

VIA ELECTRONIC TRANSMISSION

May 17, 2024

Hon. Shalanda Young
Director
Office of Management and Budget
The White House
1800 F ST NW
Washington, DC 20004

Re: Methods and Leading Practices for Advancing Public Participation and Community Engagement With the Federal Government (Docket No. OMB-2024-0005).

Dear Director Young:

The undersigned trade associations appreciate the opportunity to comment on the Office of Management and Budget's (OMB) request for information regarding methods and practices for advancing public participation and community engagement (PPCE). We believe it is essential that all individuals have a fair and equal opportunity to petition their government and have their views and interests represented within the federal policy and rulemaking process. Our associations strongly support the free exchange of information and ideas among all stakeholders.

Our members, who are directly subject to the implementation and enforcement of regulatory policies, understand firsthand the impacts of federal regulations. Additionally, these businesses often have deep ties to the communities in which they operate. Consequently, we and our members are committed to ensuring that agencies engage effectively with relevant members of the public. Such engagement promotes transparency and collaboration, thereby strengthening the rulemaking process and leading to more effective regulations.

We are encouraged by OMB's leadership in advocating for a government-wide approach to enhancing public engagement. In response to the agency's request for information, we offer the following additional comments.

I. Background

The requirement to engage with the American public in the federal rulemaking process is codified within the Administrative Procedure Act (APA),¹ Executive Order (E.O.) 12866², and various other statutes and regulatory documents. To date, however, efforts to implement a comprehensive, government-wide approach for determining best practices for engagement have largely fallen short. Currently, one in five Americans does not believe that the federal government "listens to the public" or "is transparent."³

¹ Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (1946).

² Exec. Order No. 12866, 3 C.F.R. 638 (1993).

³ Methods and Leading Practices for Advancing Public Participation and Community Engagement With the Federal Government, 89 Fed. Reg. 19885, (March 20, 2024).

Those familiar with the regulatory process have observed inconsistencies across agencies—some employ comprehensive engagement strategies, while others merely perform perfunctory check-the-box exercises. This variability may stem from a lack of resources, expertise in engagement methods, or other challenges.

Our associations represent a diverse array of sectors within the U.S. economy, including agriculture, chemical distribution, coke and coal chemicals, construction, energy, infrastructure, manufacturing, mining, real estate, recycling, road and bridge building, and transportation. These sectors are vital for ensuring our nation's economic security and sustaining our modern standard of living. We, and the businesses we represent, are dedicated to responsible development that not only provides economic opportunities through good-paying jobs and community investments but also promotes safety, environmental stewardship, and innovation. Our associations have actively engaged in several related matters, consistently emphasizing the need for enhanced agency collaboration and transparency.⁴ Based on these experiences, we offer several recommendations below.

II. Comments on the Notice

A. Trade associations should be recognized as invaluable resources for public engagement, not just low-hanging fruit.

1. *Trade associations act as vital links between federal agencies and regulated entities.*

Our experience indicates that trade associations are often excluded from crucial agency discussions due to the perception that we do not represent all impacted stakeholders. However, associations are essential in connecting agencies with a diverse and broad range of interests within our membership. Despite any stigma, trade associations are the voice of our members—we directly gather their input and advocate on their behalf. Our members depend on us to facilitate these critical dialogues that inform agency decision-making, as they often lack the time and resources to engage on every policy or rule affecting them. Federal agencies should not hesitate when engaging with associations, but rather, should leverage our ability to convene dedicated audiences and act as intermediaries with agencies for our members.

