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ORIGINAL ARTICLE

Banking on burden reduction: how the global financial crisis shaped the political economy of banking regulation

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Abstract

The Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) of 1996 requires the Federal Financial Institutions Examination Council—an interagency council composed of US banking regulators—to conduct decennial retrospective reviews of existing banking regulations, with an emphasis on reducing regulatory burden. EGRPRA reviews provide a lens to study the political economy of banking regulation before and after the global financial crisis (GFC) of 2007–2009. Through comparative case studies of EGRPRA reviews in 2007 and 2017, this article documents how ex post impact assessment of banking regulation and stakeholder participation in banking regulatory processes have changed over the last 10 years. Using within-case process tracing and content analysis of an original dataset of government documents and public input, this article analyzes the extent to which changes in review processes, participation, and outcomes can be attributed to the policy shock of the GFC and/or shifting political, regulatory, and/or market contexts. The results suggest that government–market interactions have changed considerably since the GFC and that regulatory politics explain many of these changes. While retrospective review and stakeholder participation therein may enable more effective and legitimate regulations and rulemaking processes, much work remains to realize these potential benefits in banking regulation.

Keywords Banking regulatory reform · Global financial crisis · Regulatory politics · Ex post impact assessment · Stakeholder participation · Political economy of finance

Introduction

The Federal Deposit Insurance Corporation's (FDIC) 2003 annual report featured a photo of bank regulators and bank lobbyists using gardening shears to cut 'red tape' and a chainsaw to reduce a stack of 'regulations' [1].[1] In the aftermath of the 2007–2009 global financial crisis (GFC), this photo seems imprudent; there is bipartisan consensus that deregulation and gaps in regulation enabled the GFC and ensuing recession [2]. Yet, at the time of publication, this photo symbolized a success story of government and industry co-production of more efficient financial regulation. Even more striking is that the very governance process that brought together regulators and regulated entities to review the stock of existing banking regulations was repeated a decade after this photo was published, and just five years

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[1] The photo was captioned 'Determined to Cut Red Tape and Reduce Regulatory Burden' and depicted Office of Thrift Supervision Director James Gilleran, Jim McLaughlin of the American Bankers Association, Harry Doherty of America's Community Bankers, FDIC Vice Chairman John Reich, and Ken Guenther of the Independent Community Bankers of America.

after the GFC. While in retrospect this photograph seems to have advanced neither the effectiveness nor legitimacy of financial regulatory governance, this article asks whether the same can be said of the governance process it represented: retrospective review of existing banking regulation.

The Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) of 1996 requires the Federal Financial Institutions Examination Council (FFIEC)—an interagency council composed of US banking regulators—to conduct decennial retrospective reviews of existing banking regulations [3]. FFIEC has completed two reviews to date, one in 2007 and the other in 2017. EGRPRA reviews provide a lens to study the political economy of banking regulation before and after the GFC. Through comparative case studies of EGRPRA reviews in 2007 and 2017, this article documents how ex post impact assessment of banking regulation and stakeholder participation in banking regulatory processes have changed over the last 10 years. Using within-case process tracing and content analysis of an original dataset of government documents and public input, the article analyzes the extent to which changes in review processes, participation, and outcomes can be attributed to the policy shock of the GFC and/or shifting political, regulatory, and/or market contexts. It concludes with an evaluation of the potential role of retrospective review and stakeholder participation therein in promoting effective and legitimate banking regulations and rulemaking processes. The results suggest that government–market interactions have changed considerably since the GFC and that regulatory politics explain many of these changes. While retrospective review and stakeholder participation therein may enable more effective and legitimate regulations and rulemaking processes, much work remains to realize these potential benefits in banking regulation.

Background and contributions to the literature

EGRPRA review processes sit at the intersection of three key regulatory governance issues: the role of coordination bodies in complex networked regulatory systems, the role of periodic retrospective review of existing regulations, and the role of public participation in the regulatory policymaking process. Exploring each of these issues in the context of banking regulation generates theoretical implications for the interdisciplinary literature on financial regulatory governance, regulatory impact assessment, and stakeholder participation in rulemaking. This section describes how EGRPRA review processes encompass each of these governance issues and summarizes the contributions of this article to the literature.

Financial regulatory governance: FFIEC's role in regulatory coordination of banking regulation

The US financial regulatory system is notoriously complex and embedded in a highly interconnected global financial regulatory system. As shown in Fig. 1, there are myriad regulators spanning the public and private sectors and the national and international levels. Depicted by dashed lines in Fig. 1, inter-agency bodies have emerged to address coordination challenges arising from particular risks, business functions, and subsectors within the financial regulatory system. FFIEC, depicted in blue in Fig. 1, is one such body. Established in 1979, FFIEC is a formal interagency body charged with developing 'uniform principles, standards, and report forms for the federal examination of financial institutions' regulated by its members [4]. FFIEC's members are depicted by blue dashed lines in Fig. 1: the Board of Governors of the Federal Reserve System (FRB), FDIC, the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), the National Credit Union Administration (NCUA), and state banking regulators (represented by the State Liaison Committee [SLC]); the Office of Thrift Supervision (OTS) was a member prior to its dissolution [5].

While this complex and interconnected financial regulatory system enables the bureaucratic specialization and autonomy required to regulate the complex and interconnected financial market system, it also creates the risk of fragmentation and duplication [6–10]. Banking regulators possess high degrees of technocratic expertise, enabled by regulatory specialization related to the characteristics of regulated institutions (e.g., charter, business model). There is also bureaucratic autonomy among financial regulators with different objectives (e.g., micro- and macroprudential stability, chartering and supervision, consumer protection) and political autonomy among regulators and their political principals (e.g., independent funding, insulated leadership). Yet, many have argued that this diverse regulatory landscape creates fragmentation and duplication, resulting in regulatory policy that is inefficient and vulnerable to regulatory arbitrage [9]. Policymakers have proposed various solutions, ranging from consolidation to coordination.

Bodies such as FFIEC represent a middle ground; members maintain their individual agency authority but are united by a mandate to coordinate in the development, implementation, and review of banking regulations and examination standards. Scholars are divided regarding the merits of coordination without regulatory consolidation—or, with the persistence of regulatory conflict or competition [6, 7, 11–15]. Much of the existing literature

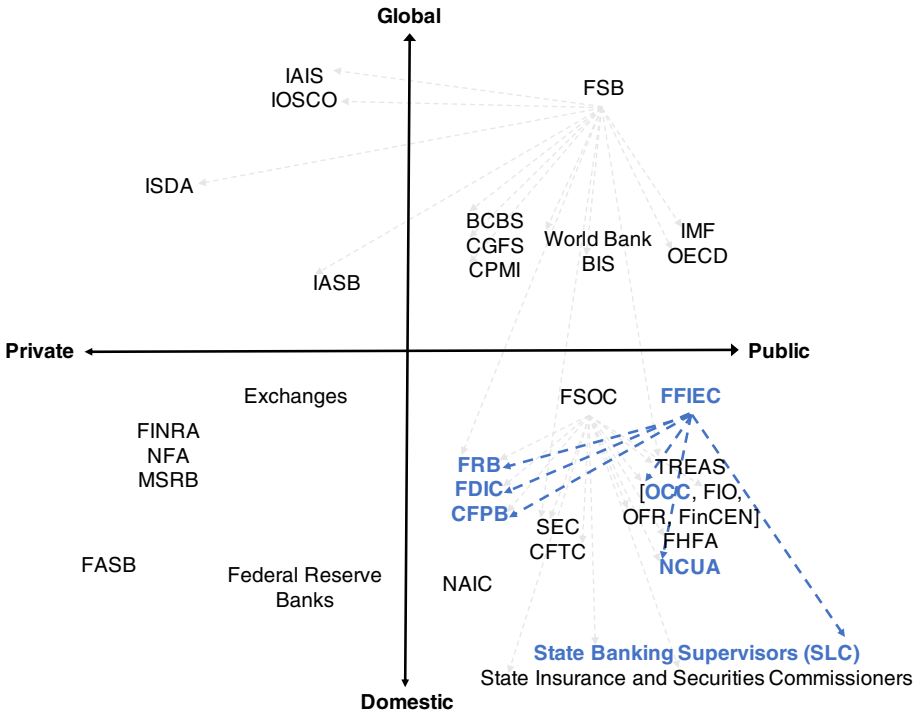

Fig. 1 FFIEC's Role in the US Financial Regulatory System (The degree of privatization is measured by both member composition and proximity to political principals while the degree of globalization is measured by the number of membership jurisdictions. *Global private organizations* (upper left quadrant) include: International Association of Insurance Supervisors (IAIS), International Organization of Securities Commissions (IOSCO), International Accounting Standards Board (IASB), and International Securities and Derivatives Association (ISDA). *Global public organizations* (upper right quadrant) include a combination of intergovernmental organizations and transnational regulatory networks: Financial Stability Board (FSB), Basel Committee on Banking Supervision (BCBS), Committee on the Global Financial System (CGFS), Committee on Payments and Market Infrastructures (CPMI), World Bank, Bank for International Settlements (BIS), International Monetary Fund (IMF), and Organisation for Economic Co-operation and Development (OECD). *Domestic private organizations* (bottom left quadrant) include: the 12 Federal Reserve Banks, US-based exchanges, Financial Industry Regulatory Authority (FINRA), National Futures Association (NFA), Municipal Securities Rulemaking Board (MSRB), and Financial Accounting Standards Board (FASB). *Domestic public organizations* (bottom right quadrant) include: Federal Financial Institutions Examination Council (FFIEC), Financial Stability Oversight Council (FSOC), Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), Consumer Financial Protection Bureau (CFPB), Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), Department of the Treasury (TREAS) [TREAS bureaus include: Office of the Comptroller of the Currency (OCC), Federal Insurance Office (FIO), Office of Financial Research (OFR), Financial Crimes Enforcement Network (FinCEN)], Federal Housing Finance Agency (FHFA), National Credit Union Administration (NCUA), National Association of Insurance Commissioners (NAIC), state banking supervisors (coordinated by the State Liaison Committee [SLC]), state securities commissioners, and state insurance commissioners.)

focuses on coordination bodies that emerged in response to the GFC—for example, the Financial Stability Oversight Council (FSOC) [16–19] and the Financial Stability Board (FSB) [20–23]—making FFIEC an interesting case given its establishment prior to not only the GFC but also the Savings and Loan Crisis in the 1980s. Thus, an evaluation of FFIEC's operations and efficacy has the potential to contribute to the theory and practice of financial regulatory governance with respect to the role of coordination bodies.

Regulatory impact assessment: EGRPRA's requirement for retrospective review of banking regulation

While much of FFIEC's mandate focuses on prospective rulemaking and examination, it also occupies a unique role among US financial regulators in that it is charged with conducting systematic retrospective reviews of existing regulations. EGRPRA—sponsored by Senator Shelby (R-AL) and passed with bipartisan support as part of an omnibus bill in the 104th Congress—requires FFIEC and its member agencies to conduct retrospective reviews of existing regulations

at least once every 10 years. The purpose of these reviews is to 'identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions' [3]. EGRPRA directs FFIEC to produce both a Federal Register notice and a report to Congress documenting review processes and outcomes.

Retrospective review is an increasingly common aspect of the regulatory policy cycle in the US and across other OECD countries and international rule- and standard-setters more broadly [24, 25]. In the US, retrospective reviews take a variety of institutional forms, including episodic crisis-driven lookbacks, such as the CFPB's review of inherited rules pursuant to the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) of 2010; periodic reviews for a particular type for burden, such as the requirement for decennial reviews of rules with a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980; reviews of a particular policy area within a given timeframe, such as the Federal Communication Commission's biennial regulatory review requirement pursuant to the Communications Act of 1934; and administration-wide stock-takes, such as executive agency retrospective reviews pursuant to Executive Orders 13563, 13579, and 13610 of 2011 and 2012 [26–31].

Notwithstanding its prominent role in regulatory policymaking, US retrospective review has been the subject of relatively little academic study [32–37]. Furthermore, existing studies tend to focus on administration-wide stock-takes, and in so doing fail to account for both the political economy of congressionally mandated reviews and review processes conducted by independent agencies, which are not subject to executive orders. As such, the EGRPRA review mandate provides an opportunity to evaluate how independent regulatory agencies balance the simultaneous demands for short-term political responsiveness (e.g., reducing regulatory burden) with long-term technocratic mandates (e.g., promoting resilience in the financial system). In so doing, such an evaluation has the potential to contribute to the theory and practice of regulatory impact assessment.

