

A Systematic Enquiry Into The Existence Of Democratic Authority In The Federal Administrative Agency Rulemaking Process

Russell M. Frazier, Ph.D.

Assistant Professor, Department of Political Science, Xavier University, New Orleans, LA. 70125

Abstract: *This article focuses on two factors, the first is to extricate patterns of populations' input and its influence in federal administrative agency rulemaking. The second is to test democratic theory models, utilizing systematic data generated by this study. The results in this research show the characteristics of issue networks. Additionally, organizations and individuals participated in the rulemaking process based on policy type. An assessment of each rule revealed that public interest and individual citizens, to a large degree coalesced, via the Notice and Comment process, to establish influential issue networks. The evidence of these very tangible phenomena may show some "soft evidence" of democratic authority in our federal administrative agency rulemaking process. As a final point, this research illuminates the many aspects of who participates and how influential participants are in non-regulatory agency rulemaking processes.*

Keywords: *Public Administration, Policy Implementation, Rulemaking, Public Management, Issue Network Theory, Iron Triangle Theory, Regulatory Capture Theory, Public Policy, Organizational Theory, Institutional Theory*

I. INTRODUCTION

According to Article 1 Section 8 of the United States Constitution, Congress is saddled with the responsibility of making law. This is principally because Congress is the only federal law-making body directly elected by the public. Any departure from this codified obligation would constitute a breach of contract with the American people. Hence, there has been multiple studies (Dahl, 1957; Arnold, 1990; Kingdon, 1995; Shafritz et al., 2016) that seek to understand the influence behind Congressional action. While this is an imperative undertaking, scholars suggest that more attention be paid to the practice of federal administrative rulemaking. Rulemaking is equivalent to Congressional law making.

The rulemaking process was established by Congress through the Administrative Procedure Act of 1946 (APA). Through the APA, Congress has delegated rulemaking authority to federal administrative agencies. According to Yackee (2009), this process is used to "fill-up" the details of enacted laws. Administrative agency rules do not only serve to regulate industry, but it also creates protocols and procedures to adequately and efficiently deliver public services to designated populations. Nevertheless, Congress, in an effort to democratize the rulemaking process, incorporated a public comment component. Specifically, the public is required to submit public comments electronically, or in writing to the appropriate administrative agency. The public usually stress their concerns regarding negative socioeconomic impacts of the proposed rule. Theoretically, federal administrative agencies would strongly consider public comments during the final formulation of agency rules. While this is an essential step in democratizing the rulemaking process, it opens the procedure to political elitism. Primarily, it legalizes the domination of rulemaking by industry, powerful interest groups and formidable issue networks.

Thus far, most scholarship has primarily focused on random policy in regulatory agencies to determine industry, interest group and issue network pressure in the general rulemaking process; little to no consideration has been given to context or democratic authority in the non-regulatory agency arena. Therefore, I will focus on the level of democratic authority in the Department of Education's (DOE), and the Department of Housing and Urban Development (HUD). It is imperative to focus on democratic authority in this context for one purpose. Principally, we need to establish the degree to which participation in the rulemaking process counterbalances the delegated responsibilities of non-elected administrative entities. The principle of American democracy (i.e., political equality, equality of opportunity, liberty and popular sovereignty) dictates that such systematic investigation occurs to ensure that all stakeholders are aware of "Constitutional Deficit" within the US rulemaking process.

As said earlier, this article will focus on two factors. The first is to extricate patterns of a populations' input and influence in federal agency rulemaking. The second is to test democratic theory models utilizing systematic data generated by this study. The article utilizes the written comments submitted to the DOE and HUD, during the APA Notice and Comment stage, to answer two specific questions:

Who participates in the DOE and HUD rulemaking? And to what degree do stakeholders influence administrative agency final rules? In the following segment, the literatures germane to these topics are provided.

II. LITERATURE REVIEW

2.1 Participation in the Rulemaking Process

There are a significant number of scholars dedicated to answering a lingering question: Who influences the rulemaking process, the masses or the elite? Contemporary research conducted on this topic by Kerwin and Furlong (2005) has provided some of the most significant findings relevant to the influence in the rulemaking process. They generally suggest that public interest groups, compared to businesses interest, are participating in over twice the number of rulemaking processes. This finding is consistent with theories of group participation.

Wilson (1980) suggests that policies can be differentiated by the way they distribute costs and benefits (as cited by Kerwin and Furlong, 2005). By extension, one would expect that organizations interested in concentrated costs or benefits are more likely to participate in policy-making. This is due to their ability to recognize the inherent benefits of their participation because of direct effect that a policy or, in this case, rulemaking will have upon them (p. 361).

