
THE GEORGE WASHINGTON UNIVERSITY

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Public Interest Comment¹ on

The Office of Information and Regulatory Affairs' Proposed Recommendations

Broadening Public Engagement in the Federal Regulatory Process

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Thank you for the opportunity to comment on the proposed recommendations for [broadening public engagement in the federal regulatory process](#). We write from a public interest perspective, leveraging our expertise in the regulatory process in general and the role of comments in the rulemaking process in particular. We support OIRA's efforts to increase public engagement in the federal rulemaking process but caution OIRA to manage expectations around what people can expect to see as a result of engagement with the public comment process.

OIRA's recommendations are threefold. The first is to take steps to help the public understand the regulatory process and the role of public engagement in that process. One proposed step is to disseminate information about how to write effective comments (along the lines of a [primer](#) developed by Regulations.gov). The second recommendation is to enhance the accessibility and usability of regulatory materials, through means such as plain language, short summaries, and multiple formats (e.g., infographics and videos). Finally, OIRA recommends engaging community members throughout the rulemaking process, especially early in the development of regulations when regulators are still determining the broad parameters of their rules.

¹ This comment reflects the views of the authors, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center's policy on research integrity is available at <https://regulatorystudies.columbian.gwu.edu/about#integrity>.

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Analysis

In our view, OIRA's recommendations each aim to make public engagement more accessible for all, including members of underserved communities. Explaining the steps in the process, the role of public comments in it, and how to write effective comments will help community members understand where they can make a difference, and why they should engage. Making materials available in plain language and in multiple formats lowers the barriers to entry for interested groups and persons. Engaging community members early in the regulatory process provides the opportunity for community input to be incorporated when key agency decisions have not yet been made and public input can be most meaningful. Implemented together, these three recommendations have the potential to enhance both the reach and effectiveness of public engagement measures.

There is, however, a potential pitfall that we believe has not yet been adequately emphasized in OIRA's effort. Rulemaking is fundamentally a legal, administrative process that is governed by statute and judicial review. Given that rulemaking takes place under these constraints, feedback from the public is often most useful when it speaks to the economic, scientific, and technical issues agencies have been charged to address. This is not to say that personal stories and other sources of situated knowledge are not important in the regulatory process. In the end, however, rulemaking is not a plebiscite in which the most popular position wins.

The reason this consideration is important is because there is a danger that OIRA's effort will inflate expectations surrounding the efficacy of public participation in a manner inconsistent with the place of public input in a legal, administrative process. New participants, for example, may become disillusioned upon finding that rules are finalized to the contrary of feedback submitted by large numbers of like-minded organizations and individuals. Such disillusionment can in turn lead to diminished trust in the process and disengagement from future regulatory matters, exactly the opposite of what OIRA's recommendations intend.

So, what do we recommend OIRA do going forward in this public engagement process? There is a lot to build on in the recommendations currently out for comment. Take, for example, OIRA's recommendation to disseminate accessible materials that explain the regulatory process. These materials should clearly state what the public can expect as a result of increased engagement in the regulatory process. The materials should prominently state that the most comments on one side of an issue do not necessarily win, but rather agencies must [incorporate](#) comments alongside "data, expert opinions, and facts" as they write final rules. In addition, it is important for agencies to clearly state the statutory and judicial constraints they face as they draft their publicly accessible materials and engage community members throughout the regulatory process. As experts in the rulemaking process, OIRA and individual agencies must take responsibility for setting expectations about public engagement and for communicating those expectations to community members who are new to the process.