Stakeholder participation in regulatory policymaking: EGRPRA's participation mandate for retrospective reviews

The review processes prescribed in EGRPRA rely heavily on public participation. FFIEC is directed to use notice and comment procedures to seek input on existing rules and to publish a summary of comments received as well as responses to significant issues that are raised in comments. Public participation is a fundamental component of US retrospective review efforts and, as with the diffusion of retrospective review more broadly, is also common across other OECD countries' and international rule- and standard-setters' retrospective review processes [24, 25]. However, EGRPRA's requirement that FFIEC responds to comments goes further than the public participation requirements in other US retrospective review initiatives and in rulemaking, for which agencies are generally required to consider, but not respond to, comments.[2] Moreover, in many other retrospective reviews, public input is used to select rules for review, and thus EGRPRA reviews' use of public consultation only after rules are selected is somewhat unusual.

While the empirical literature on public participation in regulation has burgeoned over the last three decades, most studies focus on participation in the rulemaking process, rather than in the retrospective review of existing rules [38–50]. Furthermore, among existing empirical studies of participation in US regulatory policymaking, only a handful focus on financial regulation [51–54]. Scholarship on participation in financial regulation underscores its distinctiveness compared to other issues, notably its technical complexity and opacity, as well as the unique relationship among regulators and regulated entities. As Baxter notes, 'it is in the world of complex financial regulation that our democratic norms supporting public participation and our desire to be sure that "technocrats" who really understand the industry they are trying to regulate come into direct conflict' [55]. In addition, the concentration of economic power among a relatively small number of firms and the quasi-governmental role that large banks play in the US create a unique relationship among regulators and regulated entities, in which the latter are generally understood to wield considerable political power.[3]

Interest group theory—which provides the theoretical foundation for most empirical studies of participation—suggests engagement in rulemaking will vary based on the concentration of costs and benefits among stakeholders as

[2] For example, Executive Order 13563 calls for an 'open exchange of information and perspectives' and 'a meaningful opportunity to comment' for administration-wide retrospective reviews, but do not dictate how agencies must respond to comments. Similarly, the Administrative Procedure Act (APA) of 1946 (5 U.S.C. §§ 551–559, 701–706), which is the primary legislative foundation for participation in U.S. rulemaking, does not dictate how agencies must utilize public comments, but rather states: 'After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose'. The APA also provides stakeholders the 'right to petition for the issuance, amendment, or repeal of a rule' thereby providing a mechanism to initiate retrospective review. However, subsequent judicial challenges (e.g., *United States v. Nova Scotia Food Products Corp* [1977] 568 DC F.2d 240) have created incentives for agencies to respond to comments more directly.

[3] The US Supreme Court first established in *Davis v. Elmira Savings Bank* ([1896] 161 U.S. 275)—and has reinforced in numerous subsequent cases—that national banks are 'instrumentalities of the federal government'.

well as the technical complexity and public salience of the issue area [56]. In banking regulation, the degree of technical complexity as well as the concentration of costs and diffusion of benefits—regulated entities must internalize the costs of regulation upon compliance, whereas benefits to consumers and to the public are diffuse, and in some cases, unobservable—produce a collective action problem for stakeholders other than regulated entities [55, 57]. However, the literature suggests that increasing salience relative to complexity can help overcome these collective action problems. Therefore, the GFC might be a sufficient 'policy shock' [58] to create broader participation in post-GFC banking regulation [59–63]. This broader engagement may in turn produce a 'countervailing power' dynamic among participants with divergent interests [64, 65]. Thus, an examination of how participation in banking regulation has changed over the last 10 years enables empirical assessment of key issues raised in the theoretical literature on participation in financial regulation and in so doing contributes to the theory and practice of stakeholder participation in regulatory policymaking [66–68].

Research questions and methodology

This article takes stock of EGRPRA retrospective reviews in 2007 and 2017, comparing the processes, participation, and outcomes of reviews. It then analyzes the potential causes of variation across the two reviews. Implications for the effectiveness and legitimacy of banking regulations and rulemaking processes are considered throughout the evaluation of both the consequences and causes. The research questions are as follows:

1. How did FFIEC conduct retrospective reviews pursuant to EGRPRA and how do retrospective review processes in 2007 and 2017 differ?
2. How did stakeholders participate in retrospective review processes pursuant to EGRPRA and to what extent do the level, composition, and substance of participation in 2007 and 2017 differ?
3. What, if any, evidence is there of the effects of EGRPRA and/or participation therein on banking regulation, and how do outcomes of reviews in 2007 and 2017 differ?
4. To what extent does the policy shock of the GFC and/or shifting regulatory, political, and/or market contexts explain variation in:
   - 4.1 How FFIEC conducted retrospective reviews (Research Question 1)?
   - 4.2 How stakeholders participated in retrospective reviews (Research Question 2)?
   - 4.3 The outcomes of retrospective reviews (Research Question 3)?

The considerable causal complexity associated with the dynamics explored in this article makes it well suited to qualitative approaches to causal inference. The article utilizes comparative case studies and within-case process tracing, drawing on an original dataset of government documents and public input. A variety of secondary sources, including relevant literature, government reports, and interest group and media publications are also incorporated.

The descriptive questions (Research Questions 1–3) are answered via comparative case studies, which draw on multi-method content analysis of an original dataset of FFIEC reports (totaling over 500 pages), FFIEC supplemental materials (e.g., transmission letters to Congress, Federal Register notices, government websites), descriptive data for all public comments ($n = 954$), the text of all available public comments ($n = 859$), two sets of unattributed summaries from outreach sessions in 2007, and six sets of full transcripts from outreach sessions in 2017. All content analysis was conducted in NVivo, which enabled collection of both descriptive data for each occurrence and a dichotomous indicator for each source (i.e., plan or comment). To enable comparison across the two review periods, public comments are used as the primary data source for the analysis of participation.[4] In addition to the quantitative indicators and qualitative evidence from the content analysis, secondary data are incorporated to contextualize findings from the content analysis and to benchmark the findings based on other retrospective review and financial regulatory processes.

Having established the differences across the two review periods with respect to processes (Research Question 1), participation (Research Question 2), and outcomes (Research Question 3), the article then seeks to explain the causes of this variation (Research Question 4). Specifically, it evaluates the explanatory power of the policy shock of the GFC along with three other hypothesized explanatory variables: political context, regulatory context, and market context. Recognizing the considerable causal complexity associated with these potential explanations, the article

[4] EGRPRA processes in both 2007 and 2017 incorporated participation via written comments and outreach sessions. Only the former provides a comparable basis across the two periods because outreach sessions were not recorded, nor are transcripts available for 2007. FFIEC published an unattributed summary of major issues from outreach sessions for 2007, whereas in 2017 FFIEC did not produce a summary but published video recordings and transcripts for all sessions. As such, while input from outreach sessions is described in certain instances, all comparative quantitative indicators are based on comments. A codebook is provided in Appendix A. All content analysis of comments includes form letters, but a replicated analysis without form letters is available in Appendix B.

offers a preliminary analysis and outlines areas for future research. It then turns to a discussion of the implications of these findings for the effectiveness and legitimacy of banking regulations and rulemaking processes.

Results

Review processes: FFIEC's approach to retrospective review

This section analyzes how FFIEC conducted retrospective reviews pursuant to EGRPRA and takes stock of the similarities and differences in the 2007 and 2017 review processes.

2007 review process

The 2007 EGRPRA review began in June 2003 and the final report was published in July 2007 [69]. The process was overseen by FFIEC Chairman John Reich, of FDIC and OTS, and included (for at least a portion of the review process) the following FFIEC members: James E. Gilleran, FDIC; Susan Schmidt Bies, FRB; John D. Hawke, Jr. and John C. Dugan, OCC; and Donald E. Powell and Sheila C. Bair, FDIC. NCUA is a member of FFIEC but does not fall within the 'federal banking agencies' definition in EGRPRA and is therefore not subject to the retrospective review mandate.[5]

Between June 2003 and January 2006, FFIEC published six Federal Register notices seeking comments on the 13 categories of rules: (1) Applications and Reporting; (2) Powers and Activities; (3) International Operations; (4) Lending (Consumer Protection); (5) Deposit Accounts/Relationships (Consumer Protection); (6) Anti-Money Laundering (AML); (7) Safety and Soundness; (8) Securities; (9) Banking Operations; (10) Directors, Officers and Employees; (11) Rules of Procedure; (12) Prompt Corrective Action; and (13) Disclosure and Reporting of Community Reinvestment Act (CRA)-Related Agreements.[6] During this period, FFIEC also held 16 outreach sessions in various locations around the country, with 10 banker sessions, three consumer/community group sessions, and three joint banker and consumer/community group sessions. Finally, FFIEC established a website that provided information about the EGRPRA review process, including submitted comments and summaries of outreach sessions.[7]

The 2007 review emphasized three regulatory priorities: maintaining rigorous safety and soundness standards for the financial services industry, protecting important consumer rights, and assuring a 'level-playing field' in the financial services industry [69]. These regulatory priorities were weighed against regulatory burdens. For example, FFIEC Chairman John Reich noted in the 2007 EGRPRA report that outdated, unnecessary, or unduly burdensome regulations divert industry resources away from lending and providing services, ultimately driving up costs for consumers.

The 2007 report is motivated by the notion that regulation had increased substantially—the report notes that regulators adopted more than 900 rules in the 17 preceding years—and that this accumulated regulatory burden hurt the financial services industry. The report notes that smaller community banks 'bear a disproportionate share of the burden' and that regulation has 'become an important causal factor in recent years in accelerating industry consolidation' [69]. The report substantiates the claim with anecdotal evidence about regulatory burden driving mergers and acquisitions of small and community banks as well as data about the relatively large number of small and community banks (93% of the banking industry) and their relatively small share of industry assets (12.5%) and profits (11.25%). Notably, both of these points are contested. First, many scholars and policymakers agree that the period from 1990 to 2007 was one of substantial deregulation and that the number of rules promulgated is a poor proxy for the level of regulatory burden [2, 70, 71]. Second, it has been argued that the performance of small and community banks and changing business models, rather than regulatory burden, have driven consolidation via mergers and acquisition [72]. Furthermore, consolidation in the community banking industry has increased steadily since the 1980s as a result of regulatory changes (e.g., expanding state branching and interstate banking), the globalization of financial markets, and the proliferation of financial technology, all of which reshaped the business model for banking [73, 74]. Nonetheless, the 2007 EGRPRA review clearly focused on reducing unnecessary regulatory burden, with a particular emphasis on reducing burden for small and community banks.

[5] NCUA, led by Dennis Dollar and JoAnn Johnson, conducted a separate voluntary decennial review; the NCUA 2007 review is not included in this analysis.

[6] June 16, 2003: Agencies' overall regulatory review plan and (1–3) (68 Federal Register 35589); January 20, 2004: (4) (69 Federal Register 2852); July 20, 2004: (5) (69 Federal Register 43347); February 3, 2005: (6–8) (70 Federal Register 5571); August 11, 2005: (9–11) (70 Federal Register 46779); and January 4, 2006: (12–13) (71 Federal Register 287).

[7] The website established for the 2007 EGRPRA review is no longer active.

2017 review process

The 2017 review began in June 2014 and the final report was published in March 2017. The process was overseen by FFIEC Chairman Daniel Tarullo of the FRB, and included two other FFIEC members: Martin J. Gruenberg, FDIC and Thomas J. Curry, OCC. Although both NCUA and CFPB are also members of FFIEC, they are not 'federal banking agencies' as defined in EGRPRA and therefore are not subject to the retrospective review mandate.[8]

Between June 2014 and December 2015, FFIEC published four Federal Register notices seeking comments on 12 categories of rules: (1) Applications and Reporting; (2) Powers and Activities; (3) International Operations; (4) Banking Operations; (5) Capital; (6) Community Reinvestment Act; (7) Consumer Protection; (8) Directors, Officers and Employees; (9) Money Laundering; (10) Rules of Procedure; (11) Safety and Soundness; and (12) Securities.[9] During this period, FFIEC also held six outreach sessions, one each at the Los Angeles, Dallas, Boston, Kansas City, and Chicago Federal Reserve Banks, as well as one at the FRB in Washington, DC. The outreach sessions were live-streamed and involved senior management from FFIEC's member agencies. Outreach session videos and other information about the review are published on FFIEC's website.[10]

The 2017 review emphasized two regulatory priorities: reducing regulatory burden, especially on small and community banks, and ensuring that the financial system remains safe and sound. FFIEC asked participants to consider the following review criteria in their comments on individual rules: 'need for statutory change; need and purpose of the regulation; overarching approaches/flexibility; effect on competition; reporting, recordkeeping, and disclosure requirements; unique characteristics of a type of institution; clarity; burden on community banks and other smaller, insured depository institutions; and scope of rules' [75]. Because the 2017 review focused on evaluating regulatory burden relative to system stability, the emphasis on reducing burdens for small and community banks was predicated on the assumption that they do not present the same risks to the system as large banks. The appropriateness of bank size as a proxy for riskiness has been the subject of considerable debate; [72, 76] a fact that is underscored by FFIEC's note in its final report that of the 500+ bank failures during the GFC, most were community banks.