Sunstein (2013) and Haeder and Yackee (2015) addressed the above question in a narrower context of interest group efforts to lobby the OMB during the review stage of the rulemaking process. Sunstein (2013) concludes, "OMB review is compromised by lobbying, leading some to suggest either a form of interest group capture, or at least capitulation" (p.1860) (as cited by Haeder and Yackee, 2015). Haeder and Yackee (2015) found a "statistically meaningful association between interest group lobbying and regulatory policy change during OMB Final Rule review" (p. 518). They concluded that we demonstrate an association, which may be causal.

However, our confidence in the suggestive nature of the results is increased both by the fact that they emerge from models that statistically control for the other likely drivers of policy change during OMB Review, such as rule significance and complexity, and by our research design choice to focus on a late stage in the rulemaking process (i.e., OMB Final Rule Review) (p. 518).

West (2005) ultimately suggested that, context or policy generally dictates participants during the Notice and Comment phase of the rulemaking process. In his meta-analysis of the rulemaking literature, he found that rules derive from a plethora of sources, the "relative importance which varies among agencies" (p.663). West (2005) explains that there are several mitigating factors that influence the character of outside participation. He contends that variation happens along numerous imperative dimensions:

- How participation occurs: Agencies often communicate with affected interests as they develop notices of proposed rulemaking, and we also know that such input can occur through a wide variety of mechanisms. These include letters, informal conversations between agency staff and affected interests. The appointment of advisory committees, hearings and even focus groups and among other possibilities.
- Who participates: Outside participation in proposal development usually occurs at the agency's invitation. Thus, bureaucrats exercise broad discretion in determining whose views will be considered as they define problems and identify and evaluate alternative solutions to those problems.
- The timing of participation: Interviews with agency staff indicated that the "when" of outside participation in rule development also varies a great deal. Some officials indicated that they communicate with outside interests from the beginning of proposal development through the comment phase. In other cases, participation was terminated with the publication of notice or (most frequently) at some earlier stage of proposal development in order to avoid improper ex-parte communications or to otherwise prevent the appearance of bias (p.663).

In sum, a plethora of scholars (West, 2004; West, 2005, Miller and Right 2009; Furlong and Kerwin, 2005, Tozzi, 2011; Yackee, 2015) have specifically examined the practicality of the Notice and Comment aspect of the rulemaking process. They have generally surmised that the Notice and Comment segment of the process fails to deliver on democratizing the rulemaking process. Be that as it may, most of the scholarship on this topic do not adequately illuminate who the key influential participants are in the Notice and Comment process. Additionally, these investigations (General Accounting Office, 2009; Shapiro, 2011; Sunstein, 2013; West 2005; Yackee, 2006, Yackee, 2009, Yackee, 2015) have mostly analyzed rulemaking phenomena attached to regulatory agencies. And they do not consider specific policy types in tandem with the level of conflict in which participation occurred. Generally, the research does not absolutely outline whether the process promotes accountability to the people. Still, their focus on regulatory review and their discussion on the role of interest groups, Congress and internal agency procedures are very important matters of analysis.

2.2 Influence in the Rulemaking Process

Historically, regulatory capture and iron triangle theory have factored into policy influence (McCool, 1998; Thaw, 2014). Regulatory capture occurs when "private interest, dissatisfied with regulatory outcomes, responded to this perceived "lack of representativeness" by engaging in various methods to exert influence over the process to achieve their private ends" (Thaw 2014, pp. 333-334). Often, the influence mentioned in the latter

statement conflicts with public interest (Thaw, 2014). For this study, Thurber's (1991) definition of iron triangle theory, as it most closely reflects the rulemaking process is used. Thurber (1991) contends that iron triangles take on more complicated structures where-by administrative agencies, Congressional committees and powerful interests cooperate to produce their desired policy preferences. This process tends to be more exclusive than inclusive. This model is amply supported by scholarly research; it is heralded as one of the most widely accepted theories in the rulemaking literature (Anderson, 2015; Thurber, 2013; Lowi et al., 2013). Juxtaposed to the iron triangle model, Heclo (1978) maintains that issue networks are "shared knowledge groups that tie together large numbers of participants with common technical expertise" (Heclo 1978, p.103). Included in the features that differentiate issue networks from the iron triangle are their size, scope, and inclusiveness. Based on the size, scope, and inclusiveness of issue networks, policy output and outcomes tend to be unpredictable. As Berry (1989) contends, both paradigms suggest very different and contrasting perspectives concerning what types of policy environments are most illustrative of contemporary politics in Washington D.C.

No one argues that there are only issue networks or only sub-governments active in policymaking. Rather, the argument is over what is most typical and most descriptive of the policy process. This should serve as our framework for analyzing how laws and regulations are made (Berry 1989, pp. 243-244).

