

POLICY BRIEF: Expanding Public Participation With the Federal Government Through Improved Sharing and Management of Public Information

July 2, 2024

Introduction

There is a groundswell of support for expanding the number and diversity of people who engage with federal agencies. Over the last few years, the federal government has led multiple initiatives to improve engagement with the members of the public most impacted by its actions and decisions. To offer guidance across the federal government, in 2023 the White House Office of Information and Regulatory Affairs (OIRA) sent a memo to federal agencies, “[Broadening Public Participation and Community Engagement in the Regulatory Process](#),” which recommended agencies reach out to members of the public in more varied ways to foster more public participation.

While any guidance that applies across the federal government needs to be flexible to allow agencies to design productive engagement strategies for the issues they address, EDGI insists that there needs to be, at minimum, a framework with key guidelines and best practices for agencies to actually implement this guidance for engaging the public. In March 2024, the White House Office of Management and Budget (OMB) opened a Request for Information on “[Methods and Leading](#)

[Practices for Advancing Public Participation and Community Engagement With the Federal Government](#),” which we hope will result in such a framework and a directive from that office. [EDGI responded](#) to OMB’s RFI with a public comment addressing specific questions posed by OMB. Here, we discuss key steps the federal government should take to broaden and deepen public participation in our democratic governance, specifically through improved sharing and management of public information.

Early Engagement

One of the key recommendations in OIRA’s 2023 memo is for agencies to reach out to the public earlier in the regulatory process, before a rule has been proposed, in order to support the public’s meaningful involvement. This advice has been echoed by current and former regulators (personal communication, 2023-2024), who recommend that members of the public reach out to regulatory agencies about issues well before they are at the proposed rule stage. Encouraging early engagement makes sense because agencies can be most influenced before they devote time and money to specific directions in the development of a proposed rule. Unfortunately, there is little guidance for *how* to do this early public engagement. We recommend two strategies to promote this engagement.

Provide details for engagement

Creating and publishing detailed information about how agencies should engage with the public is essential for both ensuring agencies successfully implement the federal government’s new guidelines on this matter, and for the public to know how to engage with agencies. The few specific recommendations that are included in OIRA’s memo, such as agencies expanding the information they include in the regulatory agenda, are useful. OIRA should provide more detail like this for its broader recommendations as well.

To develop more specific recommendations for engaging the public in the earlier stages of the regulatory process, OMB, led by OIRA, should synthesize efforts

across the government. We recommend they convene leaders from offices across agencies that have decades of experience with public engagement, such as offices whose authority derives from the National Environmental Policy Act (NEPA) or the Comprehensive Environmental Response, Compensations, and Liability Act (CERCLA). OMB could also adopt, adapt, and expand ideas expressed in agency-specific initiatives, such as EPA's [Meaningful Involvement Policy](#), which was released in draft form in late 2023.

Utilize early Requests for Information

[Information Collection Requests \(ICR\)](#) are one avenue for promoting early engagement in the rulemaking process that hasn't received much attention. Agencies frequently use this discretionary practice for proposed non-binding policies or frameworks, and it could be effectively applied to the rulemaking process as well. Agencies could seek requests for information before publishing Advanced Notices of Proposed Rulemaking (ANPRM), inviting diverse public input and perspectives on issues they are preparing to research for rulemaking purposes. This practice could make it easier for agencies to consider and incorporate public input that they would normally ignore or not respond to during the notice and comment process for new regulations.

Public Comments

Improve transparency

Multiple federal laws require agencies to publish notifications and consider public comments on proposed agency actions. As such, public comments are essential, protected, avenues for public engagement. However, there is a disjuncture between the advertisement of public comments as broad invitations to "make your voice heard" (e.g. this [Department of Labor presentation](#)) and the much more prescribed application of public comments agencies use to help shape final rules from proposed rules (see [What Happens to a Public Comment After It Is Submitted](#)). Agencies should address their messaging about public comments and greatly increase the transparency and detail with which they explain how public comments

are reviewed and addressed. Each agency should develop blogs, infographics, and presentations describing how the process works at that specific agency. Further, information agencies publish about writing public comments should provide examples of how public comments have affected regulations, agency programs, and other agency processes. It is important for trust-building and mutual respect between agencies and members of the public to manage the public's expectations about the potential and likely impacts of each form of their engagement.

In addition to providing detailed explanations about how comments are reviewed and used, agencies should ensure their responses to comments are easy to locate. Currently, it is very challenging to find documents that contain an agency's response to public comments for specific proposed rules using the search function in regulations.gov, particularly in dockets that have a large number of supporting material documents. OMB should provide a naming convention for agencies to use to label documents that contain their responses to public comments, and the search function within dockets on regulations.gov must be improved such that users can find these critical documents.

