



Submitted online via email

March 10, 2023

Office of Management and Budget
Office of Information and Regulatory Affairs
publicparticipation@omb.eop.gov

Re: Potential recommendations for broadening public engagement in the federal regulatory process

OIRA:

Thank you for the opportunity to provide feedback on the Office of Information and Regulatory Affairs' potential recommendations for broadening public engagement in the federal regulatory process.¹

Democracy Forward is a national legal organization that uses the law to fight for good government and improve the lives of people and communities through pro bono legal representation, policy and public education, and regulatory engagement. We partner with a growing list of over 260 organizations and community groups representing a broad range of interests—including workers, veterans, immigrants, public health experts, and small businesses²—to help bring their voices and expertise to courts and federal policy makers. We are deeply familiar with many of the barriers facing members of the public who wish to engage with the regulatory process and have ourselves worked to advocate for better engagement, particularly through the use of technology. Among other efforts, we have encouraged the General Services Administration to fix flaws in Regulations.gov that were introduced in 2020,³ published about ways to improve rulemaking engagement,⁴ and organized and facilitated a panel discussion at the ABA Administrative Law Conference on using technology to improve rulemaking engagement.⁵

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

² *See Clients & Partners*, Democracy Forward, <https://democracyforward.org/partners/> (listing over 260 partner organizations).

³ Letter from Democracy Forward Foundation et al. to Katy Kale, Acting Adm'r, U.S. Gen. Servs. Admin. et al. (May 17, 2021), <https://democracyforward.org/wp-content/uploads/2021/05/Letter-to-GSA-re-Regulations-Gov-Website-5.17.21.pdf>.

⁴ Samara Spence & Robin Thurston, *Regulatory Engagement is Due for an Upgrade*, *The Regul. Rev.* (Mar. 17, 2022), <https://www.theregreview.org/2022/03/17/spence-thurston-regulatory-engagement-is-due-for-an-upgrade/>.

⁵ *Can Technology Improve Public Engagement and the Administrative Record?*, ABA Section of Administrative Law & Regulatory Practice, 2022 Administrative Law Conference, agenda available at <https://www.regulationwriters.com/downloads/AdLaw-Conference2022.pdf>.

We commend OIRA's efforts to work with agencies to make it easier for members of the public to make their voices heard in rulemaking efforts. Hearing from a broader swath of the public is essential to rulemaking that is fair and equitable. We are especially pleased to see OIRA's Potential Recommendations for ways that technology can be tapped to improve public access, such as publishing materials in mobile-friendly formats and using text forms on agency websites to receive comment responses to specific questions.

We write here to respond to Question 2 in the Proposed Recommendations: "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?"

Specifically, we encourage OIRA to include Recommendations for improvements to Regulations.gov, the primary public platform for locating rulemaking dockets, submitting public comments, and accessing the comments of other stakeholders. OIRA should recommend fixing existing flaws in the current version of the public-facing website and making affirmative improvements that will better facilitate public engagement. Since October 2019, the eRulemaking Program, which manages Regulations.gov, has been housed within the General Services Administration.⁶ Yet funding for the eRulemaking Program comes from the budgets of the many agencies that use the database.⁷ Due to OIRA's role overseeing rulemaking across the government, OIRA is uniquely positioned to recommend that both GSA and the various policy-making agencies make Regulations.gov a priority.

Fixing Existing Flaws with Regulations.gov

The current version of Regulations.gov was released in 2020. Attached to this comment is a 2021 letter we sent to GSA detailing the history of that change, ways in which the new version *worsened* public access to rulemaking information, and a lengthy "user experience journey" that outlines some of the difficulties in navigating the site. GSA has since hosted meetings in which it showed interest in correcting the flaws, but many still persist and continue to impede the public's ability to meaningfully engage in rulemaking efforts. At minimum, the following fixes are necessary to promote broader rulemaking engagement:

- **It should be easy and intuitive to navigate a rulemaking docket accepting public comment.** The current search functionality is barely functional. It is difficult for even experienced users to locate the correct rulemaking docket. Bringing more people into the

⁶ *About the eRulemaking Initiative*, Regulations.Gov, <https://www.regulations.gov/about> (last visited Mar. 9, 2023).

⁷ *Improving Access to Regulations.gov's Rulemaking Dockets*, Admin. Conf. of the U.S., <https://www.acus.gov/recommendation/improving-access-regulationsgovs-rulemaking-dockets> (last visited Mar. 9, 2023) ("There is no direct appropriated funding for FDMS/Regulations.gov. Agencies that participate in FDMS/Regulations.gov fund the system through contributions, decided by a formula. The formula for contributions, established by the EPA in its Capital Asset Plan and Business Case, is based on a number of factors, including the average annual number of rules and non-rule items the agency publishes and the average annual number of comments posted on Regulations.gov.")

process requires simplifying this process. OIRA is correct to recommend that agencies post easy-to-understand information on their own websites, particularly if those agencies link directly to the relevant rulemaking docket where comments should be submitted. But members of the public should be able to navigate Regulations.gov itself.

