Positions

Comment Period	Difference Mean/Median (>0.25)	Range (>1.25)	SD (>0.5)
2012	Non-Financial Civil Society	Bank Associations* Non-Financial Civil Society	Non-Financial Civil Society
2014	Civil Society	Civil Society	Civil Society

Table 5: Unity in Preference Attainment Positions

Comment Period	Difference Mean/Median (>0.25)	Range (>2.25)	SD (>1.00)
2012	Non-Financial Credit Unions Civil Society	Non-Financial Credit Unions Mutual Funds/Securities Civil Society	Non-Financial* Credit Unions Mutual Funds/Securities* Civil Society
2014	Civil Society	Civil Society	Civil Society

Note: *means that the measure of interest is right on the threshold score

Stronger unity can be discerned in 2014 than in 2012. While civil society is consistently the least united, non-financial firms show a surprising amount of disunity in 2012. However, this disunity can be explained by one of the identified control variables—the mobilisation of outside groups. In 2012, a large number of casinos and precious metals dealers submitted comments. Once it became clear that the regulation would not apply to them, casinos allowed their interests to be represented by the American Gaming Association, and precious metals did not comment.

The change in unity is clarified by observing the progression of the rulemaking from its first signs to the end of the notice and comment period and final rule. FinCEN released *Guidance* *on Obtaining and Retaining Beneficial Ownership Information* in 2010, which did not impose any new expectations and sought to clarify existing standards. The response was minimal, with four associations representing mutual funds and securities interests publicly responding to the publication. The issues raised in their comments were similar to those later submitted in 2012, emphasising that to create a categorical requirement for the collection of beneficial ownership information will be too burdensome for the financial sector to absorb the costs. However, the overall focus in 2012 for the regulator and commenters was the provision of information, where the comments concentrated on explaining current procedures and their associated costs to FinCEN. The main divergence among the preferences of financial and non-financial actors was the idea that they could maintain their competitive advantage by either pushing the costs onto other financial or non-financial actors, or pressing for specific exceptions for their type of institution. This position, while common in the 2012 comment papers, was taken by few actors in the 2014 papers. By 2014, unity increased as the financial and non-financial actors lost faith in the possibility that a new regulation would not apply to them.

The most relevant topic[8] for groups in both comment periods was exemptions—a majority of commenters in all groups submitted their preferences for exemptions in 2012, and the only groups that did not in 2014 were non-financial interests, governmental interests and civil societal interests. While there are numerous examples of disunity among issue preferences, I will focus on the discussion surrounding exemptions. Nearly all financial and non-financial comment papers expressed that trusts must be exempted, while governmental and civil societal papers emphasised that trusts carry their own unique risks for money laundering that must be addressed. FinCEN leaned towards exempting trusts in 2012, and confirmed that they would be completely exempted in 2014. Interesting, however, was the disunity in the specific calls for exceptions, as many comment papers from non-bank groups sought to exempt their type of financial firm from the regulation. These papers did not argue for exceptions to extend to other groups as well, and in some cases even attempted to point the finger at other types of financial firms for being more risky for money laundering than their own. While all groups argued for more exemptions, they often came in direct disagreement as to what exemptions were appropriate.

[8] A full break-down of which actors commented on what categories is included in *Table 6* in the appendix.

Moving from what was said to who was saying it, associations representing many actors tended to remain more general in addressing across issue categories, while specific actors tended to speak towards their own "niche" in order to best protect their own competitive interests. This observation is consistent with expectations regarding highly technical and complex legislation, as information asymmetries between different sectors are amplified, and there are fewer specific preferences around which to converge (Young & Pagliari, 2015; Roemer-Mahler, 2013). The effect can be likened to a funnel, in which banks and their associations are more general and address problems across the board, while preferences become more and more specific as one moves from the provision of banking services overall to the more specific interests of such industries as money services and mutual funds and securities. For instance, in the case of exemptions, bank associations by far listed the highest number of exemptions, while credit unions often only asked for small credit unions to be exempted. This structure contributed to the increased unity seen in 2014, as the provision of information was more central to the comment papers submitted in 2012, while by 2014, financial and non-financial interests were directly challenging the proposed changes. While financial and non-financial actors were united in their disagreement with more regulation, their ideas of what the regulation would look like were largely dictated by the technical needs of their industry. These preferences created a conundrum for FinCEN as to how to appear responsive to diverse calls unified by their desire for less regulation.

Unity: In Framing

In explaining how financial and non-financial interests managed to carry influence on the final rule despite their lower-than-expected unity in commenting on specific issues, it is necessary to consider their consistent unity in framing the issue. Financial and non-financial interests managed to place the focus of the regulator from the benefits of AML regulation to the costs placed on financial institutions. Governmental and civil societal interests framed the burden as an opportunity, but it failed to sway FinCEN. A consistent challenge regarding the cost and necessity of a rule from a majority of actors and throughout the comment period was a more effective argument than the diffused and uncertain benefits portrayed by a minority of interests.

In the response to the 2010 guidance and the 2012 advance notice of proposed rulemaking, the possibility of a categorical requirement to collect beneficial ownership information was already portrayed as a costly endeavour that must be subject to sufficient industry input in the event of a new regulation. There was a constant focus on *need*, with the claim made that since the regulation is not necessary, it is not useful to AML efforts. However, financial and non-financial interests also argued that the proposed regulation largely duplicates current procedures. The actors further asserted that the proposed guidelines were "too vague", but also argued against a "one-size-fits-all" approach, creating a contradictory position for which it was hard for FinCEN to respond.

By 2014, while continuing to maintain that the regulation is not necessary, the sectors become more focussed on minimising the costs and emphasising the intangibility of the benefits. The influence of this framing is reflected in the discussion of the Regulatory Impact Assessment by FinCEN in the final rule. FinCEN(2016, p. 29426) states that the challenges of quantifying costs and analysing benefits on an academic basis, "led [them] to rely predominantly upon breakeven analysis", which explicitly compares costs and benefits by asking how large the value of benefits must be in order to be equal to the value of costs. FinCEN (2016, p. 29427) further states that they have "made numerous changes to the rule itself….so as to minimize as much as possible the impact of compliance upon covered financial institutions while still furthering the purposes of the rule". The ruling, which was considered to carry a low economic impact when the initial analysis was conducted in 2015, was upgraded as carrying an economically significant effect[9], showing a significant scaling up of the costs.

Consistent throughout the submissions by financial and non-financial actors was the message that the rule was not justified. These arguments followed three main frames: the regulation is a case of regulatory overreach and will lead to ever-increasing costs to and inconsistent examiner review for finance; it is unfair to impart this cost to the financial industry, and the responsibility should instead be at the state or federal level; or the costs simply outweigh the benefits too much for the regulation to be effective. Positions confirming the need for the regulation either simply confirmed that the need was there, and sought to best balance the costs and the benefits, or argued that the proposed amount of regulation is not enough and must go even further. The graphs below show the disproportionate number of actors that found the rule to be unjustified.

[9] Economically significant regulations are defined under Section 6 of Executive Order 12866 to be those with an annual impact on the economy of $100 million or more, or that will tangibly have negative effects on the entire economy or relevant defined sectors (Carey, 2016).

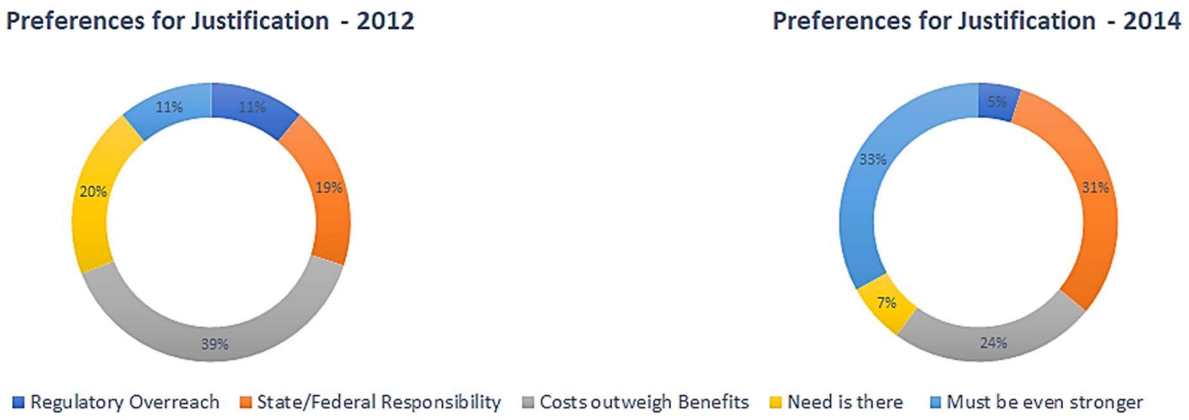


Figure 4: Framing Techniques Regarding the Rule's Justification

Three framings explicitly argued for less regulation, while one framing argued for less regulation for the most part, and only one framing both justified the regulation and argued for it to go further. These results confirm the conclusions of Yackee (2006), who challenged the conventional wisdom advanced by Wilson (1989) that consensus in the comments matters, as the central message mattered more in influencing FinCEN towards less regulation than the specific details as to what less regulation should look like. Even though groups failed to unify around what less regulation would look like, they managed to destabilise the need and emphasise the costs of more regulation.

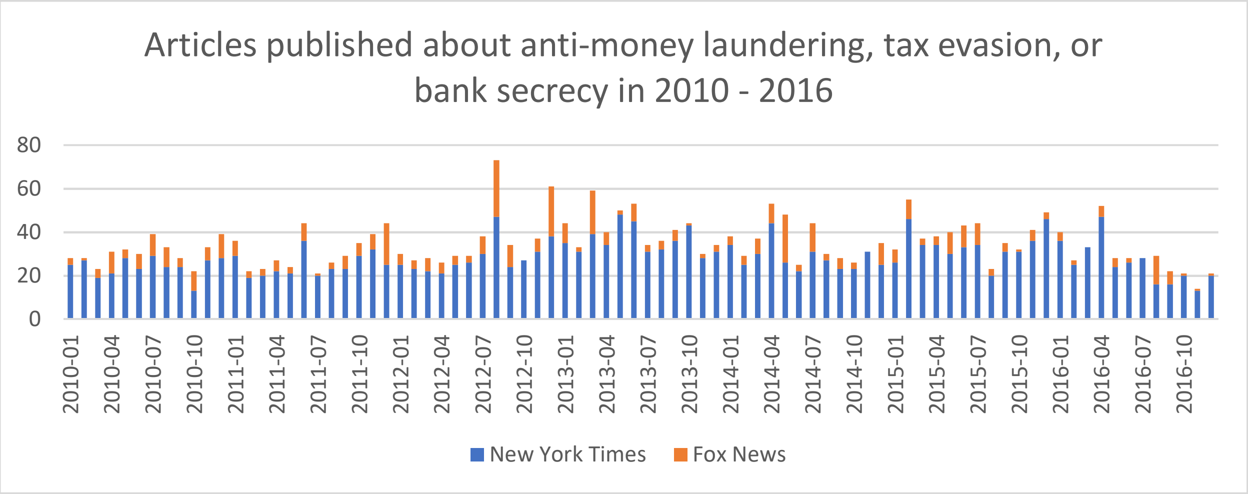
Alternative Explanations

My results remain consistent when alternative explanations are considered. The three alternative explanations I consider are that high Presidential and Congressional attention will weaken interest group influence or favour certain groups, that high mobilisation of outside groups will weaken unity, and that high public salience of an issue will weaken the influence of business (McCubbins et al., 1987; Culpepper, 2011; Mahoney, 2007).

McCubbins et al. (1987) predict that interest groups may carry less influence in cases with high Presidential and Congressional attention. Agencies may choose to engage with groups in-line with the governmental position (McCubbins et al., 1987). Alternatively, the salience of responsiveness would be reduced because Congressional or Presidential backing of a proposed regulation adds legitimacy and reduces the chances of a successful court challenge (Yackee, 2005). Presidential and Congressional attention were virtually non-existent, as the rule originated with FinCEN and only one Congressman submitted a comment paper. I can expect that the considerations of bureaucrats in responding to comment papers was not disproportionately affected by Congressional or Presidential influence.

A high proportion of outside groups can be expected to reduce the potential for financial and non-financial influence and unity, as a greater diversity of interests are potentially represented, which multiplies the preferences for bureaucrats to respond and the possible coalitions around which to form (Mahoney, 2007; Young & Pagliari, 2015). There was little mobilisation of outside groups, with non-financial commenters consisting of life insurance providers, precious metals dealers, risk management services, and one association representing small businesses. All civil society groups that commented were groups explicitly involved in promoting financial transparency. Twelve outsider groups commented in 2012, but in 2014 this number dropped to six as it became clear to casinos and precious metals dealers that their interests were protected. While these groups are certainly considered outsiders in the context of the rule, as it does not apply to them, their interest in the rule is mediated by their stakes in the financial industry. I can therefore expect their preferences to be similar to those of finance. Between the small proportion of non-financial organisations that commented and the nature of their interest in the regulation, it is unlikely that mobilisation of outsiders had an effect on the observed influence and unity among stakeholders.

High salience of a certain issue can rally public opinion and attention enough to counterbalance the dominant presence of financial and non-financial interests (Culpepper, 2011). Media attention remains consistent throughout the period, as shown in the graph below. Around thirty-five articles were published per month, with no spikes at the point of rule proposal publication, or a trend upwards. It is unlikely that increased salience of anti-money laundering had an impact on the regulation.



Source: Factiva Database

Figure 5: Issue Salience in Left-Wing and Right-Wing News in the US

Discussion: Central Messages Matter, Issue Preferences May Not

Financial and non-financial interests dominated the comment periods and exhibited unity in framing the regulation as too costly and unnecessary. A majority of actors framed the rule as exerting unjustified and excessive costs, which multiplied reputational concerns for the regulator, causing them to respond to the minimum demands given by a majority of commenters for less regulation. FinCEN strongly cares about its reputation and is highly dependent on the continuing support of its various stakeholders.

Unified voices arguing that the regulation was unjustified in its cost is an especially effective framing to influence FinCEN due to its position in the wider American rulemaking environment. FinCEN, as a government agency, possesses no authority vested by the constitution or democratic elections. The agency instead is mandated to listen to the authority of multiple voices—the system of shared control headed by the Congress and the President, the information provided by organised interests, and the monitoring provided by the courts (Yackee, 2006). Being seen as responsive to organised interests is important to FinCEN, as it reduces the potential for future court challenges, or the possibility for the Congress or the President to dissolve the agency altogether (Yackee, 2005). This dynamic is particularly strong for the AML role that FinCEN fulfills, as banks have "never much liked" the BSA due to its "technical and detailed" compliance measures, widely perceiving its requirements to be overly burdensome and ineffectual (Gouvin, 2003, p.963-4). The Patriot Act was similarly poorly received (Gouvin, 2003). Once one considers the impact of the "judicialization" of rulemaking in light of a highly technical and unpopular legislation, it can be expected that very little can be accomplished by the regulator without heavy reliance on the regulated industry.

