



TEACHING, INTERPRETING, & CHANGING LAW SINCE 1979

ADVISORY BOARD

Hon. John Burton
Hon. Nancy Pelosi

BOARD OF DIRECTORS

Cynthia Alvarez
Richard Boswell
W. Hardy Calcott
Aidin Castillo
Eva Grove
Tslon Gurmu
Bill Ong Hing
Luca D. Mangini
Anita Martinez
Michelle Mercer
Toni Rembe
Rudy Ruano
Guadalupe Sordia-Ortiz
Lisa Spiegel
Alan Tafapolsky
Mawuena Tendar
Hon. James L. Warren (Ret.)
Allen S. Weiner
Roger Wu

GENERAL COUNSEL

Bill Ong Hing

OF COUNSEL

Don Ungar

EXECUTIVE DIRECTOR

Eric Cohen

San Francisco

1458 Howard Street
San Francisco, CA 94103

Washington, D.C.

600 14th Street, NW
Suite 502
Washington, D.C. 20005

San Antonio

10127 Morocco Street
Suite 149
San Antonio, TX 78216

Austin

6633 East Hwy 290
Suite 102
Austin, TX 78723

ilrc@ilrc.org
www.ilrc.org



March 8, 2023

Office of Management and Budget
Office of Information and Regulatory Affairs (OIRA)
1600 Pennsylvania Ave NW
Washington, DC 20500

Submitted via publicparticipation@omb.eop.gov

Dear OIRA,

We write to provide feedback on your office's recommendations to broaden public engagement in the Federal regulatory process.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to immigration law and processes. The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship.

As part of this work, ILRC leads a national Immigration Regulations working group which convenes immigration-focused practitioners and organizations to share information and strategies for engaging in the federal regulatory process. We routinely evaluate and comment on regulations affecting immigration law and policy and work to ensure that information about various regulatory activities is shared with a wide audience, including directly impacted members of the community. We encourage individuals and organizations to submit comments on relevant regulations and provide assistance to comment campaigns in addition to crafting and submitting our own organizational comments. It is through this lens that we provide the following suggestions in response to OIRA's recommendations.

- I. OIRA can broaden public involvement in the Federal regulatory process by working with legal and community-based organizations engaged in this work already.

In our collaborative work, we have seen that the federal regulatory process remains inaccessible for many individuals and community organizations, even though they would like to participate meaningfully when a regulation is published that will have a profound impact on the populations they serve (e.g., the USCIS Fee Rule, changes to asylum regulations, etc.). We are supportive of the recommendations that OIRA has proposed in this regard including engaging with the public through trainings and written materials. However, OIRA should work with legal and community-based organizations to craft materials and training to ensure that the information is being presented in a way that is most useful to the public. For example, OIRA could coordinate with a select group of organizations who routinely submit comments for review to develop “How-to” guides to share widely with the public. The existing materials that are government-created are good, but oftentimes are not as user-friendly as intended. Working with organizations that regularly engage with and provide training to community organizations can help to ensure that materials are useful to the public. Engaging more with organizations will also help with dissemination of accurate information to the public.

OIRA could also collaborate with organizations to provide training to the public on the federal regulatory process, the Paperwork Reduction Act, and the mechanism of crafting and submitting comments. OIRA officials could appear in webinars or video trainings created by organizations, could attend community meetings where feasible, or could provide input on written materials intended for the public.

By collaborating with these organizations, OIRA can ensure that accurate information is being shared with the public by tapping into established advocacy networks. Further, these organizations are already trusted by communities as resources for reliable information. OIRA should develop and leverage partnerships with organizations in order to accomplish its stated goals.

Additionally, OIRA must address language barriers that exist for under-represented communities. One of the main obstacles to participation is the lack of resources in languages other than English. Community-based organizations can help to address this issue, but often do not have the resources to provide translations. As such, OIRA should work to develop resources in language other than English.

- II. OIRA can address some obstacles that remain for public participation by altering its practices for posting regulations and supporting documents for review.

One of the reasons that the federal regulatory process is inaccessible for many members of the community is the inaccessibility of the language used in postings and the platforms for reviewing and commenting on regulations. We recognize that regulatory language is complicated and that there are specific legal restrictions that require some of this language. However, directing members of the public to regulations.gov or the Federal Register notice often results in confusion because it is difficult to find specific information. Further, members of the public often do not know that a rule has been published unless they are engaged with this work (and subscribe to Federal Register email updates) and are often dependent on collaborative spaces to alert them to the publication of a relevant rule. Additionally, where there are changes, such as extensions of comment periods, it can often be difficult to find updated and accurate information. We believe that the following are some changes that OIRA can make to help facilitate more public participation:

- Agencies should be encouraged to engage with a wide range of stakeholders before promulgating a rule so that proposed rules can benefit from public input. This will make the comment process more productive by incorporating the input of directly impacted communities before the comment period but will also ensure that directly impacted communities have a stake in the rule once it’s proposed and will be looking for the rule in order to provide a comment during the comment period.

- Agencies should be encouraged to publish user-friendly materials on their own web sites – such as Frequently Asked Questions documents or fact sheets – once a rule has been published. These documents should contain highlights of the substance of the rule as well as basic instructions on how to find the rule and how to submit a comment, with links to the relevant page on regulations.gov. OIRA could provide template instruction language that the agencies could post across different platforms and could contain links to the relevant rule.
- Comment submission instructions should be more prominently displayed in Federal Register postings and on regulations.gov for each rule open for comment. Additionally, comment periods should end at midnight in whatever time zone the commentor is located. In the alternative, it should be made clear on every open-comment period rule what time zone is governing the submission deadline.
- All comments should be able to be submitted electronically through the Federal Register web site and regulations.gov. We have seen instances where agencies (such as the U.S. Department of Justice, Executive Office for Immigration Review) have only provided a postal address to submit comments. Such a process does not allow the public to review other comments submitted, which is necessary to do a fair review. We have also seen multiple instances where the Federal Register posting does not allow the public to submit their comments on that site, despite the presence of the “Submit a Comment” button. Commenters should not have to search multiple web sites in order to comment on a regulation.
- All docket documents should be available online for review during the comment period and the docket documents should be arranged by date for easier review with the most recently created on the top of the list. We have seen instances where commenters have had to contact agencies separately to obtain documents including proposed forms. Without access to the revised forms, the public is unable to provide meaningful comments. Agencies proposing changes to forms that the public will complete to obtain a benefit must make those documents electronically available for ease of review.
- Docket documents should also be more organized to make it easier to find relevant information. For example, the recently proposed USCIS Fee Rule had over 200 documents in the docket that were in no discernible order. Agencies should be encouraged to submit a Table of Contents or an explanation of the docket documents in order to ensure that the public can find and review relevant information.
- OIRA should perform outreach and advertise to the public the availability of EO 12886 meetings when a regulation is at OIRA. In our experience, few stakeholders are aware that the opportunity exists to comment in person or virtually at a meeting with OIRA when an agency regulation is there for review. We have found those meetings to provide a meaningful review opportunity and believe that more people would participate if there was more information available about when and how to schedule such a meeting.

In short, the work of engaging the public in the Federal regulatory space is underway already and OIRA should utilize existing networks to further its goal of more public participation. OIRA should also review how proposed regulations are presented to the public for review and revamp systems that are not user-friendly.

Please don't hesitate to reach out to us with questions.

Best Regards,
 /s/Elizabeth Taufa
 Elizabeth Taufa
 Policy Attorney and Strategist
 Immigrant Legal Resource Center