Comparing review processes in 2007 and 2017

The 2007 and 2017 reviews followed similar processes but differed somewhat in scope and more substantially in priorities. The 2017 review was shorter than the 2007 review, with fewer Federal Register notices and outreach sessions. However, the 2017 review covered slightly more rules (145) than the 2007 review (131), and the resulting report was 60% longer than the 2007 report. While the two reviews involved the same agencies, there was less turnover in the leadership of those agencies, and in turn, less turnover in FFIEC membership, in 2017 than 2007. Finally, while both reviews focused on burden reduction relative to other regulatory goals—with a particular emphasis on reducing burden on small and community banks—the 2007 process primarily weighed regulatory burden against industry performance whereas the 2017 process primarily weighed regulatory burden against system stability. Similarly, while FFIEC member agencies' commitment to the public interest was explicit in both reports, the 2007 process focused on expanding access to lending and other financial services while the 2017 process focused on consumer protection in accessing financial services, suggesting different conceptions of how best to promote the public interest. Furthermore, while both reports necessarily centered on EGRPRA's burden reduction mandate, the 2007 report was more overtly critical of regulation and more explicitly focused on reducing regulatory burden, while the 2017 report emphasized the benefits of regulation and the need to evaluate burden reductions against other regulatory objectives. Thus, while FFIEC's retrospective review institutional design was similar in 2007 and 2017, the ideological premise—and in turn, regulatory priorities and tradeoffs—of reviews was dissimilar across the two periods.

Participation in reviews: level, composition, and substance of participation

This section analyzes how stakeholders participated in retrospective review processes pursuant to EGRPRA and the extent to which the level, composition, and substance—including the rules, policies, and issue areas raised; recommendations provided; and type of evidence used to substantiate recommendations—of participation differed in the 2007 and 2017 reviews.

[8] NCUA, led by Debbie Matz, conducted a separate voluntary decennial review and CFPB, led by Richard Cordray, conducted a separate review process pursuant to the Dodd–Frank Act; neither the NCUA nor CFPB 2017 reviews are included in this analysis.

[9] June 4–September 2, 2014: (1–3) (79 Federal Register 32172); February 13–May 14, 2015: (4–6) (80 Federal Register 7980); June 5–September 3, 2015: (7–9) and newly listed rules (80 Federal Register 32046); and December 23, 2015–March 22, 2016: (10–12) (81 Federal Register 1923).

[10] The website used in the 2017 review is still active: https://egrpra.ffiec.gov/.

Table 1 Number of comments by submitter category ($n=819$)

	Private interests			Public interests				
	Bank or bank employee	Trade, industry, or professional association	Professional services provider	Cross-sector coalition or quasi-governmental entity	Government	Think tank or policy research organization	Consumer, community, or public-interest organization	Consumer or citizen
2007	541	27	6	9	2	0	3	3
(n=591)	*91.5%*	*4.6%*	*1.0%*	*1.5%*	*0.3%*	*0.0%*	*0.5%*	*0.5%*
2017	22	54	125	10	2	1	11	3
(n=228)	*9.6%*	*23.7%*	*54.8%*	*4.4%*	*0.9%*	*0.4%*	*4.8%*	*1.3%*

Level of participation

Retrospective review affords stakeholders with a unique opportunity to provide input on the existing stock of regulations and procedures that may affect the future flow of regulations. Although participation in retrospective review theoretically offers broader opportunities for influence than rulemaking, prior studies find that average levels of participation in retrospective review are lower than average levels of participation in rulemaking [37]. Consistent with prior literature, the overall level of participation across EGRPRA reviews was low relative to rulemaking. FFIEC reportedly received approximately 1080 comments across both periods.[11] In contrast, a single rulemaking pursuant to the Dodd–Frank Act generated approximately 8000 comments [51].

Perhaps more interesting is the variation in participation across the two periods. In 2007, FFIEC reported receiving approximately 850 comments across six Federal Register notices and approximately 500 participants across 16 outreach sessions. In 2017, FFIEC reported receiving approximately 230 comments across four Federal Register notices and approximately 120 participants across six outreach sessions. Thus, in aggregate terms, and in the average levels of participation per Federal Register notice or per outreach session, participation was substantially higher in 2007 than 2017.

Composition of participants

While analyses of participation in retrospective review suggest these processes tend to be more balanced across public and private interests than rulemaking [37], the technical complexity, concentration of costs, and diffusion of benefits associated with financial regulation suggest participation may necessarily be less balanced than other issue areas.[12] Across both the 2007 and 2017 EGRPRA reviews, the majority of participants were private interests. These private and public interests can be further disaggregated by submitter category (Table 1).

Private interests accounted for 97% of participants in 2007 ($n=591$) and 88% of participants in 2017 ($n=228$). In 2007, 92% of comments were from banks or bank employees (hereinafter 'banks'), and of these 541 comments, 81% represented small or community banks. In 2017, only 10% of comments were from banks, and of these 22 comments, there was a mix of small, midsize, and large banks. While there was approximately 30% consolidation in the banking industry between the two periods, this change in the total number of banks does not alone explain the significant decrease in participation by banks.

The next largest category of private interests was trade, industry, and professional associations (hereinafter 'trade associations'), which made up only 5% of participants in 2007. In 2007, 100% of these 27 trade association comments represented the banking industry. In 2017, 24% of participants were trade associations, of which 70% of comments represented the banking industry. Thus, while more banks participated through trade associations in 2017 than 2007, this shift does not fully account for the decrease in the representation of the banking industry across the two periods.

The difference in private interest submitter composition across the two reviews is better explained by the increased participation of professional services providers, which jumped from 1% of participants in 2007 to 55% of participants in 2017. Of the 125 comments from professional service providers in 2017, 96% were from appraisal professionals, who

[11] All approximate figures are based on FFIEC summaries in EGRPRA reports and all exact figures are based on original empirical analysis. Unless otherwise stated, all comment analysis includes form letters.

[12] This generalization does not hold for all rules. For example, the most participants in rulemaking pursuant to section 619 of the Dodd–Frank Act (i.e., the Volcker Rule) were individuals, although there was a substantial number of form letters organized by public interest groups.

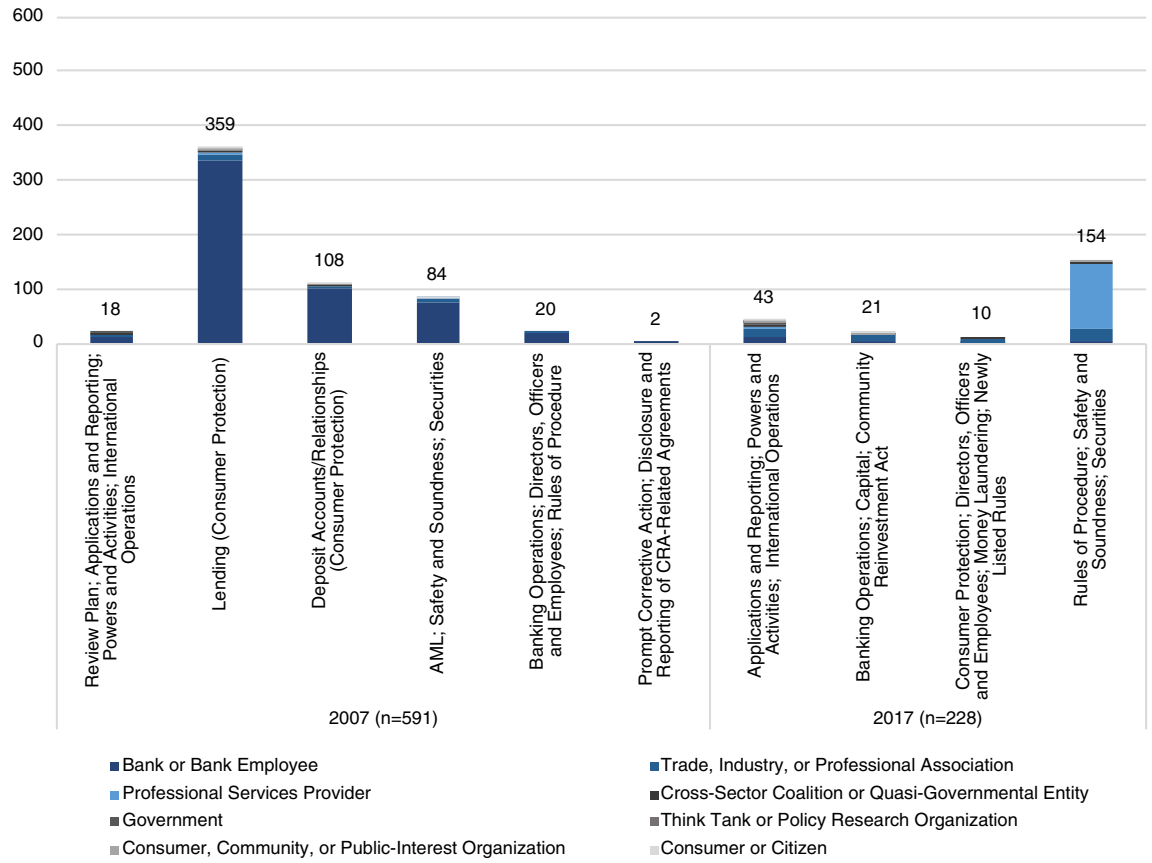

Fig. 2 Number of comments by submitter category and issue area ($n = 819$)

provide appraisals for real estate assets as part of banks' lending processes. Increased participation by the appraisal industry is also apparent in the trade associations category; in 2017, 20% of trade association comments were from coalitions of appraisal professionals. Thus, the vast majority of participants in both periods were private interests, but in 2007 these interests largely represented small and community banks, whereas in 2017, these interests mostly represented appraisal professionals, and, to a lesser extent, banks of various sizes.

Public interests accounted for 3% of participants in 2007 ($n = 591$) and 12% of participants in 2017 ($n = 228$). The largest share of these public interests in 2007 was cross-sector coalitions and quasi-governmental entities, which also made up nearly half of public interest participants in 2017. In both periods, these comments were primarily from coalitions of public and private entities working on issues related to community reinvestment and affordable housing. There was scant participation by think tank or policy research organizations, governments, and consumers/citizens in both periods, although each represented a larger percentage of participants in 2017 than 2007.

The most striking change in public interests across these two periods is the increased participation by consumer, community, or public interest organizations (hereinafter 'public interest groups'). In 2007, public interest groups represented less than 1% of participants, but in 2017, these organizations represented 5% of participants. Thus, while public interests represented a relatively small share of comments in both periods, there was a substantial increase in the number of public interest groups, in absolute and in relative terms, between 2007 and 2017.

Substance of participation: rules, policies, and issues raised in comments

The scope of EGRPRA reviews, as noted above, is the existing cumulative stock of banking regulations promulgated individually or jointly by FFIEC member agencies. In accordance with the EGRPRA mandate, FFIEC grouped these rules and requested comments on 13 categories of rules through six Federal Register notices for the 2007 review and 12 categories of rules through four Federal Register notices for the 2017 review. Submitted comments discussed a wide range of rules, policies, and issue areas, and most comments discussed more than one area. Figure 2 depicts the number of comments by submitter category—with public interests

depicted in shades of gray and private interest depicted in shades of blue—for each Federal Register notice and the corresponding rule categories.[13]

In 2007, comments covered 131 regulations in 12 of the 13 proposed categories.[14] In total, 54% of comments focused on consumer protection rules related to lending (359 comments) and deposit accounts/relationships (108 comments). The vast majority of lending comments came from small and community banks and addressed mortgage lending requirements, such as regulations pursuant to the Truth-in-Lending Act (TILA) of 1968, the Flood Disaster Protection Act of 1973, the Real Estate Settlement Procedures Act of 1973, the Home Mortgage Disclosure Act (HMDA) of 1975, and the Community Reinvestment Act (CRA) of 1977 [77–81]. For example, many banks and a few public interest groups commented on the three-day 'right of recession' requirement in Regulation Z pursuant to TILA. Unsurprisingly, for the 'right of recession' issue and other lending issues, banks and public interest groups tended to offer opposite perspectives.

Another area that garnered substantial attention in 2007 was the Bank Secrecy Act (BSA) of 1970; over 125 comments addressed issues related to related to anti-money laundering (AML) regulations, such as currency transaction reporting (CTR) thresholds and processes for suspicious activity reporting (SAR) [82]. Rules promulgated in response to 9/11—such as the 'Know Your Customer' requirement mandated in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001—also garnered substantial attention [83]. Finally, many comments focused on burdens deriving from the frequency and perceived redundancy of safety and soundness examinations.

