

**Memorandum**

To: Committee on Rulemaking
From: Emily Schleicher Bremer (Staff Counsel)
Date: August 17, 2011
Re: Draft Recommendation

The following draft recommendation is based on Professor Coglianese's report and represents what the Committee might produce if it chose to adopt the recommendations suggested by the report. However, the Committee is not required to do so. This draft is intended to facilitate the Committee's discussion at its August 24, 2011 public meeting and not to preempt the Committee's discussion and consideration of the proposed recommendations. In keeping with the Conference's practice, a draft preamble has been included. The aim of the preamble is to explain the problem or issue the Recommendation is designed to address, and the Committee should also feel free to revise it as appropriate.

Agency Innovations in e-Rulemaking**Draft Preamble**

The rulemaking function of federal regulatory agencies is typically accomplished today through "e-rulemaking": that is, through the use of digital technology. The website www.regulations.gov centralizes much e-rulemaking activity throughout the executive branch. This recommendation concerns additional activities by individual agencies, beyond the use of regulations.gov, that promote e-rulemaking.

Individual agencies have promoted e-rulemaking in innovative ways. For example, agencies have developed portions of their own websites to support their rulemaking efforts. Some agencies have specialized webpages that allow users to submit and view comments on all of the agency's open rulemakings, or to view information on the status of their priority rulemakings. Links from some agency home pages make rulemaking information easy to locate. Other agencies have innovated by using social media to get the public involved in the rulemaking processes from the earliest stages. These social media tools include blogs, Facebook, Twitter, IdeaScale, and other online discussion platforms.

The Conference's study of agency websites and e-rulemaking initiatives reveals that agency use of innovative features such as these to encourage and facilitate public engagement in rulemaking is not uniform. Agency websites are uniformly easy to locate, but do not always include features to ensure that essential information, particularly about rulemaking, is broadly accessible to the public. The Conference believes that, as a general matter, agencies should continue to improve their websites to facilitate public accessibility and engagement so as to achieve the promise of e-rulemaking.



Based on its study of innovations at individual agencies, the Conference has identified ideas that can promote better public involvement in the rulemaking process. The recommendations below are intended to guide agencies as they move towards this goal.

Draft Recommendation

Increasing the Visibility of Rulemakings

1. Agencies should manage their use of the Internet with rulemaking participation by the general public in mind.
2. Agencies should provide a one-stop location on their home pages for all rulemakings currently open for comment.
3. Agencies should consider, in appropriate rulemakings, retaining facilitator services to manage discussion with respect to the rulemaking on social media sites.

Improving Access to Agency Websites

4. Agencies should strive further to improve the accessibility of their websites to all members of the public.
5. Agencies should take steps to improve access for persons who do not speak English as a primary language.
 - (a) While agencies need not translate their entire websites into other languages, they should provide translations of vital information. More agencies should provide a scaled-down version of their website in other languages.
 - (b) Agencies should provide translations of materials into appropriate languages for specific rulemakings that can be anticipated to have disproportionate effects upon or elicit a substantial interest by individuals with limited English proficiency.
6. Agencies should take steps to improve access to their websites by members of the public using low-bandwidth Internet connections by providing a text-only option.
7. Agencies should ensure Section 508 compliance and make their websites accessible to those with disabilities.

Making Comment Policies Easy to Locate

8. Agencies should display comment policies in accessible locations or provide links to the comment policy in multiple, accessible locations, especially on webpages that elicit comments from the public.



Ensuring Access to Archived Material

9. Agencies should develop systematic protocols for the retrieval of old material online.

Evaluating Website Accessibility on an Ongoing Basis

10. Agencies should conduct ongoing evaluations of their use of the Internet against the goals of e-rulemaking.