2. *Our members are diverse and bring a wide range of perspectives.*

One benefit of membership in a trade association is that it provides access to regulatory experts who can simplify complex policies and rulemaking into plain language. This enables members to offer more

⁴ See e.g., Comments on Release of Achieving Health and Environmental Protection Through EPA's Meaningful Involvement Policy, filed on January 16, 2024, available at <https://artba.org/wp-content/uploads/2024/02/EPA-Public-Involvement-Policy-Comments-FINAL.pdf>, See also Comments on Office of Science and Technology Policy Request for Information: Development of a Federal Environmental Justice Science, Data, and Research Plan, filed on January 12, 2024, available at https://artba.org/wp-content/uploads/2024/02/For-Submittal_Coalition-Comments-on-OSTP-RFI-EJ-Research-Plan-1-12-24-1.pdf, See also Comments on Agency Information and Collection Activities; Request for Comments; Information on Meetings with Outside Parties, filed on February 20, 2024, available at https://www.artba.org/wp-content/uploads/2024/02/OIRA-ICR-12866-Meetings-FINAL_2.20.24.pdf, See also, .S. Chamber of Commerce et al., Business Community Comments on Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review) (June 6, 2023), https://www.artba.org/wp-content/uploads/2024/02/Business-Community-Comments-Draft-2e-Guidance-6_6_2023.pdf.

meaningful comments on rules. Businesses join associations to ensure their voices are heard and considered effectively. Because association memberships are open, they attract a diverse group of businesses and individuals with varying backgrounds, views, and interests.

Many of our associations represent small, disadvantaged, and veteran-owned businesses within their memberships. These businesses rely on their associations to help them understand and participate in the rulemaking process, as they often lack the time and resources necessary to engage independently.

The concerns we raise while engaging with federal agencies (e.g., written comments, public meetings, or during agency led webinars) reflect the collective views of our members. In developing a federal framework, we request that OMB ensure agencies consider and reach out to the entities directly impacted by their rules. Engaging with trade associations is an effective method to achieve this. Businesses join these associations not only for professional expertise but also for guidance that demystifies regulatory complexities. Moreover, our associations strongly support direct engagement between agencies and these entities, and as has always been the case, we stand ready to facilitate participation opportunities and provide feedback on behalf of these businesses and individuals.

B. Enhanced government transparency can lead to increased public participation.

A significant barrier to meaningful public participation in the federal regulatory process is the lack of transparency, access, and public outreach, which are core elements under the APA. Federal agencies issue hundreds of regulatory "guidance" documents annually, encompassing a wide array of topics.⁵ While these "guidance" documents are intended to aid in interpreting laws and regulations and provide insights on enforcement, they are often described as non-binding. However, in practice, they frequently exert a significant influence, functioning with the constraining power of law though they are not supposed to.

1. Agencies should allow for adequate notice and comment on documents beyond regulations.

Often, agencies release "guidance" documents to the public without offering opportunities for comment beforehand. Once issued, the application of these documents can remain unclear, potentially binding individuals or entities to conform to policies about which they are unaware.

A crucial step toward enhancing public engagement in the federal regulatory process is ensuring that all individuals can review and discuss any document that may have a binding effect. This is especially important for disadvantaged communities, as well as small businesses who typically lack the resources to engage experts like lobbyists, attorneys, and consultants. At one point, OMB attempted to mitigate these issues through a memorandum addressing these concerns.⁶ Our associations support reinstating specific parts of that memorandum to promote increased public involvement.

⁵ For purposes of these comments, we have placed the term, "guidance" in quotations to indicate that it is all encompassing and not solely just those documents labeled as such. "Guidance" in this context may include, but is not limited to, compliance manuals, certification standards, interpretative compliance memoranda, statements of applicability, "question and answer" documents interpreting regulations, letters of interpretation, and best practice manuals.

⁶ Office of Information and Regulatory Affairs, Guidance Implementing Executive Order 13891, Titled "Promoting the Rule of Law Through Improved Agency Guidance Documents" (2019), <https://www.regulationwriters.com/downloads/M-20-02-GuidanceEO13891-Memo-103119.pdf>.