In nearly every single comment paper, financial actors gave their support to FinCEN's declared mission of AML in the ruling, and to the goal of crime reduction more generally. This overall support was then followed by what was framed as minor adjustments with a big impact to reducing costs. There was either little consideration for the concordant reduction in benefits, or claims made to minimise perceptions of benefits. FinCEN was convinced that the adjustments made were small and did not think that the changes would significantly damage crime reduction. A Treasury spokeswoman claimed that the rule was "largely finalised as it was proposed", and that the final rule will be "even more effective" than was originally proposed[10]. This statement goes directly against the chorus of dissent from civil society, who contend that several of the changes made had serious implications for the rule's effectiveness[11]. Arguably, FinCEN succeeded in being seen as legitimate—financial institutions are slowly making the required changes with no foreseeable court challenges, and most notably, the Obama administration cited the regulation when announcing its own further steps to combat money laundering[12]. While civil society and some governmental actors continue to voice dissent[13], the ones that are the most visible for FinCEN's reputation generally support the new regulation. In fact, had the Obama administration's announced steps continued into the current administration[14], it is likely that FinCEN would have also managed to enhance its power.

In highly technical and complex issues, small details that are understood by few can have wide-ranging implications for which it is hard for anyone except experts to assess the impact. As is noted throughout the literature, financial interests are ideally placed to respond to complex

[10] https://blogs.wsj.com/riskandcompliance/2016/05/06/u-s-gives-banks-more-time-to-identify-corporate-owners/

[11] https://www.transparency.org/news/pressrelease/us_treasury_issues_new_rules_on_customer_due_diligence_but_gaps_remain_and
https://thefactcoalition.org/wp-content/cache/all/anti-money-laundering-experts-deeply-concerned-by-administrations-flawed-panama-papers-response//index.html
https://www.salon.com/2016/05/10/the_obama_administrations_panama_papers_misfire_why_new_rules_to_curtail_global_tax_avoidance_could_actually_make_things_worse/

[12] https://www.pymnts.com/bank-regulation/2018/giact-beneficial-ownership-compliance-due-diligence/
https://obamawhitehouse.archives.gov/the-press-office/2016/05/05/fact-sheet-obama-administration-announces-steps-strengthen-financial

[13] https://www.transparency.org/whatwedo/publication/g20_leaders_or_laggards
http://www.taxhistory.org/www/features.nsf/Articles/FB22E89F3424B5C285257FBE00578A6B?OpenDocument

[14] https://www.americanbanker.com/news/next-stop-on-the-reg-relief-train-reforming-aml-rules

issues, as they possess the expertise and ability to mobilise in large numbers (Lindblom, 1977; Cerny, 1994; Young & Pagliari, 2015). Federal agencies are most likely to respond to the most repeated preferences in comment periods (Nixon et al., 2002; Yackee, 2005). In particular, Yackee and Yackee (2006) found strong support for their hypothesis that the strength in business' numbers makes a difference in the influence carried, while the quality of information provision made little difference. My findings support this interpretation—the quality of information provided by civil society and government in the comment papers was generally very high. The groups gave specific figures as to the estimated benefits of the regulation, but these figures seemed to be drowned out by the chorus of voices from financial and non-financial interests arguing that the rule was too costly and unjustified. With business able to best mobilise in high numbers and present a unified overall message, we can expect that bureaucrats will be responsive to their preferences.

What is important, as stated by Yackee (2006) is the *central message* delivered by stakeholders, as the regulator attempts to balance across groups in the interest of being seen as a fair and legitimate actor. There are multiple dimensions to any issue, regardless of complexity, and what ultimately may matter for influence is the ability to emphasise some aspects over others (Borang & Naurin, 2015). The difference between policy issues and policy frames comes down to not specific rulings under debate, but what is seen as "at stake" in terms of the policy debate (Borang & Naurin, 2015, p. 501). In the case of this ruling, it was not the specific adjustments that mattered, but that the costs were seen as ultimately more salient than the benefits. We can expect bureaucrats to act strategically in responding to what is "at stake"—if actors can present a unified message of high stakes, the regulator may be moved to reduce a rule's impact in the interest of protecting themselves from what they perceive to be potentially damaging to their reputation.

