

**WITH THE PEOPLE,  
FOR THE PEOPLE:  
STRENGTHENING PUBLIC  
PARTICIPATION IN THE  
REGULATORY PROCESS**

AUGUST 2024

OFFICE OF INFORMATION AND REGULATORY AFFAIRS



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## EXECUTIVE SUMMARY

Public input can help agencies draft regulations that are responsive to public needs, and engagement with the public can build trust in agency actions. The Biden-Harris Administration has made strengthening public participation and community engagement in the regulatory process a priority. The Office of Information and Regulatory Affairs (OIRA) has worked alongside agencies to develop strategies for proactively seeking early input from the public, and for facilitating engagement in the regulatory process, including by underserved communities. To that end, OIRA has issued guidance for strengthening public participation in the regulatory process, and has used the Regulatory Agenda as an opportunity to discuss public participation in specific rulemaking actions. Agencies, in turn, are taking steps to better integrate public engagement into their rulemaking.

This report highlights examples of agencies seeking to strengthen public participation and community engagement in the regulatory process. These examples, from a range of agencies throughout the Federal government, showcase a variety of multi-faceted strategies for engaging with the public. The examples included in this report are only a limited sample of ongoing efforts across all agencies, but they provide a model that can inform other agencies' approaches to public participation.

Agencies have adopted different strategies to strengthen engagement with the public, consistent with applicable law, but four recurring best practices stand out. First, proactive early engagement, before a notice of proposed rulemaking is issued, can provide useful input. Second, agencies can support robust engagement in the public comment process, by making information about the content of the proposed rule more accessible to a broad audience and by widely publicizing opportunities for public comment. Third, agencies should encourage participation by all affected communities, including underserved communities, by ensuring agency engagements with the public are accessible, by reaching out to affected groups through relevant intermediaries, and, as appropriate, through proactive outreach. Lastly, agencies should be responsive to public engagement, and demonstrate that they seriously consider input received through public participation. These best practices were previously identified in OIRA's guidance on public participation and community engagement. This report complements that guidance by showcasing examples of agencies putting these best practices into action.

Strengthening public participation is an ongoing process, and OIRA will continue to work with agencies to find the best ways for ensuring that the regulatory process effectively incorporates public input.

## LISTENING TO THE PUBLIC LEADS TO BETTER REGULATIONS

Public involvement in the development of regulations can lead to more effective regulations, greater accountability in agency decision-making, and a more inclusive regulatory process. To make the most effective use of public engagement, agencies should proactively seek input early in the decision-making process, and should ensure that all interested and affected persons and communities have a fair opportunity to provide input.

Public participation can help agencies better understand the issues a regulation is intended to address. Scientists and researchers may have access to data not otherwise available to agencies. Industries and advocacy groups may have important insights into a particular problem. And individuals may be able to draw on their lived experiences to offer valuable perspectives.

Early engagement with the public can also help agencies set priorities. Public input, even before any proposed rule is drafted, can help agencies understand whether they are choosing the right issue to address. After a proposed rule has been released, public input can help an agency determine whether it has chosen the best solution among available alternatives.

Recognizing the value of public participation, the regulatory process includes opportunities for public input. The Administrative Procedure Act — a law that governs most regulatory processes — requires that, barring certain exceptions, agencies provide the public with an opportunity to submit comments on a proposed rule. Agencies, in turn, are generally required to respond to relevant and significant comments in finalizing a rule.

But there are factors that may limit the effectiveness of an agency's efforts to encourage public participation, particularly through public comments. Members of the public, for example, may lack the information they need: they might not know that they have an opportunity to submit public comments on a proposed rule, or when and where to submit a public comment, or what makes for an effective public comment. Some affected individuals or communities may lack the resources to submit comments, or to submit sophisticated, evidence-based comments that an agency is likely to find most informative. Opportunities for public comment may not be accessible to all interested persons, particularly for persons with disabilities or persons with limited English proficiency. And, in some circumstances, agencies' engagement with the public may come too late in the regulatory process: by the time a proposed rule is open for public comment, for example, some preliminary decisions at least — such as the problem and alternative solutions to focus on — have been made.

To better harness public participation, agencies should find opportunities for early and inclusive engagement. They should consider opportunities for public engagement before a proposed rule is drafted, so that public input can inform the agency's early decisions. Moreover, agencies should design inclusive engagement strategies that actively encourage participation by all affected or interested parties. To do so, agencies should strive to reduce any barriers to effective participation. OIRA has launched a public participation initiative to support agencies in these efforts.

## OIRA'S PUBLIC PARTICIPATION INITIATIVE

OIRA is working with agencies to strengthen public participation in the regulatory process. Consistent with Executive Order 14094 of April 6, 2023, *Modernizing Regulatory Review*,<sup>1</sup> OIRA has provided guidance to agencies on steps for broadening public participation.<sup>2</sup> That guidance identifies best practices and encourages agencies to adopt strategies that most effectively respond to an agency's needs. Moreover, as part of this effort, agencies now use the Unified Regulatory Agenda as a means for highlighting their ongoing public engagement efforts. This section describes the ongoing efforts of OIRA's public participation initiative.

### Executive Order 14094 and the Broadening Public Participation and Community Engagement Memorandum

The Biden-Harris Administration has made public participation in rulemaking a priority. Recognizing the importance of public participation, Executive Order 14094, *Modernizing Regulatory Review*, encourages Federal agencies, to the extent practicable and consistent with applicable law, to inform their regulatory actions through meaningful and equitable opportunities for public input from a range of interested or affected persons, including underserved communities.<sup>3</sup>

To assist agencies in implementing the public participation provisions of Executive Order 14094, OIRA published a Memorandum, *Broadening Public Participation and Community Engagement in the Regulatory Process*. The Memorandum was informed by extensive engagement with the public, including four listening sessions and two public comment periods.<sup>4</sup> Many of the leading practices discussed in the report are also consistent with recommendations and reports by the Administrative Conference of the United States.<sup>5</sup>

Among other things, the Memorandum discussed: (1) “[l]everaging the release of the biannual *Unified Agenda of Federal Regulatory Actions* . . . to discuss agencies’ past, ongoing, and upcoming participation and engagement with the public, including underserved communities”; and (2) “[e]nsuring that agency

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<sup>1</sup> Executive Order 14094 of April 6, 2023, *Modernizing Regulatory Review*, 88 Fed. Reg. 21,879, April 11, 2023: <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

<sup>2</sup> Office of Information and Regulatory Affairs, Memorandum for the Heads of Executive Departments and Agency, *Broadening Public Participation and Community Engagement in the Regulatory Process*, July 19, 2023: <https://www.whitehouse.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.

<sup>3</sup> Exec. Order 14094, §2.

<sup>4</sup> In the Memorandum, OIRA anticipated organizing a follow-up session approximately twelve months from its issuance, to hear from members of the public about implementation and opportunities for improvement. OIRA held two listening sessions in July 2024, in which it received public input on the public's experience engaging with agencies' rulemaking process since the memorandum's release. The feedback was generally positive, and members of the public appreciated agency efforts to strengthen public engagement. Members of the public also emphasized, however, the need for greater information regarding opportunities for public input.

<sup>5</sup> See, e.g., Admin. Conf. of the U.S., Recommendation 2023-2, *Virtual Public Engagement in Agency Rulemaking*, 88 Fed. Reg. 42,680, July 3, 2023; Admin. Conf. of the U.S., Recommendation 2021-3, *Early Input on Regulatory Alternatives*, 86 Fed. Reg. 36,082, July 8, 2021; Admin. Conf. of the U.S., Recommendation 2018-7, *Public Engagement in Rulemaking*, 84 Fed. Reg. 2146, February 6, 2019; Admin. Conf. of the U.S., Recommendation 2014-4, *“Ex Parte” Communications in Informal Rulemaking*, 79 Fed. Reg. 35,993, June 25, 2014.

policies on communication during the rulemaking process promote accessible, equitable, and meaningful participation and engagement, especially early on in setting regulatory priorities and in the early stages of rule development before a proposed regulation is issued for comment.”<sup>6</sup> The Memorandum identified leading practices for participation and engagement that agencies can consider using, such as making regulatory material more accessible, understandable, and usable by the public; holding listening sessions, including online or technology-enabled sessions, while agencies are still defining regulatory priorities; or providing multiple means of submitting comments and feedback.<sup>7</sup>

## The Regulatory Agenda

Since releasing the Memorandum, OIRA has worked with agencies to make effective use of the *Unified Agenda of Federal Regulatory Actions* (Regulatory Agenda) to expand public awareness of opportunities agencies have provided, and will provide, for public participation.<sup>8</sup>

By noting how public feedback informed specific rules, the Regulatory Agenda emphasizes the importance of public engagement and reaffirms to members of the public who engaged with agencies that their input mattered. At the same time, the Regulatory Agenda highlights upcoming opportunities for public participation, giving interested parties early notice.

Moreover, for agencies, the Regulatory Agenda provides an information-sharing platform. Each Regulatory Agenda offers agencies an opportunity to hold themselves accountable not only to the public but also to peer agencies, regarding the effectiveness of their public engagement strategies. Agencies can learn from one another’s approach to public participation.