There should also be a known timeline by which the agency will have posted the comments it received and its responses to comments. The timeline for posting comments received should be no more than one month after the comment period has closed. Agencies should also add comments received through public listening sessions and hearings to the docket within this timeframe. EDGI further suggests that agencies add to dockets full video recordings of the listening sessions and hearings in addition to their transcripts, in order to preserve the more human element that those commenting opportunities provide.

Ease the process

Agencies can improve the public comment process for commenters and agencies' efficiency in reviewing comments by making it easier for commenters to provide information about specific sections of a proposed rule or action. EDGI appreciates and supports the OIRA 2023 guidance on providing plain language informational resources to the public about the proposed rule (discussed below). We further

suggest that agencies provide plain language summaries about specific sections of a proposed rule (in addition to providing the original text), and give the public the opportunity to write and submit comments on those specific sections. Even if section-by-section plain language summaries are not feasible, it would assist both agencies and the public for agencies to provide tools that allow commenters to digitally identify the specific section(s) of a rule they want to read and on which they want to comment. Providing tools to assist the public in understanding the rule and identifying the pieces of it on which they want to provide input will reduce barriers to commenting and help agencies sort comments they receive.

Public Information

Designate places to find participation information

The importance of consistent, appropriate, discoverable public information cannot be overstated. To expand and improve public participation in federal rulemaking, the public must know where to find information about the government's activities, essential topical information, and opportunities for public participation. [OMB has recognized](#) for years that federal agency websites are essential for agencies to provide information to the public. Agency websites are more widely known and trafficked than whole-of-government clearinghouses, and the public should be able to more easily navigate between the public participation opportunities that exist and relevant subject matter informational resources provided on an agency's website.

The government-wide websites that share government activity information and public participation opportunities, namely [federalregister.gov](https://www.federalregister.gov) and [regulations.gov](https://www.regulations.gov), should be improved to provide links back to agency websites where the public can navigate to useful informational resources.

While OIRA's 2023 memo suggested that the Unified Agenda could become a site to provide information about public participation opportunities, the Unified Agenda (<https://www.reginfo.gov/public/do/eAgendaMain>) will need significant

improvements in order to be a meaningful tool for the public. First, much more information will need to be provided in the Unified Agenda regarding the subject matter of proposed rules, and it will need to consistently feature links to agency websites for expanded and related content. The search function will need to better provide relevant results, use search fields familiar to the public, and allow for better filtering in agency rule lists to make it easier for users to find relevant regulations that are being considered.

Consistently create informational resources

Public participation, especially productive public participation, hinges on the availability and accessibility of public informational resources. Unfortunately, agency informational policies generally do not address the vast majority of information agencies provide to the public. Agency officials have described the development of informational resources and information management largely as “ad hoc,” and subject to widely varying decision-making, both from the very top, down, and from the bottom, up (personal communication, 2022-2024). This results in very inconsistent information across issues, and undermines public trust in and reliance on government information.

The public should be able to rely on useful informational resources being developed and shared by agencies with the public. OMB, led by OIRA, should develop informational resource frameworks that include rubrics for what informational resources are created, including resources relating to agency rulemaking. EDGI supports the ideas provided in OIRA’s 2023 memo about writing plain language blogs explaining what proposed rules are about and what agencies are requesting comments on, as well as making infographics and videos about these issues. We further recommend that informational resources be developed and geared toward stakeholders with at least three levels of background knowledge, from beginner to expert, designed to build the public’s knowledge and understanding of an issue (please see [Access Denied](#) for more detailed recommendations on this issue).

It is as important to protect these resources as it is to develop them. [EDGI has reported](#) several cases in which public informational rules about proposed federal actions have been stripped from public view before and during public comment periods. OMB must develop robust website governance policies that bar agencies from removing information about an issue during the regulatory process, ensuring that the public does not lose access to information when they need it most. The policies must stipulate the informational resources that should be created as well as timeframes related to the regulatory process during which those resources may be altered or deleted.

Meaningful Engagement

The other key to expanding and advancing public participation in federal rulemaking and other activities is to ensure the participation is meaningful. People will engage if they can see the impacts and influence of their engagement. The regulatory process must be modified to make space for meaningful public engagement in it.

Public comments are a well-known avenue for public participation and their influence can be greatly expanded by including Information Collection Requests early in a rulemaking process, even before an ANPRM is published, and by facilitating more productive comments at the proposed rule stage, as discussed above. EDGI supports other public engagement strategies early in the regulatory process as well, and recommends they be grounded in consistent and reliable public information.