

Comment from Public Member Sidney A. Shapiro
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I think the below is a subject that the recommendation should at least flag, although a prescriptive recommendation would not be helpful given the variety of circumstances that a rule about outreach might apply

Williams and Metheny (*Democracy, Dialogue and Environmental Disputes: The Contested Languages of Social Regulation* (1995)) argue that social regulation can be understood in different ways and that communities, marginalized or otherwise, employ a communitarian dialogue while agencies employ a managerial (i.e., technical and expert) dialogue. Since it is obvious that community members do not "speak" that managerial language, it is easy enough to think that they have nothing to contribute. Rulemaking comments that are the equivalent of postcards seem to back this up. But, as Williams and Mehteny argue, that does not mean the lived experience of marginalized communities and the concerns that arise are irrelevant when agencies engage in rulemaking that affect their interests.

To think otherwise only increases the structural impediments that impede their participation in such rulemakings. As I have blogged about in the Yale Journal of Regulation symposium on racism in administrative law (blog post available here: <https://www.yalejreg.com/nc/administrative-procedures-and-racism-by-sidney-a-shapiro/>), their exclusion morphs into structural racism. Not everyone will agree with the strong views expressed there, but some acknowledgment that we can do better is appropriate in my view, as stated.