## OIRA’s Public Engagement

While encouraging agencies to better engage with the public, OIRA is also seeking to improve how it interacts with the public. Pursuant to Executive Order 12866 of September 30, 1993, *Regulatory Planning and Review*, interested members of the public may request a meeting with OIRA to present their views about a regulatory action that is under OIRA review. These meetings, known as E.O. 12866 meetings, serve as listening sessions for OIRA officials and representatives from the agency or agencies undertaking the regulatory action.<sup>9</sup> Section 2(e) of Executive Order 14094 directed the OIRA Administrator to implement reforms designed to protect public trust in the regulatory process, including ensuring access for meeting requestors who have not historically requested such meetings.<sup>10</sup> On December 20, 2023, OIRA issued Guidance Implementing Section 2(e) of Executive Order 14094,

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<sup>6</sup> *Broadening Public Participation and Community Engagement*, at 3.

<sup>7</sup> Agencies should consult the OIRA Memorandum for guidance on ensuring that their public participation policies are consistent with relevant legal requirements and principles surrounding *ex parte* communications. See *Broadening Public Participation and Community Engagement*, at 12–14.

<sup>8</sup> For descriptions of notable entries in the 2023 Fall and 2024 Spring Agendas, see Sam Berger, *Blog Post: The 2023 Fall Regulatory Agenda*, December 6, 2023: <https://www.whitehouse.gov/omb/briefing-room/2023/12/06/the-2023-fall-regulatory-agenda/>; Sam Berger, *Blog Post: The 2024 Spring Regulatory Agenda*, July 5, 2024: <https://www.whitehouse.gov/omb/briefing-room/2024/07/05/the-2024-spring-regulatory-agenda/>.

<sup>9</sup> Exec. Order 12866 of September 30, 1993, *Regulatory Planning and Review*, 58 Fed. Reg. 51,735, October 4, 1993: [https://www.reginfo.gov/public/jsp/Utilities/EO\\_12866.pdf](https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf).

<sup>10</sup> Exec. Order 14094, § 2(e).

describing OIRA's E.O. 12866 meeting policy, and its strategy for inclusive and transparent meetings.<sup>11</sup> This strategy included two main components: making it easier for members of the public to request a meeting, and making E.O. 12866 meetings accessible to the public.

First, OIRA has sought to make it easier for members of the public to request E.O. 12866 meetings. OIRA has modified its website and posted an instructional video and a step-by-step guide to requesting a meeting, in English and Spanish, on its website.<sup>12</sup> To further inform the public, OIRA has hosted two training sessions on how to request and make best use of 12866 meetings, and anticipates hosting further training sessions in the future.<sup>13</sup> In designing these outreach sessions, OIRA has adopted practices that mirror those identified in its guidance. For example, to increase accessibility, the sessions had an American Sign Language (ASL) interpreter and CART captions.

Second, OIRA has worked to make E.O. 12866 meetings accessible to a broad public. Given OIRA's goals of facilitating broader participation in the E.O. 12866 process, OIRA has shifted to telephonic or virtual meetings as the exclusive means of holding E.O. 12866 meetings. Moreover, requestors with disabilities who may need a reasonable accommodation can include that information in their request or, if the need is not apparent at that time, as soon afterward as is feasible. In addition, OIRA is reviewing how non-English interpretation services can be made available for E.O. 12866 meetings. These steps are designed to ensure inclusivity in E.O. 12866 meetings, consistent with practices outlined in OIRA's Memorandum to agencies.<sup>14</sup>

### Best Practices in Action: Updating Statistical Policy Directive 15 on Federal Race and Ethnicity Data Standards

In addition to making E.O. 12866 meetings more transparent and inclusive, OIRA has also sought to strengthen public engagement in other aspects of its work. The latest revision to the Office of Management and Budget's (OMB) Statistical Policy Directive 15 (SPD 15) on Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, led by the Office of the Chief Statistician of the United States within OIRA, reflected OIRA's commitment to public participation. Informed by extensive public input, the work leading up to revisions to SPD 15 incorporated best practices in public engagement and community outreach.

OMB first issued SPD 15 in 1977, in cooperation with other Federal agencies, to provide consistent data on race and ethnicity throughout the Federal government, including the decennial census, household surveys, and Federal administrative forms.<sup>15</sup> Since 1977, SPD 15 was revised one time, resulting in an update in 1997. Since the 1997 revision, there have been large societal, political, economic, and

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<sup>11</sup> Office of Information and Regulatory Affairs, Guidance Implementing Section 2(e) of Executive Order, December 20, 2023: [https://www.whitehouse.gov/wp-content/uploads/2023/12/Modernizing-EO-Section-2e-Guidance\\_FINAL.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/12/Modernizing-EO-Section-2e-Guidance_FINAL.pdf).

<sup>12</sup> Office of Information and Regulatory Affairs, "Modernizing Regulatory Review," <https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/>.

<sup>13</sup> Office of Information and Regulatory Affairs, "Broadening Public Engagement in the Federal Regulatory Process," <https://www.whitehouse.gov/omb/information-regulatory-affairs/broadening-public-engagement-in-the-federal-regulatory-process/>.

<sup>14</sup> Guidance Implementing Section 2(e) of Executive Order 14094, at 4.

<sup>15</sup> Office of Management and Budget & U.S. Census Bureau, "History of Statistical Policy Directive No. 15: 1977," 2023: <https://spd15revision.gov/content/spd15revision/en/history.html>.



demographic shifts in the United States, including increasing racial and ethnic diversity, a growing number of people who identify as more than one race or ethnicity, and changing immigration and migration patterns.<sup>16</sup>

In 2022, recognizing the critical need for updates, OIRA began a formal review to revise SPD 15. Consistent with OMB's established process used for other trusted statistical standards to ensure the rigor, validity, objectivity, and impartiality of the recommended revisions:<sup>17</sup>

- The Chief Statistician convened the Interagency Technical Working Group on Race and Ethnicity Standards (Working Group) – consisting of Federal Government career staff representing programs that collect or use race and ethnicity data – to develop recommendations for improving the quality and usefulness of Federal race and ethnicity data.
- The Working Group relied heavily on research conducted over the last decade, including new research and testing of potential alternatives by several Federal agencies.
- The Working Group also relied on robust public input.

Informed by these perspectives, the Working Group delivered a data-driven report to the Chief Statistician with recommendations for updating and improving SPD 15.<sup>18</sup>

OMB released the updated SPD 15 in March 2024, and the revisions closely follow the Working Group's recommendations, including:

- Using one combined question for race and ethnicity and encouraging respondents to select as many options as apply to how they identify;
- Adding Middle Eastern or North African as a new minimum category;<sup>19</sup> and
- Requiring the collection of additional detail beyond the minimum required race and ethnicity categories for most situations when useful and appropriate.<sup>20</sup>

OMB was committed to a full, transparent revision process, with input from the public, to ensure the rigor, validity, objectivity, and impartiality of the Working Group's recommended revisions. For example, perspectives from the public were necessary to understand whether the 1997 SPD 15 was effective or

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<sup>16</sup> Office of Management and Budget, Notice of Decision: Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182, 21,185, March 29, 2024: <https://www.govinfo.gov/content/pkg/FR-2024-03-29/pdf/2024-06469.pdf>.

<sup>17</sup> Karin Orvis, "Reviewing and Revising Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity," June 15, 2022: <https://www.whitehouse.gov/omb/briefing-room/2022/06/15/reviewing-and-revising-standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity/>.

<sup>18</sup> Interagency Technical Working Group on Race and Ethnicity Standards, Federal Interagency Technical Working Group on Race and Ethnicity Standards: Final Recommendation Report, <https://www2.census.gov/about/ombraceethnicityitwg/final-recommendations-for-csotus.pdf>.

<sup>19</sup> The new set of minimum race and/or ethnicity categories are: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Middle Eastern or North African, Native Hawaiian or Pacific Islander, and White.

<sup>20</sup> Karin Orvis, "OMB Publishes Revisions to Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity," March 28, 2024: <https://www.whitehouse.gov/omb/briefing-room/2024/03/28/omb-publishes-revisions-to-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity/>.

whether the Working Group’s proposed revisions would lead to more accurate and relevant data. Robust public participation, as well as input from experts and existing research, helped shape the activities of the Working Group, their final recommendations to OMB, and OMB’s final decisions reflected in the updated SPD 15.

### Broad Publicity

Recognizing the importance of public participation in SPD 15’s revision, the Working Group and OMB used a variety of approaches to raise awareness and encourage input. Outreach efforts included blog posts and social media posts, the creation of a dedicated website for the review process (<https://www.spd15revision.gov>), interviews with news outlets, participation in professional conferences and workshops, and direct outreach to stakeholders using contact lists maintained by the agencies participating in the Working Group.<sup>21</sup>

### Listening Sessions with Stakeholders, Town Hall Meetings, and Tribal Consultation

The Working Group developed an initial set of proposals to revise SPD 15 and a set of questions regarding various aspects of the proposals, implementation issues, and additional topics for public feedback.<sup>22</sup> Both before and after the proposed revisions were put out for public comment, the Working Group held listening sessions with members of the public, which allowed an array of individuals and organizations across sectors to share their perspectives and recommendations regarding SPD 15.<sup>23</sup> The Working Group scheduled 94 separate listening sessions over the course of a year.<sup>24</sup>

After the proposal was issued, the Chief Statistician, joined by the Working Group’s Chair and Co-Chair, hosted a series of three virtual public town hall meetings.<sup>25</sup> Recordings of the three virtual town halls were also posted online, on the SPD 15 website.<sup>26</sup> OMB also held a Tribal consultation with Tribal leaders and members to discuss the proposed revisions, organized by the Tribal Advisor to OMB’s Director.

### Ongoing Engagement During Implementation of the Updated SPD 15

Implementation of the updated SPD 15 began immediately upon its release. Federal agencies that collect race and ethnicity data must bring their collections and publications into compliance as soon as

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<sup>21</sup> Office of Management and Budget, Notice of Decision: Revisions to OMB’s Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182, 21,185, March 29, 2024: <https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and>.

