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US Office of Management and Budget
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**Attn: Methods and Leading Practices for Advancing Public Participation and
Community Engagement With the Federal Government (2024-05882)**

The Union of Concerned Scientists (UCS) is pleased to provide comments on the US Office of Management and Budget's (OMB) Request for Information (RFI), "Methods and Leading Practices for Advancing Public Participation and Community Engagement With the Federal Government." The Union of Concerned Scientists is a national nonprofit science advocacy organization representing over 500,000 members. UCS works for strong, independent public science, a robust, transparent democracy, justice for overburdened communities, and the effective use of science in making policy that serves the common good.

As discussed in the RFI, two recent surveys – one conducted by Organization for Economic Cooperation and Development and the other by Partnership for Public Service – positively linked the perception of a government willing to listen to the people with public trust in the government. This includes the perspectives of historically disenfranchised communities who, despite having been the constituents most affected by government decisions, have often been sidelined in the science policymaking process or whose knowledge and expertise were not incorporated in rulemaking processes.¹

UCS has long supported the contention that public participation and community engagement (PPCE) activities are a vital component in building the public's trust in the government.² Therefore we are excited to offer recommendations on available methods, approaches, and tools that could assist in the efforts to develop and implement a PPCE federal framework.

1. Improve public participation during the rulemaking process

¹ Kurt E. Dongoske, Theresa Pasqual, and Thomas F. King. "Environmental Reviews and Case Studies: The National Environmental Policy Act (NEPA) and the Silencing of Native American Worldviews." *Environmental Practice* 17, no. 1 (2015): 36–45. doi:10.1017/S1466046614000490.

² Taryn MacKinney et al. *Public Participation in Rulemaking at Federal Agencies: Recommendations for 2021 and Beyond*. (Cambridge, MA: Union of Concerned Scientists, September 2020), https://www.ucsusa.org/sites/default/files/2020-09/public-participation-in-rulemaking-at-federal-agencies_0.pdf

OMB should work with federal agencies to increase the transparency of the regulatory process, expand rule-making dockets, and make the public comment process more user-friendly. This section corresponds to OMB's topic areas 1 and 2.

The US government is beholden to its people, and public participation in evidence-based policymaking is central to the Constitution's stated vision of self-governance.³ Public participation (public comments, listening sessions, and hearings) gives people a voice in policy decisions.^{4,5}

However, opportunities for comment are not usually publicized to underserved communities, often fail to communicate decision-making timelines, and are usually written in technical language or jargon intended for highly specialized audiences. This helps explain why industry commenters shape final rules to a greater extent than do other commenters such as members of the public.^{6,7} Unlike most of the public, industry interests often employ in-house technical experts, attorneys, and lobbyists to help make their case in public comments.^{8,9} This further alienates the public, whose knowledge and expertise, instead of being technical, often comes from lived experiences—experiences that may not readily translate into the technocratic language of the regulatory process.¹⁰

The Office of Information and Regulatory Affairs (OIRA), which reviews agency regulations at various stages in the rulemaking process, ostensibly provides another opportunity for public input. OIRA meets with anyone who seeks to discuss a rule under review, yet inequitable practice has accompanied this policy. Agencies rarely publicize meeting opportunities and timelines widely, and industry takes advantage of the policy by an overwhelming margin, meeting with OIRA five times as often as do public interest groups. These meetings, which profoundly affect policy, are closed to the public and often occur before the release of proposals for comment.¹¹

Moreover, existing infrastructure for online comment submissions can be difficult for the public to use, thus reducing the ability of the public to provide input into regulatory

³ Nikolas Bowie, "The Constitutional Right of Self-Government," *Yale Law Journal* 130 (2021)

⁴ Steven H. Woolf et al. "Authentic engagement of patients and communities can transform research, practice, and policy," *Health Affairs* 35 (2016): 590–4, <https://doi.org/10.1377/hlthaff.2015.1512>.

⁵ Erica Morrell. "Public comment periods and federal environmental impact statements: potentials and pitfalls from the American experience." *Michigan Journal of Sustainability* (2013), <https://doi.org/10.3998/mjs.12333712.0001.008>.

