



March 9, 2023

Submitted via Email: [publicparticipation@omb.eop.gov](mailto:publicparticipation@omb.eop.gov)

To Whom It May Concern:

The Project On Government Oversight (POGO) commends the Biden Administration's commitment to reforming the regulatory process to be more inclusive and equitable. POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

On his first day in office, President Joe Biden signed Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, which directs agencies to pursue a comprehensive approach to advancing equity for all.<sup>1</sup> As part of this work, it directs agencies to assess and improve community engagement through the federal rulemaking process. In response to this executive order, the U.S. Open Government National Action Plan emphasized that the regulatory process must be reformed to better solicit and consider input provided by civil society and members of directly impacted communities, who know first-hand that government works most effectively when it benefits from strong public engagement.<sup>2</sup> As the Office of Management and Budget (OMB) states, "federal regulations make a difference in people's lives every day — from improving access to safe, effective, and affordable hearing aids to ensuring people are safe at work."<sup>3</sup>

Right now, the regulatory process does not meaningfully seek out or consider the voices of the people it was designed to serve. While federal rulemaking includes a public comment period, that process is difficult to understand and daunting for the average citizen to engage in. In fact, the public comment process is overly subject to corporate capture, where the interests of economically and politically powerful private companies far outweigh public opinion. It is no secret that corporate lobbyists are paid handsomely to maintain professional relationships with agency officials, submit detailed and highly technical comments, and even bring legal challenges against regulations that do not reflect the position of their employer. Meanwhile, underserved communities often face fundamental barriers to participation, such as limited access to internet

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<sup>1</sup> Executive Order No. 13985, 86 FR 7009 –7013, (January 20, 2021).

<sup>2</sup> Fifth National Action Plan, White House National Action Plan to Advance a More Inclusive, Responsive, and Accountable Government, December 28, 2022, <https://www.whitehouse.gov/ostp/news-updates/2022/12/28/white-house-releases-fifth-open-government-national-action-plan-to-advance-a-more-inclusive-responsive-and-accountable-government/>.

<sup>3</sup> White House, "Broadening Public Engagement in the Federal Regulatory Process," <https://www.whitehouse.gov/omb/information-regulatory-affairs/broadening-public-engagement-in-the-federal-regulatory-process/>.

services or computers.<sup>4</sup> For instance, this very request for comment was only posted online, there is no point of contact listed, and the only way to submit a written response is via email. As a result of this unequal system, federal agencies often end up hearing more from one set of stakeholders and therefore implementing more corporate-friendly changes to proposed rules.

To achieve a more equitable and participatory regulatory process we must roll back the amount of influence corporations and commercial interests have over rulemaking, and increase the involvement of those communities most affected by the set of issues being considered for regulation. A large part of this work will involve reimagining what it means to participate in public engagement. Whereas the flawed current system allows the federal government to passively rely on interested parties to submit their comments and provide feedback, an improved and effective system must push agencies to take an active role in soliciting community input. Only then will rulemaking truly reflect the perspective of diverse audiences.

Also integral to this work is increasing transparency in the rulemaking process. The public has a growing distrust of the federal government, and will be reluctant to engage in processes that include the possibility of backroom deals and political manipulation.<sup>5</sup> While the public comment process is fully transparent — where the public can see the comments submitted and an agency's response to those comments in the final rule — it is not public-friendly given the highly technical language that it uses, and the fact that individuals must have access to computers to view it. Moreover, this transparency does not include the Office of Information and Regulatory Affairs (OIRA) and its influence on proposed rules. If the administration wishes greater participation by diverse community members, it must start by being honest and forthcoming about the recommendations that agencies are getting from OIRA and other government agencies.

As such, in response to the Office of Information and Regulatory Affairs' call for recommendations on how to better engage traditionally underserved communities, POGO submits the following proposals.

- **Publish federal rulemaking resources in different languages.** Historically underserved communities often face significant language barriers that prevent more meaningful regulatory participation. OIRA should offer translations into the most common foreign languages on its website as well as in any official supplementary materials related to federal rulemaking. This would help ensure that a wider and more diverse range of individuals can make use of OIRA's processes for soliciting feedback on federal rules.
- **Streamline the federal register.** The federal register can be intimidating and difficult to navigate. Not only are its features unintuitive for users, but it also features highly technical content that often bewilders even lawyers who have been working on the federal rulemaking process for their entire careers. While the legal language and structure of federal regulations are necessary to ensure the regulations are sufficiently binding on the regulated community, the federal government needs to also present the information in a way that is accessible to the general

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<sup>4</sup> Angy Peterson, "Three ways federal agencies can align with the equity executive order," FCW, March 6, 2023, <https://www.fcw.com/comment/2023/03/three-ways-federal-agencies-can-align-equity-executive-order/383639/>.