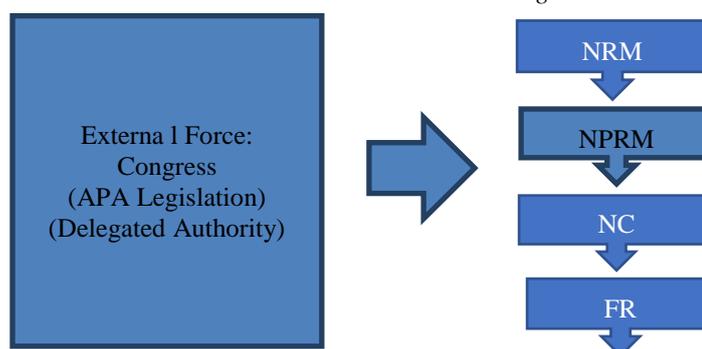
In the following two segments, I will provide the research design, empirical findings, policy implications/recommendations and conclusion for this study.

III. RESEARCH DESIGN

An exploratory case study analysis of the William D. Ford Federal Loan Program and HUD housing rules, which are administered by the DOE and HUD, was carried out to better understand their compliance with the Administrative Procedures Act of 1946. Additionally, the research sought to better understand if the general principle of democratic authority was prevalent in agency rulemaking practices. Data for this evaluation were collected from two data sources: Public comments supplied to the DOE and HUD via the Federal Register. To better comprehend the research design applied to this case study, it is imperative to understand the rulemaking process.

The rulemaking process in the United State begins with legislation. Congress passes a bill, which often contains broad policy goals. That bill is signed into law by the president. Next, is Advanced Notice (informal). During the Advance Notice of Proposed Rulemaking step, think tanks and researchers provide their expert analysis of the problem, implementation and the context in which the policy is to be executed. This part of the process is also known as the negotiated rulemaking (NRM) aspect of the process. Next, with the help of the Office of Information and Regulatory Affairs (OIRA)/Office of Management and budget (OMB)/ Executive Office of the President (EOP), the President analyzes draft proposal rules (significant rules), determining which will have drastic economic impact. Then, the agency publishes its actual proposed rule (NPRM) in the Federal Register. After the proposed rule has been published, the public has an opportunity (30 to 60 days) to comment. This is known as the Notice and Comment period (NC). After receipt of public comments, the OMB is consulted during an external review period. If the EOP/OMB approves, Congress can review the rule (Congressional Review Act of 1996). Following Congressional review, the proposed rule becomes a final rule (FR) after some agency modifications. The rule then becomes a legitimate law. Next, the agency publishes a response, via the Federal Register, to the concerns raised by the public comments and updates its analysis and justification for the rule. Sometimes, an effective date must be established for impacted parties to come into compliance. Lastly, judicial review (federal district courts) takes place if the rulemaking is deemed improper by the public, or regulated parties. In principle, public participation can be considered as a function of accountability. Ultimately, the legislative intent is to establish an intervening variable (Notice and Comment) to further democratize the policymaking process (see Figure 1).

Figure 1.
Administrative Procedures ACT 1946 Rulemaking Process



This research utilizes multiple methods to better understand influence in the DOE and HUD rulemaking process. First, public comments are used to identify who participates in the rulemaking process. Next, public comments are used to understand who influences policy outputs. This process will consist of analyzing modifications between NPRM and FRs, and then comparing that data to public responses submitted during the NC stage. Lastly, the data will be used to test the regulatory agency capture, iron triangle and issue network models. While generalizability is not a goal, transferability of exploratory findings is important. It is assumed that if the regulatory agency capture, iron triangle or issue network models accurately depicts the DOE and HUD implementation process in the US, during the period (January 21, 2008 – January 21, 2017) under consideration, policy stakeholders can possibly transfer, or apply results to similar rules that exist within similar policy environments. Additionally, it is imperative to note that this study utilizes the traditional APA rulemaking process, as it adequately addresses the guiding questions presented in this research.

The research assesses four rules in two federal agencies (see Table 1). Multiple rules were selected in the Department of Education to offer a variation in the background of populations impacted by the DOE and HUD agency rules. Both agencies were selected for two reasons:

- They were chosen due to the scope of services provided. The four rules executed by the agencies impact a broad group of stakeholders. For example, stakeholders from almost every economic background, ethnic group, business group, interest group, research group and educational group are impacted socially and economically by the DOE and HUD. Here, the aim was to diversify beyond a single rule and agency. It was hypothesized that the four rules were adequate to ultimately establish themes.
- Additionally, the DOE and HUD offers some understanding of the rulemaking process within the non-regulatory agency arena. As stressed earlier in this study, most research of agency rulemaking focuses on regulatory entities.

