



# COALITION FOR **SENSIBLE SAFEGUARDS**

## **Early, Ongoing Public Participation is Key to Effective Rulemaking**

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January 21, 2026

## ACKNOWLEDGEMENTS

This report was written by Sam Berger, consultant to the Coalition for Sensible Safeguards.

The author would like to thank Alex Hertel-Fernandez and K. Sabeel Rahman for their thoughtful comments.

## ABOUT THE COALITION

The Coalition for Sensible Safeguards is an alliance of more than 220 consumer, labor, scientific, research, faith, community, environmental, small business, good government, public health, and public interest groups — representing millions of Americans.

We are joined in the belief that our country's system of regulatory safeguards should secure our quality of life, pave the way for a sound economy, and benefit us all.

The coalition is led by an executive committee co-chaired by Public Citizen and Consumer Federation of America. The committee also includes the AFL-CIO, the Center for Progressive Reform, the Economic Policy Institute, the Natural Resources Defense Council, and the Union of Concerned Scientists.

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## KEY FINDINGS

Meaningful public participation in rulemakings leads to better rules and greater trust in the regulatory process. But the current regulatory system needs substantial improvements to more fully realize these goals.

- Meaningful public participation in the regulatory process provides agencies with important information to shape their decisionmaking, leading to better rules.
- The Trump administration has been seeking to undermine regulatory participation to quickly advance its goals with little public accountability.
- But even the pre-Trump administration status quo did not allow for meaningful participation in the regulatory process by many impacted communities due to the highly technical nature of the process and the fact that the comment process for rules is not well-designed to encourage engagement.
- Agencies can take steps to make public engagement better, by allowing for earlier participation, engaging with impacted communities proactively, making opportunities for engagement more accessible to a broader range of people, and responding to comments in a manner that demonstrates agencies take them seriously.
- There are examples from recent years that point a way forward, if more agencies adopt best practices that have proven successful.
- Critically, greater public participation does not mean that the process must be slowed to a crawl or that regulated parties get a veto over important safeguards.

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### **The Need for Improving Participation in the Regulatory Process**

Public participation plays an important role in the regulatory process. It provides information that informs agency decisions, strengthens public accountability as the agency interacts with impacted communities, and builds broader trust in the regulatory process.

Under the Administrative Procedure Act (APA) agencies are required to make proposed rules publicly available, allow anyone to comment on those proposed rules, and then respond to significant comments.<sup>1</sup> But the APA's notice-and-comment process is insufficient to allow for meaningful public engagement on its own. The passive approach to soliciting comments, complicated and technical nature of the process, and the late stage in the process in which the public is engaged, all limit broad participation from communities affected by proposed rules.

There are steps that can significantly improve public engagement, by structuring public engagement so that it is (1) early, (2) proactive, (3) accessible, and (4) reciprocal. Agencies can make these process improvements without creating undue delay or new choke points for anti-regulatory interests to stop important safeguards, a concern that is usually voiced with respect to

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<sup>1</sup> 5 U.S.C. § 553(c).

requirements for infrastructure projects that allow for special interests to slow or even derail projects, but has also been raised with public participation in rulemakings.<sup>2</sup>

Recent steps by individual agencies prior to the Trump administration show the potential for creating space for meaningful public engagement in rulemaking. Given the Trump administration's ongoing efforts to undermine public participation,<sup>3</sup> improvements will likely have to wait until a future administration that supports such increased public engagement. But by applying agency best practices more broadly, and continuing to build on and improve them, an administration focused on increasing public participation in the regulatory system can make improvements that will quickly and meaningfully improve public engagement in the process.

### **Improving on Notice and Comment Participation in Rulemaking**

Meaningful public participation in rulemaking can provide information to agencies that lead to better rules, provides a measure of accountability for agency actions, and builds trust with participating stakeholders.<sup>4</sup> But fully realizing the benefits of public engagement will require changes to the pre-Trump administration status quo.