Reputation must be considered by scholars in the case of rulemakings by American federal agencies. Reputation is coproduced among actors, as agencies attempt to manage the expectations and demands of diverse audiences (Busuioc et al., 2017). The agency needs support from its various networks, or else it faces destabilisation through low compliance, a lack of political support for their goals, or even the termination of the agency (Carpenter, 2014). This mechanism is effective for federal agencies, since their rulemaking authority wholly depends on being seen as legitimate by its audiences. Reputation, in fact, may be the most important policy good for federal agencies to secure in order to ensure their survival (Pfeffer & Salanick, 1978). The regulator is therefore interested in being seen as having engaged in "effective participation", which involves satisfying the minimum demands of a majority of commenters if it cannot mount a politically and legally sound case for the regulation (Schmidt, 2002, p. 73). In the case of AML, a highly complex area in which the benefits are largely academic, while the costs are estimated through more tangible means, effective participation is central to a legitimate ruling. Financial and non-financial interests therefore only had to create enough uncertainty in the agency regarding the evidence of benefits or necessity to nudge FinCEN towards less regulation. In highly technical and complex issues headed by a specialised regulator, in which it may be hard for financial and non-financial interests to agree on specific policy issues, the most effective path to influence may be to attempt to delegitimise the regulation and, by its extension, the regulator.

Conclusion

This research has attempted to illuminate the mechanisms through which private actors may manage to influence federal agencies. Bureaucrats occupy a unique position in rulemaking in which they both depend on stakeholders for resources and legitimacy and are legally mandated to be responsive to them. The opposing incentives presented to regulators require them to act strategically in their responsiveness to stakeholders. This process is complicated by the agency's dependence on its reputation, the judicialization of rulemaking, and the disproportionate unity of business. Bureaucrats find themselves in a difficult position, as they must be perceived as responsive in order to maintain their position and avoid court challenge, but must also strive to keep private interests in check. I observed these dynamics at play in the case of the 2016 final rule by FinCEN, *Customer Due Diligence Requirements for Financial Institutions*. I expected to find that finance and business had greater influence on the final rule than civil societal and governmental interests, and moreover expected to find striking unity in the overall preferences of the sectors. While I did find that private interests carried significant influence on the final rule, while civil societal and governmental interests carried little to no influence, the unity found among these interests was lower than I expected. When a majority of voices come from the business or financial sector, and furthermore are unified in a message that delegitimises the ruling and by extension, the regulator, the resulting rule is likely to be highly reflective of private interests.

Scholars remain divided as to whether the dynamics of federal agencies under the Administrative Procedures Act achieve its stated goals of increased transparency, accessibility and accountability. Interactions are theorised to result in more effective, stable policy (Baumgartner & Jones, 1993; Baumgartner et al. 2009) and observed to allow for a diversity of voices in input (Croley, 2000; Golden, 1998; Nixon et al., 2002). However, other scholars theorised that legal incentives for responsiveness result in policy reflecting only certain interests (West, 1984; Magat et al., 1986) and observed that private interests are favoured in input (Yackee, 2005; Yackee & Yackee, 2006). My results lend support to the latter interpretation of federal rulemakings, as the unified message of finance and business for less regulation were reflected in the change from the proposed rule to the final result.

The literature is also divided on the nature and impact of business unity on federal agency rulemakings. Business unity is the prediction whereby business is expected to exert greater influence than other groups due to its superior ability to mobilise and remain unified (Smith, 2000). Unity is generally seen as particularly strong in the financial sector, and especially in the institutional context of the US (Young & Pagliari, 2015; Hacker & Pierson, 2010). However, some scholars claim that unity cannot be automatically assumed (Truman, 1951; Lowery & Gray, 2004), while others point to mitigating factors for unity such as high public salience, high mobilisation of outside groups, and attention from the President or Congress (Culpepper, 2011; McCubbins et al., 1987; Smith, 2000). Disagreement also remains as to whether unity in specific demands is important, or in the central message sent (Clapp & Helleier, 2012; Yackee, 2006). My results support the findings of Yackee (2006), as bureaucrats may choose to be responsive to the central message sent, even when preferences are not highly unified.