The rules were drawn from a single presidential administration to control for external influences. A change in administration may result in a change of implementation philosophy. Thus, the change in the process may derive from the top rather than the bottom. So, all the rules linked to this study were entirely processed during the Obama administration. A non-probability purposive sampling process was used to identify rules among agencies. Because not all regulatory, or non-regulatory agencies allow for tangible factors by which to discern patterns of deficiency among rulemaking participants. A non-probability purposive sampling process simply allowed for a more efficient, effective and useful data collection process (Trochim & Donnelly, 2008).

Table 1. Background Information

<i>Rule</i>	<i># Comments</i>	<i>OMB Significance</i>	<i>Date NPRM</i>	<i>Date FR</i>
<i>DOE</i>				
Student Assistance	25	Yes	07/29/2013	11/01/2013
Adverse Credit Definition	310	Yes	08/08/2014	07/01/2015
<i>HUD</i>				
Racial Investigative Standards	63	No	10/21/2015	09/14/2016
Discriminatory Effects Standards	96	No	11/16/2011	02/15/2013

Source: <https://www.federalregister.gov/my/clippings>

IV. FINDINGS

4.1 Rulemaking Participation

The APA of 1946 was designed to further democratize the policymaking process. Again, the Notice and Comment aspect of the process, as perceived by Congress, would help facilitate such a normative concept. Thus, our focus on this stage of the process is vital to answering the guiding questions listed above. Tables 2-3 depicts participation during the Notice and Comment period for each rule examined. The most noticeable characteristic among the results is that the dominance of “Individual Citizens” participating in the Notice and Comment stage at the DOE. Between 44 % and 78.6 % of the correspondence submitted to the DOE were provided by “Individual Citizens”. The coding process also revealed that federal agencies, in no case, participated in the Notice and Comment process. Additionally, the most striking point of observation was the dearth of participation by any level of government in the Notice and Comment process at the DOE and HUD. In no case did “Government” participation exceed 7.9 %. The modest government input came from individual members of Congress, governor appointed university board members, and local city housing commissions/authorities.

Table 2.
DOE Rulemaking Participation
Comments Presented by Type of Groups

<i>Category</i>	<i>Student Assistance</i>		<i>Adverse Credit Definition</i>	
	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>
<i>Citizen Groups</i>				
Public Interest	0.0	0	0.3	1
Advocacy	4.0	1	1.0	3
Total	4.0	1	1.3	4
<i>Business</i>				
Corporations	28.0	7	1.3	4
Business Interest	0.0	0	0.0	0
Total	28.0	7	1.3	4
<i>Individual Citizens</i>				
	44.0	11	78.6	236
<i>Professional Participation</i>				
Associations	20.0	5	1.9	6
Coalitions	4.0	1	0.0	0
Total	24.0	6	1.9	6
<i>Government</i>				
Federal Agencies	0.0	0	0.0	0
State/Local	0.0	0	0.6	2
Congress	0.0	0	0.3	1
Total	0.0	0	1.0	3
<i>Academic</i>				
Institutions	0.0	0	14.1	44
Academic Interest	0.0	0	0.2	2
Think Tanks	0.0	0	3.2	10
Totals	0.0	0	18.0	56
<i>Faith Based Organizations</i>				
	0.0	0.0	0.3	1
<i>N =</i>		25		310

Source: <https://www.federalregister.gov/my/clippings>

With respect to, HUD (Table 3), the tone of participation is slightly different. Here, the results show that there is limited participation by “Individual Citizens” and significant input made by “Citizen Groups”. In one case, 39 comments were submitted to HUD concerning the “Discriminatory Effects Standards” rule change. During this Notice and Comment process, 40 % of comments were submitted by advocacy groups.

Table 3.
HUD Rulemaking Participation
Comments Presented by Type of Groups

<i>Category</i>	<i>Racial Investigative Standards</i>		<i>Discriminatory Effects Standards</i>	
	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>
<i>Citizen Groups</i>				
Public Interest	23.8	15	13.5	13
Advocacy	23.8	15	40.0	39
Total	47.0	30	54.1	52
<i>Business</i>				
Corporations	2.0	1	7.2	7
Business Interest	0.0	0	2.1	2
Total	2.0	1	9.3	9
<i>Individual Citizens</i>				
	39.6	25	14.5	14

<i>Professional Participation</i>				
Associations	2.0	1	12.5	12
Coalitions	0.0	0	0,0	0
Total	2.0	1	12.5	12
<i>Government</i>				
Federal Agencies	0.0	0	0.0	0
State/Local	7.9	5	4.1	4
Congress	0.0	0	1.0	1
Total	7.9	5	5.2	5
<i>Academic</i>				
Institutions	0.0	0	4.1	4
Academic Interest	0.0	0	0.0	0
Think Tanks	2.0	1	0.0	0
Totals	2.0	1	4.1	4
<i>Faith Based Organizations</i>	0.0	0.0	0.0	0.0
N =		63		96

