



COALITION FOR
SENSIBLE
SAFEGUARDS

**Undermining Accountability in
Rulemaking: The Trump Administration's
Attack on Public Engagement in the
Regulatory Process**

By Sam Berger
Consultant to the Coalition for Sensible Safeguards

July 17, 2025

ACKNOWLEDGEMENTS

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

The author would like to thank Alex Hertel-Fernandez, Max Sarinsky, and Devin O'Connor for their thoughtful comments.

ABOUT THE COALITION

The Coalition for Sensible Safeguards is an alliance of more than 200 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.

CONTACT CSS

[SENSIBLESAFEGUARDS.ORG](https://www.sensible Safeguards.org) | [@SENSIBLESAFEGUARDS.BSKY.SOCIAL](https://www.SensibleSafeguards.org)

KEY FINDINGS

As part of its ongoing efforts to evade public accountability, the Trump administration is seeking to undermine public participation in the regulatory process. In doing so, it is borrowing from a playbook it has used in its attacks on the federal civil service and its efforts to contravene statutory spending requirements: acting quickly, ignoring legal standards and norms, and seeking to weaken or destroy forms of public accountability.

- Under the Administrative Procedure Act (APA), agencies generally must provide notice of a proposed rule and allow the public to comment on the proposal. The agency must then respond to significant comments. Courts take these responses into account in reviewing rulemakings.
- The Trump administration is seeking to evade notice and comment requirements, which would allow it to finalize rules more quickly and limit public accountability and engagement:
 - It has directed agencies to broadly apply a narrow emergency exception to the APA's notice and comment requirements. Adopting this interpretation, which is inconsistent with decades of caselaw and agency practice, would effectively eliminate public notice and comment requirements entirely.
 - It has argued that agencies can ignore APA requirements when the president directs them to repeal a regulation, a position that has no support in the law.
 - It has claimed that notice and comment requirements do not apply to immigration and tariff-related rules, despite numerous court decisions to the contrary. Even the first Trump administration applied APA procedures to these types of rules.
 - It changed longstanding practice at the Department of Health and Human Services to eliminate public notice and comment for rulemakings related to loans, grants, benefits, or contracts, which has implications for rules related to scientific research funding and Medicaid, among others.
- Public participation in rulemaking provides an important form of accountability. It requires agencies to explain their actions in a public forum and respond to comments from members of the public who are empowered to engage in the process. It also creates an important opportunity for those who will be impacted by the rule to share their perspective.
- Public participation can inform consideration of the rule by a court.
 - In the last Trump administration, courts overturned rules that did not follow the proper procedure; the claims being made by this administration to avoid public notice and comment are clearly inconsistent with the relevant law and agency practice.

How the Trump Administration is Undermining Accountability in Rulemaking

Over the first several months of the second Trump administration, a clear pattern has emerged in its efforts to implement its agenda. The administration has sought to act quickly, ignore relevant legal requirements and norms that may stand in its way, and weaken or evade forms of public accountability. This approach has been on display in its attacks on the federal civil service and its refusal to follow statutory spending directives. While it has received less attention, the Trump administration is taking a similar approach in the regulatory space, where it has begun an unprecedented attack on public participation in rulemakings.

Public participation is a critical component of the regulatory process. Under the Administrative Procedure Act (APA), agencies generally must publish notice of a proposed rulemaking in the Federal Register and “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.”¹ Anyone can provide a comment and in finalizing a rule agencies are required to consider and respond to significant public comments they receive during this process.² In practice, agencies take this responsibility seriously, and spend significant time and resources in responding to comments.

When done correctly, public participation can bolster the legitimacy of the regulatory process in the public’s eyes. When government agencies are committed to making sure people are informed and able to provide feedback before a regulation is put in place, it shows the public that it has a voice in the process. It also improves the regulatory process itself by providing the agency with important information and viewpoints from relevant stakeholders that can help to inform its decision-making with respect to new regulations. And so long as the agency meaningfully addresses and responds to public comments when developing the rule, the agency can better defend its rulemaking, both before the public and if challenged in court.

But the Trump administration is seeking to undermine this process, attempting to avoid public comments on a range of efforts to quickly and quietly change existing regulations with which it disagrees. In doing so, the administration has put forward legal arguments at odds with established judicial precedent that would effectively eliminate public participation in the regulatory process.

If successful, this effort would come at a significant cost, removing an important form of public accountability, reducing transparency, and depriving agencies of critical information that helps improve their decision-making.

There are legitimate questions about how best to structure public participation to bring more voices into the process and improve the quality and timeliness of the information that agencies receive. But the Trump administration is looking to undermine the public comment process, not improve it. If it is successful in doing so, it would remove yet another important check on the president’s power.

¹ 5 U.S.C. § 553(c).

² See, e.g., *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92 (2015).

The Trump Administration's Playbook for Evading Accountability

In implementing its agenda, the Trump administration has been characterized by quick action coupled with a disregard for legal requirements and norms that might stand in its way, as well as a concerted effort to undermine institutions and processes that could provide accountability for its actions.

Consider the administration's efforts to attack the federal civilian workforce. On his first day of his second administration, President Trump issued an executive order that sought to eliminate civil service protections for thousands of federal workers while simultaneously directing his administration to treat certain existing regulations protecting civil service workers as "inoperative and without effect" despite no legal authority to do so.³ The administration then quickly moved to fire recently hired "probationary" government employees, who have fewer civil service protections than longer tenured federal workers.⁴

When an agency watchdog raised concerns that such actions were illegal,⁵ since the firings could only be done based on individualized determinations as opposed to part of a mass firing campaign, the Trump administration removed the head of the agency and is now seeking to replace him with a loyalist who will support its actions.⁶ At the same time, the Trump administration is illegally implementing widespread layoffs of longer-tenured federal workers, which will undermine core government services and functions.⁷

A similar pattern has emerged in the Trump administration's efforts to ignore federal spending laws. In the second week of the administration, the U.S. Office of Management and Budget (OMB) issued a memorandum seeking to freeze spending in grant, loan, and other financial assistance programs governmentwide.⁸ After the direction was halted by a court because it

³ Executive Order 14171, "Restoring Accountability to Policy-Influencing Position Within the Federal Workforce," 90 FR 8625 (Jan. 20, 2025), available at <https://www.federalregister.gov/documents/2025/01/31/2025-02095/restoring-accountability-to-policy-influencing-positions-within-the-federal-workforce>. President Trump also issued a presidential memorandum on his first day in office that sought to assert great political control over career senior executives. Presidential Memorandum, "Restoring Accountability for Career Senior Executives," (Jan. 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/restoring-accountability-for-career-senior-executives/>.

⁴ Ted Oberg and Megan Lebowitz, "Trump administration tells federal agencies to fire probationary employees," *NBC News*, Feb., 13, 2025, available at <https://www.nbcnews.com/politics/white-house/trump-administration-federal-agencies-fire-probationary-employees-rcna192149>.

⁵ Erin Mansfield, "Federal watchdog says firing of probationary employees was illegal," *USA Today*, Feb. 24, 2025, available at <https://www.usatoday.com/story/news/politics/2025/02/24/special-counsel-calls-doge-federal-firings-illegal/80056449007/>.

⁶ Marshall Cohen, "Whistleblowers shun office that's supposed to protect them amid fears of Trump partisanship," *CNN*, June 16, 2025, available at <https://www.cnn.com/politics/paul-ingrassia-office-of-special-counsel>.

⁷ Sam Berger and Jacob Leibenluft, "Trump Administration's Mass Layoffs of Federal Workers are Illegal," Center on Budget and Policy Priorities (May 2, 2025), available at <https://www.cbpp.org/research/federal-budget/trump-administrations-mass-layoffs-of-federal-workers-are-illegal>.

⁸ Office of Management and Budget Memorandum M-25-13, "Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs," (Jan. 27, 2025), available at <https://www.nytimes.com/interactive/2025/01/27/us/omb-memo.html>.

violated the law, OMB rescinded the memorandum.⁹ But the administration has continued its attempts to freeze hundreds of billions of dollars of funding for grant recipients and contractors,¹⁰ even while the independent Government Accountability Office (GAO) has already determined on multiple occasions that the administration’s funding freezes have violated the law.¹¹

The Trump administration responded by limiting the information it provides to GAO,¹² directing the U.S. Department of Transportation to ignore GAO’s ruling,¹³ refusing to comply with legal requirements to make spending information publicly available (requirements that were enacted after the first Trump administration illegally impounded defense funding for Ukraine),¹⁴ and putting forward specious legal arguments that it can withhold funding if it chooses.¹⁵

Attacking Public Participation in Rulemaking

Following this same pattern, the Trump administration has undertaken a widespread attack on public participation in the regulatory process. The goal in the regulatory space appears to be to take action more quickly and limit opportunities for effective public oversight and response. In doing so, the Trump administration has put forward legal arguments at odds with established precedent that, if upheld by courts, would fundamentally undermine the APA’s requirements for public participation in rulemaking.

Abusing the Good Cause Exception to the APA

The APA has an exception to the requirement for notice and comment where an agency “for good cause finds” that notice and comment is “impracticable, unnecessary, or contrary to the public interest.”¹⁶ Comments are considered unnecessary when a regulation is a “routine determination,

⁹ Michael Macagnone, “Judge blocks Trump administration memo that froze grants,” *Rollcall*, Feb., 3, 2025, available at <https://rollcall.com/2025/02/03/judge-poised-to-extend-block-on-trump-grant-freeze/>.

¹⁰ Bo Erickson, “Trump administration withholding \$436.87 billion in approved spending, top Democrats say,” Reuters, Apr. 29, 2025, available at <https://www.reuters.com/world/us/trump-administration-withholding-43687-billion-approved-spending-top-democrats-2025-04-29/>.

¹¹ Government Accountability Office, “U.S. Department of Transportation, Federal Highway Administration—Application of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans,” B-337137 (May 22, 2025), available at <https://www.gao.gov/products/b-337137#mt=e-report>; Government Accountability Office, “Institute of Museum and Library Services—Applicability of the Impoundment Control Act to Reduction of Agency Functions,” B-337375 (June 16, 2025), available at <https://www.gao.gov/products/b-337375>.

¹² Eric Katz, “White House says it will cooperate with top watchdog only when it does not ‘unduly burden Trump’s agenda,” *Government Executive*, May 30, 2025, available at <https://www.govexec.com/oversight/2025/05/white-house-says-it-will-cooperate-top-watchdog-only-when-it-does-not-unduly-burden-trumps-agenda/405713/>.

¹³ Chris Marquette, “White House directs DOT to ignore GAO ruling on EV funding pause,” *Politico*, June 4, 2025, available at <https://www.politico.com/news/2025/06/04/white-house-dot-gao-ev-funding-00384230>.

¹⁴ Paul M. Krawzak, “White House scraps public spending database,” *Rollcall*, Mar. 24, 2025, available at <https://rollcall.com/2025/03/24/white-house-scraps-public-spending-database/>.

¹⁵ David Super, “‘Pocket Rescissions’ are a Legal Fantasy,” *Balkinization*, June 24, 2025, available at <https://balkin.blogspot.com/2025/06/pocket-rescissions-are-legal-fantasy.html>.

¹⁶ 5 U.S.C. § 553(b)(B).

insignificant in nature and impact, and inconsequential to the industry and to the public.”¹⁷ When a rule is not insignificant and routine, courts have made clear that the exception is to be “narrowly construed and only reluctantly countenanced” and “should be limited to emergency situations.”¹⁸ These include circumstances where there is “imminent” harm or where notice and comment would frustrate the purpose of the rule or cause harm to the public.¹⁹

There are limited situations in which agencies need to utilize the good cause exception. For example, the Department of Transportation’s determination to bypass notice and comment when issuing safety regulations in response to an increasing number of helicopter accidents in Hawaii was upheld due to the emergency nature of the regulation.²⁰ But such circumstances are few and far between.²¹

The Trump administration has sought to significantly expand the scope of this exception as part of President Trump’s plan to rescind a large number of regulations in order to, in the words of his executive order, “commence the deconstruction of the overbearing and burdensome administrative state.”²² In implementing this directive, President Trump has ordered agencies to forgo notice and comment where the agency determines a regulation is “facially unlawful.”²³ Specifically, in a presidential memorandum entitled “Directing the Repeal of Unlawful Regulations,” President Trump claims that agencies can repeal these regulations without notice and comment pursuant to the good cause exception because:

Retaining and enforcing facially unlawful regulations is clearly contrary to the public interest. Furthermore, notice-and-comment proceedings are “unnecessary” where repeal is required as a matter of law to ensure consistency with a ruling of the United States Supreme Court. Agencies thus have ample cause and the legal authority to immediately repeal unlawful regulations.²⁴

¹⁷ *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (quoting *South Carolina v. Block*, 558 F. Supp. 1004, 1016 (D.S.C. 1983)).

¹⁸ *Tennessee Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir. 1992).

¹⁹ Jared P. Cole, Congressional Research Service, “The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action,” (Jan. 29, 2016), available at <https://www.congress.gov/crs-product/R44356>.

²⁰ *Hawaii Helicopter Operators Association v. Federal Aviation Administration*, 51 F.3d 212 (9th Cir. 1995).

²¹ As an example of what does not meet the standards for the good cause exception, consider an Environmental Protection Agency rule during the first Trump administration seeking to delay implementation of protections related to restricted use pesticides. The agency said it had good cause to dispense with notice and comment because it needed more time to review and consider the pesticide regulations to determine whether it wanted to change them and did not want those regulations to go into effect before it was done making its determination. The court found that this did not constitute good cause and struck down the Trump administration’s rule delaying implementation. *Pineros y Campesinos Unidos del Noroeste v. Pruitt*, 293 F. Supp. 3d 1062 (N.D. Cal. 2018).

²² Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” 90 FR 10583 (Feb. 19, 2025), available at <https://www.federalregister.gov/documents/2025/02/25/2025-03138/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency>.

²³ Presidential Memorandum, “Directing the Repeal of Unlawful Regulations,” (Apr. 9, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>.

²⁴ *Id.*

None of these claimed justifications meet the stringent test to utilize the good cause exception. The regulations in question are not ones that have been struck down by a court, but rather ones that the agency claims are unlawful given the agency's revised view of the law. In these circumstances there is no emergency that requires dispensing with notice and comment; the only changed circumstance is the agency's judgment regarding applicable legal standards, a view that itself would benefit from public comment. Moreover, this type of justification for applying the good cause exception would present significant opportunities for abuse, since it relies only on an agency's claims regarding its view of the law.

The fact that an administration believes retaining and enforcing a regulation it now views as illegal to be contrary to the public interest is not the relevant question for purposes of utilizing the good cause exception; what matters is whether *taking comment* on the proposal to rescind the regulation is in the public interest. Under the Trump administration's reasoning, no regulation would need to undergo notice and comment, since in every case the agency presumably believes the reason for its regulatory action is in the public interest.

Additionally, the claim that comments on these regulatory changes would be "unnecessary" is equally unpersuasive. The rules in question are not routine matters that elicit little comment or concern, but rather rules of enough significance that they have risen to the attention of agency leadership as part of the implementation of a government-wide presidential directive. Moreover, these are rules in which the agency is seeking to change an important regulatory requirement due to a new interpretation of the applicable legal standards, exactly the type of proposals that would benefit from public input.

Directing Agencies to Forego Public Notice and Comment

President Trump has pushed agencies to ignore established caselaw and practice in seeking to implement his broader initiative to change regulatory standards with which he disagrees, but he has gone even further in ignoring the law in issuing an executive order related to rulemaking on the definition of a showerhead. In this order, he directed the U.S. Secretary of Energy to issue a regulation repealing the prior definition and claimed that "[n]otice and comment is unnecessary because I am ordering the repeal."²⁵

To the extent that President Trump was seeking to invoke the good cause exception because comments would be "unnecessary," there is no basis for such a claim. As the president's order makes clear, this topic has been the subject of two prior rulemakings in the last twelve years, and is important enough to merit a specific executive order issued by the president of the United States. This is no routine matter. Moreover, an agency cannot dispense with notice and comment simply because it believes those comments would not be helpful.²⁶

That the president directs agencies to take an action also does not obviate the need for notice and comment. Courts have rejected the notion that a president could simply order an agency to take

²⁵ Executive Order 14264, "Maintaining Acceptable Water Pressure in Showerheads," 90 FR 15619 (Apr. 9, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/04/maintaining-acceptable-water-pressure-in-showerheads/>.