Additionally, our associations have previously advocated for a standard public comment period of no less than 60 days, with extensions for particularly complex or analysis-intensive agency actions.⁷ In standardizing a minimum comment period, federal agencies must also ensure the deadline does not commence until all relevant supporting documents (i.e., NEPA reviews, economic analyses, technical support documents) for a particular proposed rule are available in the docket. Ensuring the public has adequate time to review, digest, and draft meaningful responses to agency actions further enhances the process and leads to more effective outcomes. To this end, our associations encourage agencies to respond to extension requests on public comment periods well before the last day of the comment deadline. The regulated public relies on the comment period to draft comments, complete research, and engage with other stakeholders. The public's ability to plan around a particular deadline is enhanced if extension requests are answered promptly.

Finally, agencies should utilize rulemaking dockets to collect written comments alongside opportunities for oral comments. Often, individuals may be unable to attend public hearings, but still wish to contribute their views on an issue. By maintaining open dockets concurrent with oral comment sessions, agencies can ensure broader participation by accommodating the most accessible format for everyone.

2. *Centralized information sources simplify processes and reduce confusion, frustration, and time costs.*

A crucial improvement that agencies can make to enhance transparency is the centralization of their information. Utilizing existing databases like the *Federal Register* and *Regulations.gov*, agencies can establish comprehensive clearinghouses for all regulatory information, including the types of documents previously mentioned. Currently, the need for the public to navigate multiple agency websites, each with a different structure and organization, imposes an unnecessary burden and exacerbates confusion and frustration. This setup also assumes that all stakeholders have sufficient internet connectivity and time to spare from their businesses.

Many of our members interact with over 50 different federal agencies in their regular business operations. Expecting these businesses to individually monitor each agency's website is impractical and would necessitate hiring additional staff dedicated solely to federal regulatory advocacy—a prohibitive cost for small businesses and disadvantaged communities. This not only highlights the reason businesses join trade associations but also underscores the need for a unified approach to information management, consolidating resources in accessible, centralized locations.

3. *Utilizing diverse communication channels enhances outreach effectiveness.*

Transparent communication and effective information-sharing are crucial for advancing PPCE. Many federal agencies use listservs and social media platforms like Facebook, LinkedIn, X, and Instagram to disseminate updates about regulatory changes, webinars, and other engagement opportunities. For instance, the Council on Environmental Quality sends a regular email, the CEQ EJ Connector, which consolidates opportunities and updates on environmental justice from various agencies. Similarly, the Occupational Safety and Health Administration sends short "Quick Takes" emails with only the most pertinent updates in short, digestible formats. However, signing up for these listservs can be confusing. Agencies should make the signup links easily accessible, and prominently displayed on their websites to facilitate public participation.

⁷ *Supra* note 4.

Additionally, agencies like the Office of Advocacy of the US Small Business Administration holds virtual roundtables to engage small entities, including businesses and government agencies, in a two-way dialogue. This approach, which contrasts with the one-way listening sessions other agencies often conduct, allows for more candid and meaningful feedback, ensuring that concerns and recommendations are genuinely heard.

We encourage the continued use of these digital platforms to efficiently share information with all stakeholders and recommend enhancing interactive formats to foster deeper engagement and dialogue.

4. Agencies should document their public engagement activities for each regulatory action.

To enhance transparency, it is essential that agencies explicitly detail all their public engagement efforts, either within the regulatory document itself or in an accompanying report. For regulations subject to E.O. 12866 review, this documentation should be submitted to the Office of Information and Regulatory Affairs (OIRA) as part of the regulatory review process. If OIRA finds that an agency's engagement with the public was insufficient, it should recommend that the agency undertake further engagement efforts. This approach not only ensures accountability, but also reinforces the importance of public input in the regulatory process.

C. The public engagement process should encourage, not dissuade, participation.

1. Agencies should ensure that their public outreach efforts are accessible and conducive to productive dialogue.

Severe time constraints typically imposed by federal agencies on commenters in public meetings have been problematic across multiple federal agencies. Often, these constraints are so restrictive (three minutes or less) and lacking interactive features such as video, that they discourage participation by making commenters feel that their input is neither heard nor valued. It is simply a "check the box" exercise. Providing commenters with more time to comment and more interaction, such as enabling video and employing active listening techniques, can make stakeholders feel that their contributions are meaningful and appreciated.

