



March 10, 2023

Administrator Richard Revesz
Office of Information and Regulatory Affairs
1600 Pennsylvania Ave NW
Washington, DC 20500

Via email publicparticipation@omb.eop.gov

Re: Office of Information and Regulatory Affairs; Broadening Public Engagement in the Federal Regulatory Process

Dear Administrator Revesz:

The U.S. Chamber of Commerce appreciates the opportunity to comment on the Office of Information and Regulatory Affairs' (OIRA) request for input on the "Broadening Public Engagement in the Federal Regulatory Process."¹

- 1. Which of the following recommendations would most effectively broaden public engagement in the Federal regulatory process, especially from members of underserved communities and those who do not typically participate in the regulatory process? Are there recommendations that are not helpful?**

Use Prerules to Enhance Early, Proactive Engagement - Proactively engaging stakeholders early and throughout the regulatory process can more efficiently use government and community time as OIRA states, but it is also very important for regulated entities. To increase public engagement from all stakeholders, agencies should more frequently issue prerules, requests for information, advanced notices of proposed rulemakings, or other similar early notices. Prerules that are issued well in advance of any proposed rulemaking provide the best opportunity to engage the public early.

Prerules allow an agency to ask detailed questions on a variety of important policy topics and to explain possible regulatory alternatives that an agency may be considering for an ensuing proposed rule. Agencies can also use the prerule to identify information gaps and request feedback from the public to help the agency better understand an issue. Early identification of policy alternatives and information gaps can help improve regulatory outcomes for the public and regulated entities.

¹ Broadening Public Engagement in the Federal Regulatory Process, <https://www.whitehouse.gov/omb/information-regulatory-affairs/broadening-public-engagement-in-the-federal-regulatory-process/>

Prerules are also important because they are usually shorter, less technical documents that can be more easily accessible to interested stakeholders such as small business owners or the general public. Proposed and final rulemakings are usually more detailed, technical notices that have to meet various criteria under their appropriate action statute as well as other administrative statutes and executive orders. Prerules provide a digestible way for the public to learn about potential regulations to determine whether it will affect them so that they can engage an agency early. By providing another touch point with the public, issuing more prerules would increase the number of opportunities for the public to learn about a regulatory policy.

Encourage Agencies to Adopt Longer Public Comment Periods – Creating longer public comment periods for proposed and other draft regulations will permit agencies to conduct more public outreach. Executive Order 12866 states that “each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.”² Longer public comment periods allow the public and affected stakeholders to provide better, more complete information to help inform an agency about the effect of a regulatory proposal.

With the growing complexity and number of federal agency regulations, not counting state and local regulations, it is important to allow sufficient time for the public to understand a proposal to be able to meaningfully engage the agency. To illustrate this point, the March 6, 2023, edition of the Federal Register contained over 100 federal agency documents including 400 pages of information. While not all of these documents were proposed or final rulemakings, they inform the public about the implementation of various government programs. While over 100 documents were published that day, simultaneously there were over 200 documents with comment periods closing over the ensuing seven-day period. While not all of these documents are regulations, they may still be of significant importance and effect as they inform the public about the implementation of various government programs. Providing longer public comment periods would help the public be better equipped to engage especially during periods of high regulatory output.

Instruct Agencies to Develop Websites List all Guidance Documents – Agencies have large numbers of active guidance documents, although there is no easy way for the public to track them. To improve agency policy transparency and assist with regulatory compliance, it would be helpful if each agency had a dedicated website that would list all agency guidance.

OIRA should also issue guidance to agencies directing them to formalize a process for creating new guidance and managing existing guidance to promote transparency and openness in the regulatory development and implementation process. Guidance can serve the important purpose of interpreting existing law or clarifying how the agency

² EO 12866, October 4, 1993.

intends to implement particular legal requirements. Establishing a more transparent and open process for issuing guidance would help provide more predictability for regulated entities when making the investments and decisions necessary to meet regulatory requirements.

- 2. Are there obstacles or barriers to greater public participation, especially for underserved communities, that are not addressed by these recommendations? If so, are there other recommendations that we should consider?**

Increase Outreach to Small and Small Disadvantaged Businesses – As part of the prerule process, agencies should make concerted efforts to reach out to small and disadvantaged businesses for their input. Running a small business is challenging particularly during this time of labor shortages and supply chain constraints but piling on new regulatory burdens can have a disproportionate impact on these businesses.

Agencies need to develop smart regulations that are careful about the cumulative impacts of their own agency's regulations, and they should also be aware of the cumulative burdens due to regulations from other agencies across the federal government. OIRA has the unique role of being able to drive interagency coordination and the consideration of cumulative regulatory impacts across the government to help inform agency decision-making and ultimately avoid squeezing small businesses out of the marketplace. One example of a single regulation that is expected to significantly burden small businesses is the Federal Acquisition Regulatory (FAR) Council's proposed rule to require federal contractors to make climate-related disclosures and set targets to reduce greenhouse gas emissions.³ The FAR estimated the rule would impose over \$100 million in costs on small businesses in the first year of implementation alone. The FAR estimated a portion of the costs but didn't account for the costs that would be passed down to small businesses through the supply chain from larger manufacturers who would be required to meet even more burdensome requirements.