<sup>22</sup> Office of Management and Budget, Initial Proposals For Updating OMB’s Race and Ethnicity Statistical Standards, 88 Fed. Reg. 5375, January 27, 2023: <https://www.federalregister.gov/documents/2023/01/27/2023-01635/initial-proposals-for-updating-ombs-race-and-ethnicity-statistical-standards>.

<sup>23</sup> Office of Management and Budget, Notice of Decision: Revisions to OMB’s Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182, March 29, 2024: <https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and>.

<sup>24</sup> For a summary of these outreach efforts, see Federal Interagency Technical Working Group on Race and Ethnicity Standards, Annex 4: Communications and Outreach Team Final Report, <https://www2.census.gov/about/ombraceethnicityitwg/annex-4-communications-and-outreach-team-final-report.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> Office of Management and Budget & U.S. Census Bureau, “Recorded Webinars,” <https://spd15revision.gov/content/spd15revision/en/get-involved/recorded-webinars.html>.

possible, on or before March 2029. The updated SPD 15 requires that the 24 Chief Financial Officers Act Agencies<sup>27</sup> and the U.S. Equal Employment Opportunity Commission submit to OMB, by or before September 2025, an Action Plan on Race and Ethnicity Data (Action Plan) describing how the agency intends to bring new and existing information collections and publications into compliance through the required and appropriate clearance processes. These plans will include a discussion of how the agency intends to meaningfully engage with stakeholders through the implementation process. Agencies must make their Action Plans available on their websites, and OMB will post a consolidated list on the SPD 15 website for the public to easily access all links from the same location.

Additionally, public engagement will continue as agencies implement the revised SPD 15. For example, since the updated SPD 15 was released, OMB has met with community organizations and data users to discuss the various changes to the race and ethnicity standards and to ensure that stakeholders understand how Federal data will now be collected and presented. OMB's SPD 15 website continues to include accessible resources such as a breakdown of the updated race and ethnicity data standards and tools for data users.

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Strengthening public participation is a continuous process, and OIRA plans to continue to examine how to better engage with the public in its own work, and how to support agency efforts to strengthen public participation. Highlighting agency successes in seeking public engagement is an important part of these efforts. This report showcases agency efforts to strengthen public engagement, and offers examples to those agencies seeking to craft new strategies for public input.

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<sup>27</sup> The 24 CFO Act Agencies include: Agency for International Development, Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, Social Security Administration. See <https://www.congress.gov/bill/101st-congress/house-bill/5687>.

## STRENGTHENING PUBLIC PARTICIPATION: IN PRACTICE

Agencies are working to strengthen public engagement in the regulatory process. There is no single path towards strong public participation, and agencies have been adapting and tailoring strategies that best respond to their specific needs and regulatory contexts. OIRA's Memorandum on Public Participation identifies best practices for public participation, emphasizing the importance of early input and inclusive engagement. This section describes a variety of mechanisms recently used by agencies to seek public input in the regulatory process. It complements OIRA's Memorandum on Public Participation by providing concrete examples that illustrate how agencies are developing public engagement strategies, including by implementing the best practices outlined in the Memorandum.

This section starts with an in-depth look at case studies from the Environmental Protection Agency (EPA), the Food and Nutrition Service (FNS) in the Department of Agriculture (USDA), the Department of Labor (DOL), and the Federal Communications Commission (FCC). The first two examples, from EPA and FNS, describe efforts to develop agency-wide policies on public participation, which incorporate the broad principles outlined in OIRA's Memorandum on Public Participation. Not all agencies, however, may find that an agency-wide policy on public engagement is necessary. Other examples, from DOL and the FCC, illustrate agency public engagement strategies designed in response to specific rules. The strategies used by each of these agencies included some of the best practices outlined in the Memorandum on Public Participation, but also incorporated other elements that were particularly well-suited to that specific rule.

The report then discusses best practices for public participation, providing examples of agencies that have incorporated those practices into their public engagement, focused on four main themes stressed by the Memorandum on Public Participation: (1) early public input; (2) supporting robust engagement in the public comment process; (3) making public engagements accessible and inclusive; and (4) demonstrating the impact of public comments on proposed rules.

### Case Studies: Agency-Wide Strategies

#### Environmental Protection Agency

The Environmental Protection Agency (EPA) has long emphasized the importance of public participation to its regulatory policymaking. As early as 1981, EPA issued a Public Participation Policy to strengthen its commitment to public participation.<sup>28</sup> In 2003, EPA updated the Policy to provide guidance on effective and reasonable means to achieve public involvement.<sup>29</sup> More recently, EPA has begun a process to

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<sup>28</sup> Environmental Protection Agency, Public Participation Policy, 1981: <https://archive.epa.gov/publicinvolvement/web/pdf/1981ppp.pdf>.

<sup>29</sup> Environmental Protection Agency, Public Involvement Policy, 2003: <https://archive.epa.gov/publicinvolvement/web/pdf/policy2003.pdf>.

revise its public engagement policy, and released a draft for public comment in December 2023.<sup>30</sup> EPA expects to release the final version of this policy in Fall 2024.<sup>31</sup>

### Meaningful Engagement Policy

EPA's agency-wide approach to public participation focuses on encouraging meaningful engagement, which includes early and proactive outreach to inform and seek input from interested members of the public, including potentially affected communities.<sup>32</sup> Moreover, EPA generally encourages staff to consider how public engagement could include and be accessible to a broadly representative public, including multi-lingual, multi-cultural, rural, and urban populations with differing abilities— all communicated in plain language.<sup>33</sup> EPA's policy recognizes that meaningful engagement takes time and resources, is non-linear, and is often iterative. While several statutes and regulations include public participation requirements for EPA, these statutory and regulatory requirements set a baseline, and EPA's policy provides guidance on how EPA staff can make the required participation a good experience for the public and encourages public engagement where it is not required by law.<sup>34</sup>

Under EPA's proposed meaningful engagement policy, EPA staff are encouraged to consider a three-step process to design appropriate and effective processes for meaningful engagement and public participation for particular actions or situations, including drafting a proposed regulatory action. To begin, the relevant EPA office identifies the decisions in an EPA action – including an anticipated regulatory action – that may be influenced by public input.<sup>35</sup> Then, the EPA team uses EPA's Public Participation Spectrum to match an EPA action with the appropriate level of participation. The Public Participation Spectrum is a matrix EPA has developed to ask whether the appropriate level of engagement with the public regarding a given proposed action is information and outreach, consultation and information exchange, public comments, or other levels not relevant to the rulemaking process.<sup>36</sup> After determining the appropriate level of engagement, the EPA team uses EPA's Public Participation Model to understand the types of tools and practices that can help provide meaningful engagement and meet the promise to the public.

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<sup>30</sup> EPA released translations of the draft policy in Simplified and Traditional Chinese, Spanish, Tagalog, Vietnamese, and Korean, and posted these translations on its website. EPA also offered three public informational webinars to provide an overview of the policy and to allow the public to ask questions. Interpretation and translation services were offered. After the meeting, a copy of the meeting materials and a recording of the website were posted on EPA's website. See Environmental Protection Agency, "EPA's Meaningful Involvement Policy," 2024: <https://www.epa.gov/environmentaljustice/epas-meaningful-involvement-policy>.

<sup>31</sup> This report refers primarily to the draft Meaningful Involvement Policy. Aspects of the draft policy cited in this Report, thus, may be different in the final policy. Interested members of the public should consult EPA's website for the final version of the policy, once it becomes available.

<sup>32</sup> U.S. Environmental Protection Agency, Achieving Health and Environmental Protection Through EPA's Meaningful Involvement Policy (Public Review Draft) at 8, October 2023: [https://www.epa.gov/system/files/documents/2023-12/final\\_meaningful-involvement-policy\\_eams\\_11.7.2023\\_508.pdf](https://www.epa.gov/system/files/documents/2023-12/final_meaningful-involvement-policy_eams_11.7.2023_508.pdf).

<sup>33</sup> *Id.* at 5.

<sup>34</sup> *Id.* at 10.

<sup>35</sup> *Id.* at 10–11.

<sup>36</sup> *Id.* at 10–13.

EPA's Public Participation Model describes iterative stages for designing a meaningful approach to public engagement, after identifying the EPA action and selecting a level of participation based on the Public Participation Spectrum. The stages are not compulsory and do not all have to be used.

First, the EPA team identifies communities that are likely to be interested in the rulemaking process or may be affected by an upcoming EPA action, their key demographic characteristics, and any intermediaries that may be well-placed to liaise with these communities.<sup>37</sup>

Second, the EPA team considers whether assistance may be needed to effectively engage with the public, including whether assistance may be helpful to communicate complex technical issues to a broad public.<sup>38</sup>

Third, the EPA team identifies outreach opportunities, what information shall be conveyed to the public and what media is most effective for communicating this information.<sup>39</sup> The team may consider how to provide the public with information at the earliest viable time, providing information that is accessible to a broad audience, developing materials in a way that makes it easy for external organizations to amplify EPA's efforts, and tailoring information to the target community groups.<sup>40</sup> Outreach materials may include: background information on the purpose of the proposed rule, a timetable, plain language summaries of technical materials, and a notice of when and where there will be opportunities for public engagement.<sup>41</sup>

Fourth, the EPA team conducts public consultation and participation activities.<sup>42</sup> Effective planning for public engagements may consider: early notification to give members of the public time to prepare, whether the time and location of the proposed engagement is appropriate for the target audience, using a variety of public participation methods, ensuring public engagements are accessible and that members of the public know they can request reasonable accommodations, and compliance with the relevant statutory authorities including the Paperwork Reduction Act.<sup>43</sup> EPA teams may consider multiple forms of public information solicitation and exchange, and may rely on stakeholders participating in Federal Advisory Committees, for input.<sup>44</sup>

Fifth, the EPA team reviews information received, uses input, and follows up with the feedback. After public engagement, and to the extent appropriate and consistent with legal requirements, the EPA teams briefly and clearly documents input received.<sup>45</sup> Similarly, where practicable and permissible, the EPA team provides public participants with an explanation about the outcome of the public engagement.<sup>46</sup>

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<sup>37</sup> *Id.* at 17–18.

