



March 10, 2023

The Honorable Richard Revesz
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Feedback on Broadening Public Engagement in the Federal Regulatory Process

Dear Administrator Revesz,

On behalf of America's 3,069 counties, parishes and boroughs, nearly 40,000 elected county officials and 3.6 million county employees, the National Association of Counties (NACo) appreciates the opportunity to provide feedback on efforts within the Office of Information and Regulatory Affairs (OIRA) to broaden public engagement in the federal regulatory process and the potential recommendations laid out by OIRA.

Counties play a critical role in the everyday lives of our nation's residents and county governments affect the lives of Americans across the country every day. Many county responsibilities are mandated by both the state and the federal government. While county responsibilities differ widely, most states grant their counties significant authority to fulfill public services. These authorities include construction and maintenance of roads, bridges and critical infrastructure, assessment of property taxes, record keeping, administering elections, and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment and workforce training, emergency management, land use planning and zoning. In our role providing a wide range of health, child welfare and justice and public safety services, counties serve as the ultimate safety net for our most underserved and vulnerable residents.

While some of the responsibilities listed above are unique to counties, in many cases we work with our state and federal partners to achieve optimal solutions. These responsibilities are the shared, fundamental components of a broader national interest in serving our citizens and as such, counties play an important, fundamental role in our intergovernmental system with significant policy, service delivery and administrative roles and responsibilities. Policies and programs established by the federal government are intended to guide and coordinate efforts but are ultimately implemented at the state and local levels and have direct impacts on our residents and the citizens we serve.

Public trust in institutions, including government, consistently remains low and NACo appreciates the administration's efforts to boost public engagement in the federal regulatory process and that OIRA is soliciting feedback on this topic. However, counties believe that the dysfunction and a lack of coordination and dialogue between levels of government are key contributors to declining public trust and engagement.

NACo believes that strengthening the intergovernmental partnership and restoring the balance of federalism would be crucial in boosting public engagement in the federal regulatory process. In our federalist system, local governments are the level of government closest to the people. As such, we have a unique understanding of and access to our local communities and their needs that is often established and reinforced by the public engagement of county elected officials and employees. Restoring the balance of federalism and meaningful engagement with counties is a way in which the federal government can boost public engagement.

The following is NACo's feedback on the recommendations compiled by OIRA to: 1. Help the public and agencies better understand the regulatory process and the role of OIRA, including identifying opportunities for engagement; 2. Make regulatory material more accessible and useful for members of the public; and 3. Proactively engage communities early and throughout the regulatory process to efficiently use government and community time and resources.

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?

NACo believes that proactively engaging communities early and throughout the regulatory process to efficiently use government and community time and resources would be most effective in broadening public engagement in the federal regulatory process, especially from members of underserved communities. To do this, it will be crucial that agencies are encouraged, if not fully required, to engage with relative stakeholders, including counties, and conduct outreach when regulations are being drafted and formulated. Furthermore, federal agencies should be required to review public engagement in the rulemaking process not only to ensure public participation, but to also meaningfully consider the impacts a proposed regulation could have on communities across the country.

As federal regulations that have impacts on the public are often carried out by state and local governments in our system of federalism, it is crucial for the federal government to consult state and local governments in the drafting of regulations that could have direct impacts on our residents. Counties play an often-misunderstood role in our intergovernmental system, with a unique position to understand the diverse needs of our local communities and as such, engagement with counties as an intergovernmental partner in the development and implementation of federal regulations is vital to boosting public participation.

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?

An obstacle to greater public participation, especially for underserved communities, is the current unbalance in our system of federalism. Today's complex public policy issues – both challenges and opportunities – are often interrelated and cross multiple federal, state and local jurisdictions and responsibilities. There are few federal and state programs that do not interact with counties in some manner. The complexity of issues facing federal, state and local governments necessitate a strong and institutionalized national forum for intergovernmental collaboration in order to produce optimal results for our residents and boost public participation in governmental processes.

However federal mandates, that often go unfunded, continue to be passed down to state and local governments, the impacts of which are often misunderstood by our federal partners. While there is a wide, varying range of unintended impacts of federal regulations, negative unintended consequences often leave the public with distrust in the governments intended to serve them.

A better understanding by federal agencies of how proposed policies and regulations will impact communities on the ground will impact communities can certainly improve the perception of government and therefore boost public participation. This is done most effectively by intergovernmental collaboration and coordination.

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?

The establishment of a new national commission on intergovernmental relations would help create a better system of federalism that benefits all levels of government and the people we serve would be instrumental in restoring the balance of federalism and improving civic participation. While Executive Order 13132 nominally requires agencies to engage in a federalism consultation process, this is adhered to unevenly not only across agencies, but often within a specific agency or regions of a specific agency. These discrepancies make it difficult for states and local governments to navigate the federalism process and could lead to federal policies and outcomes that result in deeper public mistrust.

This is concerning because the policies that address the needs of our residents and are practically applicable on the ground are most often developed in concert with all governmental stakeholders. Additionally, since the implementation of federal policies often fall on state and local governments effective implementation almost always require intergovernmental cooperation and coordination.

Counties – along with our other state and local association partners – have been urging Congress to embrace this commitment to intergovernmental participation through passage of the *Restore the Partnership Act* that would restore a national Commission on Intergovernmental Relations. Restoring the Commission on Intergovernmental Relations would formally bring governmental stakeholders together to address the most pressing issues facing communities across the nation without placing any undue burden on one level of government and ensuring successful and effective implementation at the state and local level. Effective policies and the implementation thereof are essential in restoring the public faith in government institutions and public participation in the federal regulatory process.

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?

As the level of government closes to the people, organizations and businesses that form communities across the country, counties are the ultimate intermediary in helping the federal government boost public participation in the regulatory rulemaking process. County governments and county officials have unique access to the individuals and entities that form our community. Increasing coordination with state and local government partners in the federal rulemaking process would therefore increase the access to the populations federal regulations are intended to serve.

Encouraging consistent federal agency consultation with state and local governments, and the national associations that represent them, during the rulemaking process is crucial to making and implementing

sound federal policies that bolster the public trust in government institutions that leads to greater public participation in regulatory processes.

Conclusion

On behalf of the nation's 3,069 counties, parishes and boroughs, we appreciate the opportunity to provide feedback to the OIRA on recommendations to broaden public participation in the federal regulatory process, especially among underserved communities. NACo believes that strengthening the intergovernmental partnership and restoring the balance of federalism is a crucial step in this endeavor.

Local governments are the intergovernmental partner closest to the people, organizations and businesses that federal regulations are intended to serve and should be coordinated with in the rulemaking process. Increasing coordination among intergovernmental partners would improve the development and delivery of federal regulations that could in turn improve citizen participation in the rulemaking process.

Thank you for your consideration of this feedback. If you have any questions about these comments or recommendations, please contact Paige Mellerio, Associate Legislative Director at NACo, at 202-942-4272 or pmellerio@naco.org.

Sincerely,

A handwritten signature in black ink that reads "Matt Chase". The signature is written in a cursive, flowing style.

Matt Chase
Executive Director
National Association of Counties