While they did not receive comparatively large shares of comments, several issues raised in the 2007 comments are notable in light of subsequent regulatory and market failures. First, comments from lenders questioned the value of real estate appraisals in mortgage transactions, arguing that lenders were sufficiently knowledgeable and disciplined to provide the necessary information to consumers; inflated real estate appraisals were a contributor to the real estate bubble that precipitated the GFC, and in 2007 a coalition of appraisers submitted a petition with over 11,000 signatures to FFIEC arguing that lenders were pressuring appraisers to inflate the estimated value of real estate assets [2]. Second, comments lamented that bank directors were forced to take on too many compliance and management functions, thereby diverting attention away from more strategic business functions; weak corporate governance and insufficient board oversight have been central to a range of regulatory failures since the crisis [84]. Finally, many comments focused on the burden on small and community banks and the need for tiered regulatory approaches; reducing regulatory burden on small and community banks through tiered regulation is a central component of recent financial reform legislation [85].

In 2017, real estate appraisals, BSA, capital, call reports, CRA, and bank examinations received the most comments. In total, 57% of comments focused on safety and soundness and the vast majority of these comments were from appraisal professionals and related to the threshold at which appraisals are required for residential and commercial mortgages as well as the market for appraisal services. Although a few comments addressed appraisal thresholds in 2007, comments in 2007 were from banks advocating for raising the thresholds whereas in 2017 most of the comments were from appraisers advocating for maintaining the current threshold. The GFC and the role of appraisals in preventing real estate asset bubbles loomed large in comments from appraisal professionals in 2017.

The second largest category was powers and activities, and comments mostly focused on rules related to community development corporations and projects. For these issues, banks and quasi-governmental community development corporations tended to be aligned, while public interest groups generally offered the opposing perspective. Many comments focused on the complexity of call reports and of capital regimes, as well as the frequency of safety and soundness bank examinations. As with the 2007 review, there were also several comments related to regulations pursuant to CRA (e.g., geographic areas) and BSA (e.g., thresholds for currency transaction reporting).

Finally, many comments focused on procedural or cross-cutting issues. Several comments from industry groups recommended expanding the scope of reviews to include other regulatory agencies (e.g., CFPB[15]) or rules pursuant to

[13] Comments are used as the unit of analysis throughout this article. However, it should be noted that comments varied substantially in length and substance and that the scope of rules, polices, and issues discussed also varied considerably, with some comments on entire statutes and others on a single line in a particular rule.

[14] According to FFIEC, the outreach sessions covered a similar set of issues, with the 10 most common topics covering: '(1) Bank Secrecy Act, including Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs); (2) USA PATRIOT Act and 'Know Your Customer' Requirements; (3) Withdrawal Limits on Money Market Deposit Accounts (Regulation D); (4) Home Mortgage Disclosure Act (HMDA); (5) Community Reinvestment Act (CRA); (6) Truth-in-Lending Act (Regulation Z) and the Real Estate Settlement Procedures Act (RESPA); (7) Three-Day Right of Rescission; (8) Extensions of Credit to Insiders (Regulation O); (9) Flood Insurance; and (10) Privacy Notices'.

[15] FFIEC-2014-0001-0016.

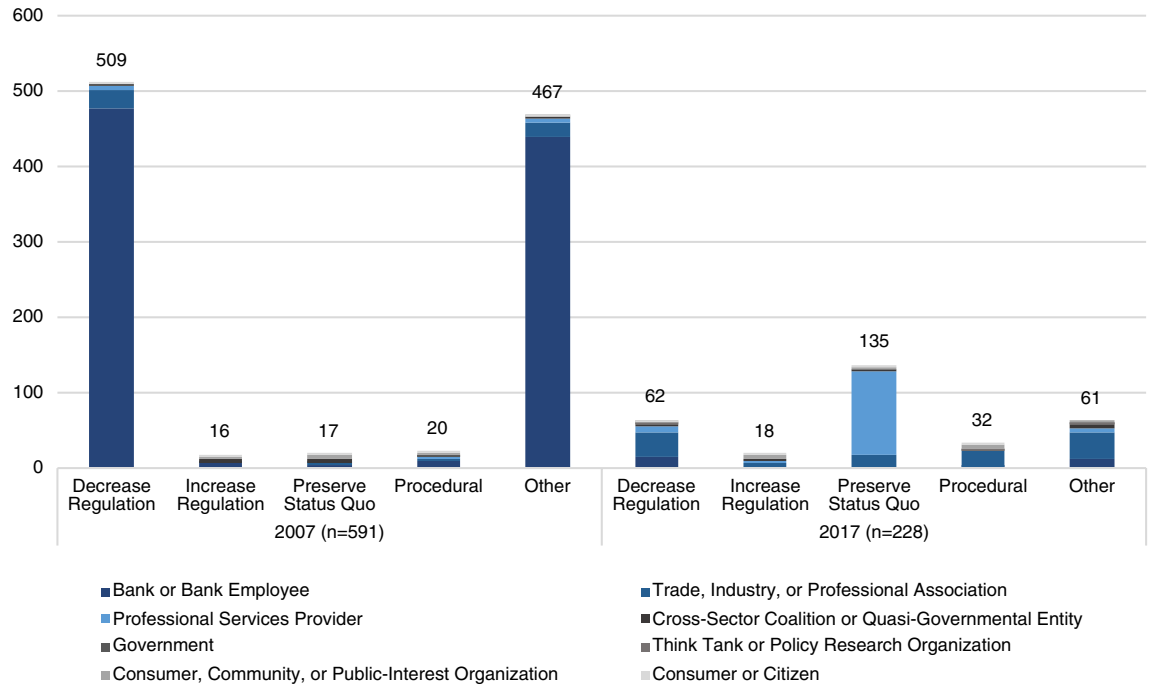

Fig. 3 Number of comments by suggested revision ($n = 819$)

particular statutes (e.g., the Dodd–Frank Act[16]). Other comments discussed review methodology, for example, calling for assessments of cumulative burden and individual rule burden, use of quantitative cost–benefit analysis in rulemaking and in review, commitment to strengthening rules rather than only reducing burden, broader public participation in rulemaking and review processes, and greater interagency coordination and rule harmonization.

Several issues—such as CRA, BSA, examination burden, and burden on bank boards—generated substantial shares of comments in both 2007 and 2017. However, the most consistent thread connecting comments within and across reviews related neither to perceived regulatory effectiveness nor burden relative to benefits, but rather to the perceived fairness of bank regulation relative to the regulation of other institutions. Arguments about fairness across both time periods took three forms. First, banks emphasized the institutional mismatch between 'banking functions' and 'policing functions' related to AML and flood insurance, suggesting that the Financial Crimes Enforcement Network (FinCEN) and Federal Emergency Management Agency, respectively, should take responsibility for these issues instead of banks.[17] Second, in both 2007 and 2017, banks argued that regulatory burdens placed upon small and community banks were unfair relative to those of large banks. In 2007, the primary argument was that small and community banks do not have the economies of scale necessary to internalize increasingly large compliance functions, resulting in managerial staff focusing on compliance rather than other duties. In 2017, arguments about compliance burden persisted, but more commonly arguments centered on small and community banks' regulatory burdens relative to their risks. As noted above, the relationship between bank size and risk is controversial [72, 76]. Finally, in both 2007 and 2017, comments described the unfair regulatory burden placed on banks relative to other financial institutions offering competing services. In 2007, these comments focused on the need for more stringent regulation of independent mortgage lenders and credit unions. In 2017, these comments focused more broadly on institutions that offer intermediation services outside the banking regulatory framework established under the Dodd–Frank Act (i.e., 'shadow banks'). Thus, while in both periods regulatory fairness was a dominant theme, the baseline against which fairness was assessed shifted across the two periods.

Substance of participation: revisions suggested in comments

Consistent with the processes dictated by EGRPRA and the resulting Federal Register notices, the vast majority of comments included suggestions for revisions. As Fig. 3 depicts, these suggestions can be categorized as decreasing regulation, increasing regulation, preserving the status

[16] FFIEC-2014-0001-0042.

[17] FFIEC-2014-0001-0038.

quo, procedural, or other. These categories are not mutually exclusive because comments often raise more than one issue and offer more than one suggestion.

In 2007, the most commonly suggested revisions were deregulatory, with revisions that were neither pro-regulatory nor deregulatory (i.e., 'other') comprising the other largest category; notably most of the comments that included several recommendations to decrease regulation also included at least one recommendation coded as other. In 2017, the most common recommendations were to preserve the status quo, with decrease regulation and other making up the second and third largest categories, respectively.

Perhaps not surprisingly, recommendations varied by submitter category. Public interests—depicted in shades of gray in Fig. 3—generally recommended increasing regulation or preserving the status quo while private interests—depicted in shades of blue in Fig. 3—generally recommended decreasing regulation or suggested revisions that were neither clearly pro-regulatory nor deregulatory. Among the latter category, trade association comments framed recommendations as less clearly deregulatory than those from banks, especially smaller banks, which were more explicit in their calls for reducing regulation and regulatory burden. Banks also provided a variety of solutions to 'level the playing field' for different institutions, such as tiered regulation by bank size, consolidation of charters and regulatory authority, and creation of barriers to entry for credit unions.[18]

Many comments included suggestions that were neither clearly pro-regulatory nor deregulatory. Some of these comments related to relatively narrow issues, for example, requests for clarification or interpretative guidance for specific rules and the adoption of web-based technologies for the submission of certain reporting forms. However, in both periods, participants expressed concerns related to more systemic issues—such as inconsistencies in examination processes—and made various suggestions to address these inconsistencies—ranging from providing more guidance and training for examiners to providing examiners with greater interpretative authority. Several comments also recommended regulatory consolidation, coordination, and cooperation to address problems arising from multiple banking regulators operating at the state, federal, and international levels. These comments related to implementation reinforced one of the potential benefits of retrospective review: understanding how a rule 'as lived' may differ from a rule 'as written'. There were also procedural recommendations related to review processes in both rounds. As noted above, these comments generally discussed the scope of review—for example, the inclusion of rules pursuant to the Dodd–Frank Act and the integration of review processes for FFIEC, NCUA, and CFPB. Two of the most prominent banking trade associations, the American Bankers Association (ABA) and Independent Community Bankers of America (ICBA), also provided detailed procedural comments. For example, ICBA suggested the development of a website to continuously track the 10 'most burdensome' rules.[19]

While it is not surprising that banks sought to decrease their regulatory burden and public interest groups sought to preserve or increase the stringency of regulation, the relative level of public and private participation suggests that the outcomes of reviews, to the extent they are based on public participation, will necessarily be deregulatory. While FFIEC purportedly balanced burden reductions with other regulatory objectives—such as safety and soundness and consumer protection—the imbalance of perspectives and the relationship between the GFC and deregulation raises concerns about the ability of regulatory agencies to deregulate while maintaining system resilience. However, for certain issues there were conflicting preferences among private interests, suggesting a potential countervailing power dynamic [64, 65]. For example, in the case of appraisal thresholds in 2017, lenders sought to decrease regulation (by raising the threshold at which appraisals are required) while appraisal professionals sought to preserve the status quo (maintaining the current threshold); both submitter categories framed their recommendations as promoting the public interest. This finding suggests that the 'capital unity' hypothesis may not hold for the banking sector as uniformly as it does for other financial services subsectors [51, 54].

Substance of participation: evidence provided in comments

EGRPRA directs FFIEC to solicit comments on 'outdated, unnecessary, or unduly burdensome' regulations [3]. As shown in Figs. 3 and 4, comments used a variety of evidence types to justify recommendations. In 2007, the majority of comments argued that rules were burdensome, followed by outdated or unnecessary as the next largest category of evidence. In 2017, the majority of comments argued that rules were beneficial, with outdated or unnecessary and burdens also being somewhat common.

As with recommendations, evidence provided varied by submitter category. Private interests—depicted in shades of blue Fig. 4—focused on burdens while public interests—depicted in shades of gray in Fig. 4—focused on benefits; the former tended to be very specific and the latter tended to be more general, reflecting the concentrated costs and diffuse benefits of banking regulation. Public interest comments were more defensive, arguing to preserve the status

[18] E.g. FFIEC-2003-0001-0005, FFIEC-2014-0001-00030, FFIEC-2003-0001-0011.

[19] FFIEC-2014-0001-0036.

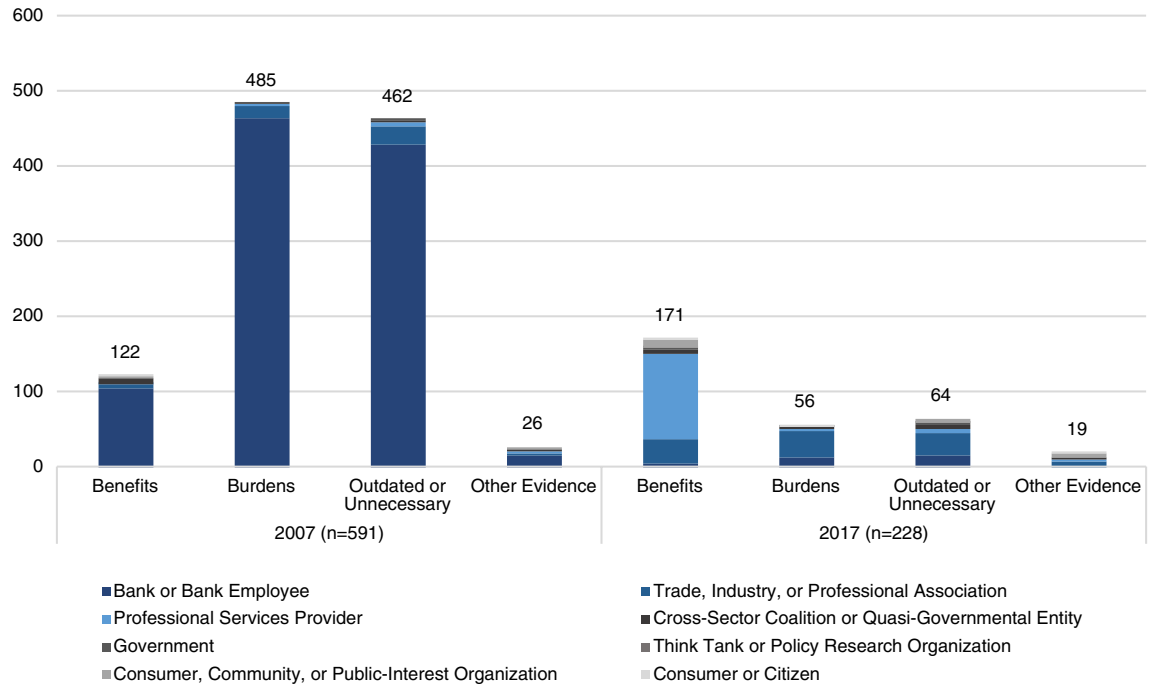

Fig. 4 Number of comments by evidence type ($n = 819$)

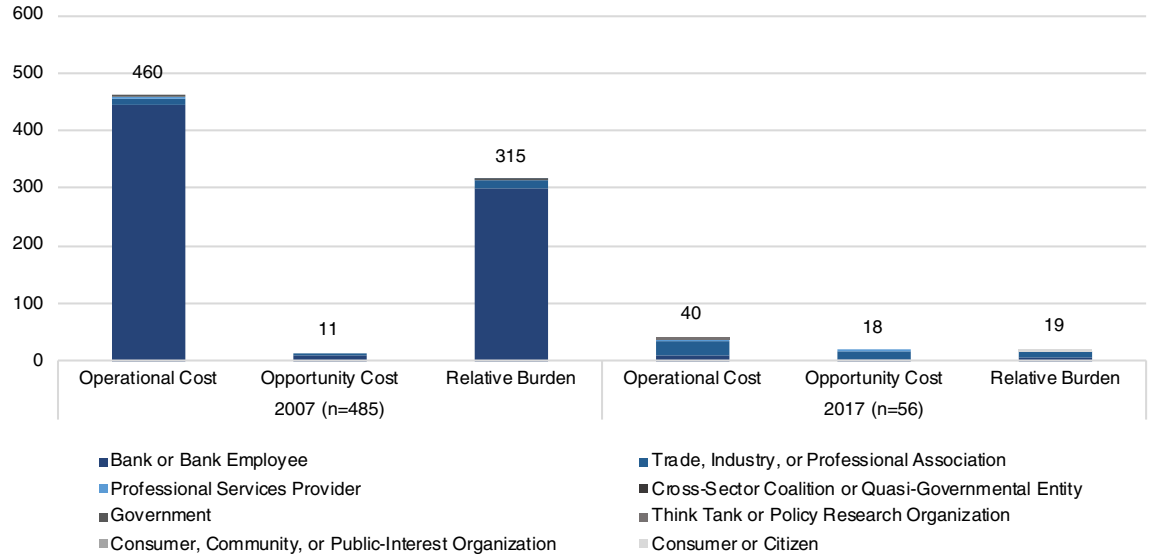

Fig. 5 Number of comments by burden type ($n = 541$) (The sample size is the number of comments that provided evidence related to burdens)

quo based on benefits, and in some cases, statutory interpretation.[20] Although private interests' justifications generally focused on burdens, arguments varied qualitatively. For example, small and community banks described their own compliance burdens, while large banks and trade associations described how regulatory burden negatively affects the entire industry, and in turn, customers. There was also variation across banks and other types of private interests. For example, in 2017 professional service providers most frequently employed arguments about the benefits of preserving the status quo, whereas trade associations most often employed arguments about burdens or outdated

[20] Arguments about statutory interpretation are coded as 'other' evidence.

or unnecessary requirements when seeking to decrease regulation.

With respect to the types of burdens (Fig. 5), operational costs (i.e., compliance costs) were more frequently identified than other types of burdens. While there was some discussion of unintended consequences, there were relatively few arguments about opportunity costs. Of the few opportunity cost arguments, the most common examples related to resource tradeoffs between compliance and customer service. A few comments also mentioned market exit or discussed how boards of directors' compliance responsibilities detract from management functions. Even after the crisis, which made apparent the immense externalities associated with financial systemic risk, arguments about burdens tended to focus on first-order effects.

Although not garnering the majority of comments, the issue of relative burden appeared to be important to bank participants in both periods. In 2007 and 2017, there were concerns about the competitiveness of bank versus non-bank institutions (e.g., shadow banks, credit unions) and about small versus large banks. For example, in 2017 comments argued that regulations pursuant to the Dodd–Frank Act placed inordinate burden on banks, while credit unions and Fintech companies face relatively few new requirements.[21] Both before and after the GFC, small and community banks argued that their regulatory burdens were inordinate and undue given their compliance resources (2007) and their relative riskiness (2017). While this concern about relative burden is not surprising in 2017, it is striking that the exact same arguments were used in 2007 given that in 2017 small and community banks generally identified the regulatory framework established pursuant to the Dodd–Frank Act as the source of this inordinate burden.

Comparing participation in 2007 and 2017

The overall level of participation in the EGRPRA reviews was low relative to rulemaking, but participation was substantially higher in 2007 than 2017, both in aggregate terms and in the average levels of participation per Federal Register notice and per outreach session. In both periods, most participants were private interests, although participation was more balanced across public and private interests and submitter categories in 2017 than 2007. Notably, participation by certain groups, such as think tanks and governments, was almost nonexistent in both periods. While analyses of participation in retrospective review suggest review processes tend to be more balanced across public and private interests and across various submitter categories than rulemaking [37], the particular design of EGRPRA reviews may explain the imbalance; EGRPRA is narrowly focused on banking regulation and explicitly emphasized burden reductions, suggesting banks and other regulated entities will have the greatest awareness of, and incentives to participate in, EGRPRA reviews. Similarly, because FFIEC is an interagency body composed of representatives of major government stakeholders at the local and national levels, it makes sense that government participation via notice and comment was lower than in other retrospective review processes. Nonetheless, EGRPRA review processes seem to have become more balanced over time, with participation by more diverse regulated entities and greater public and private interest group mobilization.

With respect to the substance of participation, there was a wide range of issue areas, recommendations, and evidence included in comments. In 2007, the most frequently commented issues related to consumer protection whereas in 2017 they related to safety and soundness. Across both periods, issues of regulatory fairness persisted. In 2007, the most common recommendation was for deregulation whereas in 2017 the most common recommendation was for preserving the status quo. In general, public interests sought to preserve or increase regulation while private interests sought to reduce regulation. This finding generally comports with the literature on participation in rulemaking. However, the findings that private participants were divided on certain issues—such as real estate appraisals—and that areas of emphasis varied by financial institution type—such as small versus large banks—are particularly noteworthy given that recent literature suggests financial industry lobbying exhibits more preference homogeneity than other industries [54].

Finally, in providing justifications for recommendations, there was a greater emphasis on burdens in 2007 and a greater emphasis on benefits in 2017. The types of evidence provided varied by submitter category, with private interests generally commenting on burdens and public interests generally commenting on benefits. As with recommendations, there was also interesting within-sector variation. However, a variety of entities seemed to be united behind a shared concern about relative burden. Particularly common in both periods were arguments from small and community banks that their regulatory burdens were inordinate and undue given then their compliance resources (2007) and their relative riskiness (2017). The similarity in arguments across the two periods is notable since many have argued that it is regulation pursuant to the Dodd–Frank Act that created this unfair burden on small and community banks. Indeed, relief for small and community banks served as the bipartisan foundation for sweeping financial reform legislation enacted by the 115th Congress [85].

[21] FFIEC-2014-0001-0095.

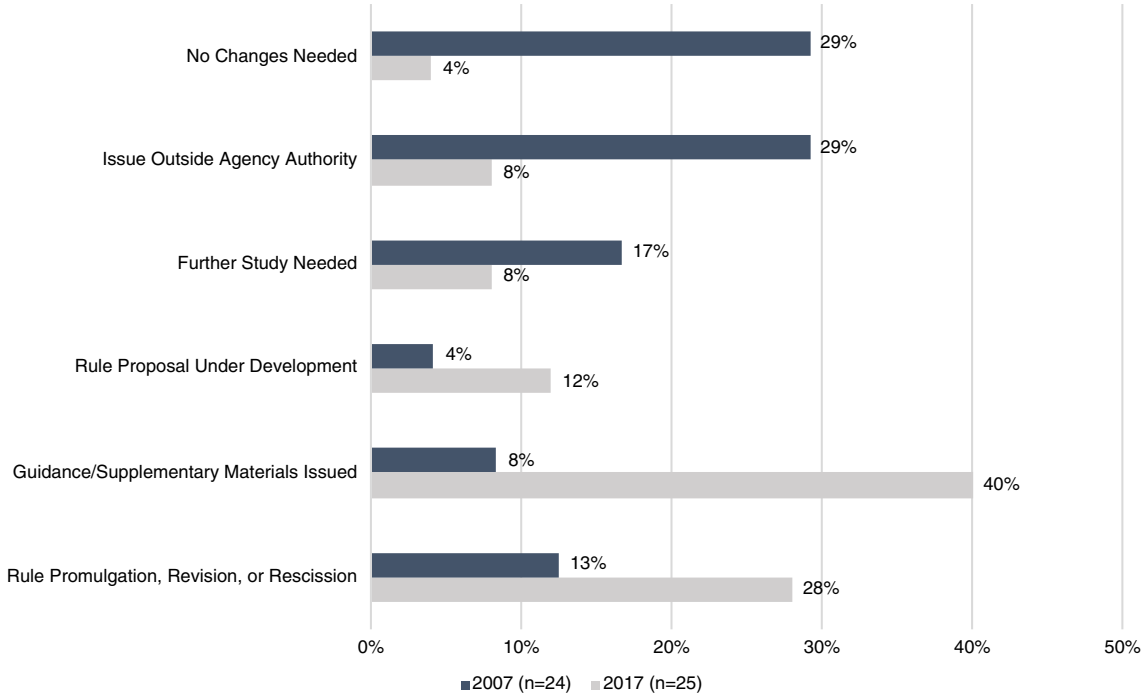

Fig. 6 Type of EGRPRA review outcomes identified in plans

Outcomes of EGRPRA reviews and the role of participation therein

As stipulated by EGRPRA, FFIEC produced detailed reports documenting review processes and the individual and inter-agency outcomes in both 2007 and 2017. Depicted in Fig. 6 below, review outcomes ranged from no action to rule revision/rescission, with several alternatives along this spectrum. As with other retrospective reviews, quantifying the outcomes of EGRPRA reviews is difficult for at least two reasons. First, establishing a consistent unit of analysis is difficult because comments and revisions vary in scope from an entire statute to a single line in a particular rule or guidance document. Second, correlation between issues raised in review processes and outcomes does not itself imply causality. Nonetheless, by holding these issues constant across the two EGRPRA reviews, it is possible to compare the outcomes of the 2007 and 2017 processes.