Under the current APA requirements, agencies publish a proposed rule, with detailed and technical discussions of the relevant issues, in the *Federal Register* and provide a reasonable time period for members of the public to comment. But this process is tailor-made to result in comments largely from sophisticated actors who are the most frequent participants in the process. Understanding where to look to find proposed rules, the relevant content of such rules, and how to provide information to agencies effectively is challenging. Rules are too complex and the regulatory process itself is too little-understood to allow for easy engagement from those unfamiliar with it or too busy to spend significant time engaging with the process. Individuals with relevant lived experience, including those that directly benefit from regulations, can find it challenging to participate, as they may lack the necessary time, resources, knowledge of the process, or trust that their views will be truly considered.

Given the value of public participation to the regulatory process and the agency action itself, ensuring more meaningful participation was a core part of the Biden administration's efforts to modernize the regulatory process.<sup>5</sup> Like any part of the regulatory process, public participation benefits from a systematic and intentional approach by an agency, combined with the necessary

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<sup>2</sup> Ezra Klein, "Biden's Team Wished They Moved So Much Faster," *Washington Post*, Apr. 13, 2025, available at <https://www.nytimes.com/2025/04/13/opinion/doge-abundance-government-bulding.html>.

<sup>3</sup> Sam Berger, "Undermining Accountability in Rulemaking: The Trump Administration's Attacks on Public Engagement in the Regulatory Process," Coalition for Sensible Safeguards, July 17, 2025, available at <https://sensiblesafeguards.org/reports-and-studies/undermining-accountability-in-rulemaking-the-trump-administrations-attack-on-public-engagement-in-the-regulatory-process/>.

<sup>4</sup> Michael Sant'Ambrogio and Glen Staszewski, Administrative Conference of the United States, "Public Engagement with Agency Rulemaking," (Nov. 19, 2018), available <https://www.acus.gov/document/public-engagement-rulemaking-final-report>.

<sup>5</sup> Executive Order 14094, "Modernizing Regulatory Review," 88 FR 21879 (Apr. 6, 2023), available at <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

staff time and resources to implement it. Specific guidance on public participation can help to ensure agency staff use best practices consistently and effectively.

For example, the Environmental Protection Agency (EPA) has participation guidance, which it updated in 2024, to “help EPA staff build and strengthen competencies necessary to reach and hear from members of the public on actions they are interested in or affected by, while accounting for Agency time and resource constraints.”<sup>6</sup> The guidance sets forth steps to aid staff in intentionally planning an engagement strategy that is well-suited to a particular regulatory action. Similarly, the Food and Nutrition Service (FNS), part of the Department of Agriculture (USDA), developed an agency framework for engagement that helped staff understand available tools and how best to use them with respect to specific engagement efforts.<sup>7</sup>

More granularly, agencies have taken steps to improve public participation with a focus on engagement that is (1) early, (2) proactive, (3) accessible, and (4) reciprocal.

### *Early Engagement in the Regulatory Process*

While notice and comment provides an important opportunity for public engagement, it is critical for agencies to provide opportunities for meaningful participation even earlier in the process, when they are at the stage of considering regulatory priorities and potential approaches to pressing issues. Agencies take seriously the comments they receive on proposed rules, but given the time and effort necessary to develop a proposed rule, an agency is less likely to make wholesale changes to a regulation in response to public comments unless a serious flaw is identified in their suggested approach. Even when an agency does decide to take a significantly different approach, it has still lost the time and resources expended in developing the first approach reflected in the proposed rule.

Earlier engagement allows agencies to receive important input when they are still deciding on which issues to address and in which order. And it allows them to receive feedback prior to investing significant time in a particular regulatory approach when a better one might be available. Early engagement can be particularly helpful if it is part of regular, ongoing dialogue with stakeholders that occurs outside of engagement on a particular rulemaking.

This kind of meaningful, early engagement is not how the formal requirements of administrative law are structured. Yet in recent years, there have been notable attempts to encourage greater early engagement. In a 2023 guidance, for example, the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget, which coordinates the

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<sup>6</sup> Environmental Protection Agency, “Achieving Health and Environmental Protection Through EPA’s Meaningful Engagement Policy,” (Aug., 2024), available at <https://www.epa.gov/system/files/documents/2024-09/achieving-health-and-environmental-protection-through-epas-meaningful-engagement-policy-august-2024.pdf>.