⁶ Jason Webb Yackee and Susan Webb Yackee, "A Bias Towards Business? Assessing Interest Group Influence on the U.S. Bureaucracy," *The Journal of Politics* 68 (2006): 128-139, <https://www.jstor.org/stable/10.1111/j.1468-2508.2006.00375.x>

⁷ Coalition for Sensible Safeguards (CSS), *Down the Regulatory Rabbit Hole: How Corporate Influence, Judicial Review and a Lack of Transparency Delay Crucial Rules and Harm the Public*, (Washington DC: CSS, June 2013), <https://sensiblesafeguards.org/assets/documents/down-the-regulatory-rabbit-hole.pdf>

⁸ Yackee and Yackee, "A Bias Towards Business?"

⁹ CSS, *Down the Regulatory Rabbit Hole*

¹⁰ James Goodwin, "Can Hip Hop Save Rulemaking?" *The Regulatory Review*, August 5, 2019, <https://www.theregreview.org/2019/08/05/goodwin-can-hip-hop-save-rulemaking/>

¹¹ Rena Steinzor, Michael Patoka, and James Goodwin. *Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment*, (Washington DC: Center for Progressive Reform, November 2011), https://cpr-assets.s3.amazonaws.com/documents/OIRA_Meetings_1111.pdf

proposals.¹² For example, the organization of *regulations.gov* is inconsistent. Document type categories on the website vary between agencies, making it difficult for users to search effectively. Other advanced search filters, such as “By Agency,” are often similarly unhelpful.¹³ Agencies also sometimes create multiple dockets for the same proposed rule, each with different information, which can prevent users from accessing up-to-date information. In other cases, agencies may fail to upload crucial context for a rule, such as background research or underlying data.¹⁴ There is little consensus and research on the best ways to evaluate large quantities of diverse public comments, despite the growth of online processes for writing rules—“e-rulemaking”—since the early 2000s.¹⁵ And perhaps most prohibitively, not everyone who may be affected by e-rulemaking can access it—for example, low-income households are far less likely to have reliable Internet access.¹⁶

OMB should work with agencies to implement changes to encourage diverse, widespread, and fair participation in the rulemaking process. Specifically, UCS recommends incorporating the following reforms:

- **Issue more Advance Notice of Proposed Rulemaking (ANPRM) or Requests for Information (RFIs), when appropriate.** As exemplified by this very RFI, these processes can provide more time for public input and invite earlier, pre-rulemaking public input. However, agencies currently issue ANPRMs for less than five percent of rules, meaning that further use of this tool is highly warranted.¹⁷
- **Make the public comment process easier and more accessible to the public.** Agencies should:
 - Engage the public much earlier in the public comment process, including during initial stages of deliberations; for instance, agency officials could ask for feedback in how the public input process should be carried out. Without earlier and enhanced inclusion, the public may feel ignored or even sidelined during the public comment process, and potentially critical perspectives will be precluded from informing decision-making.¹⁸

¹² Office of Management and Budget (OMB), “Broadening Public Participation and Community Engagement in the Regulatory Process,” Memorandum for the Heads of Executive Departments and Agencies, July 19, 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>

¹³ Todd Rubin, *Regulations.gov and the Federal Docket Management System*. (Washington, DC: Administrative Conference of the United States, December 2018), <https://www.acus.gov/sites/default/files/documents/Regulations.gov%20Report%20FINAL%2012%203%202018.pdf>

¹⁴ Cary Coglianese and Todd Rubin, “Improving Regulations.gov,” *The Regulatory Review*, May 28, 2019, <https://www.theregulatoryreview.org/2019/05/28/coglianese-rubin-improving-regulations-gov/>

¹⁵ Frank Massaro, “Public Participation in Rulemaking in the Age of Mass Comments,” Administrative Conference of the United States, 2018, <https://www.acus.gov/newsroom/administrative-fix-blog/public-participation-rulemaking-age-mass-comments>

¹⁶ Emily A. Vogels, “Digital divide persists even as Americans with lower incomes make gains in tech adoption,” Pew Research Center, June 22, 2021, <https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>

¹⁷ Juliana Balla, “Early but Not Often: A Look into the Use of ANPRMs in Rulemaking,” GW Regulatory Studies Center, May 3, 2019, <https://regulatorystudies.columbian.gwu.edu/early-not-often-look-use-anprms-rulemaking>

¹⁸ Morrell, “Public comment periods”