<sup>38</sup> *Id.* at 22–24.

<sup>39</sup> *Id.* at 25–27.

<sup>40</sup> *Id.* at 27.

<sup>41</sup> *Id.* at 28.

<sup>42</sup> *Id.* at 29–31.

<sup>43</sup> *Id.* at 29–30.

<sup>44</sup> *Id.* at 31.

<sup>45</sup> *Id.* at 36–37.

<sup>46</sup> *Id.*

Lastly, the EPA team periodically evaluates and assesses the effectiveness of public participation activities.<sup>47</sup>

EPA’s meaningful engagement policy, thus, will establish general goals and principles and set out a basic process template, which EPA staff can tailor and apply to relevant decisions, including specific regulatory actions. EPA continues to develop this proposed policy.

### U.S. Department of Agriculture: Food and Nutrition Service

The Food and Nutrition Service (FNS), a component of the U.S. Department of Agriculture (USDA), is the agency responsible for increasing food security and reducing hunger, by providing children and low-income people access to food, a healthy diet, and nutritional education.<sup>48</sup> To that end, FNS is tasked with administering 16 nutrition assistance programs to ensure children, income eligible individuals, and families have equitable access to healthy, safe, and affordable foods.<sup>49</sup> These programs, which include the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and the National School Lunch Program, serve 1 in 4 Americans over the course of a year.<sup>50</sup> Input from program participants, operators, and other external partners, is particularly important for FNS’s ability to successfully implement and administer these programs. Given the critical role external partners play in the design and implementation of FNS programs, FNS has actively worked across the agency to prioritize engagement with external entities.

### Agency-Wide Strategy on External Engagement

To develop a comprehensive approach to public participation, FNS’s planning and regulatory policy teams collaborated with the USDA Office of the General Counsel, the external affairs team, and the FNS program offices to improve how best to reflect public input in the regulatory policy. Leveraging the skills and expertise across an entire agency can lead to a better work product. For example, conversations with a regulatory policy team can help an office of external engagement understand what aspects of a rulemaking process could benefit from public input and, in turn, an office of external engagement may be better placed than a regulatory policy team to reach out to relevant external parties.

FNS developed an agency framework that provides clarity and a set of ground rules on how to engage with the public throughout the rulemaking process, from conception to implementation of the final rule. FNS identified the specific types of public engagement that are permissible at each stage of the rulemaking process, consistent with best practices and the applicable legal standards, including the requirements of the Paperwork Reduction Act.

FNS tailors its engagement strategies for different rulemakings according to the context and nature of each rulemaking. When starting to plan rulemaking, FNS identifies relevant partners and outside organizations, as well as the issues and questions on which external feedback will be needed to inform policy. Based on insights from early engagement, additional topics surface, and the agency refines questions and topics for exploration.

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<sup>47</sup> *Id.* at 37–39.

<sup>48</sup> U.S. Department of Agriculture, Food and Nutrition Service, “About FNS,” 2023: <https://www.fns.usda.gov/about-fns>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

After identifying the main anticipated affected and interested parties for a given planned rule, FNS develops strategies for approaching affected members of the public. FNS puts an emphasis on engaging all those who are impacted by the proposed rule, especially those that have not previously engaged or who do not have formal representation at the national level. This requires strategic, targeted outreach. FNS has built strong partnerships with organizations – like professional associations, advocacy groups, and faith-based groups – that are willing to serve as intermediaries, identifying and convening interested parties, hosting listening sessions, and in some cases providing aggregated information. These partnerships have been critical to successful engagement, as organizations have leveraged their communication channels to reach broadly and to engage all potentially affected groups, including specific underrepresented groups.

Lastly, FNS’s approach underscores the importance of continued engagement throughout the rulemaking process. While early participation, before a proposed rule is published, may provide valuable input, continued engagement is important to ensure effective implementation of a final action. Thus, engagement opportunities like listening sessions and workshops, where FNS informs partners about the finalized action, are also critical components of public participation in the rulemaking process.

Although FNS tailors its agency-wide approach to public engagement to public engagement to address the needs of specific regulations, recent engagement on the school nutrition meal standards rule exemplifies its multi-faceted approach to public engagement.

#### Updates to School Meal Nutrition Standards

Through the school meals programs – including the National School Lunch Program (NSLP) and School Breakfast Program (SBP) – the Federal government reimburses schools and residential child care institutions to provide nutritionally balanced, low-cost or no-cost breakfasts and lunches to tens of millions of eligible children every day.<sup>51</sup> FNS issues regulations defining the nutrition standards that participating schools must follow. These nutrition standards align with the goals of the Dietary Guidelines for Americans, a set of evidence-based recommendations that provide guidance on healthy eating patterns, that are published and updated every five years by the USDA and the U.S. Department of Health and Human Services (HHS). While meals offered must meet Federal nutrition standards, local school food authorities decide the specific foods to offer and how to procure and prepare those meals.

Prior to finalizing the updated school meal nutrition standards, FNS carried out a multi-phase, intensive engagement effort.<sup>52</sup> Throughout 2022, USDA held over 50 listening sessions with State agencies, school food professionals, education leaders, advocacy organizations (including parent organizations), Tribal partners, professional associations, food industry, and other Federal agencies to inform the proposed rule.<sup>53</sup> FNS prioritized convening affected parties with often underrepresented perspectives, including

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<sup>51</sup> U.S. Department of Agriculture, Food and Nutrition Service, “National School Lunch Program,” 2024: <https://www.fns.usda.gov/nslp>.

<sup>52</sup> U.S. Department of Agriculture, Food and Nutrition Service, Final Rule: Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans, 89 Fed. Reg. 31,962, April 25, 2024: <https://www.federalregister.gov/documents/2024/04/25/2024-08098/child-nutrition-programs-meal-patterns-consistent-with-the-2020-2025-dietary-guidelines-for>.

<sup>53</sup> U.S. Department of Agriculture, Food and Nutrition Service, Proposed Rule: Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans, 88 Fed. Reg. 8050, 8053–8054, February 7, 2023: <https://www.federalregister.gov/documents/2023/02/07/2023-02102/child-nutrition-programs-revisions-to-meal-patterns-consistent-with-the-2020-dietary-guidelines-for>.



staff at small, rural schools and Tribally-operated schools. The agency provided background information about the current standards, the constraints in law, and the questions to be addressed through rulemaking in order to equip interested parties to engage meaningfully, and posed targeted questions based on each group’s expertise. These conversations - along with numerous other informal engagements – yielded critical information about program operations and challenges, as well as ideas that informed the proposed rule in tangible ways. For example, the final rule provides significant lead time for schools to implement new added sugar limits for school meals, reflecting feedback from schools and industry partners about how long it takes for companies to reformulate products, and for schools to procure products consistent with updated standards. Similarly, based on input from industry partners about the added cost of reformulating products multiple times, the final rule includes one reduction to sodium limits for meals, with multiple years of lead time.

Throughout 2023, FNS conducted 116 engagements to encourage relevant parties to comment on the proposed meal standards rule. As a result, USDA received and carefully considered over 136,000 public comments to inform the final rule.<sup>54</sup>

Public input helped the agency determine the best approach for strengthening the school meal nutrition standards and advancing child health and well-being, while ensuring standards in the final rule are realistic for industry and schools to meet. For example, while the proposed rule considered options for limiting flavored milk for grades K-8, the final rule continues to allow flavored milks, recognizing that the public comments noted concerns about declining levels of milk consumption among school-aged children, and that flavored milk – a more palatable option for some children – may improve milk consumption and reduce milk waste.<sup>55</sup>

In addition to informing the regulations, public engagement provided opportunities to educate interested parties about the process, to build trust and understanding, and to identify partnership opportunities. And the regulations are just one piece of the puzzle. FNS continues to build on these efforts to support successful implementation of the updated meal standards going forward – for example, by keeping a pulse on questions that come up, partnering with intermediary organizations to host trainings and workshops, soliciting external feedback about how FNS can support schools as they work to meet updated standards, and working with industry partners to make sure schools can get the ingredients and products they need.

## Case Studies: Rule-Specific Strategies

### Department of Labor: National Apprenticeship System

Registered apprenticeships help train Americans and open the doors to good-paying jobs.<sup>56</sup> A registered apprenticeship is an industry-driven career pathway through which employers can develop and prepare

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<sup>54</sup> U.S. Department of Agriculture, Food and Nutrition Service, Final Rule: Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans, 89 Fed. Reg. 31,962, 31,965, April 25, 2024: <https://www.federalregister.gov/documents/2024/04/25/2024-08098/child-nutrition-programs-meal-patterns-consistent-with-the-2020-2025-dietary-guidelines-for>.

<sup>55</sup> U.S. Department of Agriculture, Food and Nutrition Service, “Updates to the School Nutrition Standards: Milk,” 2024: [https:// www.fns.usda.gov/cn/school-nutrition-standards-updates/milk](https://www.fns.usda.gov/cn/school-nutrition-standards-updates/milk).

