



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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SENT VIA PERFORMANCE.GOV AND EMAIL

Ms. Loren DeJonge Schulman
Associate Director
Office of Performance and Personnel
Management
Office of Management and Budget

Ms. Lauren Stocker
Deputy Associate Director
Office of Performance and Personnel
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Office of Management and Budget

Re: Broadening Public Participation and Community Engagement with the Federal Government,
Draft for Public Feedback (10-29-24) & A Toolkit for Broadening Public Participation and
Community Engagement with the Federal Government

Dear Ms. Schulman & Ms. Stocker:

I offer this comment on behalf of the Office of the Chair of the Administrative Conference of the United States (ACUS), an independent agency within the executive branch. Insofar as this comment sets views not contained in formal ACUS Recommendations, they reflect only the views of the Office of the Chair.

Congress established ACUS to provide a forum where federal agencies and outside experts could work cooperatively to improve administrative procedure, and in particular to “promote more effective public participation and efficiency in the rulemaking process.” 5 U.S.C. § 591(2). To that end, ACUS is charged with studying federal administrative procedure and making such recommendations for action by federal agencies, the President, Congress, and the Judicial Conference of the United States.

ACUS has adopted many recommendations identifying best practices that agencies can use to ensure that all persons have a meaningful voice in federal agency decision-making. These recommendations and related resources are available at acus.gov/public-participation. Further, the Office of the Chair maintains the [Statement of Principles for Public Engagement in Agency Rulemaking](#), which concisely describes the principles and practices identified in ACUS Recommendations on public participation in federal agency rulemaking.

Public participation serves a critical role in agency decision-making, whether in rulemaking, adjudication, permitting, etc. Though most ACUS Recommendations on public participation have dealt with rulemaking, others have discussed public participation in administering federal permitting programs, designing user fees, and conducting retrospective

review of agency rules. ACUS is also currently engaged in a project to study and recommend best practices on public participation in administrative adjudications, including licensing. All ACUS Recommendations are available at <https://www.acus.gov/recommendations>. I encourage OMB to consider these recommendations and other ACUS resources as it works to improve public participation in agency decision-making.

I submit the following comments to OMB's requests for feedback on the draft guidance and draft toolkit referenced above.

FEEDBACK ON DRAFT GUIDANCE

Suggested additions to Section II, *importance of broadening and improving public participation and community engagement for Federal agencies and the public.*

Better Outcomes and Better Governance. The draft memo provides a list of reasons why participation and engagement can lead to better outcomes and governance. ACUS recognizes in federal agency rulemaking that, “[b]y providing opportunities for public input and dialogue, agencies can obtain more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for their rules.” See [Recommendation 2018-7, Public Engagement in Rulemaking](#), 84 Fed. Reg. 2146. With that in mind, OMB may wish to add a bullet to this list that says the following:

- *Obtaining more comprehensive information, enhancing legitimacy and accountability in agency decisions, and increasing public support.*

Suggested additions to Section III, *guiding principles for meaningful participation and community engagement.*

Guiding Principle: Purposeful. ACUS recommends that agencies, “consider whether the methods it uses to facilitate early outreach in its rulemaking process will engage a wide range of interested persons, including individuals and groups that are affected by the rule and are traditionally underrepresented in the agency’s rulemaking process.” See [Recommendation 2021-3, Early Input on Regulatory Alternatives](#), 86 Fed. Reg. 36082. ACUS further recommends that, “[p]ublic engagement should generally occur as early as feasible in the rulemaking process, including when identifying problems and setting regulatory priorities.” See [Recommendation 2018-7](#). Therefore, OMB may wish to add the following bullet point under the “putting practices into action” section for this guiding principle:

- *Establish participation efforts, as early as feasible, to allow for the engagement of a wide range of interested persons.*

Guiding Principle: Inclusive, Welcoming, and Accessible. Under this guiding principle, OMB may wish to discuss utilizing technology to enhance public participation. ACUS has outlined best practices for social media in the rulemaking context in [Recommendation 2013-5, Social Media in Rulemaking](#), 78 Fed. Reg. 76269; and for enhancing public participation through virtual engagement in [Recommendation 2023-2, Virtual Public Engagement in Agency Rulemaking](#), 88 Fed. Reg. 42680. To supplement their list with technology considerations, OMB may consider adding the following bullet points under the “putting practices into action” section for this guiding principle:

- *Use social media to increase public awareness of agency activities, including opportunities to contribute to policy setting, regulation, and other forms of agency decision-making.*
- *Provide video conferencing options to enable broader public participation in agency policymaking, particularly among communities that historically have been underrepresented in such processes.*

Guiding Principle: Transparent and Accountable. OMB may wish to provide an additional bullet point under the “putting practices into action” section for this guiding principle, to encourage agencies to develop one-stop locations on their websites where members of the public can easily access information about opportunities for public participation. ACUS identified best practices for doing so in [Recommendation 2023-2](#), [Recommendation 2018-7](#), and [Recommendation 2011-8, Agency Innovations in e-Rulemaking](#), 77 Fed. Reg. 2264. Therefore, to supplement their discussion of methods to increase transparency and accountability, OMB may consider adding the following bullet point:

- *Utilize agency websites to provide information about agency rulemaking procedures and specific initiatives in a one-stop location.*

Suggested additions to Section V, actions for agencies.

1. *Suggested additions to Subsection a, agencies should designate agency-wide public participation and community engagement points of contact.*

Public Engagement Training and Experience. OMB may wish to include, under the responsibilities for the agency-wide public participation and community engagement points of contact, a point that outlines that these employees should have experience in public participation. In the context of rulemaking, ACUS recommends that agencies “consider using personnel with public engagement training and experience to participate in both the development of their general public engagement policies as well as in planning for specific rules.” See [Recommendation 2018-7](#). OMB may wish to consider adding the following bullet point:

- *Be trained, or have relevant experience, in public engagement initiatives at their agency.*

Encouraging Interagency Collaboration. OMB may also wish to consider interagency coordination and collaboration when assessing responsibilities of the agency-wide public participation and community engagement points of contact. ACUS has recognized that interagency coordination can promote coherent agency decision-making, maximize burden reduction, and can help to establish a process whereby, “agencies can share best practices and evaluate their coordination initiatives *ex post*, and assist them in doing so effectively and efficiently.” [Recommendation 2012-5, Improving Coordination of Related Agency Responsibilities](#), 77 Fed. Reg. 47810. OMB may wish to consider adding a bullet point incorporating interagency coordination as part of this employee’s portfolio:

- *Agencies should seek to collaborate and share best practices in public participation and community engagement with other agencies.*

Suggested additions to Section VII, important considerations when building engagement into agency functions and activities.

Considerations Under the Federal Advisory Committee Act (FACA). OMB includes discussion of FACA under this section as a consideration of potential trade-offs when assessing suitability and scope of public participation. OMB may consider adding discussion of integrating advisory committees into agency public participation efforts in a transparent and objective way. ACUS recommends that agencies enhance transparency and objectivity in the advisory-committee process by posting committee documents, waivers, and meeting recordings on their websites; livestreaming committee meetings when not cost prohibitive; and announcing new advisory committees in the *Federal Register* and on agency websites to allow the public to more easily nominate potential committee members. See [Recommendation 2011-7, The Federal Advisory Committee Act – Issues and Proposed Reforms](#), 77 Fed. Reg. 2261. To that end, OMB may wish to add a *sub-bullet* point under the existing “trade-offs” bullet to say:

- *Agencies can enhance transparency and objectivity in the advisory committee process by posting committee documents, waivers, and meeting recordings on their websites; livestreaming committee meetings when not cost prohibitive; and announcing new advisory committees in the Federal Register and on agency websites to allow the public to more easily nominate potential committee members.*

Suggested additions to the appendices

OMB may wish to supplement the appendix section on “Other Policy Commitments and Documents” with ACUS recommendations relating to public participation and agency decision-making. Though all ACUS recommendations are available at www.acus.gov/recommendations, the following may be particularly helpful:

- [Recommendation 2011-2](#), *Rulemaking Comments*;
- [Recommendation 2013-5](#), *Social Media in Rulemaking*;
- [Recommendation 2014-4](#), “*Ex Parte*” *Communications in Informal Rulemaking*;
- [Recommendation 2018-7](#), *Public Engagement in Rulemaking*; and
- [Recommendation 2023-2](#), *Virtual Public Engagement in Agency Rulemaking*.

FEEDBACK ON DRAFT TOOLKIT

What other types of content could help agencies begin or improve outreach and engagement?

I. Additions to Section Three of the Toolkit – *Preparing for, Designing, Implementing, and Assessing Public Participation and Communications.*

Stage 1 – Preparing for Participation and Engagement. In the Toolkit, OMB provides a variety of considerations, as a bulleted list, for how best to prepare for engagement activities. OMB may also consider adding bullets for both timing of public participation and determining the method of public participation. ACUS has recommended that, “[p]ublic engagement should generally occur as early as feasible in the rulemaking process, including when identifying problems and setting regulatory priorities.” See [Recommendation 2018-7](#). Further, ACUS describes the benefits of different public engagement methods, and provides best practices for implementing these methods, in [Recommendation 2021-3](#), [Recommendation 2018-7](#), [Recommendation 2017-2](#), [Recommendation 2014-6](#), and [Recommendation 2014-4](#). Therefore, OMB may wish to consider adding the following two bullets to this Toolkit Section:

- *Determine the feasibility of early engagement: [Recommendation 2021-3](#), [Recommendation 2018-7](#) (Administrative Conference of the United States)*
- *Consider the variety of public engagement options available: [Recommendation 2021-3](#), [Recommendation 2018-7](#), [Recommendation 2017-2](#), [Recommendation 2014-6](#), and [Recommendation 2014-4](#). (Administrative Conference of the United States)*

Stage 2 – Designing Participation and Engagement. Under this section of the OMB Toolkit, there are resources geared towards setting up public engagement efforts and how to reach certain stakeholders. OMB also provides a bullet point about forming community advisory entities for engagement initiatives. OMB may consider adding ACUS [Recommendation 2011-7](#), *The Federal Advisory Committee Act – Issues and Proposed Reforms*, as a resource to allow Toolkit users to access best practices and guidance on how to improve transparency and objectivity in the advisory committee process. With that in mind, OMB may wish to amend the bullet point in on community advisory entities to read (proposed amendment in *italics*):

- Forming community advisory entities to support engagement initiatives: Tools and Resources for Project-Based Community Advisory Boards (Urban Institute) *and Recommendation 2011-7, The Federal Advisory Committee Act – Issues and Proposed Reforms (Administrative Conference of the United States)*

Stage 3 – Implementing Participation and Engagement. In this section of the Toolkit, OMB provided examples and best practices for implementing public engagement efforts. However, OMB may wish to provide additional best practices and guidance on leveraging technology to enhance public participation. ACUS has completed several recommendations that outline best practices for agencies to use as they build or expand virtual public participation programming and OMB may wish to provide these recommendations in a new bullet point under this section, entitled “Leveraging Technology to Enhance Engagement.” That bullet point may be styled as follows:

- *Leveraging Technology to Enhance Engagement: [Recommendation 2011-8](#), Agency Innovations in e-Rulemaking; [Recommendation 2013-5](#), Social Media in Rulemaking; [Recommendation 2018-7](#), Public Engagement in Rulemaking; [Recommendation 2021-1](#), Managing Mass, Computer-Generated, and Falsely Attributed Comments; and [Recommendation 2023-2](#), Virtual Public Engagement in Agency Rulemaking (Administrative Conference of the United States)*

What other types of content could help the public better participate in engagement activities with federal agencies?

I. Additions to Section Four of the Toolkit – *Communicating Effectively with the Public.*

Providing Regulatory Information to the Public. Agencies engaged in regulation should provide information about the rulemaking process, the role of public participation, and the qualities of effective comments. ACUS has identified best practices for explaining the public’s place in rulemaking and effective commenting in [Recommendation 2018-7](#) and [Recommendation 2011-2](#).

For that reason, OMB may wish to consider adding the following bullet point under section four of the Toolkit:

- *Providing Regulatory Information to the Public: [Recommendation 2011-2](#), Rulemaking Comments & [Recommendation 2018-7](#), Public Engagement in Rulemaking (Administrative Conference of the United States)*

Writing in Plain Language. OMB provides a bullet, in section four of the Toolkit, which contains sample resources and tips for using plain language in agency decision-making. ACUS understands that, “[c]learly drafting and explaining regulations facilitates the core administrative law goals of public participation, efficient compliance, judicial review, and the protection of rights.” See [Recommendation 2017-3](#), *Plain Language in Regulatory Drafting*. As this recommendation offers best practices for agencies to facilitate plain language in drafting both substantive rules and guidance documents, OMB may wish to modify this bullet point to include this ACUS recommendation. That modification (modified text in *italics*) could be as follows:

- Writing in plain language: plainlanguage.gov, Tips for Using Plain Language (U.S. Office of Personnel Management) & [Recommendation 2017-3](#), *Plain Language in Regulatory Drafting (Administrative Conference of the United States)*