- Offer an email address for submitting and asking questions about public comments during the notice and comment period for all proposed rules.
- Provide a one-stop point of access for all proposed rules open for comment on the homepage of each agency website, including links to other important websites such as the Federal Register and *regulations.gov*.¹⁹
- Harness the power of social media, webinars, newsletters, or other forms of online engagement to solicit a greater number and diversity of perspectives in public comments on rulemaking, particularly from members of the public who might not otherwise know about rulemakings of interest.²⁰
- Encourage the solicitation of comments via public hearings, specifically via both an online and in-person space. Rather than defaulting to a Washington DC location, in-person public hearings should be held in historically marginalized communities that are particularly affected by the proposed rule.
- Include the following features when soliciting comments during online public hearings:
 - Phone-in options for individuals without reliable Internet service.
 - Video features so that participants feel like they are providing public comments to “real” people (e.g., being able to observe that government officials are listening and hearing their testimony) and so that participants can showcase visual aids in virtual environments.
 - Closed captions and/or American Sign Language (ASL) sign language so that people who are deaf or hard-of-hearing can follow along.
 - Language translation services to make the content accessible to non-English speakers.
- **Offer public comment periods with reasonable timeframes.** In order to obtain substantive comments from the public, agencies should commit to opening public comments for at least 60 days. Executive Order 12866 advises agencies to give the public “no less than 60 days” to comment on a proposed rule (and significantly longer for complex rules).²¹ While 30-day public comment periods are sometimes used by federal agencies, there should be restrictions or at least justification for its use. Some agencies have restricted the public comment period to incredibly short timeframes. For example, in October 2018, the Bureau of Land Management halved,

¹⁹ Cary Coglianese, “Enhancing Public Access to Online Rulemaking Information,” *Michigan Journal of*

Environmental and Administrative Law 2 (2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1911546

²⁰ Cynthia R. Farina et al., “Rulemaking in 140 Characters or Less: Social Networking and Public Participation in Rulemaking,” *Cornell Law Faculty Publications* 174 (2011), <https://scholarship.law.cornell.edu/facpub/174/>

²¹ Office of the US President, “Executive Order 12866: Regulatory Planning and Review,” *Federal Register* 58, no. 190 (1993), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

from 30 days to 15 days, the comment period for a series of oil and gas leases across Utah.²²

- **Include more background information in public comment notices that highlights the transparency of decision-making processes for the proposed rule.** Agencies should:
 - Publish records of all research, sources, and correspondences—including meetings and phone calls—used to inform the rule-drafting phase. These records should be publicly available in the rulemaking docket within a reasonable timeframe after the research, correspondences, or other source retrieval occurred, and before publication of the rule proposal.
 - Ensure that redlined versions of rules, which document edits and changes that OIRA makes during the rulemaking process, are accessible to the public when a rule is published on *regulations.gov*, as required by Executive Order 12866, Section 6(a)(3)(E)(iii).²³ Agencies should include clear, simple explanations of and justifications for every major change proposed by OIRA and its parent body, OMB, and these changes should be easily retrievable by the public (e.g., in memos distinct and separate from redlined documents).
- **Ensure that submitted public comments are given their proper due.** It is important that the public knows how their comments will be considered in rulemaking processes. For instance, Yosie and Herbst (1998) found that projects that are presented to stakeholder groups without their previous participation are largely perceived as government officials engaging in “decide, announce, and defend” tactics, in which stakeholder input is unlikely to result in substantive change.²⁴ Agencies should take the time to be transparent with the public on how public comments are used in decisionmaking processes, such as how OMB did during a public comment process in 2021,²⁵ as it builds public trust that federal agencies want to include the perspectives of the public in rulemaking processes. Unfortunately, there are examples showing the opposite, of public officials refusing to hear public comments. Randal Bowman, a senior policy analyst at the Interior Department, led a May 2017 webinar to train a dozen agency employees on how to read and catalog the public comments the agency had received during its review of the Bears Ears monument. Bowman told the review team that because the Utah monument was so new and a management plan had not yet been adopted, it would be “virtually impossible” for a member of the public to submit information that had not been

²² Christopher Solomon. “Zinke and Trump Are Ignoring the Public,” Outside Online, October 24, 2018, <https://www.outsideonline.com/2356036/public-comment-erosion>

²³ US President, “Executive Order 12866”

²⁴ Terry F. Yosie and Timothy D. Herbst, *Using Stakeholder Processes in Environmental Decisionmaking: An Evaluation of Lessons Learned, Key Issues, and Future Challenges*, September 1998, <https://www.gdrc.org/decision/nr98ab01.pdf>