<sup>7</sup> Office of Information and Regulatory Affairs, “With the People, For the People: Strengthening Public Participation in the Regulatory Process,” (Aug., 2024), available at <https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/08/OIRA-2024-Public-Participation-Report.pdf>.

interagency regulatory process, encouraged agencies to rely on prior engagement with relevant actors when developing priorities for the Unified Regulatory Agenda.<sup>8</sup>

The Unified Regulatory Agenda, which is released twice a year, explains an agency's expected regulatory actions for both the near and long term. Incorporating prior engagement into this process serves two purposes: It provides a mechanism for agencies to incorporate early feedback into their planning and serves as an impetus for agencies to seek out such feedback in the future.

OIRA also directed agencies to review their guidance on public communication related to notice-and-comment rulemaking that is not undertaken through submission of formal comments, sometimes termed *ex parte* communications, to ensure that it did not unduly limit early engagement.<sup>9</sup> *Ex parte* guidance is important to ensure that agencies are engaging with the public in a transparent, consistent, and equitable manner, while also protecting against unnecessary legal risks to the rulemaking itself. Early public engagement is consistent with these goals. OIRA also recommended that agencies identify regulations that would benefit from meaningful participation and then develop an engagement plan prior to moving forward with the rulemaking, to ensure there is early, meaningful input.

Early engagement can occur with respect to specific rulemakings, but is most useful when it is part of an ongoing dialogue with relevant stakeholders. For example, as part of its Strategic Plan, the Administration for Children and Families (ACF) in the Department of Health and Human Services sought to “[c]enter and integrate the perspectives and experiences of program participants in the design, management, evaluation, and decision-making of ACF programs and operations.”<sup>10</sup> To do so, it had a number of listening sessions with parents and caregivers, and used these meetings to inform policy priorities, including rulemakings.<sup>11</sup> These types of ongoing discussions can help to build trust between stakeholder communities and agencies, which encourages further participation and engagement.

### *Proactive Engagement with Potential Stakeholders*

To ensure broad public participation, particularly from stakeholders who do not typically engage in the regulatory process, agencies need to undertake targeted, proactive engagement. Traditional models of public engagement, in which agencies provide general notice of opportunities to participate and make themselves available to talk with whomever reaches out to them, are useful

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<sup>8</sup> Office of Information and Regulatory Affairs, “Broadening Public Participation and Community Engagement in the Regulatory Process,” (July, 2023), available at <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.

<sup>9</sup> Office of Information and Regulatory Affairs, “Broadening Public Participation and Community Engagement in the Regulatory Process,” (July, 2023), available at <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.

<sup>10</sup> Administration for Children and Families, “Strategic Plan,” (Jan., 2022), available at [https://acf.gov/sites/default/files/documents/ACF-Strategic-Plan-Jan-2022-FINAL\\_0.pdf](https://acf.gov/sites/default/files/documents/ACF-Strategic-Plan-Jan-2022-FINAL_0.pdf).

<sup>11</sup> Office of Information and Regulatory Affairs, “With the People, For the People: Strengthening Public Participation in the Regulatory Process,” (Aug., 2024), available at <https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/08/OIRA-2024-Public-Participation-Report.pdf>.

for engaging knowledgeable actors who understand the regulatory process and how to effectively participate in it. But these methods are less likely to reach those who tend to engage in the regulatory process less frequently or not at all.

Instead, agencies need to be proactive in encouraging these stakeholders to participate and shaping outreach in a way more likely to engage them. That means meeting people where they already are, by participating in existing events in relevant communities, working with trusted local partners, and conducting accessible outreach in mediums and forms more likely to be utilized by those the agency is seeking to reach.

OIRA took a notable, if modest, step in this direction in its 2023 guidance, which directed agencies to review their *ex parte* guidance to ensure that it did not preclude proactive, targeted outreach to relevant stakeholders, in addition to the early engagement discussed above. OIRA also encouraged agencies to develop engagement plans to determine how they would identify and engage relevant stakeholder communities early in the rulemaking process, taking into account barriers that might make participation by members of those communities challenging.