<sup>56</sup> U.S. Department of Labor, Apprenticeship USA, “Registered Apprenticeship Program,” <https://www.apprenticeship.gov/employers/registered-apprenticeship-program>.

their future workforces and individuals can obtain paid training with a mentor, work experience, progressive wage increases, classroom instruction, and a portable, nationally-recognized credential. A Registered Apprenticeship Program (RAP), approved by the U.S. Department of Labor (DOL) or a State Apprenticeship Agency, is designed to help channel job-seekers to opportunities in specific industries, and to then offer on-site training and credential accreditation.

Recognizing the need for an updated regulatory framework to strengthen RAPs, the Department of Labor has proposed a regulation, *National Apprenticeship System Enhancements*, to enhance worker protections and equity, improve the quality of registered apprenticeship programs, and clearly establish critical pipelines to RAPs.<sup>57</sup> In developing its proposed rule, DOL sought extensive input from a variety of stakeholders, using a multi-faceted strategy.

#### Advisory Committee on Apprenticeships

First, DOL sought to resurrect the Advisory Committee on Apprenticeships (ACA), which provides advice and recommendations to the Secretary of Labor on ways to better utilize the apprenticeship training model.<sup>58</sup> The ACA is composed of approximately 30 members with balanced representation of employers, labor organizations, and members of the public. Although the ACA has been in existence for over 80 years, it had recently fallen into disuse.<sup>59</sup> In 2021, anticipating a broader effort to strengthen RAPs, DOL began rebuilding the ACA, appointing new members so the ACA could begin holding public meetings.<sup>60</sup> Between 2021 and 2023, the ACA held seven public meetings, remotely and in cities across the United States, engaging with apprenticeship stakeholders.<sup>61</sup> In May 2022, informed by these stakeholder meetings and its own deliberations and findings, the ACA published an Interim Report, consisting of 147 recommendations for ways DOL could improve and expand the Registered Apprenticeship System.<sup>62</sup> These recommendations offered an early foundation for the subsequent proposed rule.

#### National Online Dialogue

Second, in 2022, DOL held a National Online Dialogue, led by the Office of Apprenticeships.<sup>63</sup> The National Online Dialogue asked participants, including various partners and stakeholders, to describe

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<sup>57</sup> U.S. Department of Labor, Employment and Training Administration, Proposed Rule: National Apprenticeship System Enhancements, 89 Fed. Reg. 3118, January 17, 2024:

<https://www.federalregister.gov/documents/2024/01/17/2023-27851/national-apprenticeship-system-enhancements>.

<sup>58</sup> The White House, “Fact Sheet: Biden Administration to Take Steps to Bolster Registered Apprenticeships,” February 17, 2021: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/17/fact-sheet-biden-administration-to-take-steps-to-bolster-registered-apprenticeships/>.

<sup>59</sup> U.S. Department of Labor, Apprenticeship USA, “Advisory Committee on Apprenticeship,” <https://www.apprenticeship.gov/advisory-committee-apprenticeship>.

<sup>60</sup> U.S. Department of Labor Blog, Relaunching the Advisory Committee on Apprenticeship, May 3, 2021: <https://blog.dol.gov/2021/05/03/relaunching-the-advisory-committee-on-apprenticeship>.

<sup>61</sup> U.S. Department of Labor, Apprenticeship USA, Advisory Committee on Apprenticeships: Meetings (2021-2023 Term): <https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings-archive>.

<sup>62</sup> Advisory Committee on Apprenticeship, Biennial Report to the Secretary of Labor, May 10, 2023: <https://www.apprenticeship.gov/sites/default/files/Final%20ACA%20Biennial%20Report%20-%20May%2010%202023.pdf>.

<sup>63</sup> U.S. Department of Labor, Employment and Training Administration, Proposed Rule: National Apprenticeship System Enhancements, 89 Fed. Reg. 3118, 3124, January 17, 2024:

what they believed to be the optimal implementation of the registered apprenticeship model.<sup>64</sup> The questions presented in the National Online Dialogue were informed by issues first flagged by the ACA.

DOL's Office of Disability Employment Policy used a platform that is easier to navigate, more efficient, more flexible, and more accessible than traditional input strategies such as in-person dialogue. After submitting a registration form, participants in the platform can submit "ideas," which are brief responses to a series of topics or questions. Other participants can then "like" particular "ideas," submit "comments" in response to particular "ideas," or submit their own "ideas." The platform thus allows for a more dynamic exchange of public ideas, in a way that cannot be easily achieved by public comments.

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The National Online Dialogue began with a broad outreach effort. To launch the online dialogue and generate excitement around the topic, DOL hosted an X Fireside chat on August 16, 2022. Then, to ensure a wide range of perspectives, DOL and other agencies conducted numerous strategic outreach efforts, including targeted eblasts, emails to targeted groups such as registrants of earlier National Online Dialogues, publishing announcements in newsletters, and posting on USDOL's social media accounts. In total, over 40,000 emails announcing the Dialogue were sent.<sup>66</sup>

For the National Online Dialogue on Apprenticeships, between August 15 and September 12, 2022, participants submitted 175 ideas, 148 comments, and 440 votes. 2,525 "visitors" accessed the website, 278 "visitors" registered by verifying their email, and 158 "visitors" participated by submitting an idea, comment, or like. DOL then reviewed the ideas, comments, and likes submitted, and prepared a summary report, which helped inform the proposed rule.<sup>67</sup>

### Listening Sessions

Lastly, DOL also held a series of listening sessions that were ultimately essential to inform development of the proposed rule.<sup>68</sup> In 2021, virtual listening sessions were coordinated by DOL in cooperation with various partners and stakeholders to hear perspectives on the current state of the National Apprenticeship System and to gather ideas and suggestions on ways to modernize registered apprenticeship programs.<sup>69</sup> These included sessions targeting industry stakeholders, labor union stakeholders, apprenticeship stakeholders, and stakeholders with perspectives on diversity, equity,

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<https://www.federalregister.gov/documents/2024/01/17/2023-27851/national-apprenticeship-system-enhancements>.

<sup>64</sup> U.S. Department of Labor, "U.S. Department of Labor Opens Online Dialogue With Stakeholders to Expand Access Among Underrepresented Communities to Registered Apprenticeships," November 16, 2021:

<https://www.dol.gov/newsroom/releases/eta/eta20211116>.

<sup>65</sup> U.S. Department of Labor's Advancing the National Apprenticeship System Online Dialogue: August 15-September 12, 2022: Summary Report, 7–11, February 2023: [https://epolicyworks.com/wp-content/uploads/2023/02/Dialogue-Summary-Report\\_Advancing-Apprenticeships\\_Accessible.pdf](https://epolicyworks.com/wp-content/uploads/2023/02/Dialogue-Summary-Report_Advancing-Apprenticeships_Accessible.pdf).

<sup>66</sup> *Id.* at 4.

<sup>67</sup> *Id.* at 4–5.

<sup>68</sup> U.S. Department of Labor, Employment and Training Administration, Proposed Rule: National Apprenticeship System Enhancements, 89 Fed. Reg. 3118, 3123, January 17, 2024:

<https://www.federalregister.gov/documents/2024/01/17/2023-27851/national-apprenticeship-system-enhancements>.

<sup>69</sup> U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, 2021 Apprenticeship Listening Sessions, December 2021: <https://www.regulations.gov/document/ETA-2023-0004-0004ns.gov>.

inclusion, and accessibility.<sup>70</sup> And in 2023, DOL also held virtual listening sessions, in which partners and stakeholders were given the opportunity to share perspectives on the current state of the National Apprenticeship System and to share policy recommendations for ways to strengthen and modernize the system.<sup>71</sup> Questions for these sessions were developed, in part, by reviewing the ACA's 2022 Interim Report and input received during the National Online Dialogue.

## Federal Communications Commission: Prevention and Elimination of Digital Discrimination

On November 15, 2023, the Federal Communications Commission (FCC) adopted rules implementing section 60506 of the Infrastructure Investment and Jobs Act of 2021 (Section 60506) that establish a framework to facilitate equal access to broadband internet access service to historically unserved and underserved communities throughout the nation.<sup>72</sup> Pursuant to Section 60506, the FCC's rules to facilitate equal broadband access, taking into account issues of technical and economic feasibility, aim to prevent digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin, and identify steps for the Commission to take to eliminate such discrimination. The rules seek to accomplish Congress's objective of ensuring all people in the United States benefit from equal access to broadband.<sup>73</sup>

Given broad interest in the policy issue, FCC sought to develop a strategy for robust public engagement. The FCC created the Task Force to Prevent Digital Discrimination (Task Force).<sup>74</sup> The Task Force was charged with coordinating the development of rules and policies to combat digital discrimination and promote equal access to broadband, overseeing the development of model state and local policies, and improving how FCC sought feedback from persons facing digital discrimination in their communities. With a specific mandate to seek public input, the Task Force adopted a variety of strategies for ensuring broad and inclusive public engagement.

### Disseminating Information Broadly

The Task Force launched a dedicated website to serve as an informational hub about the Task Force and FCC actions in FCC's digital discrimination rulemaking, as well as programs and events in support of the Task Force's work. The website included a dedicated email address for stakeholders to submit meeting requests to the Task Force Leadership Team and members.<sup>75</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> U.S. Department of Labor, Employment and Training Administration, A Listening Session for National Apprenticeship System Enhancements, May 5, 2023, ETA-2023-0004-0003.