²⁵ US General Services Administration, “Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government: Summary of Stakeholder Responses to the OMB Request for Information (RFI),” 2021, <https://www.performance.gov/equity/rfi-summary/>

previously considered. “Essentially, barring a surprise, there is no new information that’s going to be submitted,” Bowman told staffers.²⁶

- **Increase the use of plain language summaries:** Sampson et al. (2023) conducted a focus group analysis and found that public notices on environmental policymaking were perceived negatively by environmental justice leaders and adult English learners. The public notices were perceived by the focus groups as being intentionally biased, unnecessarily technical, and without clear directions on how and why to participate. The authors concluded that plain language summaries can make decisionmaking processes more transparent, and therefore should be inherent in all agency-led public participation opportunities.²⁷ That is, agencies should include *both* a plain language summary for the public and a traditional written summary that has more technical information.

2. Increase outreach to impacted communities

In order to address the historic lack of transparency and accountability to underserved communities, OMB should work with agencies to plan and execute proactive, targeted outreach efforts to increase its engagement with impacted communities. This section corresponds to OMB’s topic areas 2 and 3.

For decades, government officials have failed to include underserved communities at the policymaking table or failed to meaningfully incorporate lived experience or tribal ecological knowledge in decisions, despite underserved communities often having been the constituents most affected by government decisions.^{28,29} Therefore, meaningful stakeholder engagement with underserved communities is an important and needed step and to make agency rulemaking more equitable and just requires the removal of barriers that prevents community voices from being heard. This step also promises improvements in policy design, a better chance for successful policy implementation, and enhanced civic participation.

In January 2024, we at UCS submitted a public comment to the Environmental Protection Agency (EPA) in response to their notice, “Release of Achieving Health and Environmental Protection Through EPA’s Meaningful Involvement Policy; Draft Policy; Notice of Availability.” In our comments, we supported EPA’s seven step approach for how the agency can establish a public participation model that establishes strong and inclusive guidance for agency outreach, offering feedback for ways to include the approach, and encouraging EPA to make the process required, not just optional. We have attached that document to this public comment for OMB consideration.

²⁶ Chris D’Angelo, “Emails Show Interior Expected To Learn Nothing From Public Input On Bears Ears Review,” Huffington Post, May, 17, 2018, https://www.huffpost.com/entry/emails-bears-ears-national-monument-review-comment-period_n_5afd7e8fe4b06a3fb50e47f0

²⁷ Natalie Sampson et al., “Plain Language as a Prerequisite for Environmental Justice,” *Environmental Justice* 16, no. 2 (2023), <https://doi.org/10.1089/env.2021.0108>

²⁸ Kurt E Dongoske, Theresa Pasqual, and Thomas F. King, “Environmental Reviews and Case Studies: The National Environmental Policy Act (NEPA) and the Silencing of Native American Worldviews,” *Environmental Practice* 17, no. 1 (2015): 36–45. doi:10.1017/S1466046614000490.

²⁹ Patrice Lumumba Simms, “On diversity and public policymaking: an environmental justice perspective,” *Sustainable Development Law and Policy* 13 (2012): 57–9.

Additionally, UCS recommends incorporating the following reforms to actively engage in outreach to underserved communities:

- **Engage historically marginalized communities to deliberately address barriers to public participation, and do so before rules are solidified.** These efforts may require the creation of new entities—for example, task forces that engage directly with community leaders to better understand local impacts or trusted intermediaries who represent local needs and can build trust and communication between agencies and communities.³⁰ Agencies should work with the General Services Administration (GSA) to audit and improve existing systems of outreach. This process can also be applied to the development of the OMB framework. OMB could undertake a process to identify an advisory committee of primarily affected community groups in developing the framework and should consider a multitude of engagement opportunities – such as focus groups and online surveys.
- **Incentivize agencies to actively engage with historically marginalized communities.** Individuals from impacted communities bring a particular experience that is too often missed or undervalued by policymakers, and therefore one of the best ways to incorporate equity into rulemaking processes is to ensure that communities have a seat at the table such that their knowledge, viewpoints, and perspectives are fully incorporated into policymaking.³¹ For example, OIRA could incentivize agencies by asking them to check a box when they submit rules for review indicating that they consulted and solicited feedback from impacted communities.³² The rules where agencies carried out these community-focused processes could be moved by OIRA into a queue for priority review, absent other circumstances. OMB should request that agencies seek community input on policy priorities, design choices, policy implementation, and enforcement mechanisms.
- **Address gaps in the participation of tribal communities in rulemaking.** OMB’s framework should lay out the best practices for meaningfully consulting and engaging with tribal groups at the start of deliberations on rulemaking processes. A 2017 report from the Department of the Interior, the Department of the Army, and the Department of Justice, in consultation with 59 tribal groups, laid out gaps preventing federal agencies from meaningfully engaging with, consulting with, and allowing public participation of tribal communities in rulemaking.³³ In this report, tribal communities stated that agencies are inconsistent in the degree to which each agency is aware of, and implements, its responsibilities to engage with tribes as sovereign nations in accordance with the government-to-government framework, the