The severe time constraints discussed above are a significant barrier that discourages participation in key meetings. For instance, discussions with OIRA under E.O. 12866 are capped at 30 minutes, and public hearings by agencies like the Environmental Protection Agency and the Department of Energy routinely limit speakers to three minutes. Moreover, the process for selecting speakers, which requires submitting a request and obtaining approval from the agency prior to being allowed to speak, fosters mistrust. It is not clear how an agency selects speakers and why everyone who expresses interest is not granted permission to speak. These constraints may compel participants to omit crucial details or discourage them from engaging altogether due to perceived futility. To cultivate more trust and transparency in the process, agencies should consider extending meeting durations to ensure meaningful public involvement and allow any interested individual to participate.

Additionally, agencies should provide summary documents shortly after meetings to inform the public about the feedback received. Participants often invest significant resources in preparing detailed comments, and it is crucial that these contributions be acknowledged rather than disappearing into a

perceived void. Prompt sharing of meeting notes would reassure participants that their input is valued and considered in the decision-making process.

2. *Agencies must prioritize plain language to enhance accessibility.*

The mandate for regulatory agencies to draft documents that are simple and easy to understand is established by various statutes and EOs.⁸ Despite this, many regulatory documents remain overly complex, lengthy, and inaccessible to the public. If individuals cannot comprehend a rule, they cannot provide meaningful feedback on it.

To address this, OMB should incorporate specific provisions in its framework to ensure adherence to “plain language” standards. Agencies could provide concise, one-page fact sheets alongside their rulemakings and regulatory documents. Additionally, offering brief, non-technical briefing materials can help demystify content, making it more digestible for the public. While these practices may generate more paperwork, they are crucial for educating the public in understandable terms, ultimately fostering greater engagement.

D. Metrics pertaining to public engagement should track more than just basic information.

As mentioned earlier, there is a perception among some participants that agency activities are mere “check the box” exercises, and not meaningful dialogues and idea exchanges. Our associations are wary of OMB adopting new metrics for agencies solely to demonstrate that the agencies have engaged in outreach. If metrics are included in the framework, they should assess the usefulness of the comments received and their influence on agency decision-making, rather than merely tallying the total number of engagements and categorizing the types of individuals or groups involved. Additionally, addressing comments before finalizing rules can mitigate suspicion and distrust in government, potentially reducing costly litigation.

For instance, OIRA's recent guidance on modernizing regulatory review⁹ requires tracking the number of times an individual has requested an E.O. 12866 meeting in the past three years. Collecting this type of data without clear communication regarding the data's use does not support an open-government approach and can foster suspicion among stakeholders, making them feel potentially excluded from the process.

III. Conclusion

As OMB continues to develop its federal framework for PPCE, we urge the agency to engage meaningfully with our organizations and other stakeholders. Our goal is to ensure the framework is fair, equitable, and accessible to everyone. We are prepared to contribute to the development of this framework and to support efforts that enable all Americans to have their voices heard by their government.

Thank you for the opportunity to provide input. For any further questions, please contact Prianka Sharma at psharma@artba.org.

⁸ See e.g., Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (2010). See also, *Supra* note 2.

⁹ Guidance Implementing Section 2(e) of Executive Order 14094 (Modernizing Regulatory Review), Dec. 20, 2023, https://www.whitehouse.gov/wp-content/uploads/2023/12/Modernizing-EO-Section-2e-Guidance_FINAL.pdf.

Respectfully submitted,

Alliance for Chemical Distribution
American Chemistry Council
American Coke and Coal Chemicals Institute
American Farm Bureau Federation
American Fuel & Petrochemical Manufacturers
American Road & Transportation Builders Association
Associated Builders and Contractors
Associated General Contractors of America
Essential Minerals Association
ICSC
National Asphalt Pavement Association
National Association of Home Builders
National Association of Realtors
National Mining Association
National Pork Producers Council
National Stone, Sand and Gravel Association
National Waste & Recycling Association
Southeastern Lumber Manufacturers Association
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