<sup>72</sup> Federal Communications Commission, Final Rule: The Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, 89 Fed. Reg. 4128, January 22, 2024: <https://www.federalregister.gov/documents/2024/01/22/2023-28835/the-infrastructure-investment-and-jobs-act-prevention-and-elimination-of-digital-discrimination>.

<sup>73</sup> Federal Communications Commission News, "FCC Adopts Rules to Prevent and Eliminate Digital Discrimination: Implements First Bipartisan Broadband Access Anti-Discrimination Law", November 15, 2023: <https://docs.fcc.gov/public/attachments/DOC-398477A1.pdf>.

<sup>74</sup> Federal Communications Commission, "Task Force to Prevent Digital Discrimination," 2024: <https://www.fcc.gov/task-force-prevent-digital-discrimination>.

<sup>75</sup> *Id.*

## Targeted Outreach to Stakeholders

Prior to publication of a proposed rule, the Task Force engaged in significant outreach nationwide to understand the depth of problems in accessing broadband, particularly as experienced by persons in historically excluded, low-income, rural, and marginalized communities.<sup>76</sup> Beginning in Spring 2022, the Task Force Leadership Team accepted meeting requests from interested stakeholders, including members of the public; state, local and Tribal governments; public interest advocates; members of academia; and industry (e.g., service providers and associational organizations). The Task Force and FCC staff met with local advisory groups, state and local government representatives and other industry stakeholders to discuss an array of topics, such as industry best practices, current impact on the state and local levels, policies, and more. In Fall 2022, the Task Force proactively reached out to public interest and disability community advocates for their participation in four dedicated listening sessions. Following these sessions, summaries of the issues discussed, and perspectives shared were included in the record for the FCC rulemaking.

## Direct Engagement with Consumers

At the same time, the Task Force sought input directly from consumers. To that end, on January 25, 2023, the Task Force released a Broadband Access Experience Form for consumers to state their experience with accessing broadband internet.<sup>77</sup> The Task Force explained that the experience shared by consumers help inform the work of the Commission.

## Public Comment

In March 2022, FCC adopted a Notice of Inquiry to commence a proceeding on how to prevent and eliminate digital discrimination of access to ensure that everyone has equal access to broadband internet access service. The Notice of Inquiry sought comment on how to construe and give meaning to the statutory language in section 60506 and how to fulfill Congress's objective.<sup>78</sup> In December 2022, FCC released a notice of proposed rulemaking (NPRM) seeking focused comment on potential rules to address digital discrimination of access. FCC received more than 1,400 pages of record comments from a wide range of stakeholders including public interest organizations, broadband internet access providers, state, local and Tribal governments, industry advocacy organizations, research institutes, and individual members of the public.<sup>79</sup>

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<sup>76</sup> Federal Communications Commission, Final Rule: The Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, 89 Fed. Reg. 4128, 4131–4132, January 22, 2024:

<https://www.federalregister.gov/documents/2024/01/22/2023-28835/the-infrastructure-investment-and-jobs-act-prevention-and-elimination-of-digital-discrimination>.

<sup>77</sup> Federal Communications Commission News, "FCC Announces New Outreach for Consumer Stories About Broadband Access: Seeks Input from Consumers About Experiences in Obtaining Broadband Access to Inform the Commission's Combatting Digital Discrimination Initiative," January 25, 2023:

<https://docs.fcc.gov/public/attachments/DOC-390832A1.pdf>.

<sup>78</sup> Federal Communications Commission, Notice of Inquiry, 37 FCC Rcd 4198, March 16, 2022:

<https://www.fcc.gov/document/fcc-initiates-inquiry-preventing-digital-discrimination>.

<sup>79</sup> Federal Communications Commission, Final Rule: The Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, 89 Fed. Reg. 4128, 4132, January 22, 2024:

<https://www.federalregister.gov/documents/2024/01/22/2023-28835/the-infrastructure-investment-and-jobs-act-prevention-and-elimination-of-digital-discrimination>.

## Listening Sessions

In 2023, after the public comment period had closed, the Task Force hosted five public listening sessions to gain additional information and understanding from affected communities, state, local, and Tribal governments, public interest advocates, and providers about challenges, barriers, and experiences in ensuring all people benefit from equal access to broadband. These sessions provided an opportunity for stakeholders to share research studies, survey findings and statistics regarding the current state of the digital divide; gaps in current policies and the industry; recommendations; consumer stories; and best practices. The public listening sessions were held in Los Angeles, CA; Baltimore, MD; Washington, DC; New York City, NY; and Topeka, KS.<sup>80</sup>

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<sup>80</sup> Federal Communications Commission, “Task Force to Prevent Digital Discrimination,” 2024: <https://www.fcc.gov/task-force-prevent-digital-discrimination>.

## BEST PRACTICES FOR PUBLIC ENGAGEMENT

When designing opportunities for public engagement, agencies should consider some best practices: proactively seeking early input, supporting robust participation during the public comment process, developing inclusive participation including through the use of intermediaries, and demonstrating the impact of participation. The following sections highlight how various agencies have sought to incorporate these best practices into their public participation efforts.

### Seeking Early Input

Early input, before a Notice of Proposed Rulemaking is published, can help agencies develop rules that are informed by a broad range of perspectives. Agencies have a variety of options for seeking early public engagement, including publishing an Advance Notice of Proposed Rulemaking (ANPRM) or a targeted request for information (RFIs), organizing targeted listening sessions, or hosting broad listening sessions.

In doing so, agencies should proactively conduct outreach to groups that may face greater challenges participating in the process at early stages. Take, for example, FWS's rule revising the regulations for the issuance of permits for eagle incidental take and eagle nest take.<sup>81</sup> To seek early public input, FWS issued an ANPRM.<sup>82</sup> Aware of the specific impact the rule was likely to have on Tribes, FWS provided written notification to Tribes about the ANPRM and, subsequently, the proposed rule and offered government-to-government consultation.<sup>83</sup> FWS conducted Tribal informational webinars during the ANPRM public comment period as well as prior to the publication of the proposed rule. FWS then conducted two additional Tribal informational webinars during the proposed rule public comment period as well as a bilateral information session.<sup>84</sup> FWS conducted a final Tribal informational webinar after the rule was finalized regarding the changes the Service made in developing the final rule.<sup>85</sup>

Early listening sessions with stakeholders can provide valuable input, both for a specific proposed action and for the agency's policy priorities writ large. The Administration for Children and Families (ACF), for instance, has made engagement with program participants a top priority in its overall approach to its mission. Since 2022, and as part of its Strategic Plan, ACF has sought to center and integrate the perspectives and experiences of program participants in the design, management, evaluation, and decision-making of ACF programs and operations.<sup>86</sup> Starting in 2022, ACF has held numerous listening sessions with parents and caregivers from diverse backgrounds with a range of experiences with ACF

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<sup>81</sup> U.S. Department of Interior, Fish and Wildlife Service, Final Rule: Permits for Incidental Take of Eagles and Eagle Nests 89 Fed. Reg. 9920, February 12, 2024: <https://www.federalregister.gov/documents/2024/02/12/2024-02182/permits-for-incidental-take-of-eagles-and-eagle-nests>.

<sup>82</sup> U.S. Department of Interior, Fish and Wildlife Service, Advance Notice of Proposed Rulemaking; Request for Comments: Eagle Permits; Incidental Take, 86 Fed. Reg. 51,094, September 14, 2021: <https://www.federalregister.gov/documents/2021/09/14/2021-19717/eagle-permits-incidental-take>.

<sup>83</sup> U.S. Department of Interior, Fish and Wildlife Service, Final Rule: Permits for Incidental Take of Eagles and Eagle Nests 89 Fed. Reg. 9920, 9956, February 12, 2024: <https://www.federalregister.gov/documents/2024/02/12/2024-02182/permits-for-incidental-take-of-eagles-and-eagle-nests>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Administration for Children & Families, Strategic Plan, 2, January 2022: [https://acfmain-content-stage.acf.hhs.gov/sites/default/files/documents/ACF-Strategic-Plan-Jan-2022-FINAL\\_1.pdf](https://acfmain-content-stage.acf.hhs.gov/sites/default/files/documents/ACF-Strategic-Plan-Jan-2022-FINAL_1.pdf).

programs to better understand their needs, deliver more impactful programming, and improve outcomes for children and families.<sup>87</sup> Parent leader groups convened for listening sessions included parents and caregivers of children with behavioral needs, fathers, Spanish-speaking parents and caregivers, and LGBTQI+ parents, foster parents, and kinship caregivers.<sup>88</sup> These listening sessions have helped ACF identify policy priorities, including for rulemaking.<sup>89</sup>

When implementing these policy priorities through rulemaking, ACF has sought further public input through early listening sessions. For example, as part of a package of rules designed to strengthen the child welfare system, ACF recently adopted a rule that seeks to ensure LGBTQI+ children in the care of a state welfare agency will be placed in foster homes where they will be protected from mistreatment related to their sexual orientation or gender identity.<sup>90</sup> This rule was informed by input ACF received from national site visits, public comments, and listening sessions with LGBTQI+ youth with lived experience in foster care, as well as parents, caregivers, and providers.<sup>91</sup> Listening sessions sought both general input from experience as well as more specific input on particular issues. ACF sought to ensure that participants at these sessions were representative of the broader population of LGBTQI+ youth with lived experience in foster care, considering factors like geographic and demographic diversity. ACF carried out listening sessions with LGBTQI+ youth in partnership with youth service organizations that were able to help train, prepare, and support the lived experience leaders, including providing youth with discussion questions in advance and identifying areas of interest for response among individual attendees, as well as providing training on how to share personal information safely and offering emotional support before and after the listening sessions for young people sharing experiences of hardship and trauma. These listening sessions helped root ACF's policymaking in the experiences of communities affected by the policies under consideration.

Agencies should also consider working with trusted intermediaries to better understand the challenges faced by affected communities even before a proposed rule is issued. When developing a proposed rule to address the serious problems that individuals with disabilities using wheelchairs and scooters face when traveling by air, the Department of Transportation (DOT) turned to trusted intermediaries outside and inside the government.<sup>92</sup> In March 2022, DOT held a Public Meeting on Air Travel by Persons Who Use Wheelchairs, to listen and learn from individuals who use wheelchairs on the difficulties that they encounter during air travel.<sup>93</sup> Trusted intermediaries, notably disability rights groups, played an

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<sup>87</sup> Administration for Children & Families, Parent Engagement Report, 4, February 2024: <https://www.acf.hhs.gov/sites/default/files/documents/main/ACF%20Parent%20Report%202024.pdf>.

<sup>88</sup> *Id.* at 5.

<sup>89</sup> Administration for Children & Families, "HHS Announces Historic Child Welfare Package to Expand Support and Equity in Child Welfare System," September 27, 2023: <https://www.acf.hhs.gov/media/press/2023/hhs-announces-historic-child-welfare-package-expand-support-and-equity-child>.

<sup>90</sup> Children's Bureau; Administration on Children, Youth and Families; Administration for Children and Families; Department of Health and Human Services, Final Rule: Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children, 89 Fed. Reg. 34,818, April 30, 2024: <https://www.federalregister.gov/documents/2024/04/30/2024-08982/designated-placement-requirements-under-titles-iv-e-and-iv-b-for-lgbtqi-children>.

<sup>91</sup> *Id.* at 34,822, n. 13.

<sup>92</sup> Office of the Secretary, Department of Transportation, Notice of Proposed Rulemaking: Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs, 89 Fed. Reg. 17,766, March 12, 2024: <https://www.federalregister.gov/documents/2024/03/12/2024-04729/ensuring-safe-accommodations-for-air-travelers-with-disabilities-using-wheelchairs>.

<sup>93</sup> *Id.* at 17,769.



important role in facilitating participation by disabled persons. Moreover, in 2019, as mandated by the 2018 Federal Aviation Administration Act, DOT established the Air Carrier Access Act Advisory Committee to identify and assess barriers to accessible air travel, and recommend improvements.<sup>94</sup> The ACAA Advisory Committee included representatives from airlines, air travelers, and civil society.<sup>95</sup> DOT tasked the ACAA Advisory Committee with gathering information on the barriers encountered by individuals with disabilities in obtaining guide and wheelchair assistance at airports and on aircraft.<sup>96</sup> Given its composition, the ACAA Advisory Committee was able to serve as a bridge between stakeholders and DOT. Moreover, stakeholders, including numerous disability advocacy organizations, directly assisted DOT in developing the proposed rule, and DOT also reached out to the US Access Board, a federal agency that promotes equality for people with disabilities, to develop new safety and accessibility standards.

### Supporting Robust Participation During the Public Comment Period

Once a proposed rule is published, the public comment process offers the main channel for public input into rulemaking. At this stage, agencies can encourage broad participation by ensuring that members of the public are well-informed of the proposed rule and that members of the public can easily submit public comments. Even during the public comment period, consistent with applicable law, agencies can hold public hearings and listening sessions to better engage with the public concerning the proposed regulatory actions.

One strategy that agencies have used is a dedicated website for specific proposed rules. These websites allow agencies to post all material related to a proposed rule in a single place, which may be more accessible or easy to navigate for the public. A dedicated website also offers agencies a platform for a multi-pronged strategy for increasing public engagement.

For example, the Bureau of Land Management (BLM) created dedicated webpages for several of its recent rulemaking efforts related to the use of public lands, which it used to facilitate access to multiple public engagement opportunities.<sup>97</sup> During the comment period, BLM hosted a variety of public outreach activities.<sup>98</sup> BLM held two virtual public meetings and three in-person meetings to provide an overview of the proposed rule and answer questions from the public. It posted a video recording of one of the virtual meetings and presentation slides in English and Spanish.<sup>99</sup> BLM also posted a reviewer

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<sup>94</sup> *Id.* at 17,771.

<sup>95</sup> U.S. Department of Transportation, “Air Carrier Access Act Advisory Committee (ACAA Advisory Committee),” 2023: <https://www.transportation.gov/airconsumer/ACAACCommittee>.

<sup>96</sup> Air Access Act Advisory Committee, Final Report: Air Carrier Access Act Advisory Committee Recommendations, 2, February 4, 2022: <https://www.regulations.gov/document/DOT-OST-2018-0204-0040>.

<sup>97</sup> U.S. Department of Interior, Bureau of Land Management. “Public Lands Rule | Proposed (2023),” 2023: <https://www.blm.gov/public-lands-rule/public-lands-rule-proposed>.

<sup>98</sup> U.S. Department of Interior, Bureau of Land Management, Proposed Rule: Conservation and Landscape Health, 88 Fed. Reg. 19,583, April 3, 2023: <https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health>.

<sup>99</sup> U.S. Department of Interior, Bureau of Land Management. “Public Lands Rule | Proposed (2023),” 2023: <https://www.blm.gov/public-lands-rule/public-lands-rule-proposed>; U.S. Department of Interior, Bureau of Land Management, “La Norma sobre Tierras Públicas,” <https://www.blm.gov/about/laws-and-regulations/public-lands-rule/la-norma-sobre-tierras-publicas>.

guide and fact sheet,<sup>100</sup> frequently asked questions on topics of interest,<sup>101</sup> infographics,<sup>102</sup> and other background information to further public understanding of the proposed rule.

Another approach is to prepare plain-language fact sheets or translated fact sheets that distill and complement an NPRM. The Department of Justice (DOJ) took this approach in proposing to revise the regulations implementing title II of the Americans with Disabilities Act to make more accessible to the public the services, programs, and activities offered by State and local governments through their Medical Diagnostic Equipment (MDE).<sup>103</sup> DOJ issued a fact sheet describing the proposed in plain language to help ensure that members of the public had an opportunity to effectively comment.<sup>104</sup> DOJ also participated in a Community Engagement Call, and provided a plain language overview of the NPRM and explained how the public could submit comments on the proposed rule.<sup>105</sup>

To complement written public comments, agencies can also hold public hearings where members of the public can submit testimony on the record. As an example, the Mine Safety and Health Administration (MSHA) held public hearings soliciting comments at three different locations (Arlington, VA; Beckley, WV; and Denver, CO) during the comment period on its proposal to better protect miners against occupational exposure to respirable crystalline silica and improve respiratory protection.<sup>106</sup> All three public hearings were available both virtually and in-person to facilitate the participation of the public, small businesses and organizations that represent them, and all other stakeholders.<sup>107</sup> MSHA also attended a Small Business Labor Safety Roundtable organized by the SBA's Office of Advocacy to discuss

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<sup>100</sup> U.S. Department of Interior, Bureau of Land Management, "BLM's Proposed Public Lands Rule – Reviewer's Guide," May 2023: <https://muleapi.blm.gov/sites/default/files/docs/2023-05/Public%20Lands%20Rule%20-%20reviewer%20guide.pdf>; U.S. Department of Interior, Bureau of Land Management, "FACT SHEET: Public Lands Rule," [https://www.blm.gov/sites/default/files/docs/2024-04/PLR\\_general-factsheet\\_508.pdf](https://www.blm.gov/sites/default/files/docs/2024-04/PLR_general-factsheet_508.pdf);

<sup>101</sup> U.S. Department of Interior, Bureau of Land Management, "Frequently Asked Questions: Land Health in the Proposed Public Lands Rule," <https://www.blm.gov/sites/default/files/docs/2023-07/Public%20Lands%20Rule%20-%20Land%20Health%20FAQ.pdf>; U.S. Department of Interior, Bureau of Land Management, "Frequently Asked Questions: BLM Proposed Public Lands Rule and Renewable Energy," <https://www.blm.gov/sites/default/files/docs/2023-06/Proposed%20Public%20Lands%20Rule%20and%20Renewable%20Energy%20FAQs%20-%2006-4-23.pdf>.

<sup>102</sup> U.S. Department of Interior, Bureau of Land Management, "Public Lands Rule: Protecting, Restoring, Making Informed Management Decisions," <https://www.blm.gov/sites/default/files/docs/2024-04/BLM-Final-Public-Land-Rule-Infographic.pdf>.

<sup>103</sup> U.S. Department of Justice, Proposed Rule: Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities, 89 Fed. Reg. 2183, January 12, 2024: <https://www.federalregister.gov/documents/2024/01/12/2024-00553/nondiscrimination-on-the-basis-of-disability-accessibility-of-medical-diagnostic-equipment-of-state>.

<sup>104</sup> U.S. Department of Justice, Civil Rights Division, ADA.gov, "Fact Sheet: Notice of Proposed Rulemaking on Accessibility of Medical Diagnostic Equipment" April 8, 2024: <https://www.ada.gov/resources/2024-01-10-mde-nprm/>.

<sup>105</sup> Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions, Department of Justice, Nondiscrimination on the Basis of Disability by State and Local Governments: Medical Diagnostic Equipment, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=1190-AA78>.

<sup>106</sup> U.S. Department of Labor, Mine Safety and Health Administration, Final Rule: Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection, 89 Fed. Reg. 28,218, April 18, 2024: <https://www.federalregister.gov/documents/2024/04/18/2024-06920/lowering-miners-exposure-to-respirable-crystalline-silica-and-improving-respiratory-protection>.