- **It should be possible for a user to easily identify the authors (both name and organization) of previously submitted comments.** Meaningful rulemaking engagement includes giving people the opportunity to determine whether their views have already been represented and whether there are opposing views to which they might want to respond. Those new to rulemaking engagement are also likely to want to view other comments as “samples” and need author information in order to determine which samples to view or download. The current version of Regulations.gov makes it extremely difficult and cumbersome to identify comment authors. Comments are listed by comment title, which is often something vague like “comment on docket [#].” The site does not list “author” or “organization,” even though that information is collected at the time of comment submission. Instead, 3-4 clicks are generally necessary (including downloading any attachment) to determine whether a prior comment is of interest. In dockets containing hundreds or even thousands of comments, this process becomes extraordinarily burdensome. There are many ways to address this issue, including revealing “author” and “organization” metadata on the comment list.
- **It should be possible for a user to filter and sort comment data.** Just as members of the public need a straightforward and user-friendly way to view the author and organization behind a comment, they also need to be able to filter and sort through comment data. For example, a person interested in looking at samples or responding to opposing views may be interested in viewing only comments with attachments or comments from organizations likely to oppose or support a rulemaking. People should be able to easily find relevant comments using filters for information that Regulations.gov already collects, like author, organization, and comments with attachments. The pre-2020 version of Regulations.gov made it possible for users to filter and sort comment data on a particular docket using a downloadable csv spreadsheet. The new version could provide the same feature option or could integrate filtering and sorting capacity into Regulations.gov itself.
- **Information in rulemaking dockets should be presented using a single set of standards common to all agencies.** Currently, docket management practices and lack of standards exacerbate the difficulties of locating dockets and reviewing prior comments. For example, dockets may have confusing names or multiple opportunities for comment may be posted under a single docket.⁸ A single request for comment may be split up into multiple “dockets,” resulting in confusion over where one should submit a comment and

⁸ In one example, GSA has posted multiple unrelated documents on issues like environmental impact and regulation management under a single docket with the vague title “GSA- Notices -2019.” Regulations.gov docket entry for GSA-GSA-2019-0002, <https://www.regulations.gov/docket/GSA-GSA-2019-0002>.

where to find prior comments.⁹ While agencies may have their own internal reasons to organize dockets this way, the organization—or, at least, the cross-links and navigation tools—should always make it possible for members of the public to readily understand and navigate the dockets. Agencies also use data fields like “title” and “author” inconsistently. Sometimes the author may be listed in the title field rather than the “author field,”¹⁰ confounding any efforts by outside databases to ingest and sort the data by machine. At other times, the title may be identical for each comment,¹¹ making it even more difficult to find and review comments of interest. OIRA, in coordination with GSA, is well positioned to recommend the establishment of standards for docket management and data fields, agency training, and enforcement of data standards upon data ingestion from agencies.

Additional Improvements Will Better Facilitate Public Engagement

As the central public portal for rulemaking engagement, Regulations.gov has the potential to become more than merely functional. It could also itself become a useful tool for drawing in more members of the public and making it easier to participate in the process. Here are just a few potential options.

- **Dockets on Regulations.gov could highlight key questions for which agencies seek comment and include forms with text boxes to accept responses to specific questions.** OIRA’s Proposed Recommendations suggest that agencies do this on their own websites. *Any* such forms have the potential to make public access simpler for particular comment opportunities. But not all agencies have the resources to host such forms on their own websites. Such a feature should be available on Regulations.gov itself. This site already hosts rulemaking dockets and accepts comments. And GSA has the technological expertise to create a user-friendly way for agencies to generate web forms and ingest and sort the comments received.
- **Regulations.gov could collect additional information on comments for use in filtering and sorting.** In addition to making it possible to filter and sort comments based on data that Regulations.gov already collects (like attachments and author), additional data on each comment would assist members of the public trying to decide whether or

⁹ For example, a proposal by the Department of Health and Human Services to withdraw the so-called “sunset rule” was posted in numerous, separate dockets. See <https://www.regulations.gov/document/HHS-OS-2020-0012-0541/comment>, <https://www.regulations.gov/document/FDA-2021-Z-0025-0016>, <https://www.regulations.gov/document/CMS-2022-0001-0001>, https://www.regulations.gov/document/ACF_FRDOC_0001-0105, <https://www.regulations.gov/document/PHS-2021-0004-0001>, <https://www.regulations.gov/document/HHSIG-2022-0001-0001>.

¹⁰ For example, on Docket No. EPA-HQ-OPP-2019-0080, the agency has listed the author and organization in the title of the comments and left the fields for author and organization blank. <https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0080-0001/comment>; <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0080-0559>.

¹¹ For example, each of the 500+ comments on one docket is entitled: “Public Submission Comment on FR Doc # 2020-23888,” <https://www.regulations.gov/docket/HHS-OS-2020-0012/comments>.

how to weigh in. Such information could include author identifiers (e.g., individuals, anonymous, or organization), whether the comment opposes or supports a rulemaking effort, and whether a comment addresses specific questions posed by the agency. For example, the comment submission form could include check boxes for the different topics identified by the agency, and then the comment list could allow users to filter to see only comments addressing a particular topic. This would allow for more meaningful engagement on particular topics and would likely also allow agencies to sort comments electronically instead of doing so manually.

- **The Regulations.gov landing page could highlight and summarize major upcoming comment opportunities, with deadlines, and link directly to the docket page.** We agree with OIRA that agencies can do more to publicize and summarize their rulemaking efforts. But agencies need not do this on their own. Regulations.gov could be a centralized source for members of the public interested in participating.
- **Regulations.gov could host a blog or news feed that highlights comment opportunities and agency information needs.** Interested members of the public could then receive email alerts or share information through social media that draws attention to specific agency needs, in an easy-to-comprehend format.

A thorough review would likely reveal many other possibilities. Any serious effort to modernize Regulations.gov should rely on input from agencies, technologists, and members of the public. We encourage OIRA to include a process to modernize Regulations.gov in its final Recommendations.

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If you have any questions or would like to discuss the information in this comment, please contact Samara Spence, sspence@democracyforward.org, or Robin Thurston, rthurston@democracyforward.org.

Respectfully submitted,

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