2007 Outcomes

In 2007, outcomes focused more on referral and deferral than action. For at least seven issue areas, FFIEC determined revisions raised in comments were outside of both FFIEC's inter-agency and FFIEC member agencies' authority. FFIEC referred most of these issues (e.g., reforming the National Flood Insurance Program) to Congress, but also referred a few issues to other agencies (e.g., AML comments were referred to FinCEN). In many instances, FFIEC recommended a specific action or expressed a willingness to work with other entities in addressing referred issues. In addition, the 2007 report repeatedly called for legislative action to reduce regulatory burden and celebrated the collaboration between FFIEC and the 109th Congress on the passage of the Financial Services Regulatory Relief Act (FSRRA) of 2006 [86]. FFIEC also determined no action was needed for several issues raised in comments. For example, although several comments related to HMDA, FFIEC noted that it was too soon after implementation to evaluate rule effectiveness relative to burden. For capital rules, FFIEC determined the existing framework did not rise to the level of 'unduly burdensome' because it afforded a choice among the existing Basel I rules, the standardized approach, or the Basel II advanced approaches.

There were three issues for which the 2007 FFIEC plan outlined regulatory changes, although only one—OTS's revision of application and reporting requirements for savings associations—was described as originating solely from the EGRPRA review process, with the others purportedly resulting from a combination of the EGRPRA review and other initiatives. Finally, the 2007 plan also included a detailed list of 'current initiatives', which demonstrated progress on various issues without necessarily addressing comments. Similarly, the plan referenced other review initiatives outside the EGRPRA process that aligned with its burden reduction mandate, such as those pursuant to the Riegle

Community Development and Regulatory Improvement Act (CDRI Act) of 1994 [87].

The 2007 report included a detailed summary of all recommendations received in comments and outreach sessions, organized by issue area. These summaries included some attribution to broad submitter categories, most commonly 'industry group' or 'consumer group'. The report provided the volume of comments for certain rules, particularly those that received a relatively large share of comments (e.g., BSA/AML) and noted the issues for which form letter comments predominated. These summaries also highlighted the extremely limited evidence offered in comments. The only issue areas that included data to substantiate claims were right of recession, CTR thresholds, and SAR processes. While the summary of comments was distinct from the summary of review outcomes, the report repeatedly framed review outcomes as directly responsive to comments. Furthermore, given the very limited use of other types of inputs (e.g., empirical ex post impact assessment), it is reasonable to assume that to the extent EGRPRA produced actions that would not have otherwise been pursued, those actions were a result, at least partially, of public input.

2017 Outcomes

In 2017, outcomes were more action-oriented, with the frequent issuance of clarifying materials as well as the revision of at least seven rules. The major issue areas addressed in 2017 were capital, regulatory reporting, real estate appraisals, examination frequency for and safety and soundness, and BSA. Clarifying materials were issued for appraisal waiver processes, use of evaluations as alternatives to appraisals, and flood insurance guidance. Rule changes included the development of a community bank call report and raising the appraisal threshold for commercial real estate loans. FFIEC referred issues related to the frequency of safety and soundness examinations to Congress, which in turn passed legislation enabling FFIEC to modify relevant regulations [88]. As with the 2007 review, FFIEC referred issues related to AML to FinCEN. The 2017 report also identified several ongoing issues, including reviewing the major assets interlock thresholds and simplification of capital rules. Like the 2007 report, the 2017 report highlighted review initiatives beyond the scope of EGRPRA as well as other agency initiatives to reduce regulatory burden, such as the FDIC's ongoing review of examination and supervisory processes, which resulted in the rescission of several rules inherited from OTS.

The 2017 report also included a detailed summary of all recommendations received in comments and outreach sessions, organized by issue area. Relative to the 2007 report, the 2017 summary is more detailed in terms of the number of comments received and attribution to submitter categories. As with the 2007 report, there was very little evidence other than that provided in comments, although the 2017 report is perhaps slightly more deliberative in its adjudication of conflicting participant input. For example, with respect to appraisal thresholds, FFIEC described how the comments against increasing the threshold far outnumber those in favor of increasing it, yet based on the evidence provided in the latter, FFIEC decided to develop a proposal to raise the commercial threshold and is considering changing thresholds for real estate secured business loans, but not residential loans due to concerns about safety and soundness and consumer protection. Thus, as with 2007, outcomes in 2017 responded to comments, but the 2017 report suggests FFIEC considered the quantity of comments and the quality of evidence provided within comments.

Comparing outcomes in 2007 and 2017

Recognizing that it is difficult to infer causation from review initiatives and outcomes, and perhaps even more difficult to draw causal inferences between participation in reviews and outcomes [89], is possible to examine how the outcomes of reviews and the role of participation therein changed across the two EGRPRA reviews. On balance, the 2017 review produced more actions by FFIEC whereas the 2007 review produced more referrals to other entities. In both periods, FFIEC responded directly to comments and did not appear to use input other than comments in review processes. Thus, to the extent EGRPRA reviews produced actions that would not have otherwise been pursued, it is reasonable to attribute those actions, at least partially, to public input.

Relative to other US review efforts, such as those pursuant to Executive Orders 13563, 13579, and 13610, the EGRPRA review mandate is somewhat more procedurally prescriptive and the resulting reviews were somewhat more transparent, perhaps reflecting the differences in political accountability to regulatory oversight bodies (i.e., the Office of Information and Regulation Affairs) and legislatures (i.e., the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs) as well as the distinctiveness of banking relative to other regulatory issues [37, 90].

Prior retrospective review efforts have been criticized for their lack of methodological rigor, with reports documenting inputs and outputs, but providing less legibility into review processes, data, or methodologies [34]. EGRPRA reviews seem to rely exclusively on public input, drawing the criticism of the Government Accountability Office (GAO), which recently recommended that future EGRPRA reviews include 'quantitative rationales' and assess cumulative burden [91]. Yet, it is not clear that banking regulators would even have the data required to conduct more quantitative or comprehensive retrospective impact assessment given that

cost–benefit analysis is generally not required upon promulgation of banking regulations. Indeed, the role of ex ante impact assessment in banking regulation is politically controversial and methodologically complicated [92–94]. The latter is compounded by the unique structure of the banking sector, which creates substantial challenges with quantifying the benefits and costs of particular outcomes (e.g., because risks generated at the institutional level are borne at the system level) and the probability of those outcomes (e.g., because the supervisory model in banking enables examiners to continuously shape regulation through implementation). It should also be noted that although banking regulators generally do not forecast or track quantitative benefits and costs of individual regulations, neither do regulated entities: the comments suggest that most banks do not systematically collect data on their individual or cumulative regulatory burdens.[22]

Causes of variation in 2007 and 2017

EGRPRA review processes, participation, and outcomes differed in the 2007 and 2017 reviews. This section provides an analysis of the extent to which the policy shock of the GFC explains this variation, relative to three other potential explanatory variables: political context, regulatory context, and market context.

Potential explanatory variables

The timing of the EGRPRA reviews is notable because of the substantial changes that occurred in the 10-year period between the reviews. The most obvious difference, and the first potential explanatory variable, is the policy shock of the GFC. The 2007 EGRPRA review began four years before the GFC, while the 2017 review began five years after the GFC. Crises can serve as focusing events by illuminating otherwise unobservable consequences of regulatory and market failure [58] and in so doing can affect the policy agenda and the policy community for a given issue [59–63]. While there are several ways in which the policy shock of the GFC might directly explain the variation in review processes, participation, and outcomes across the two EGRPRA reviews, it is also plausible that the policy shock of the crisis affected the political, regulatory, or market context, which in turn may explain the variation.

The second potential explanatory variable is political context. The 2007 review was carried out during a Republican administration and President George W. Bush appointed all but one of the FFIEC members involved in the review. Government was unified during this period, with Republicans controlling the House of Representatives and the Senate for the duration of the FFIEC review (108th and 109th Congress), meaning that FFIEC members reported the outcomes of the EGRPRA review to a Congress in which members of their own party were in the majority. The 2017 review occurred during a Democratic administration and President Barack H. Obama appointed all of the FFIEC members involved in the review. However, government was divided during the 2017 review, with Republicans controlling the House of Representatives and Democrats controlling the Senate in the 113th Congress (2013–2015) and Republicans controlling both chambers in the 114th Congress (2015–2017), meaning that FFIEC members reported the outcomes of the EGRPRA review to a Congress in which members of their own party were in the minority. Thus, the two review periods are distinct in political ideology—conservative (2007) versus liberal (2017)—and the balance of political power—unified government (2007) versus divided government (2017).

The third potential explanatory variable is regulatory context. The 2007 review occurred during a period of deregulation in the financial services industry broadly, and in banking specifically (e.g., FSRRA, Gramm–Leach–Bliley Act of 1999 [95]). Steady market performance and persistent financial innovation created the basis for a regulatory regime predicated on the desirability and sufficiency of market discipline. While bank regulators implemented micro-prudential regulations, safety and soundness objectives were evaluated against potential costs to the international competitiveness and profitability of US financial institutions, and in turn, their perceived private and public benefit. In addition to international regulatory competition (e.g., capital frameworks pursuant to Basel II), there was domestic regulatory competition among bank regulators at the federal level and among state and federal regulators. In contrast, the 2017 review occurred during a period of re-regulation, as agencies implemented sweeping reforms under the legislative authority of the Dodd–Frank Act. In response to the GFC, bank regulators promulgated myriad micro-prudential, macro-prudential, and consumer protection regulations. The benefits of these regulations were weighed against the potential burdens, although these tradeoffs were perhaps less explicit than before the crisis. While bank regulation is still highly fragmented, there was a greater emphasis on domestic and international coordination in response to the GFC. Thus, the two review periods are distinct in terms of the dominant regulatory objectives and tradeoffs, which in turn shaped regulatory priorities and strategies.

[22] One exception is trade associations' periodic surveys of regulatory burdens; however, these surveys rely on self-reporting and are not systematic. FFIEC-2014-0001-0015; FFIEC-2003-0001-0001.

Table 2 Summary of explanatory power

Category	Finding	Policy shock	Political	Regulatory	Market
Process	Greater emphasis on deregulation in 2007 than 2017	✓	✓	✓	–
Participation	Greater participation in 2007 than 2017	✗	–	✗	✗
	Less balanced participation (across interest types and submitter categories) in 2007 than 2017	✓	✓	–	✓
	More recommendations for deregulation (with evidence of burdens) in 2007 and preserving status quo (with evidence of benefits) in 2017	✓	✓	✓	✓
Outcome	More referrals in 2007 and more regulatory actions in 2017	–	✓	✗	–

The fourth potential explanatory variable is market context, which encompasses regulated institutions and the broader stakeholder landscape, including interest groups and the public. With respect to regulated institutions, there was considerable consolidation in the banking industry between EGRPRA reviews, with approximately 30% fewer banks in the first quarter of 2017 than 2007. The number of small and community banks decreased substantially in this period, while the number of large banks increased, as did the quantity of assets held by all commercial banks [96]. This consolidation reflects bank failures during the crisis as well the continuation of a mergers trend that began in 1980s, as discussed above [73, 74]. Although there was a substantial performance trough from 2008 to 2009, a comparison of performance indicators in the first quarters of 2007 and 2017 suggests the banking industry has largely recovered [97–99].

While the composition of the banking industry changed, its representation in political processes was constant in both periods. The banking industry's political efforts are highly organized, with the ABA and the ICBA acting as the predominant trade associations in the 2007 and 2017 reviews and leading other lobbying efforts for commercial banks throughout both review periods [100]. In contrast, before the GFC there was no clear constituency advocating for the public interest in financial regulation, particularly for financial stability, but several organizations dedicated to promoting the public interest in financial regulation formed in the wake of the GFC (e.g., Better Markets and Americans for Financial Reform) [101].

Finally, public awareness and opinion of financial regulation changed drastically between the two reviews. In 2007, there was bipartisan public confidence in financial markets' self-disciplining capacity, and financial regulation had low public salience. In 2017, faith in market discipline was more variable and partisan, and financial regulation was comparatively more salient as measured by survey data, news media publications, and internet searches [102–106]. This trend is consistent with evidence from psychology that suggests risk perceptions, and in turn attentiveness to risk regulation, can be shaped by a variety of cognitive biases. Most notably, after a crisis event, the availability heuristic may cause individuals to update their perceptions of the probability of future crises [107, 108]. Together these differences are consistent with Birkland's observation that focusing events can affect policies and policy communities via 'group mobilization' and 'issue expansion' [62].

Explanatory power

Summarized in Table 2 below are the key differences in review processes (section "Comparing review processes in 2007 and 2017"), participation (section "Comparing participation in 2007 and 2017"), and outcomes (section "Comparing outcomes in 2007 and 2017") and the power of each potential explanatory variable. A check mark indicates that the finding is consistent with the explanatory variable, an x indicates the finding is inconsistent with the explanatory variable, and a dash indicates the finding is neither consistent nor inconsistent with the explanatory variable.

