

Two Ideas to Improve Equity in Government Decisions

By: Bridget C.E. Dooling | July 28, 2021

In brief...

To improve equity in government decisions, OMB should update what counts as “burden” to include the psychological and other costs that paperwork and other disclosure requirements can impose on individuals. Second, while formal public comment periods remain important, OMB should also encourage agencies to leverage the entire regulatory development timeline—especially at the beginning—to engage the public in different ways.

Earlier this month I [submitted a comment](#) in response to a [Request for Information](#) on *Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government* (RFI) issued by the Office of Management and Budget (OMB). The RFI called for public input on a wide range of topics to help OMB “identify . . . effective methods for assessing whether agency policies and actions (e.g., programs, services, processes, and operations) equitably serve all eligible individuals and communities, particularly those that are currently and historically underserved.” This ambitious goal flows from [Executive Order 13985](#), *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, which tasks the agencies with a suite of actions.

OMB's Request

In its RFI, OMB requested information on five broad, topical areas:

1. *Equity Assessments and Strategies*. Approaches and methods for holistic and program- or policy-specific assessments of equity for public sector entities, including but not limited to the development of public policy strategies that advance equity and the use of data to inform equitable public policy strategies.
2. *Barrier and Burden Reduction*. Approaches and methods for assessing and remedying barriers, burden, and inequities in public service delivery and access.
3. *Procurement and Contracting*. Approaches and methods for assessing equity in agency procurement and contracting processes.

4. *Financial Assistance*. Approaches and methods for assessing equity in the administration of agency grant programs and other forms of financial assistance.
5. *Stakeholder and Community Engagement*. Approaches and methods for accessible and meaningful agency engagement with underserved communities.

My Comments

In my comment, I focused on two of these five topics. As a practice note, you don't have to respond to every question an agency asks in an RFI or proposed rule. Sometimes it's best to stick to a few points on which you can offer your unique perspective rather than being comprehensive.

Barrier and Burden Reduction

On this topic, I highlighted the Paperwork Reduction Act (PRA) as a tool that can be used to help the Biden-Harris administration achieve its equity objectives. Before an agency collects information from the public, it must seek public comment on the collection and obtain OMB approval. The PRA framework balances the government's legitimate need for information against concerns about the public's burden of providing that information. OMB's regulations define "burden" in a way that focuses on estimates of "time, effort, or financial resources"¹ quantified in dollars and/or hours.

In my comment, I encourage OMB to revisit this definition and take a more expansive view of "burden" that incorporates recent public administration scholarship from Pamela Herd and Don Moynihan. Their book, *Administrative Burden*, acknowledges the role of psychological costs associated with paperwork and other requirements. This could include stigma, frustration, and other factors that discourage people from signing up to receive benefits to which they are entitled.

While these factors might not always lend themselves to quantitative estimates, OMB has already figured out a way to handle similar concerns. OMB [directs agencies](#) to justify any questions that collect sensitive information such as questions about sexual behavior, religion, and tricky topics. The agency justifications are included in the supporting materials that are made available for public comment. This offers a ready example of how OMB could encourage agencies to acknowledge, and therefore begin to address, the non-economic stressors their collections may create.

Using the PRA in this manner could deliver transformative gains, and quickly, because collections cycle through OMB for approval on 3-year intervals. This means that the federal government could potentially assess all collections for psychological costs within 3 years. That's warp speed in government. Given this potential, my recommendation was that **OMB should update its guidance or regulations on the definition of "burden" to increase attention on the psychological and other costs that information collections place on individuals.**

¹ 5 C.F.R. § 1320.3(b)(1).

Stakeholder and Community Engagement

OMB's question was not limited to rulemaking, but since that's my area of expertise that's where I focused my response. In thinking about opportunities to improve stakeholder and community engagement in rulemaking, lately I have been thinking about [rulemaking as a set of policymaking activities that happens over a period of time](#). Different forms of engagement at different times could help reach people at different stages of an idea. Thinking of the regulatory development process as a timeline with multiple points and forms of public engagement could help identify gaps in whose perspectives are considered, how or whether they are invited, and when.

To give an example, different forms of front-end engagement on agenda-setting and priorities—beyond the standard public meetings or additional written comment periods, and before the technical details of the rule are drafted and proposed—could offer significant potential for greater equity by informing which rules get written in the first place. This might be a more successful way to engage the public rather than expecting individuals to read thousands of pages of what can be very technical proposals. While we can and should strive to make regulatory documents more understandable, they ultimately need to contain technical language that can make them harder to understand.

My suggestion is that we need to reframe what “counts” as public engagement on regulatory matters. I'm a huge supporter of the notice and comment procedures of the Administrative Procedure Act. It also is not the case, in practice, that only formal comments matter. Bringing more people into the overall process, including at the early stages of a regulatory idea, and in ways that do not require them to have the resources and savviness to file a formal comment, could do a lot of good.

Therefore, my second and final recommendation is that, **notwithstanding the importance of public participation in the formal comment period on the proposed rule, OMB should encourage agencies to consider how the entire regulatory development timeline can be used to engage different groups at different stages and in different forms.**

Next Steps on Equity

OMB is already full-steam-ahead implementing early executive orders from President Biden. This RFI represents one of many milestones along the way. While there is much to learn and to try for the sake of improving the way government makes decisions, my goal in my comment was to offer two concrete ideas for how to get there. First, OMB should update the definition of “burden” to include the psychological and other costs that information collections place on individuals. Second, OMB should explore how the entire regulatory development timeline can be used to engage the public in different ways.

Translating admirable goals into the day-to-day activities of policymaking can always be a challenge in government, but OMB—with its exceptional career staff—is especially well-suited to help make sure the government delivers on the promise of EO 13895. I hope these ideas can help them do just that.