- 3. Are there existing materials, such as guides or tools, that would be especially effective in revising and potentially implementing these recommendations? What new tools or guidance are needed?**

Make Regulations.gov More User Friendly – Improve the utility of the regulations.gov website by making the interface more user-friendly as recent revisions to the regulations.gov website have made searching for agency dockets and their associated documents more difficult and time-consuming. The website is an important tool for the public as it provides the public with access to agency documents and comments that are submitted by the public on regulatory proposals.

³ FAR Case 2021-015, Federal Acquisition Regulation: Disclosure of Green-house Gas Emissions and Climate-Related Financial Risk Proposed Rule; 87 Fed. Reg. 68312-68334 (November 14, 2022).

Improving the search function and webpage organization would help reduce the number of clicks users make to navigate to a particular docket or document. One way to improve the search function would be to provide a better search interface. An improved interface that allows users to check boxes for particular search criteria would help improve search results. Criteria such as agency, date range, topics, or others would help narrow searches and save time.

Develop More Plain Language Guides for Individual Regulations – OIRA could issue guidance to expand upon its 2011 guidance⁴ to federal agencies to use clear government communication that the public can understand and use. Providing a summary of a regulation in plain language would help make regulations more accessible to the public, including businesses large and small. It would allow the public to more easily determine if they are affected by the regulation and whether additional time will be needed to dig into the more detailed proposed rulemaking's federal register notice.

Some agencies have issued plain language writing guides for regulations, although agencies often defer to fact sheets. While fact sheets may convey some information regarding a proposed rulemaking, it is often missing important information about the applicability of a regulation and sometimes includes technical information that may be less relevant to the stakeholders. Although not specific to a particular regulation, EPA published a plain language guide to describe the policies the agency implemented in response to the 1990 Clean Air Act Amendments.⁵ This EPA document provides a helpful overview of the breadth of statutory policies and EPA programs that were developed in response to the 1990 Clean Air Act Amendments.

4. How can intermediaries—such as trade associations or coalitions—be helpful in reaching individuals and small organizations or businesses, where have they been successful in doing so, and where might they be insufficient?

Request Agencies to Brief Trade Associations and their Member Companies – The increased use of virtual communication due to the pandemic is now commonplace at government agencies, trade associations, youth sports leagues, coalitions, families, and others. While the number of participants in agency virtual public hearings on regulations may have grown compared to in-person meetings, agencies should ensure there is ample outreach of regulated entities. One way to bolster outreach to affected stakeholders is through trade associations.

Proactively disseminating relevant materials to intermediaries like trade associations can help ensure these important stakeholders are involved and not shut out of the process. In a recent Environmental Protection Agency public hearing regarding a

⁴ Final Guidance on Implementing the Plain Writing Act of 2010, <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2011/m11-15.pdf>

⁵ The Plain English Guide to the Clean Air Act, <https://www.epa.gov/sites/default/files/2015-08/documents/peg.pdf>

proposed rulemaking, there were over 350 speakers with less than 20 being speakers from businesses and trade associations.⁶ The EPA proposed rulemaking has the potential to impact businesses across the economy; however, more effective outreach to affected industry groups would have likely drawn more business groups to testify at the public hearing.

Agency briefings for trade associations are a highly valued way of providing important information to businesses, in particular concerning proposed regulations. These briefings provide an opportunity for business community representatives to ask questions and raise important issues that an agency may not have considered.

Require Agencies to Develop Screening Documents for Applicability Determinations – In the summary documents that an agency develops for a regulatory proposal, agencies should develop applicability documents to help the business community more quickly determine if they are affected by the rulemaking. Considerable time is spent by businesses to read through agency federal register notices, rulemaking dockets, websites, and other materials to determine whether the regulation even applies to their business.

In the preamble to the rule, agencies should identify the affected businesses by the North American Industry Classification System (NAICS), business type, or other relevant criteria. Including this information in the preamble and then creating a way to search across the government for actions affecting a particular industry or sector, will help businesses better understand the federal government's regulatory agenda.

Due to the number and complexity of agency regulatory requirements, the public will benefit from being able to quickly and clearly identify whether they are affected by the regulation or not.

Require Agencies to Identify all Requests for Comment in a Summary Section – OIRA guidance to that directs agencies to include a summary list of requests for comment would help the public, including the business community, more quickly identify agency information gaps and proposed policy alternatives. Agencies often thread requests for comment throughout the preamble of a proposed regulation, making it more difficult to track. As an example of a helpful practice, the Department of Energy (DOE) compiled all of their requests for information on their recent proposed rule in a section of the preamble titled "Issues on Which DOE Seeks Comment."⁷ Compiling a list of the requests for comment in a designated place in the preamble, particularly for longer preambles, would help save time and public resources.

⁶ U.S. Environmental Protection Agency, Public Hearing Notice Proposal National Ambient Air Quality Standards, <https://www.epa.gov/pm-pollution/public-hearing-notice-proposal-national-ambient-air-quality-standards>

⁷ 88 Fed. Reg. 1722 (January 11, 2023)

Thank you for the opportunity to comment on the importance of public engagement in the federal regulatory process. Please let me know if I can answer any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce