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## **Re: Identifying and Reducing Burdens in Administrative Process**

Mr. Gluth:

Thank you for the opportunity to provide feedback on how agencies can identify and reduce unnecessary procedural burdens that members of the public face when engaging in the administrative process.<sup>1</sup>

Democracy Forward is a national legal organization that uses the law to fight for good government and improve the lives of people and communities through pro bono legal representation, policy and public education, and regulatory engagement. We partner with a growing list of over 260 organizations and community groups representing a broad range of interests—including workers, veterans, immigrants, public health experts, and small businesses<sup>2</sup>—to help bring their voices and expertise to courts and federal policy makers. We are deeply familiar with many of the barriers facing members of the public who wish to engage with the regulatory process and have ourselves worked to advocate for better engagement, particularly through the use of technology. Among other efforts, we have encouraged the General Services Administration to fix flaws in Regulations.gov that were introduced in 2020,<sup>3</sup> published about ways to improve rulemaking engagement,<sup>4</sup> and organized and facilitated a panel discussion at the ABA Administrative Law Conference on using technology to improve rulemaking engagement.<sup>5</sup>

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<sup>1</sup> Identifying and Reducing Burdens in Administrative Processes; Request for Comments, 88 Fed. Reg. 9851 (Feb. 15, 2023), available at <https://www.federalregister.gov/documents/2023/02/15/2023-03181/identifying-and-reducing-burdens-in-administrative-processes-request-for-comments#addresses>.

<sup>2</sup> See *Clients & Partners*, Democracy Forward, <https://democracyforward.org/partners/> (listing over 260 partner organizations).

<sup>3</sup> Letter from Democracy Forward Found. et al. to Katy Kale, Acting Adm'r, U.S. Gen. Servs. Admin. et al. (May 17, 2021), <https://democracyforward.org/wp-content/uploads/2021/05/Letter-to-GSA-re-Regulations-Gov-Website-5.17.21.pdf>.

<sup>4</sup> Samara Spence & Robin Thurston, *Regulatory Engagement is Due for an Upgrade*, *The Regul. Rev.* (Mar. 17, 2022), <https://www.theregview.org/2022/03/17/spence-thurston-regulatory-engagement-is-due-for-an-upgrade/>.

<sup>5</sup> *Can Technology Improve Public Engagement and the Administrative Record?*, ABA Section of Admin. L. & Regul. Prac., 2022 Admin. L. Conf., agenda available at <https://www.regulationwriters.com/downloads/AdLaw-Conference2022.pdf>.

We appreciate ACUS’s continuing efforts to improve public participation in the administrative process and to reduce burdens in accessing government programs. We believe that reducing burdens to access will ultimately make government more responsive to the needs of people, including those who have historically been under-represented in the administrative process.

We write here to respond to two issues raised in the Request for Comments: (1) methods that agencies can use to identify unnecessary burdens to engaging in the administrative process, and (2) strategies for reducing unnecessary burdens to engaging in the administrative process.

### **Agencies Should Systematically Rely on User Experience Research Anytime It Seeks to Understand or Address Burdens to the Public**

Any consideration of methods for improving public participation must begin with the crucial acknowledgement that, in the modern era, technology has become the primary access point for government information and programs, including the administrative process. Even individuals who may lack financial resources for traditional web access are likely to access the internet through their mobile devices,<sup>6</sup> indicating that technology presents a significant opportunity for expanding public participation.

Yet the quality and use of technology vary dramatically across agencies, and, in some cases, the technology itself has created unnecessary barriers to participation in the administrative process. For example, as we have explained in detail elsewhere, Regulations.gov is far from user-friendly to even sophisticated users, much less those less familiar with the administrative process.<sup>7</sup> Our experience working with GSA to explain the flaws with Regulations.gov has indicated that the agency conceived, designed, and implemented the site without an adequate understanding of how the public engages in the administrative process, and thus how technology can help or hinder their goals.

The technology industry has solved this problem with numerous human-centered design<sup>8</sup> processes, one of which is “user experience research.” User experience research is the way in which technologists identify how actual users accomplish the underlying task behind a technology, including assumptions users make, how they interact with others in the process, what outcomes they expect, and what challenges they encounter.<sup>9</sup> This research then becomes the basis of the subsequent technology solution. This process is widely used throughout the private

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<sup>6</sup> Holly Quinn, *Nearly 30% of young and low-income Americans rely on mobile internet*, Technical.ly (Feb. 21, 2022) <https://technical.ly/diversity-equity-inclusion/mobile-internet-reliance-report/>.

<sup>7</sup> Democracy Forward Found. et al., *supra* note 3.

<sup>8</sup> Nat’l Inst. of Standards and Tech., *Human Centered Design (HCD)*, <https://www.nist.gov/itl/iad/visualization-and-usability-group/human-factors-human-centered-design> (May 3, 2021).

<sup>9</sup> See *User Research Basics*, GSA, <https://www.usability.gov/what-and-why/user-research.html> (last visited Apr. 17, 2023).

sector, and many government technology programs have implemented such practices based on well-established playbooks.

For example, the U.S. Digital Service has created a Digital Services Playbook recommending that government services “begin digital projects by exploring and pinpointing the needs of the people who will use the service, and the ways the service will fit into their lives” and that “policy makers must include real people in their design process from the beginning.”<sup>10</sup> It recommends that, early on in the project, agencies “spend time with current and prospective users of the service,” and that it “[t]est prototypes of solutions with real people” and continue to test with potential users throughout the process.<sup>11</sup> GSA’s Usability.gov recommends similar best practices, including using processes like card sorting to understand how users understand the website’s information to be structured, contextual interviews to observe user patterns, or focus groups and individual interviews to understand user needs.<sup>12</sup>

User experience research is not simply accepting public comment letters or listening to oral comments during a listening session. It is a sophisticated process that experts can use to map the journey of specific users, pinpoint specific challenges, and design appropriate solutions. For example, a user experience researcher working with the military conducted over 100 interviews and 20 site visits to observe users “to understand the needs and pain points of service members, military base office personnel, and moving companies.”<sup>13</sup> Afterward, they were able to take “a manual, paper process that service members dreaded and trimmed it down to something that only requires 10 minutes and a mobile device.”<sup>14</sup>

In order to truly “understand the needs and pain points”<sup>15</sup> of members of the public who wish to participate in the administrative process, we recommend that agencies, including GSA, conduct user experience research following their own, already published best practices. This must include actual user interviews, task-oriented observation, focus groups, and other processes. User experience research and human-centered design should be systematically incorporated into all stages of planning, design, and implementation of any efforts to improve the customer experience of those engaging with administrative programs and procedures.

### **Regulations.Gov Should Be Reimagined as a Cutting Edge Tool for Public Engagement in the Rulemaking Process**

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<sup>10</sup> *Digital Services Playbook*, U.S. Digit. Serv., <https://playbook.cio.gov/#play1> (last visited Apr. 14, 2023).

<sup>11</sup> *Id.*

<sup>12</sup> See *User Research Basics*, *supra* note 9.

<sup>13</sup> See, e.g., *U.S. Transportation Command: MilMove*, Truss, <https://truss.works/milmove-case-study> (last visited Apr. 17, 2023).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

We also recommend that the government take seriously the burdens—as well as the opportunities—presented by Regulations.gov.

ACUS itself has previously recommended that Regulation.gov be designed to meet user needs.<sup>16</sup> Yet, as noted above and elsewhere, Democracy Forward has serious concerns about the version of Regulations.gov that was released by GSA in 2020. GSA has made some improvements to the site since we began engaging on the issue, including adding the ability to download a csv file containing an index of comments on a particular rulemaking docket and the ability to sign up for docket update emails. While we appreciate these efforts, the site continues to be a serious barrier to public engagement in the rulemaking process.

At a minimum, it should be easy and intuitive for users to navigate the site. The broken search feature needs improvements. It should be possible for users to identify and skim basic information about comments (such as author, organization, and whether there is an attachment) from the website itself. It should be possible to filter and sort comment data, and information across rulemaking dockets should be presented using a single set of standards common to all agencies.

But Regulations.gov could be so much more than functional. It could itself become a useful tool for drawing in more members of the public and making it easier to participate in the process. Here are just a few potential options.

- **Regulations.gov could facilitate agencies' affirmative promotion of public participation in compliance with Section 2 of the April 6, 2023, Executive Order on Modernizing Regulatory Review.**<sup>17</sup> Agencies are now required to take affirmative steps to engage with a wide range of groups throughout the rulemaking process, from agenda-setting to meetings with the Office of Information and Regulatory Affairs. Regulations.gov could facilitate this through, for example, allowing organizations or individuals to indicate interest in being contacted for engagement. Regulations.gov could contain a database of people specific expertise and interests that agencies could use when fulfilling their duties. Or Regulations.gov could routinely provide links to a webpage where people can sign up for meetings with OIRA.
- **Dockets on Regulations.gov could highlight key questions for which agencies seek comment and include forms with text boxes to accept responses to specific questions.** Others have suggested that agencies do this on their own websites. *Any* such forms have the potential to make public access simpler for particular comment opportunities. But Regulations.gov could facilitate this process by creating a user-friendly way for agencies to generate web forms and ingest and sort the comments received.

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<sup>16</sup> Improving Access to Regulations.gov's Rulemaking Dockets, 84 Fed. Reg. 2143, 2145 (Feb. 6, 2019).

<sup>17</sup> Exec. Order No. 12,866, 88 Fed. Reg. 20916 (Apr. 6, 2023), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/06/executive-order-on-modernizing-regulatory-review/>.

- **Regulations.gov could collect additional information on comments for use in filtering and sorting.** In addition to making it possible to filter and sort comments based on data that Regulations.gov already collects (like attachments and author), additional data on each comment would assist members of the public trying to decide whether or how to weigh in. Such information could include author identifiers (e.g., individuals, anonymous, or organization), whether the comment opposes or supports a rulemaking effort, and whether a comment addresses specific questions posed by the agency. For example, the comment submission form could include check boxes for the different topics identified by the agency, and then the comment list could allow users to filter to see only comments addressing a particular topic. This would allow for more meaningful engagement on particular topics and would likely also allow agencies to sort comments electronically instead of doing so manually.
- **The Regulations.gov landing page could highlight and summarize major upcoming comment opportunities, with deadlines, and link directly to the docket page.**
- **Regulations.gov could host a blog or news feed that highlights comment opportunities and agency information needs.** Interested members of the public could then receive email alerts or share information through social media that draws attention to specific agency needs, in an easy-to-comprehend format.
- **The eRulemaking program could have staff who regularly coordinate with agency program offices to identify ways in which Regulations.gov can facilitate their engagement with the public.**

Thorough user experience research with members of the public would likely reveal many other possibilities. The key is for ACUS, GSA, and the agencies that participate in Regulations.gov<sup>18</sup> to begin to treat the site as a potential solution to many of the burdens to engaging in the administrative process. As the centralized hub for members of the public to engage in the administrative process, Regulations.gov has the potential to become a truly cutting-edge tool for drawing more members of the public into the process.

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<sup>18</sup> *Improving Access to Regulations.gov's Rulemaking Dockets*, Admin. Conf. of the U.S., <https://www.acus.gov/recommendation/improving-access-regulationsgovs-rulemaking-dockets> (last visited Apr. 17, 2023) (“There is no direct appropriated funding for FDMS/Regulations.gov. Agencies that participate in FDMS/Regulations.gov fund the system through contributions, decided by a formula. The formula for contributions, established by the EPA in its Capital Asset Plan and Business Case, is based on a number of factors, including the average annual number of rules and non-rule items the agency publishes and the average annual number of comments posted on Regulations.gov.”)

If you have any questions or would like to discuss the information in this comment, please contact Samara Spence, [sspence@democracyforward.org](mailto:sspence@democracyforward.org), or Robin Thurston, [rthurston@democracyforward.org](mailto:rthurston@democracyforward.org).

Respectfully submitted,

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