The Federal Communication Commission's (FCC) outreach efforts around rulemaking to provide equal access to broadband services show how targeted outreach can be incorporated into broader outreach efforts. Prior to releasing a proposed rule, the FCC conducted nationwide outreach with a particular focus on the experiences of people in historically excluded: low-income, rural, and marginalized communities.<sup>12</sup> The FCC accepted meeting requests from a range of actors who wanted to discuss potential options for reform, state and local impacts, and industry best practices.

In addition to accepting a large number of meeting requests, the FCC also proactively reached out to public interest advocates and the disability community to seek their participation in four listening sessions. The FCC's approach shows how agencies can blend more traditional and proactive approaches to hear from a wide range of stakeholders.

Members of Congress have also recognized the need for proactive agency engagement around rulemakings. For example, The EXPERTS Act, introduced in November 2025 by Representative Pramila Jayapal and Senator Elizabeth Warren includes a provision that would for the first time create an Office of Public Advocate whose duties include “assisting agencies in soliciting public participation in the rulemaking process,” “assisting individuals in participating in the rulemaking process,” and “working with agencies, Congress, and the public to identify problems and improve public participation in the rulemaking process.”<sup>13</sup> The bill also includes a provision to ensure greater public awareness of rulemakings.<sup>14</sup>

### *Making Public Engagement Opportunities Accessible*

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<sup>12</sup> Federal Communications Commission, “The Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Final Rule,” 89 FR 4128 (Jan., 22, 2024) available

<https://www.federalregister.gov/documents/2024/01/22/2023-28835/the-infrastructure-investment-and-jobs-act-prevention-and-elimination-of-digital-discrimination>.

<sup>13</sup> EXPERTS Act of 2025, H.R. 6145, 119th Congress, § 11 (2025).

<sup>14</sup> *Id.* § 14.

For public engagement to be meaningful, agencies need to do more than simply provide opportunities for engagement: They need to take steps to make those opportunities accessible to a wide range of stakeholders.

At minimum, accessible engagement requires providing stakeholders with sufficient notice of upcoming opportunities, doing so in a manner they are likely to see and understand, and structuring those opportunities to make participation easy. For rules that engage a more technical audience, this may involve publishing a notice in the *Federal Register* and in relevant trade journals or newsletters.

But when agencies are seeking feedback from a broader audience, they must use communication methods people are more likely to engage with, such as social media, email, and other print and digital platforms. For rules where relevant stakeholders may speak a different language or have disabilities that preclude certain types of engagement, agencies should account for and address these issues. For example, in developing a rule protecting African elephants, the Fish and Wildlife Service held listening sessions in English and French so that people from African elephant range countries could participate.<sup>15</sup>

Agencies also should consider the times and places that they hold public engagement events. A mix of in-person and online events will reach both people who have less access to or comfort with online engagement tools and those who have trouble traveling to in-person events. Providing opportunities for engagement outside of standard work hours can allow for participation by those who cannot take time away from their jobs, and providing opportunities during standard work hours can allow for participation by those who work nights and weekends or have many personal responsibilities outside of normal working hours.

Holding in-person events in a number of locations can ensure diverse perspectives from different regions of the country. In seeking feedback on its rulemaking on equal access to broadband, the FCC held in-person listening sessions in Los Angeles, California; Baltimore, Maryland; the District of Columbia; New York City, New York; and Topeka, Kansas. Similarly, in developing a rule to protect miners from occupational exposure to respirable crystalline silica, the Mine Safety and Health Administration held listening sessions in Arlington, Virginia; Beckley, West Virginia; and Denver, Colorado – the sessions allowed for both virtual and in-person participation.<sup>16</sup>

Agencies also should seek to meet people where they are, by holding participation sessions at existing, widely-attended events where possible and partnering with local partners who are trusted in a given community. This type of partnering will help the agency best understand how

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<sup>15</sup> Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule for the African Elephant Final Rule,” 89 FR 22522 (Apr. 1, 2024), available at <https://www.federalregister.gov/documents/2024/04/01/2024-06417/endangered-and-threatened-wildlife-and-plants-revision-to-the-section-4d-rule-for-the-african>.

<sup>16</sup> Mine Safety and Health Administration, “Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection Final Rule,” 89 FR 28218 (Apr. 18, 2024), available at <https://www.federalregister.gov/documents/2024/04/18/2024-06920/lowering-miners-exposure-to-respirable-crystalline-silica-and-improving-respiratory-protection>.

to structure information in a way that is more accessible and aid it in connecting with harder to reach stakeholders. For example, when the Department of Transportation (DOT) was working on regulations to address air travel challenges faced by individuals with disabilities using wheelchairs and scooters, DOT worked with disability rights groups to help facilitate participation by people with disabilities.<sup>17</sup>

But perhaps even more basic than that, agencies need to ensure that the information they provide to people is readily understandable. Regulations deal with highly complex issues, and frequently do so using very technical language and with lengthy descriptions of the relevant factors that informed the rulemaking. It is unlikely that people without specialized knowledge are able to understand and respond to this information.

To encourage effective participation, therefore, agencies need to present information about proposed rules in a clear manner, and also be clear about the outstanding issues and topics on which they are most interested in receiving feedback. Beyond any particular rule, there is significant work that agencies need to do to demystify the rulemaking process as a whole, helping people to understand that they can comment on any rule, how they can do so, and that the agency will review and consider relevant comments in finalizing the rule.

To this end, OIRA's 2023 guidance encouraged agencies to provide information related to public engagement in a clear, readily understandable manner. EPA also made clear the importance of plain language in its 2024 public participation guidance to staff, directing them to draft outreach materials in a clear manner and include graphics and other visuals, and to “[s]hare materials with partners that can help adapt technical information into plain language and create appropriate language translations. This process also gives EPA teams immediate feedback on what types of information a community finds most useful.”<sup>18</sup>

### *Making Public Engagement Reciprocal*

Given the time and effort necessary for stakeholders to participate in the regulatory process, particularly those who do not have significant experience with doing so, agencies need to make clear to those who participate that their efforts are valued. It is not enough to take into account and make changes in light of public feedback; agencies should also ensure they effectively communicate these facts back to relevant stakeholders.

OIRA's 2023 guidance directing agencies to discuss past participation efforts in the Unified Agenda notes that agencies should consider how they can “describe in the relevant abstract text how engagement with the public informed individual regulatory proposals.”<sup>19</sup> Similarly, EPA's

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<sup>17</sup> Office of Information and Regulatory Affairs, “With the People, For the People: Strengthening Public Participation in the Regulatory Process,” (Aug., 2024), available at <https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/08/OIRA-2024-Public-Participation-Report.pdf>.

<sup>18</sup> Environmental Protection Agency, “Achieving Health and Environmental Protection Through EPA's Meaningful Engagement Policy,” (Aug., 2024), available at <https://www.epa.gov/system/files/documents/2024-09/achieving-health-and-environmental-protection-through-epas-meaningful-engagement-policy-august-2024.pdf>.

<sup>19</sup> Office of Information and Regulatory Affairs, “Broadening Public Participation and Community Engagement in the Regulatory Process,” (July, 2023), available at <https://bidenwhitehouse.archives.gov/wp->

2024 participation guidance states that, “EPA should provide an explanation to participants and interested parties about the outcome of the public’s participation, such as how the EPA team considered the information and/or substantive responses to issues raised by the public.”<sup>20</sup> And to the extent that agencies create a space for ongoing dialogue with stakeholders, it provides an effective means for sharing back the results of public engagement.

## **Building on Best Practices to Further Improve Public Participation**

The agency practices described in this report are meaningful first steps toward a better public engagement process. Beyond applying these practices more broadly, agencies will need to continue to develop new and improved forms of engagement.

For example, agencies should consider how to provide even more meaningful engagement in their agenda-setting process. While impacted communities may have difficulty providing feedback on technical details of a particular regulation, such as what constitutes a dangerous level of a particular chemical in the air, they are particularly well-suited to provide thoughts on the issues they think are most pressing and worthy of agency attention. Beyond listening sessions, local and state governments are experimenting with other forms of participation that can provide for more meaningful public engagement,<sup>21</sup> and agencies should consider how these types of tools could be adapted to the process of setting regulatory priorities.