<sup>107</sup> U.S. Department of Labor, Mine Safety and Health Administration, "Notice of Silica Stakeholder Meetings," <https://www.msha.gov/notice-silica-stakeholder-meetings>.

the proposal.<sup>108</sup> MSHA considered all testimonies and written comments regarding its proposal, including its regulatory alternatives prior to issuing its final rule.

Likewise, agencies can hold listening sessions during the public comment period. While listening sessions are not meant as a substitute for the public comment process, they offer an additional mechanism for members of the public to learn about and express their views on a proposed action. The Department of Housing and Urban Development (HUD) sought to better inform the public about a proposed rule concerning floodplain management and the protection of wetlands to improve the resilience of HUD-assisted housing projects, in order to strengthen the ability of members of the public to effectively submit public comments. HUD engaged in stakeholder outreach through six listening sessions, two of which included a webinar and conference call with Tribal leaders.<sup>109</sup> The four additional live listening sessions were open to the public, although sessions were targeted towards local government officials, Tribal representatives, housing industry representatives, and the general public respectively.<sup>110</sup> These sessions were intended as informative listening sessions in which HUD provided an overview of the proposed rule and a description of opportunities for members of the public to comment.

The Small Business Administration (SBA) took a similar approach with respect to its Small Business Investment Company (SBIC) Investment Diversification and Growth rulemaking process.<sup>111</sup> The SBIC Investment Diversification and Growth Rule is intended to increase access and diversify funding for the small business, startup, and investment management communities. During the public comment period, SBA hosted a virtual webinar to explain the new proposed rule and encourage the public to submit comments.<sup>112</sup> SBA encouraged members of the public to submit questions in advance of the webinar to a dedicated email address, and members of the public could submit additional questions via a Q&A chat feature during the event.<sup>113</sup>

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<sup>108</sup> U.S. Department of Labor, Mine Safety and Health Administration, Final Rule: Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection, 89 Fed. Reg. 28,218, 28,400, April 18, 2024: <https://www.federalregister.gov/documents/2024/04/18/2024-06920/lowering-miners-exposure-to-respirable-crystalline-silica-and-improving-respiratory-protection>.

<sup>109</sup> U.S. Department of Housing and Urban Development, Final Rule: Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard, 89 Fed. Reg. 30,850, 30,861, April 23, 2024: <https://www.federalregister.gov/documents/2024/04/23/2024-06246/floodplain-management-and-protection-of-wetlands-minimum-property-standards-for-flood-hazard>.

<sup>110</sup> *Id.*

<sup>111</sup> U.S. Small Business Administration, Final Rule: Small Business Investment Company Investment Diversification and Growth, 88 Fed. Reg. 45,982, July 18, 2023: <https://www.federalregister.gov/documents/2023/07/18/2023-13981/small-business-investment-company-investment-diversification-and-growth>.

<sup>112</sup> U.S. Small Business Administration, Proposed Rule: Small Business Investment Company Investment Diversification and Growth, 87 Fed. Reg. 63,436, October 19, 2022: <https://www.federalregister.gov/documents/2022/10/19/2022-22340/small-business-investment-company-investment-diversification-and-growth>.

<sup>113</sup> U.S. Small Business Administration, SBA Small Business Investment Company (SBIC) Proposed Regulations Webinar, 87 Fed. Reg. 68,109, November 14, 2022: <https://www.federalregister.gov/documents/2022/11/14/2022-24714/sba-small-business-investment-company-sbic-proposed-regulations-webinar>.

## Inclusive Engagement

Effective public engagement seeks to create inclusive opportunities for all interested parties, including members of underserved communities, to provide input on proposed actions. To do so, agencies should consider whether any particular steps would make it easier for members of affected communities to participate.

For example, if a proposed rule is likely to affect people with limited English proficiency, an agency may consider providing some form of language accommodations. FWS took this approach with its rule to increase protection for African elephants in light of the recent rise in international trade of live African elephants and to clarify the existing enhancement requirements during the evaluation of an application for a permit to import African elephant sport-hunted trophies. During the comment period, FWS held a virtual public hearing where FWS explained the proposed changes and sought public comment. The hearing was held in both English (including an option for subtitles) and French so that representatives from African elephant range countries could participate.<sup>114</sup>

Agencies should also be attentive to how best to engage with Tribes, in a manner consistent with the Federal government's specific responsibilities to consult with Tribes, as appropriate in light of the particular action under consideration.<sup>115</sup> For example, the Bureau of Indian Affairs issued, in December 2023, a final rule that provides the procedures governing the discretionary acquisition of lands into trust, which was developed through significant engagement with Tribes.<sup>116</sup> In October 2021, BIA held consultations on the protection and restoration of tribal homelands and use the feedback from these consultations to inform early drafts revisions to preexisting rules.<sup>117</sup> BIA then held four consultation sessions on the draft revisions. Utilizing feedback from those consultations, BIA published the proposed rule, and held three Tribal consultation sessions during the public comment period.<sup>118</sup> The first Tribal consultation was held in person at the Bureau of Land Management Training Center in Phoenix, AZ. The next two Tribal consultations were conducted virtually on Zoom.<sup>119</sup>

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<sup>114</sup> U.S. Department of Interior, Fish and Wildlife Service, Final Rule: Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule of the African Elephant, 89 Fed. Reg. 22,522, 22,535, April 1, 2024: <https://www.federalregister.gov/documents/2024/04/01/2024-06417/endangered-and-threatened-wildlife-and-plants-revision-to-the-section-4d-rule-for-the-african>; U.S. Fish & Wildlife Service, "4(d) Rule for African Elephants," <https://www.fws.gov/international-affairs/4d-rule-african-elephants>.

<sup>115</sup> See, e.g., Presidential Memorandum of November 30, 2022, *Tribal Consultation and Strengthening Nation-to-Nation Relationships*, 87 Fed. Reg. 74,479, December 5, 2022: <https://www.federalregister.gov/documents/2022/12/05/2022-26555/uniform-standards-for-tribal-consultation>; Presidential Memorandum of January 26, 2021, *Tribal Consultation and Strengthening Nation-to-Nation Relationships*, 86 Fed. Reg. 7491, January 29, 2021: <https://www.federalregister.gov/documents/2021/01/29/2021-02075/tribal-consultation-and-strengthening-nation-to-nation-relationships>.

<sup>116</sup> U.S. Department of Interior, Bureau of Indian Affairs: Land Acquisitions, 88 Fed. Reg. 86,222, January 11, 2024: <https://www.govinfo.gov/content/pkg/FR-2023-12-12/pdf/2023-27077.pdf>.

<sup>117</sup> *Id.* at 86,222.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

## Demonstrating Impact of Public Comments

Public participation takes time and resources. In order to encourage participation, agencies should make clear that the time and resources are not wasted. They can do so by making clear how public participation has influenced their regulations.

Consider, for example, the Social Security Administration's (SSA) ongoing efforts to simplify the process for maintaining eligibility for the Supplemental Security Income (SSI) program. SSA recently expanded the definition of a public assistance household, meaning a household that has both an SSI applicant or recipient, and at least one other household member who receives one or more of the listed public assistance payments.<sup>120</sup>

In the initial stage of the rulemaking, SSA noted that this rule reflected, in part, feedback received from advocacy groups representing claimants and beneficiaries during listening sessions for a different rule.<sup>121</sup> In a similar endeavor, a year prior, SSA issued a proposed rule that receiving food from a family member or friend would not lower a beneficiary's SSI payment.<sup>122</sup> In the course of the listening sessions, and in public comment submissions, advocacy groups noted that the expansion and definition of a public assistance household could help underserved families access benefits more easily and that this was their top priority. SSA responded to this public feedback, and ultimately published regulations changes in-line with this priority.

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<sup>120</sup> Social Security Administration, Final Rule: Expand the Definition of a Public Assistance Household, 89 Fed. Reg. 28,608, 28,610, April 19, 2024: <https://www.federalregister.gov/documents/2024/04/19/2024-08364/expand-the-definition-of-a-public-assistance-household>.

<sup>121</sup> Social Security Administration, Notice of Proposed Rulemaking: Expand the Definition of a Public Assistance Household, 88 Fed. Reg. 67,148, 67,153, n. 73, September 29, 2023: <https://www.federalregister.gov/documents/2023/09/29/2023-21550/expand-the-definition-of-a-public-assistance-household>. The listening sessions were held by the Office of Information and Regulatory Affairs during review of the proposed rule, pursuant to Executive Order 12866.

<sup>122</sup> Social Security Administration, Notice of Proposed Rulemaking: Omitting Food From In-Kind Support and Maintenance Calculations, 88 Fed. Reg. 9779, February 15, 2023: <https://www.federalregister.gov/documents/2023/02/15/2023-02731/omitting-food-from-in-kind-support-and-maintenance-calculations>.

## CONCLUSION

As the examples in this report show, there is no one way to encourage greater public participation in rulemaking. The strategies that agencies use will depend on the particular nature of the rule and the relevant stakeholders who are most affected by it.

But there are similarities in approach. Many of the efforts detailed above involve some combination of proactive early engagement with relevant stakeholders; taking steps to support a robust and informed public comment process; encouraging participation by affected and underserved communities by focusing on accessibility, working with trusted intermediaries, and proactive engagement; and showing responsiveness to feedback in order to encourage future engagement.

By carefully considering which of these, and other, strategies are best deployed for particular rulemakings, agencies can improve public participation in the rulemaking process. OIRA looks forward to continuing to work with agencies to support their efforts.



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