While the results of my study point to the importance of private sector influence during comment periods and the relevance of unity, my research comes with a number of limitations. Finance is identified as a sector with consistently higher levels of unity than others (Young & Pagliari, 2015), and we may find a less pronounced effect in other sectors. I also did not evaluate unity for a ruling in which mitigating factors for unity were present, meaning that influence or unity may be less pronounced in rulings with different attributes (Culpepper, 2011; McCubbins et al., 1987; Smith, 2000). I observe only one policy issue and venue, so there may be unobserved interaction effects between different issue and agency types, particularly given the highly technical nature of the observed ruling (Braun, 2012). Further unobserved variables could take place at different stages in the policy cycle, as input is given to legislation before it even translates into authority at the level of federal agencies (Chubb, 1983; McCubbins et al., 1987). The lack of a reliability check also represents a significant limitation of my study, as replication of my study could yield different coding categories and ultimately different results.

These limitations, however, when considered in light of my results and the broader literature, point to further avenues of research. This study is situated among the broader literature that considers the impact of business interests on governance, drawing increasing concern over the effectiveness of legislation and regulation, given the disproportionate influence of private interests. Yackee (2005), Yackee (2006), and Yackee and Yackee (2006) provided the quantitative work that indicated that bureaucrats do change rules in response to notice and comment papers, and moreover favour business interests in doing so. My research gives insight into the claim by Yackee (2006) that the central message sent in comment papers matters. I therefore stress the conclusion of Yackee (2005, p. 119) that additional quantitative research is needed to "sort out the full relationship between interest group influence and bureaucratic responsiveness during all stages of rulemaking." This research is particularly important when one considers the "coupling of direct elections and private funding of elections in the US[, which] leads to a system with incentives for elected officials to be more responsive to wealthier actors" (Mahoney, 2007, p. 54). Better understanding of under what conditions business can unify and influence governance at all stages in the policymaking process is necessary to ensure fair and effective regulations in the future. My results are also interesting in light of the wider literature that compares regulatory dynamics in the US to the European Union (EU). Given the significant differences in interest group environments between the US and EU identified by Mahoney (2007), most notably that in the EU compromise is more likely, it would be interesting to perform a similar study in the EU context to see how the dynamics compare.

In conclusion, my research lends support to the growing concern over financial and business influence in the US. While I do not consider my results to support claims of regulatory capture (Bernsten, 1955; Lowi, 1969; Stigler, 1971; Carpenter, 2004), I do find that the judicial aspect of federal rulemakings in the US may be under-emphasised. Pfeffer and Salanick (1978) caution of a future in which organisations develop extreme interdependence, weakening possibilities for risk taking and uncertainty. The increased potential for court challenges magnifies the impact of pre-empting criticism and being perceived as responsive, creating significant incentives for bureaucrats to consider what is written in comment papers (Hrebenar, 1997; Funk et al., 1997; Carpenter, 2014). With comment papers considered the most common vehicle for regulatory lobbying influence, the potential implications of disproportionate financial and business influence are vast (Furlong, 1997). The claim of the "judicialization" of rulemaking made by West (1984, p. 390) may have a greater impact in the US than originally considered. As Yackee and Yackee (2006, p. 138) state in their conclusion, "whether notice and comment procedures themselves may be more effectively designed to equalize participation and influence is perhaps the question most worthy of further evaluation and empirical scrutiny". It is important we develop our understanding further of when and how unity changes rulemaking outcomes in order to better understand the influence of business and finance in federal agencies in the US.

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Appendix

Coding Scheme: 2012 Comment Papers

Risk Basis: When should beneficial ownership information be required?
- -1: Do not require, or only after account opening on risk basis
- -0.5: Compliance with current Customer Identification Program requirements suffices
- 0: Collect beneficial ownership information through risk-based approach
- 1: Categorical Requirement for all accounts

Definition Beneficial Ownership: For whom is the information to be collected?
- -1: Control prong only, remove indirect, minimise number of individuals
- -0.5: Treat agent as customer, simplify equity interest
- 0: 25% is acceptable, current definition
- 0.5: Lower 25% threshold
- 1: Involves analysis of assets

Exemptions: To which customers and institutions will this rule not apply?
- -1: Not our FI, 5+ unique exemptions listed, trusts, intermediated accounts
- -0.5: "Low-risk", less than 5 unique exemptions listed
- 0: 25% is acceptable, current definition
- 0.5: Lower 25% threshold
- 1: All financial institutions, no exemptions

Verification: To what extent is the institution expected to verify beneficial ownership information?
- -1: No verification, risk basis only
- -0.5: Reliance on customer, safe harbour
- 0: Identity only
- 0.5: Documentary and non, Look-through requirement
- 1: Verify both identity and status

Existing Customers: Should beneficial ownership information be requested from existing customers?
- -1: No
- 0: On risk basis
- 1: Yes

Coding Scheme: 2014 Comment Papers

Definition Beneficial Ownership: For whom is the information to be collected?
- -1: Collection on risk-basis, current Customer Identification Program
- -0.5: Certification form only requirement, remove indirect, minimise number/narrow definition, no understand nature/purpose
- 0: 25% is adequate, clarify prongs/indirect/nature or purpose
- 0.5: Do not permit nominee, clarify manager, Fallback provision

1: Lower 25%, identify all management under control

Certification Form: How is the information to be collected?

-1: Certification form after account opening, remove indirect

-0.5: Certification form only requirement, agent is customer

0: Flexibility in form submission

0.5: Governing approval, who can fill in form

1: Penalty of perjury

Verification: To what extent is the institution expected to verify beneficial ownership information?

-1: No verification or only after account is opened

-0.5: Safe harbour

0: Identity only, reliance, risk-based

0.5: Documentary and non, Look-through requirement

1: Verify both identity and status for all

Exemptions: To which customers and institutions will this rule not apply?

-1: 3+ unique exemptions listed, pooled/intermediated accounts, exempt own financial institution

-0.5: "Low-risk", less than 3 unique exemptions listed

0: CIP exemptions, trusts, charities, pensions, 1 exemption listed

1: All financial institutions, no exemptions, include trusts

Existing Customers: Should beneficial ownership information be collected from existing customers?

-1: No

0: On risk basis

1: Yes

Monitoring/Update: To what extent should monitoring and update of customer records be required?

-1: No fifth pillar, no express requirement

-0.5: Monitor on risk basis

0: No timeframe, monitor and update on risk basis

1: Specific requirement for monitoring and updating timeline

Note: While the two codings have slightly different categories, I ensured that there is no overlap between categories for accurate comparison.

Table 6: Interest Group Comment Issue Areas (In percent)

Issue	Banks	Bank Associations	Credit Unions	Credit Union Associations	Business	Money Services	Mutual Funds/Securities	Government	Civil Society
2012									
Risk Basis	66	54	40	40	25	63	75	33	37
Definition BO	53	72	-	20	-	45	50	66	50
Exemptions	80	91	40	50	83	100	50	66	50
Verification	33	63	-`	20	8	36	-	33	50
Existing Customers	47	36	20	20	-	18	-	33	50
Justified Only	13	9	20	30	8	-	-	33	25
Total (Count)	15	11	10	10	12	11	4	3	8
2014									
Definition BO	20	46	8	81	17	55	45	50	33
CF Form	60	46	15	45	22	78	54	50	23
Verification	33	46	8	81	17	44	27	25	41
Exemptions	53	69	61	64	33	66	89	-	23
Existing Customers	73	38	38	18	17	44	54	-	36
Monitoring	53	46	8	45	17	33	45	25	30
Justified Only	27	31	15	-	50	-	27	25	38
Total (Count)	15	13	13	11	6	9	11	4	39