Source: <https://www.federalregister.gov/my/clippings>

The data illuminates a couple of patterns concerning participation in the federal administrative agency rulemaking process. The first concern is based on comparison and contrast of the DOE and HUD. The two non-regulatory agencies received insignificant input from “Academic” entities. We might argue that academics play an imperative role in identifying the public problem, defining the public problem and ultimately contributing to the development of policy alternatives. So, their level of participation matters. However, we do see moderate participation from “Academics” when considering the DOE, “Adverse Credit Definition”, rule change. Nevertheless, it is insignificant when compared to the number of individual citizens that commented on the matter. All in all, when looking at both agencies combined, a significant number of participants include “Individual Citizens”. The next observation pertains to democratic authority, or at least the illusion of democratic authority in the rulemaking process. Here, at least among these two non-regulatory agencies, there is a refreshing presence of public representation. The data clearly illuminates that there was a high level of individual and citizens group advocacy on behalf of college students, ethnic groups and the indigent. In all cases, it seemed that business interest and government agencies did not show dominance during the Notice and Comment process.

4.2 Influence in Rulemaking

Political science is the study of power, or influence within our political institutions. As Machiavelli suggests, if you are not assessing power dynamics within the political process, then you are not studying political science. The illumination of power dynamics within the process matters, as you can reduce the noise surrounding a political issue. But, how does one measure influence in the policymaking process? Most political science scholars have determined that it is almost impossible to draw any direct correlations of influence. However, it is widely accepted that the more resources you have, the more likely you can influence policy development (Lowi et al., 2013). Nevertheless, the proposed research design and data obtained for this research will enable a rigorous assessment of the power dynamics associated with the federal administrative agency rulemaking process. Specifically, this study will measure the change between the NPRM and the FR for each point of focus.

The APA is very broad, and does not provide specific language that requires strict adherence to public comments submitted during the Notice and Comment period. It only provides protocols and procedures, during the traditional process, that instruct agencies to seek public input. Therefore, the principle enquiry becomes, does the FR change as a result of comments submitted during the Notice and Comment period? In other words, does democratic authority exist within the federal administrative agency rulemaking process?

As Table 4 illustrates, three of the four rules, at least moderately, were modified from the NPRM in reply to the individual citizen and citizens group comments. However, there was a single outlier (DOE’s “Student Assistance” rule) where the administrative agency modified the FR significantly. In that particular

case, the agency received majority opposition to several aspects of the proposed rule. In response, the DOE totally revised its loan rehabilitation practices allowing loan agencies to initially establish a loan re-payment plan based on personal financial information disclosed orally by a borrower. The new revision additionally requires the borrower to ultimately solidify the agreement via written proof of financial claim. The revision goes further to require that guarantee agencies cease wage garnishment activity once a borrower has made five qualifying payments. With respect to two other cases (HUD Racial “Investigative Standards” and “Discriminatory Effect Standards”) “Individual Citizens” and “Citizen Group” participants had asked for slight modifications. Changes were generally restricted to redefinitions and interpretive rules such as incorporating language that qualifies individuals as “reasonable” people in an aggrieved person’s position. For the most part, administrative agencies made some of the changes that were requested by commenters, but seldom did administrative agencies modify the core of the NPRM. In only one instance did an administrative agency reject all proposed changes to its NPRM; however, in this case, a great majority of commenters overwhelmingly expressed their support for the NPRM.

Table 4. *Level of Final Rule Change Based on Public Comments*

<i>Rule</i>	<i>Significant Change</i>	<i>Moderate Change</i>	<i>None</i>
<i>DOE</i>			
Student Assistance	*		
Adverse Credit Definition			*
<i>HUD</i>			
Racial Investigative Standards		*	
Discriminatory Effects Standards		*	

Source: <https://www.federalregister.gov/my/clippings>

Taking everything into account, these data depict a pattern indicating that changes will be made when there is harmony among the chorus. On at least two occasions when participants were unified in their sentiments (positive or negative) to the NPRM (DOE’s “Student Assistance” and “Adverse Credit Definition rules”), the administrative agency either made significant change to the FR, or they absolutely made no changes to the FR.

Additionally, these data establish a pattern where the agencies were more likely to at least “Moderately Change” the FR if there were a considerable amount of commenters (e.g., HUD’s “Discriminatory Effects Standards” rule: 93 comments) expressing concerns (e.g., HUD’s “Discriminatory Effects Standards” criteria where a majority of participants except academics and some government entities opposed the broad criteria for “perpetuating a discriminatory effect”).

Furthermore, for each NPRM and FR assessed in this research, the federal administrative agency addressed all comments in the Final Rule. For example, in one instance DOE’s “Student Assistance Rule”, the agency wrote a 76-page informative response to each participant’s comment from the Notice and Comment process. The responses attempted to address each concern raised by the 25 participants. The agency responses are kept on file with the Federal Register for public consumption. As mentioned earlier in this text, the agencies are not obligated to modify rules based on public comments; however, they are required to publish a response to the concerns raised by the public, and provide an unqualified justification for the rule.

To what degree do specific stakeholders influence administrative agency final rules? The findings offered above illuminate that comments provided by participants were given credence based on their gravity and the level of conflict in the Notice and Comment process. In other words, the more harmonized, practical and urgent comments were, the more likely agencies were to consider participant input when modifying the FR. Thus, it did not seem to matter who commented, but rather how they commented and the level of conflict existing within the policy-making process. Lowi (1972) suggests that, it is not politics that dictate policy, but the level of conflict in the policy-making process that dictates policy. High conflict-low attention, low conflict-high attention. In all cases, “Citizens Groups” or “Individual Citizens” were largely in sync and were the “loudest” and most pragmatic voice. Hence, in each instance the determination is that business interest, as usually hypothesized, did not have much of a voice, or influence in the Notice and Comment process.

An illustration of the above assertion, regarding administrative agency receptivity to “Individual Citizens” and “Citizens Groups”, can be seen in the following: In one case (DOE’s “Adverse Credit Definition” rule), the few business interests were virtually ignored. For instance, TG (guaranty agency) supported the measure, but expressed a desire that a great deal of additional information be added to the Parent Plus Loan counseling aspect of the rule; the DOE did not add the requested revisions to the FR. In the next case (HUD’s “Discriminatory Effects Standards”), the B & B Law Firm solicited a change in the rule concerning disparate impact requirements; however, HUD did not modify the FR. This was consistent with “Citizens Groups” preferences. In the last example (HUD’s “Racial Investigative Standards” rule), Ridge Park Duplexes submitted the sole request that language be added regarding tenant violations against management. In that instance, HUD did not adopt language consistent with their request. In fact, the FR signaled that it was supportive of majority interest (“Individual Citizens” and “Citizens Groups”). Nevertheless, in all cases, it seemed that bias was involved in the rulemaking process. To clarify, agencies seemed to adhere to the preferences of commenters that generally supported the core content of the NPRM; and individuals or groups who were unsupportive of the measures only realized insignificant modifications.

In summary, there seems to be a few patterns emerging from the data. First, the findings show that who participates is based on policy type. Second, administrative agencies tend to “Moderately Change”, if at all, FR content based on commenters’ input. That suggests that the impact of the Notice and Comment process is marginally inadequate. For example, only one process (DOE’s “Student Assistance” rule) yielded a “Significant Modification” from the NPRM. Next, administrative agencies only modified rules in cases when there were either large amounts of “Citizen Group” participation, or significant amounts of “Individual “Citizen” participation. Lastly, business pressure was insignificant. Business interest, at times, seemed to be in conflict with federal agency’s NPRMs. And as noted above, administrative agencies showed a tendency to favor those participants who were generally supportive of the NPRM. So, whose voices get heard? The evidence suggests that the devil is in the details.

V. THEORETICAL ENQUIRY

5.1 Regulator Agency Capture

The findings presented above explain that there is no support for an occurrence of regulatory agency capture. These data simply do not provide any instance where private/business interest, dissatisfied with regulatory outcomes, responded to exert influence over the process to achieve private ends that conflict with the public’s policy preferences. So, our theoretical interest in regulatory agency capture is quieted by these assessment results. However, it is imperative that we recognize the level of business participation in the DOE’s “Student Assistance” Notice and Comment process. While the DOE revised the rule moderately, based on guarantor loan business comments, the revisions were neutral; and in most cases revisions reflected the interests of individual citizens. Thus, this probable instance of regulatory agency capture does not fit a rigid definition of regulatory agency capture.

5.2 Iron Triangle of Issue Network Influence

An aggregation of the data supports a Notice and Comment process that centers largely on issue networks. For example, the findings presented on the Notice and Comment process portrays a sizeable number of commenters, not an exclusive few as defined in the iron triangle concept. For instance, DOE received 310 comments during one Notice and Comment period. Additionally, there was no consistency, or continuity among groups in the rulemaking process. For example, as shown above in Table 3, of the 156 participants that offered comments to HUD, only 1 (AARP) provided comments for both NPRM processes. At the DOE, where two rules were examined in the research, there was no significant overlap of the 335 total commenters offering their sentiments for both rules, and no group commented on all four rules. So, these data paint a story of diversity among commenters. For example, “Individual Citizens” made up about 39.6% of commenters on the HUD “Racial Investigative Standards” rule, but the “Discriminatory Effects Standards” rule elicited 54% of its comments from “Citizen Groups”, but none from federal agencies. In all cases, these rules targeted specific sectors (Housing and Education). Thus, a supposition was made that the large interest/advocacy groups, in each sector, would dominate the Notice and Comment process. However, the exact opposite occurred; there were a range of commenters who participated in the federal administrative agency NPRM process. Thus, these results illustrate a clear picture of issue network influence in the rulemaking process.

VI. POLICY IMPLICATIONS AND RECOMMENDATIONS FOR PUBLIC MANAGEMENT

6.1 Policy Implications

It is imperative to disseminate this investigation's implications for policy makers, public management and public managers. The results provided in this research concerning input from organizations and individuals that advocate for the public's policy preferences, support the need for the following: Enhanced federal administrative agency advertisement of NPRM processes, and individual citizens and citizen groups utilizing a more strategic method to gain agenda success. Recommendations addressing implications are provided below:

6.1.2 Policy Recommendations

Symbolic tactics may bring attention to an issue, but the rule initiator is ultimately responsible for ensuring that all stakeholders are sophisticated participants. Administrative agencies may be more successful in achieving this goal, if stakeholders are supplied with timely, relevant and substantive material regarding federal administrative rulemaking. A methodical dissemination of rulemaking protocol and procedures, in any given policy area, will accomplish this charge (Kingdon, 1995).

Legislators and administrative agency executives find it essential to know whether a policy will create protest, offend potential voters, or know what is popular in order to retain, or gain more support for policy support (Arnold 1990). This instance provides the community with leverage in the agenda setting process. Policy initiators must take advantage of this public influence when initiating agenda objectives. The following recommendations provide policy initiators with a coherent method in achieving community support:

- Mobilization: Public officials must launch a campaign to gain public attention as a way to further develop their institutional policy agendas (e.g., media blitz: TV. ads; web campaigns; blogs; radio ads, magazine inserts) (Cobb and Ross 1997; Kingdon 1995).
- Avoid language that may provide instigators with material to activate unsophisticated inattentive publics (Arnold 1990).
- Assure the public that implementation is immediate, and will not include long causal chains (Arnold 1990).
- Show expert data that policy effects would match the public's preferred policy outcomes (Arnold 1990).
- Provide the public with the cost benefit ratio of policy implementation- benefits should outweigh the cost (Arnold 1990)
- Use poor statistical rankings as a powerful symbol of crisis that will raise public concern on the issue (Kingdon 1995).

In summary, the article generally illuminates the fact that federal administrative agencies serve multiple roles. First, federal agencies are tasked with serving as referees in a political arena full of conflict between numerous actors; it is impossible for every actor in the process to emerge victorious. Therefore, rulemaking may seem, on its face, like an unfair process; as you will have clear winners and losers. Ultimately, it is imperative for policymakers to be as inclusive as possible and develop policy alternatives that serve as a benefit for the collective. That in effect, serves as a clear case of democratic authority.

VII. CONCLUSIONS

In conclusion, these results show characteristics of issue networks. Additionally, organizations and individuals participated in the rulemaking process based on policy type. There were noticeable levels of conflict in the process, each yielding a different level of policy output. Nevertheless, there were clear winners and losers. Still, there was evidence of cooperation among groups to advance their policy preferences. An assessment of each rule revealed that public interest and individual citizens, to a large degree coalesced, via the Notice and Comment process, to establish influential issue networks. The evidence of these very tangible phenomena may show some "soft evidence" of democratic authority in our federal administrative agency rulemaking process. As a final point, this research illuminates the many aspects of who participates and how influential participants are in federal administrative agency rulemaking. These emergent themes dictate further investigation into the matter. Specifically, questions remain about the extent to which the investigation's findings, concerning practical and theoretical conclusions, are transferable to similar federal administrative agencies.