³⁰ James Goodwin, *Regulation as Social Justice: A Crowdsourced Blueprint for Building a Progressive Regulatory System*, (Washington, DC: Center for Progressive Reform, September 2019), <https://cpr-assets.s3.amazonaws.com/documents/Regulation-as-Social-Justice-Report-FINAL.pdf>

³¹ Danielle Bergstrom et al., *The Sustainable Communities Initiative: The Community Engagement Guide for Sustainable Communities*, (The Sustainable Communities Initiative, 2012), https://www.policylink.org/sites/default/files/COMMUNITYENGAGEMENTGUIDE_LY_FINAL%20%281%29.pdf

³² Todd N. Tucker and Rajesh D. Nayak, *OIRA 2.0: How Regulatory Review Can Help Respond to Existential Threats*, (New York, NY: The Great Democracy Initiative and the Roosevelt Institute, April 2020), https://greatdemocracyinitiative.org/wp-content/uploads/2020/04/OIRA_Final.pdf

³³ US Department of the Interior, US Department of the Army, US Department of Justice, *Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions*, (Washington, DC: DOI, Department of the Army, DOJ, January 2017), <https://www.achp.gov/sites/default/files/reports/2018-06/ImprovingTribalConsultationandTribalInvolvementinFederalInfrastructureDecisionsJanuary2017.pdf>

federal relationship, and tribal reserved rights through treaties and other legal authorities.

- **Tailor engagement opportunities to meet specific community needs.** Agencies should hold informational webinars, public information meetings, and town hall–style sessions outside regular working hours, especially for policy actions that have the potential to significantly affect communities of concern. These engagement opportunities should be tailored to the specific needs of the community, such as being offered at different times of day, in different locations, and in multiple languages. Agencies should include records of these efforts—including meeting transcripts, scheduled events, and agency deliberations on outreach planning—in the regulatory docket for any proposed rules. If agencies do not provide these records, they should justify in writing why they choose not to do so or why the records do not apply.
- **Ensure that translation services are offered when engaging with communities where multiple languages are spoken.** Public comments, public hearings, and other forms of community engagement need to be issued in the languages most widely spoken in the communities most affected by the policies under consideration. OMB’s framework should dictate that it is the agency’s responsibility to cover translation services. During in-person opportunities such as public hearings, agencies should cover the sound quality and reliability of translation technologies such that these important services function well and consistently. For example, the community group Texas Environmental Justice Advocacy Services (t.e.j.a.s.), in conjunction with Earthjustice and Sierra Club, successfully pressed the Texas Commission on Environmental Quality into adopting a strong rule in 2021 that requires that translation and interpretation services be offered during public engagement sessions on environmental permitting decisions.³⁴

3. Conclusion

Public participation and community engagement activities are an important component of building public trust in governmental institutions and allow civic engagement in some of the nation’s most impactful agency actions. However, the current process of public participation in rulemaking may be viewed as too difficult to follow or lacking in transparency. Additionally, community engagement efforts currently have some barriers that prevent underserved and impacted communities from fully contributing their lived experiences to federal agencies.

Thank you for taking the time to consider our views. We are grateful for OMB’s efforts in developing a framework on PPCE, and we hope that the recommendations in our public comment will serve as a valuable resource to OMB.

³⁴ Earthjustice, “Texas Expanding Language Access for Decisions Involving Pollution Permits,” Press Release, August, 26, 2021, <https://earthjustice.org/press/2021/texas-expanding-language-access-for-decisions-involving-pollution-permits>

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