Explaining variation in review processes

The greater emphasis on deregulation in 2007 than 2017 is consistent with the policy shock of the GFC as well as the political and regulatory contexts. As described above, evidence from psychology and political science suggests that policy shocks, such as financial crises, increase the acceptability of risk regulation by affecting political and public perceptions of the probabilities and consequences of market failures [58]. A greater emphasis on re-regulation after the crisis is therefore consistent with the policy shock explanatory variable.

The change in emphasis of the review processes is also explained by political and regulatory differences across the two periods, and particularly by the intersection of the political and regulatory contexts. The ways in which political ideologies can shape regulatory priorities is exemplified by the leaders of the two processes: 2007 FFIEC Chairman and G.W. Bush appointee John Reich was a major advocate of deregulation—posing in the aforementioned FDIC photograph with gardening shears to cut 'red tape'—whereas 2017 FFIEC Chairman and Obama appointee Daniel Tarullo

was a central player in post-GFC re-regulation—serving as the de facto Vice Chair for Supervision, a position created in the Dodd–Frank Act to strengthen regulatory oversight of bank holding companies. Thus, the emphasis on deregulation in 2007 and re-regulation in 2017 is consistent with both the ideologies of political principals and the priorities of appointees. It is, of course, difficult to assess the extent to which political appointments and regulatory priorities would have produced these results in the absence of the GFC, and thus there may be multiple causal paths.

While this analysis focuses on variation over time, it is notable that there was consensus across both periods regarding the need to reduce regulatory burden for small and community banks. This finding is perhaps best explained by the political power of small and community banks, which have considerable electoral leverage because they are located in almost every congressional district, participate in well coordinated national lobbying efforts, and have untarnished post-GFC reputations relative to Wall Street banks.

Explaining variation in participation

The changes in the level of participation across the two reviews are surprising given the regulatory context in 2017—a period of re-regulation pursuant to the Dodd–Frank Act and thus the EGRPRA review represented a unique opportunity for regulated entities to advocate for deregulation—and market context—notably the increased salience of financial regulation among a broader set of stakeholders between the two review periods. Furthermore, in the period between the reviews, there was a persistent trend toward more participation in regulatory policy facilitated by information technology, making this pattern even more surprising [109].

Thus, none of the proposed explanatory variables provide a compelling explanation for why participation was lower in 2017 than 2007. However, given that participation in retrospective review is generally substantially lower than participation in rulemaking, perhaps rather than asking 'why so little' participation in 2017, we should ask 'why so much' participation in 2007 [37]. One hypothesis is that banks and other regulated entities actively sought regulatory relief via the passage of EGRPRA and were therefore aware of the first review process; subsequently, enthusiasm may have dissipated because of dissatisfaction with the outcomes of the 2007 review. There is some evidence in comments from 2017 that participants, especially trade associations and their members, were dissatisfied with the 2007 process.[23] Another hypothesis is that the institutional design of FFIEC review processes affected the level of participation; for example, the more explicit focus on reducing regulatory burden in 2007 may have signaled a greater receptivity to comments from regulated entities. The explanatory power of these potential hypotheses could be further probed via interviews with a representative sample of participating and non-participating stakeholders.

The overall composition of participants was more balanced in 2017 than 2007, driven by three trends in submitter categories: (1) a dramatic decrease in the number of banks participating in 2017 relative to 2007, (2) a substantial increase in the number of professional service providers participating in 2017 relative to 2007, and (3) an increase in public and private interest group participation in 2017 relative to 2007. These changes are partially explained by the policy shock of the GFC and partially explained by variation in the political and market contexts.

With respect to the first composition trend, the decrease in bank participation cannot be fully explained by market context (i.e., consolidation in the banking industry) or regulatory context (i.e., banks had greater incentives to capitalize on deregulation advocacy opportunities in 2017 than 2007). Yet, prior literature suggests that political context might explain the change in bank participation. For example, Young finds that the financial services industry has moved toward more 'subtle' forms of advocacy in the post-crisis era [104]. Thus, recognizing their limited political capital after the GFC, banks might have elected to work through their trade associations in 2017 to a greater extent than in 2007, resulting in fewer individual bank participants. A competing hypothesis is that after the GFC banks that implemented regulatory reforms pursuant to the Dodd–Frank Act had fewer incentives to lobby for deregulatory reforms since their compliance programs entail considerable sunk costs and create competitive advantages relative to new market entrants. While this hypothesis is partially supported by the timing of bank participation—banks participated more in earlier stages of the 2017 EGRPRA review, when their implementation of compliance programs was presumably nascent, it is possible that the design of the review processes (i.e., the predefined issues areas for each round) drove this pattern.

With respect to the second composition trend, the increase in professional service providers is more puzzling given that the issue of real estate appraisal thresholds predated the GFC and was well aligned with the consumer protection orientation of the 2007 review. However, appraisers may have seen an opportunity to shift venues—from aggregated petitions

[23] For example, ICBA observed that while banking agencies perceived the first EGRPRA review to be successful, changes as a result of the 2007 review 'hardly made an impact on the overall regulatory burden that now confronts community banking' (FFIEC-2014-0001-0036).

submitted directly to regulators to disaggregated form letters submitted as EGRPRA comments—and to reframe real estate appraisals as a safety and soundness issue in order to more effectively advocate in the post-GFC political and regulatory contexts (appraisers were quite active during the 2007 review, but this activism was pursued through a petition campaign rather than through the EGRPRA process) [2].

With respect to the third composition trend, the increase in participation by interest groups was driven by both private and public interests. The increase in trade associations reflects the mobilization of more diverse industry representation in 2017 (e.g., appraisal professionals account for 20% of trade associations in 2017) and potentially banks' increased use of trade associations to represent their interests, although these hypotheses warrant further investigation. The rise of public interest participation is consistent with theories of the effects of policy shocks on interest group mobilization. Because the beneficiaries of strong financial regulation did not form a coherent constituency before the crisis, the post-GFC market context reflected an increase in the number of public interest groups focused on financial regulation (e.g., 27% of public interest group comments in 2017 came from groups that did not exist in 2007) and greater engagement by consumer groups on issues of financial regulation (e.g., 36% of public interest group comments in 2017 came from groups that existed but did not participate in 2007). Thus, a combination of the policy shock of the GFC, political context, and market context explains the variation in the composition of participants across the two reviews. As with the level of participation, interviews could provide greater insight into the causal paths underlying these explanations.

While comments included various issues and recommendations in both periods, there were more calls for deregulation in 2007—generally grounded in evidence of undue burdens—and more calls for preserving the status quo in 2017—generally grounded in evidence of benefits. Of the factors included in this analysis, the four hypothesized explanatory variables perhaps best jointly explain the substance of participation, albeit with uncertainty about the causal path(s) connecting these variables. First, the policy shock of the GFC illuminated the importance of regulation, at both the system and institutional levels, and the potential consequences of allowing markets to self-discipline. The 2017 EGRPRA review began just a few years into the implementation of sweeping reforms designed to address the regulatory and market failures that enabled the GFC. Democratic appointees in the Obama administration were largely united in their commitment to re-regulation in response to the GFC, as opposed to Republican appointees in the G.W. Bush administration that were committed to easing regulatory burden in response to a period of sustained market performance. In addition, many of the targets of deregulation in 2007 moved to the CFPB, which was outside the scope of the 2017 EGRPRA process. Thus, given the political and regulatory contexts, it makes sense that participants would focus their efforts defensively in 2017 and offensively in 2007, although it should be noted that many of the issues raised in 2017 were also raised in 2007. Finally, the market context shifted to include a greater diversity of interests that grounded arguments in evidence about the benefits of strong regulation, including more public interests—which generally advocated for increasing regulation—and greater mobilization of appraisal professionals—which generally advocated for preserving the status quo. Thus, each of the four explanatory variables, at least partially, explains differences in the substance of participation for the 2007 and 2017 reviews.

Explaining variation in outcomes

Although EGRPRA processes did not result in a large number of outcomes relative to the number of rules reviewed, they were fairly productive compared to other review processes. In 2017, FFIEC initiated more regulatory actions (e.g., rule revision, issuance of clarifying guidance) whereas in 2007 FFIEC acted on relatively few issues but made many referrals to Congress. At first glance, this outcome is counterintuitive given the regulatory and market contexts of the two periods and the GFC. However, political context—and the ways in which the balance of political power affects regulatory strategies—provides a partial explanation. The literature suggests that in periods of united government, like 2007, regulators work with Congress to make substantial legislative changes, whereas in periods of divided government, such as 2017, regulators have an incentive to deter congressional action and preserve agency power [110, 111]. Thus, regulators in 2017 may have viewed EGRPRA as a way to demonstrate responsiveness to concerns about regulatory burden with relatively small concessions, thereby fending off larger deregulatory efforts. Regulators' partial action on real estate appraisals, for example, could be understood as an attempt to provide some regulatory relief (i.e., by raising appraisal thresholds for commercial loans) while preserving control over issues more central to safety and soundness priorities (i.e., by maintaining appraisal thresholds for residential loans). The subsequent enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 suggests this approach was not effective for the issue of appraisal thresholds; the legislation raises the threshold for residential loans from $250,000 to $400,000 and creates an exemption for appraisals in rural areas. Thus, acting on a few issues raised in EGRPRA reviews may be understood as small concessions as part of a broader strategy to insulate the regulatory agenda, although interviews with regulators could inform this potential explanation.

Summary of causal evidence and areas for future research

This section analyzes the extent to which the policy shock of the GFC, political context, regulatory context, and market context individually and jointly explain variation in 2007 and 2017 EGRPRA review processes, participation, and outcomes. Two themes emerge from this preliminary analysis. First, it is difficult to disentangle the causal pathways connecting the hypothesized explanatory variables to the outcomes. As such, it is challenging to assess the counterfactual; for example, the extent to which regulatory context can be understood as part of a causal path independent of the policy shock of the GFC. Second, if we assume that a positive finding (check) outweighs a negative finding (x), Table 2 suggests political context provides the strongest explanation for variation across processes, participation, and outcomes. This finding underscores that although financial regulation is by design relatively technocratic, studies of financial regulatory policy—including those on regulatory governance, impact assessment, and stakeholder participation—must be attentive to regulatory politics—i.e., the ways in which political ideology and the balance of political power shape regulatory priorities and strategies.

This preliminary analysis motivates several areas for future research. As noted above, interviews with regulators and a representative sample of participating and non-participating stakeholders could provide the evidence necessary to adjudicate among competing causal hypotheses. In addition, structured process tracing over a longer timeframe would provide insight into how EGRPRA reviews and participation therein influence the effectiveness and legitimacy of banking regulations and rulemaking processes. In addition, because certain findings, such as the level of participation, are not well explained by any of the hypothesized causes, future research may establish a broader set of explanatory variables. Finally, given the considerable causal complexity within and across reviews, future research should explore the interactions among the explanatory variables in the columns in Table 2 and among the outcome variables in the rows in Table 2.

Implications and conclusion

EGRPRA reviews provide a lens to study the political economy of banking regulation before and after the GFC. Comparative case studies of the 2007 and 2017 reviews generate several implications for the theory and practice of financial regulatory governance, retrospective regulatory impact assessment, and stakeholder participation in financial regulation.

With respect to the regulatory governance of finance, EGRPRA reviews highlight the challenge of regulatory coordination and the importance of regulatory politics. FFIEC appears to play a significant, but perhaps underappreciated, role in coordinating—and to some extent, consolidating—banking regulation. Particularly as other coordination bodies, such as FSOC, lose regulatory power and political support, the examination of FFIEC's operations and efficacy may contribute to scholarly and applied understanding of effective regulatory cooperation in federalist or internationally networked regulatory systems. With respect to regulatory politics, two related findings are notable. First, except for one comment stating that foreclosure rates were at an all-time high, there was no indication in the 2007 comments or FFIEC report of the crisis that would unfold shortly thereafter.[24] As former Treasury Secretary Timothy Geithner observed, before the crisis banks and their examiners largely focused compliance resources on AML and consumer protection regulations, and as a result, systemic risk was seldom considered [112]. This finding underscores the technical and political difficulty associated with anticipating and regulating issues that pose immediate costs and protracted benefits. Given the polarization of financial regulation and the misaligned incentives of regulated entities, it is incumbent upon regulators to remain attentive to the accumulation and aggressive in the mitigation of systemic risk. Second, recent legislation targeting burdens purportedly resulting from post-GFC reforms centers on issues that predated those reforms, as evidenced by their inclusion in the 2007 EGRPRA review [85]. Most salient among these issues is tiered regulatory approaches for small and community banks, which provided the bipartisan foundation for sweeping financial reform legislation in the 115th Congress. Both before and after the regulatory framework established pursuant to the Dodd–Frank Act, small and community banks argued that their regulatory burdens were inordinate and undue given their compliance resources (2007) and their relative riskiness (2017). Thus, while debating the merits of regulation by size is reasonable [72, 76], doing so based on a correlation with post-GFC performance is not. Although not directly related to retrospective review, this finding also suggests areas for future theoretical work, such as whether 'fairness' should be considered in financial regulation and whether burden should be assessed relative to potentially unquantifiable benefits. This finding also highlights the changing political economy of banking regulation and the political power of small and community banks relative to large banks.