II. Additions to Section Five of the Toolkit – *Navigating the Legal and Policy Environment.*

Federal Administrative Sourcebook. ACUS, in a joint initiative with the Section of Administrative Law and Regulatory Practice of the American Bar Association, maintains the online Federal Administrative Procedure Sourcebook. The Sourcebook is an annotated compilation of key legal sources that govern nearly every aspect of administrative procedure, including several important statutes related to public participation not referenced in the Toolkit. OMB may wish to consider including the Sourcebook in section five of the Toolkit as a means to enhance public understanding of these complex legal sources. Therefore, OMB may wish to add the following bullet point in this section:

- [Federal Administrative Procedure Sourcebook](#) (*Administrative Conference of the United States*)

III. Additions to Section Seven of the Toolkit – *Special Considerations for Public Participation and Community Engagement.*

Leveraging Artificial Intelligence Design and Implementation. OMB notes that leveraging artificial intelligence (AI) is a special consideration for public participation and community engagement under section seven of the toolkit. ACUS has completed several projects on the use of AI at federal agencies and has provided considerations for agencies, “when adopting or

modifying AI systems and developing practices and procedures for their use and regular monitoring.” See [Statement #20](#), *Agency Use of Artificial Intelligence*. OMB may wish to consider adding a link, in this bullet point, to ACUS resources pertaining to agency use of AI, or more specifically to ACUS Statement #20. Further as mass comments to agency rulemaking have become more common, OMB might wish to provide resources for best practices on using AI to manage mass comments to proposed rules. See [Recommendation 2021-1](#), *Managing Mass, Computer-Generated, and Falsely Attributed Comments*. OMB might supplement that bullet point as follows:

- Leveraging artificial intelligence design and implementation: *The Administrative Conference of the United States provides best practices and guidance to assist agencies in using AI in their administrative processes* (<https://www.acus.gov/ai>).

IV. Additions to Section Nine of the Toolkit – Building the Public’s Capacity to Engage.

The Public’s Use of Technology. OMB has provided, in section nine of the Toolkit, a collection of sample resources to assist in building the public’s capacity to engage in agency decision-making. To supplement this list of resources, OMB may wish to include methods and best practices relating to the public’s use of technology in agency decision-making. ACUS has recommended best practices for using virtual engagement to improve public participation in rulemaking. See [Recommendation 2023-2](#). ACUS has also developed best practices for using social media to increase public awareness of agency activities. See [Recommendation 2013-5](#). Therefore, OMB may wish to add the following two bullet points under section nine, to provide resources that work to improve the public’s use of technology in agency action:

- [Recommendation 2023-2](#), *Virtual Public Engagement in Agency Rulemaking (Administrative Conference of the United States)*
- [Recommendation 2013-5](#), *Social Media in Rulemaking (Administrative Conference of the United States)*

Petitioning Agencies to Issue, Amend, or Repeal a Rule. Assisting the public in engaging in more effective public participation requires that they be aware of the various ways that they can participate. A primary reason so few petitions are filed at agencies is simply that the public is not aware that they can request that an agency issue, change, or repeal a rule. ACUS recommends that agencies provide greater transparency for the petitioning process and, “educate the public about how petitions fit with the other (often more informal) mechanisms through which agencies receive feedback.” See [Recommendation 2014-6](#), *Petitions for Rulemaking*. Therefore, OMB may wish to consider adding a bullet point under the section on building the public’s capacity to engage, to reflect the public’s ability to petition federal agencies. Such a bullet point could look like the following:

- [Recommendation 2014-6](#), *Petitions for Rulemaking* (Administrative Conference of the United States)

How might you like to be involved in creating this Toolkit?


ACUS is ready to assist OMB as they carry out the work of publishing this important resource. This Toolkit will assist both the public and federal agencies in understanding how to best develop public participation and community engagement programming, while also providing examples of successes at various governmental and non-governmental bodies.

OMB may wish to keep ACUS in mind should they consider convening a working group or committee geared towards further developing this Toolkit. ACUS also plans to take advantage of any opportunity to submit feedback on further drafts of the Toolkit and is available should OMB have any further questions, comments, or concerns about this comment or any ACUS resources.

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The Office of the Chair would welcome any questions OMB may have about the above-cited or any other ACUS resources on public participation. Please contact Adam Cline at acline@acus.gov if you have questions or would like further information.

Sincerely,



Andrew Fois
Chair



Adam Cline
Attorney Advisor

Cc: Mr. Alex Goodenough
ACUS Government Member from OMB