REFERENCES

- [1] "5 U.S. Code Chapter 8 - Congressional Review of Agency Rulemaking". LEGAL Information Institute.
- [2] Administrative Procedures Act. 1946. United States Statutes at Large. Vol. 60, 10.
- [3] Anderson, J. E. (2015). *Public Policymaking* (8thed.). Boston: Houghton Mifflin Company.
- [4] Arnold R. Douglas (1990). *The Logic of Congressional Action*. New Haven, CT: Yale University.
- [5] Berry, J. (1989). *The Interest Group Society*, (2nded). New York: Harper Collins
- [6] Dahl, Robert A. (1957). *The Concept of Power*. *Behavioral Science*, (2) 3, 201
- [7] "DOE Announces 1 NPRM In Federal Register" Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, July 29, 2013.
- [8] "DOE Announces 1 NPRM In Federal Register" William D. Ford Federal Direct Loan Program, August 8, 2014.
- [9] Ginsberg, B., Lowi, T. J. & Weir, M. (2013). *We the People: An Introduction to American Politics* (9th ed.) New York: W. W. Norton & Company.
- [10] Government Accountability Office(2009). *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews*. Washington, DC: Government Accountability Office.
- [11] HAEDER, S., & YACKEE, S. (2015). Influence and the Administrative Process: Lobbying the U.S. President's Office of Management and Budget. *American Political Science Review*,109(3),507-522.
- [12] Hecl, H (1978). "Issue Networks and the Executive Establishment." In Anthony King, ed. *The New American Political System*. Washington, DC: American Enterprise Institute
- [13] "HUD Announces 1 NPRM In Federal Register" Implementation of the Fair Housing Act's Discriminatory Effects Standards, November 16, 2011.
- [14] "HUD Announces 1 NPRM In Federal Register" Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, October 21, 2015.
- [15] Jason WebbYackee, & Susan WebbYackee(2009). "Is the Bush Bureaucracy Any Different? A Macro-empirical Examination of Notice and Comment Rulemaking under '43.'" In President George W. Bush's Influence over Bureaucracy and Policy: Extraordinary Times, Extraordinary Powers, eds. C.ProvostandP.Teske. New York: Palgrave Macmillan, 41-59.
- [16] Kerwin, C., & Furlong, S. (2005). Interest Group Participation in Rule Making: A Decade of Change. *Journal of Public Administration Research and Theory*, 15 (3), 353-370
- [17] Kingdon, John (1995). *Agendas, Alternatives, and Public Policies*. New York: Addison, Wesley, Longman.
- [18] Lowi, Theodore (1972). Four Systems of Policy, Politics, and Choice." *Public Administration Review* 32:298-310
- [19] McCool, D. (1998). The Subsystem Family of Concepts: A Critique and a Proposal. *Journal Research Quarterly*, 51 (2), 551
- [20] Miller, C, & Wright, D. (2009). WHO'S MINDING WHICH STORE? INSTITUTIONAL AND OTHER ACTORS' INFLUENCE ON ADMINISTRATIVE RULEMAKING IN STATE AGENCIES. *PAQ* Fall 2009
- [21] Shafritz et al., (2016). *Classics of Organization Theory* (8th Ed.). Boston, MA: Cengage Learning.
- [22] Shapiro, S. (2011). "OIRA inside and Out." *Administrative Law Review* 63 (Special Edition): 135 -47.
- [23] Thaw, D. (2014). ENLIGHTENED REGULATORY CAPTURE. *Washington Law Review*, 89(2), 329-377.
- [24] Thurber, J. (2013). *Rival for Power: Presidential and Congressional Relations* 5th Edition. Lanham, MD: Rowman and Littlefield Publishing, Inc
- [25] Tozzi Jim (2011). "OIRA's Formative Years: The Historical Record of Centralized Regulatory Review Preceding OIRA's Founding." *Administrative Law Review* 63 (Special Edition): 37 -69.
- [26] Trochim, W.M. & Donnelly, J.P. (2008) *Research methods knowledge base*, Atomic Dog/Cengage Learning Mason, OH.
- [27] West, W. (2004). "Formal Procedures, Informal Processes, Accountability, and Responsiveness in Bureaucratic Policy Making: An Institutional Policy Analysis." *Public Administration Review* 64 (1): 66

- [28] West, W. (2005). Administrative Rulemaking: An Old and Engaging Literature. *Public Administration Review*, Nov/Dec; 65 (6), 655
- [29] Yackee Jason Webb, & Susan Webb Yackee (2006). "A Bias towards Business? Assessing Interest Group Influence on the U.S. Bureaucracy." *Journal of Politics* 68 (1): 128 -39
- [30] Yackee Jason Webb, & Susan Webb Yackee (2009). "Is the Bush Bureaucracy Any Different? A Macro-empirical Examination of Notice and Comment Rulemaking under '43.' " In President George W. Bush's Influence over Bureaucracy and Policy: Extraordinary Times, Extraordinary Powers, eds. C. Provost and P. Teske. New York: Palgrave Macmillan, 41-59.

Russell M. Frazier. "A Systematic Enquiry Into The Existence Of Democratic Authority In The Federal Administrative Agency Rulemaking Process." *International Journal of Humanities and Social Science Invention (IJHSSI)* , vol. 6, no. 8, 2017, pp. 87-97.