With respect to regulatory impact assessment, this analysis provides legibility into how regulatory agencies

[24] FFIEC 2003-0002-0123.

balance the simultaneous demands for short-term political responsiveness (e.g., reducing regulatory burden) with long-term technocratic mandates (e.g., promoting resilience in the financial system). While there were few outcomes relative to the number of rules reviewed, EGRPRA reviews appear to result in comparatively greater policy changes than many administration-wide stock-takes, although there is complexity in the causal relationship between reviews and outcomes as well as challenges with the unit of analysis. One hypothesis is that government-wide stock-takes may serve more political than substantive roles, providing administrations with a way for interests to be heard without fundamentally changing policy, whereas sector-specific reviews may result in the degree of information exchange and deliberation required to enhance the efficacy of regulatory policies. The banking sector may be particularly well suited to periodic stock-takes because implementation through supervision and interaction among interagency regulations dictate that rules 'as lived' will necessarily be different from rules 'as written'. There is some anecdotal support for this supposition. For example, in a recent survey of agency officials, GAO found that discretionary retrospective reviews were perceived to be more productive than mandatory retrospective reviews, except in the case of EGRPRA, which an FFIEC member agency deemed to be substantially more productive than other reviews [113]. Similarly, given the increasingly partisan nature of financial regulation, retrospective regulatory review may serve as a substitute for technical correction bills, which have historically followed large regulatory reform legislation.

Retrospective review and participation in regulatory policymaking may enhance the effectiveness and promote the legitimacy of regulatory policies and rulemaking processes. With respect to regulatory effectiveness, stakeholder participation in retrospective review can enable policy learning by providing information about the divergence between rules 'as written' and rules 'as lived'. There is some evidence of policy learning via EGRPRA reviews; for example, GAO finds the first EGRPRA review helped FFIEC members 'reduce burden' and calibrate 'regulatory decisions to reflect current realties' [113]. Another potential opportunity for policy learning unique to EGRPRA is the review of interagency rules and interactions among agency rules in implementation. For this reason, GAO has called for integration of CFPB, NCUA, and FFIEC EGRPRA reviews [91, 114]; however, a legislative proposal to the same effect suggests the purpose of this proposal may be curtailing CFPB's authority rather than enhancing regulatory effectiveness via coordination [115]. With respect to potential legitimating effects, the evidence is more limited. First, while many private interest participants celebrated review processes in 2007, in 2017 these participants criticized the prior review for not resulting in sufficient burden reductions.[25] At the same time, public interest groups expressed concerns that reviews were narrowly focused on burden reduction. While review processes seemed to be relatively transparent and accessible, they were not representative of the broad range of potentially affected stakeholders, suggesting limited input legitimacy. Reviews appeared to be responsive to participants, although the findings that participants were not representative of affected stakeholders and reviews included little outside data suggest mixed evidence of output legitimacy.

With respect to participation in financial regulation more broadly, the results suggest some progress has been made over the last 10 years, but participation remains largely skewed toward regulated entities. As noted throughout this article, the technical complexity, concentrated costs, and diffuse benefits of financial regulation create a collective action problem for stakeholders other than regulated entities. One potential solution to this imbalance is ensuring regulators serve as representatives of the public interest when considering tradeoffs between burden reductions and other regulatory objectives. However, even the most public-interested civil servant needs good information, and it is apparent from EGRPRA reviews that there is a dearth of data other than that provided by regulated entities, suggesting a potential risk of epistemic capture [66–68]. Another solution is the mobilization of a more robust community of practice around financial stability, which could serve as a source of countervailing power [64, 65]. The policy shock of the GFC provided an opportunity to partially overcome the collective action problem inherent to financial regulation. Yet, as we approach the tenth anniversary of the crisis and as policy proposals predicated on collective amnesia about the causes of the crisis become more politically viable, it is perhaps time to reassess how to maintain the post-GFC momentum. Work on post-crisis framing and moral narratives might inform advocacy strategies for financial stability as the 'shock' of the GFC fades [116, 117].

Outgoing FDIC Chairman Martin Gruenberg recently observed, 'the seeds of banking crises are sown by the decisions banks and bank policymakers make when they have maximum confidence that the horizon is clear' [118]. Similarly, a recent International Monetary Fund paper finds that throughout history and across market economies, the politics of post-financial crisis booms tend to drive deregulation and in turn, this pro-cyclical approach to financial regulation tends to drive future financial crises [119]. Retrospective review of banking regulation may be an important tool for policymakers to ensure banking regulation remains responsive to emergent risks in increasingly complex and interconnected financial market systems. Given the complexity and opacity of financial markets, participation should be an

[25] FFIEC-2014-0001-0036, 2014-0001-0093; FFIEC-2003-1-009.

integral component of retrospective review. Yet, this analysis of EGRPRA reviews suggests that while government–market interactions have changed considerably since the GFC, much work remains for retrospective review and stakeholder participation therein to enable more effective and legitimate banking regulations and rulemaking processes.

Appendix A: Content analysis codebook

Submitter categories

- *Bank or bank employee*: Insured depository institution or other financial institution offering intermediation services (e.g., savings and loans, thrifts, mortgage lenders), or their representatives.
    - *Bank without details*: self-identification as a bank/bank employee without identification of bank size.
    - *Small or community bank*: ≤ 1B assets or self-identification as a small or community bank/bank employee.
    - *Midsize bank*: > 1B ≤ 50B assets or self-identification as a midsize bank/bank employee.
    - *Large bank*: > 50B assets or self-identification as a large or systemically important (e.g., GSIB, SIFI) bank/bank employee.
- *Trade, industry, or professional association*: Association representing the commercial sector or a consortium of firms.
- *Professional services provider*: Appraisal, accounting, legal, and other firm or individual that provides banks with professional services, or their representatives.
- *Cross-sector coalition or quasi-governmental entity*: Private association of public entities or coalition of public and private sector entities.
- *Government*: Federal, state, or local government agency or official.
- *Think tank or policy research organization*: Organization primarily involved in policy research.
- *Consumer, community, or public interest organization*: Organization primarily involved in policy advocacy for consumer, community, or public interests.
- *Consumer or citizen*: Individual representing his/her own non-commercial interests.

Revision categories

- *Decrease regulation*: Suggestion to rescind rule or decrease rule stringency or scope (e.g., removing requirement, raising a threshold).
- *Increase regulation*: Suggestion to promulgate rule or increase rule stringency or scope (e.g., adding requirement, lowering threshold).
- *Preserve status quo*: Suggestion to preserve rule or expression of support for rule as is.
- *Procedural*: Suggestion related to EGRPRA or rulemaking process.
- *Other*: Suggestion that is neither pro-regulatory nor deregulatory (e.g., reconciling requirements, clarifying language) or comment that suggests a review with no recommendations for revision.

Evidence categories

- *Benefits*: Discussion of benefits associated with a current or proposed rule, policy, or issue for either the submitter and/or an identified set of stakeholders (e.g., consumers). For a proposed new regulation or regulatory change, the benefit could be described as the consequences of not regulating.
- *Burdens*: Discussion of burdens or costs associated with rule, policy, or issue for either the submitter and/or an identified set of stakeholders (e.g., lenders)
    - *Operational cost*: Costs associated with compliance.
    - *Opportunity Cost*: Costs associated with forgone opportunities.
    - *Relative burden*: Comments about the relative burdens faced by institutions based on their size or type (i.e., relative to other financial institutions, not relative to benefit).
- *Outdated or unnecessary*: Discussion of redundancy, inconsistency, or other issues requiring updating and/or the reasoning that a rule, policy, or issue, as written, is unnecessary, ineffective, or producing unintended consequences.
- *Other*: Evidence that does not fit into the categories above, such as misalignment with legislative intent or issues of fairness not relative to other financial institutions.

Appendix B: Replicated analysis of EGRPRA comments with and without form letters

Replicated analysis with form letters includes all data in sample ($n = 891$). Replicated analysis without form letters excludes all form letters except the first occurrence of each form letter ($n = 397$). Recall that number of comments by submitter category and by issue area are mutually exclusive, but all other categories are not mutually exclusive because comments may include more than one recommendation or type of evidence.

Number of comments by submitter category

	Private interests			Public interests				
	Bank or bank employee	Trade, industry, or professional association	Professional services provider	Cross-sector coalition or quasi-governmental entity	Government	Think tank or policy research organization	Consumer, community, or public interest organization	Consumer or citizen
With form letter (n=819)								
2007	541	27	6	9	2	0	3	3
(n=591)	*91.5%*	*4.6%*	*1.0%*	*1.5%*	*0.3%*	*0.0%*	*0.5%*	*0.5%*
2017	22	54	125	10	2	1	11	3
(n=228)	*9.6%*	*23.7%*	*54.8%*	*4.4%*	*0.9%*	*0.4%*	*4.8%*	*1.3%*
Without form letter (n=397)								
2007	176	25	6	5	2	0	3	3
(n=220)	*80.0%*	*11.4%*	*2.7%*	*2.3%*	*0.9%*	*0.0%*	*1.4%*	*1.4%*
2017	22	53	58	9	2	1	11	3
(n=159)	*13.8%*	*33.3%*	*36.5%*	*5.7%*	*1.3%*	*0.6%*	*6.9%*	*1.9%*

Number of comments by issue area

	Review plan; applications and reporting; powers and activities; international operations	Lending (consumer protection)	Deposit accounts/relationships (consumer protection)	AML; safety and soundness; securities	Banking operations; directors, officers, and employees; rules of procedure	Prompt corrective action; Disclosure and reporting of CRA-related agreements
2007 With (n=591) and without (n=220) form letters						
2007	18	359	108	84	20	2
(n=591)	*3.0%*	*60.7%*	*18.3%*	*14.2%*	*3.4%*	*0.3%*
2007	18	82	38	63	17	2
(n=220)	*8.2%*	*37.3%*	*17.3%*	*28.6%*	*7.7%*	*0.9%*

	Applications and reporting; powers and activities; international operations	Banking operations; capital; community reinvestment act	Consumer protection; directors, officers, and employees; money laundering; newly listed rules	Rules of procedure; safety and soundness; securities
2017 With (n=228) and without (n=159) form letters				
2017	43	21	10	154
(n=228)	*18.9%*	*9.2%*	*4.4%*	*67.5%*
2017	43	20	10	86
(n=159)	*27.0%*	*12.6%*	*6.3%*	*54.1%*

Number of comments by revisions suggested

	Decrease regulation	Increase regulation	Preserve status quo	Procedural	Other
With form letters (n=819)					
2007	509	16	17	20	467
(n=591)	*86.1%*	*2.7%*	*2.9%*	*3.4%*	*79.0%*
2017	62	18	135	32	61
(n=228)	*27.2%*	*7.9%*	*59.2%*	*14.0%*	*26.8%*
Without form letters (n=397)					
2007	145	13	14	19	102
(n=220)	*65.9%*	*5.9%*	*6.4%*	*8.6%*	*46.4%*
2017	61	18	68	32	61
(n=159)	*38.4%*	*11.3%*	*42.8%*	*20.1%*	*38.4%*

Number of comments by evidence type provided

	Benefits	Burdens	Outdated or unnecessary	Other evidence
Evidence type with form letters (n=819)				
2007	122	485	462	26
(n=591)	*20.6%*	*82.1%*	*78.2%*	*4.4%*
2017	171	56	64	19
(n=228)	*75.0%*	*24.6%*	*28.1%*	*8.3%*

	Operational cost	Opportunity cost	Relative burden
Disaggregation of burdens with form letters (n=541)			
2007	460	11	315
(n=485)	94.8%	2.3%	64.9%
2017	40	18	19
(n=56)	71.4%	32.1%	33.9%

	Benefits	Burdens	Outdated or unnecessary	Other evidence
Evidence type without form letters (n=397)				
2007	36	120	141	25
(n=220)	*16.4%*	*54.5%*	*64.1%*	*11.4%*
2017	104	55	63	19
(n=159)	*65.4%*	*34.6%*	*39.6%*	*11.9%*

	Operational cost	Opportunity cost	Relative burden
Disaggregation of burdens without form letters (n=175)			
2007	95	11	50
(*n=120*)	79.2%	9.2%	41.7%
2017	39	17	18
(n=55)	70.9%	30.9%	32.7%

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