Agencies can also do more to work with and strengthen civil society groups that are important mediators for public engagement. Local groups that engage regularly with community members on a range of topics are likely to be more trusted than federal agencies that only episodically engage a particular community. But these groups need help, and resources, to engage effectively in the rulemaking process.

Agencies should consider how they can provide relevant training, resources, and other support to such groups. And they should be mindful of how their engagement with these organizations can contribute to, or detract from, the organizations’ credibility within relevant communities. Put another way, agencies should recognize as a relevant concern that their planning process, information sharing, and subsequent follow-up all serve to increase the likelihood of future productive engagements with a relevant community through a given local organization.

In designing new public participation strategies, it will be important to remain attentive to the need to allow for effective, timely agency action. Concerns have been raised about the use of public engagement processes to stymie needed regulatory changes,<sup>22</sup> and it will be critical to

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<content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.

<sup>20</sup> Environmental Protection Agency, “Achieving Health and Environmental Protection Through EPA’s Meaningful Engagement Policy,” (Aug., 2024), available at <https://www.epa.gov/system/files/documents/2024-09/achieving-health-and-environmental-protection-through-epas-meaningful-engagement-policy-august-2024.pdf>.

<sup>21</sup> Hollie Russon Gilman and Sara Jacob, “Civic Assemblies in Action: Lessons on Civic Engagement from Fort Collins,” New America, May 21, 2025, available at <https://www.newamerica.org/political-reform/blog/civic-assemblies-in-action-lessons-on-civic-engagement-from-fort-collins/>.

<sup>22</sup> See, Nicholas Bagley, “The Procedure Fetish,” *Michigan Law Review*, Vol. 118, Issue 3, No. 3 (2019), available at <https://repository.law.umich.edu/mlr/vol118/iss3/2/> and Ronald M. Levin, “The Duty to Respond to Rulemaking

ensure that new processes provide opportunities for agencies to obtain helpful information and meaningfully engage relevant communities, without creating new chokepoints that slow the process. More meaningful engagement can, in some circumstances, lead to quicker processes: For example, to the extent that agencies have regular ongoing dialogue and engagement with stakeholders outside of the context of specific rulemakings, that can reduce the additional time needed for engagement on any particular regulation.

More broadly, agencies should tailor engagement efforts to the specific regulatory need or regulatory action in question. Some regulations may only generate interest within specific communities with high levels of expertise in the subject matter, such as specifications for types of technical equipment. For these types of regulations, more proactive outreach may not be necessary. Other agency actions would benefit from targeted outreach to particular communities to ensure more robust participation. Even for regulations that generate this type of broad interest, agencies need to balance the importance of participation with timeliness in the rulemaking process. Public participation is an important part of the regulatory process, but it should not serve as a chokepoint to prevent action.

## **Improving Public Participation**

An effective democracy is one that takes into account the public's views in setting and implementing policy. This is not something that should occur only in the voting booth; for government to be truly responsive to the public's needs, there must be mechanisms for effective public participation in government processes and decision making. Given the critical role that agencies play in translating broad statutory mandates into the specific rules that govern people's everyday lives, meaningful participation in the regulatory process is critical.

While the Trump administration has sought to limit public participation and public accountability, which will result in government decision making that is further divorced from the public's needs, even the process that predated the current administration was in need of real improvement. Too often, the comment process has been the domain of only sophisticated actors, with little meaningful engagement from less-resourced impacted communities.

But there is a better path: Agencies have taken concrete steps in recent years to improve public participation. These actions can serve as building blocks for a more meaningful form of participation, one that does not create process for its own sake, but rather provides a forum for the public to share its views and have those views help shape more effective, responsive policy.

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Comments," *The Yale Law Journal Forum*, Vol. 134 (Mar. 14, 2025), available at <https://www.yalelawjournal.org/forum/the-duty-to-respond-to-rulemaking-comments>.