

# No Comment: Reducing Opportunities for Public Engagement in Rulemaking

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## In brief...

In his first 100 days, President Trump and his administration have taken steps that limit opportunities for public commenting. In this commentary, we identify three instances in which the administration aims to change how the public participates in the regulatory process.

The Trump administration is testing the limits of presidential power across many fronts. Operating at a breakneck pace to enact his deregulatory policy priorities, the president and his agencies may be circumventing longstanding practices designed to insure public input and accountability.

The Administrative Procedure Act of 1946 (APA) requires agencies to provide public notice of proposed regulatory changes, to take comments on the merits of those changes, and to justify final regulations on a record that considers relevant comments. But notice-and-comment rulemaking takes time and effort for which the administration seems to have little patience, so it is pursuing some creative strategies to speed things up.

In this piece, we highlight three actions from the second Trump administration that limit public commenting, either narrowly—applying only to one rule—or broadly. The actions range from presidential directives to agency policy and suggest a wide-ranging effort to change how the public interacts with the government.

Starting with the broadest action, an [April 9](#) presidential memorandum directed agencies to rely on the “good cause” exemption of APA to repeal “facially unlawful regulations....” The memorandum argued that as a result of recent Supreme Court opinions, some existing rules are now unlawful, giving agencies “ample cause and the legal authority to immediately repeal” them without public notice and comment.

At the agency level, Department of Health and Human Services (HHS) Secretary Kennedy announced on [March 3](#) that the agency would rescind a 44-year-old policy that had expanded the agency’s public comment opportunities. The APA exempts rules regarding “public property, loans, grants, benefits, or contracts” from the notice-and-comment process. In 1969, the Administrative Conference of the United States [recommended](#) that Congress amend the APA to remove these exemptions and encouraged agencies

to opt into notice-and-comment proceedings for these types of rules. In 1971, the Department of Health, Education, and Welfare—now HHS—responded by issuing a [statement of policy](#), the “Richardson Waiver,” extending public comment to these rules. While the extent of the consequences of Secretary Kennedy’s rescission of the Richardson Waiver remains to be seen, it is safe to assume that it will have a meaningful impact on public engagement in HHS policymaking. HHS administers a variety of benefits programs, offers [billions of dollars](#) in grants, and issues more than 100 final rules each year.

Other actions are very specific. On April 9, frustrated with water pressure in showerheads inadequate to wash his “[beautiful hair](#),” the president issued an [executive order](#) directing the Department of Energy (DOE) to rescind one Biden administration showerhead rule. Without citing legal authority or acknowledging that the authorizing statute prevents DOE from reducing the stringency of water and energy-efficiency standards, the order asserted, “notice and comment is unnecessary because I am ordering the repeal.” Less than a week later, DOE issued a [final rule](#) repealing the definition of showerhead, to go into effect in May without any opportunities for the public to weigh in.

All of these actions seem to suggest a lack of appreciation for public participation in the regulatory process. With fewer opportunities for public comment, influence in the regulatory process may become even more dependent on interest groups who have the knowledge and capacity to engage with regulatory agencies outside of the traditional rulemaking process. Ultimately, these actions may lead to a less transparent, less accountable policy process.