<sup>5</sup> "Americans' Views of Government: Decades of Distrust, Enduring Support for Its Role," Pew Research Center, June 6, 2022, <https://www.pewresearch.org/politics/2022/06/06/americans-views-of-government-decades-of-distrust-enduring-support-for-its-role/>.

public, especially affected communities. This should include a plain language explanation of the proposed regulation and links to other sources the regulation cites. The government should also ensure that the federal register and relevant websites related to rulemaking are user-friendly for disabled individuals.

- **Use technology to engage a wider and more diverse audience.** OIRA should better and more creatively use popular technology, including social media platforms, to reach underserved communities. Most people do not regularly read the federal register, and even with improved entries and translation services that is unlikely to change. Simply put, if the government wants more people to participate, then it must go where the people already are. Currently, that means social media. To inform this work, OIRA should look to other federal campaigns, such as the Census, that regularly communicate through social media advertisements and accounts.
- **Reach out to communities that do not have regular access to technology.** While OIRA should better use technology platforms (see above), OIRA should also expand its strategies to reach individuals who do not consistently have broadband service, such as rural communities. According to PEW Research, nearly 1 in 4 rural Americans still say that access to broadband and internet services remain a challenge.<sup>6</sup> OIRA should establish a pilot project in coordination with other federal agencies such as the United States Postal Service to test how best to conduct outreach to rural communities, which could include distributing pamphlets; convening educational public meetings; and partnering with local schools, libraries, and businesses.
- **Build relationships with state and local leaders.** OIRA should establish a task force that brings together leaders from a cross section of state and local governments, civil society groups at the state and local levels that work with historically underserved groups, and community organizations in order to advise administration officials on how best to engage with these communities in a cost-effective and meaningful manner. Instead of reinventing the wheel, the federal government should be looking to identify potential opportunities for collaboration with state and local leaders when it comes to engaging with constituents. State and local leaders are familiar with the challenges in reaching traditionally underserved communities, and must be brought in on the front end of reform.
- **Establish an OIRA Equity Accountability Council.** OIRA should establish a permanent Equity Accountability Council consisting of representatives from the federal level, state and local levels, civil society, community organizations, third party intermediaries, academics, and other experts to advise on the federal rulemaking process. This would allow interested and relevant groups to coordinate on regulatory reform.
- **Build relationships with on-the-ground intermediaries.** The federal government should also look to build and maintain meaningful relationships with third party intermediaries, such as nonprofits, community organizers, and faith-based organizations. These community leaders are often the most effective conduits to reaching traditionally underserved groups.
- **Ensure full transparency in the rulemaking process.** The federal government should be fully transparent regarding the results of the administrative review of regulations. OIRA reviews drafts of major rules that are either economically significant (an annual effect on the economy of \$100

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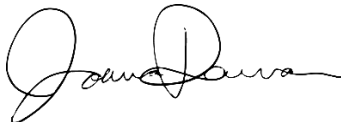
<sup>6</sup> Anna Read and Kelly Wert, “Broadband Access Still a Challenge in Rural Affordable Housing,” PEW, December 8, 2022, <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/12/08/broadband-access-still-a-challenge-in-rural-affordable-housing>.

million or more) or deemed significant for policy reasons (often rules seen as controversial or sensitive). Executive Order 12866 issued in 1993 established transparency requirements for OIRA. It required OIRA to publish all documents exchanged between it and the agency during the review, to publicly note all changes in the draft regulation made at OIRA's recommendation, and to maintain a public log of meetings and communications with outside parties related to regulatory actions under review. However, the requirements have never been implemented; a questionable policy interpretation limited the transparency to senior officials and formal reviews. The public has a right to know about efforts by all parties, those in and out of government, to influence the rulemaking process, what changes are made to draft regulations, and where those changes originated.

- **Publish a list of organizations from whom OIRA has received feedback or with whom it has met.** OIRA should publish online a list of organizations that attend engagement sessions or provide feedback. This would encourage organizations to collaborate and to build long-lasting professional relationships in the regulatory space.

The regulatory process is most effective when it is informed by the communities most directly impacted by implementation of federal laws. In order to meaningfully engage with these impacted communities, we urge OIRA to incorporate these recommendations into their efforts to reform the system. Doing so would allow the administration to fulfill its commitment to the American people by providing them more accessible ways to make their voices heard, especially those from underserved communities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joanna Derman', with a stylized, flowing script.

Joanna Derman  
Policy Analyst