²⁶ *Action on Smoking & Health v. Civil Aeronautics Bd.*, 713 F.2d 795, 801 n.6 (D.C. Cir. 1983)).

an action and thereby avoid the requirements of the APA.²⁷ While these cases have generally focused on judicial review pursuant to the APA – as when the Ninth Circuit recently stated, “The Supreme Court has never excepted a final rule from APA review because it carried out a presidential directive”²⁸ – the same logic applies to procedural steps required by the APA. Otherwise, notice and comment would be rendered meaningless, as a president could avoid it simply by telling the agency what action to take.

Abusing the Foreign Affairs Exception to the APA

The APA also has an exception from its rulemaking procedures for regulations related to “a military or foreign affairs function of the United States.”²⁹ This exception is less frequently invoked than the good cause exception, and there is less caselaw that addresses its contours.³⁰ Still, with respect to the foreign affairs exception, courts have applied it narrowly to cases involving core foreign affairs and diplomatic functions, such as to rules involving the regulation of foreign missions³¹ and the implementation of international agreements between the United States and other countries.³²

Courts have rejected efforts to expand the reach of the exception, particularly to immigration rules. The Court of Appeals for the Ninth Circuit determined that, “[t]he foreign affairs exception would become distended if applied to [Immigration and Naturalization Services] actions generally, even though immigration matters typically implicate foreign affairs.”³³ Similarly, the Court of Appeals for the Second Circuit found that, “[t]he dangers of an expansive reading of the foreign affairs exception in that context [of immigration] are manifest. While ‘immigration matters typically implicate foreign affairs’ at least to some extent, *Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980), it would be problematic if incidental foreign affairs effects eliminated public participation in this entire area of administrative law.”³⁴

Despite this judicial precedent, the Trump administration has sought to put forward an extremely broad interpretation of the foreign affairs exception. U.S. Secretary of State Marco Rubio published a determination in the Federal Register claiming that, “all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States,

²⁷ Jack Jones and Max Sarinsky, “Preventing Public Participation: The Trump Administration’s Misuse of the Good Cause Exception to Fast-Track Deregulation,” Institute for Policy Integrity (Apr., 2025), available at https://policyintegrity.org/files/publications/Good_Cause_Brief_VI.pdf.

²⁸ *State v. Su*, 121 F.4th 1, 15–16 (9th Cir. 2024).

²⁹ 5 U.S.C. § 553(a)(1).

³⁰ Stephen Migala, “The Lost History of the APA’s Foreign Affairs Exception,” *George Mason Law Review*, Vol. 31, No. 1, (2023) available at https://lawreview.gmu.edu/print_issues/the-lost-history-of-the-apas-foreign-affairs-exception/.

³¹ *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172 (2d Cir. 2010).

³² *E.B. v. U.S. Dep’t of State*, 583 F. Supp. 3d 58 (Feb 4, 2022).

³³ *Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980). Other cases have similarly found that it does not apply to routine immigration cases. See, e.g., *Cap. Area Immigrants’ Rts. Coal. v. Trump*, 471 F. Supp. 3d 25 (D.D.C. 2020). It has been applied in cases regarding the response to the emergency situation created by the Iranian hostage crisis. See, *Zhang v. Slattery*, 55 F.3d 732, 744 (2d Cir. 1995).

³⁴ *City of New York v. Permanent Mission of India to U.N.*, 618 F.3d 172, 202 (2d Cir. 2010).

constitute a foreign affairs function of the United States under the Administrative Procedure Act.”³⁵ Not only would this apply the exception to immigration rules, which courts have routinely rejected, but it would also apply it to regulations related to tariffs and international trade that have also been subject to the APA under longstanding judicial precedent.³⁶ Even during the first Trump administration these types of rules went through notice and comment, consistent with the practice of administrations of both parties.

While the secretary has claimed to render a “determination” regarding the scope of the foreign affairs exception, that is a decision ultimately made by the courts. It seems unlikely that courts will choose to take such a broad view of the foreign affairs exception, given its inconsistency with long standing caselaw and executive branch practice.

Disregarding Longstanding Practice That Expanded Public Participation at HHS

The Trump administration has also sought to abandon a longstanding U.S. Department of Health and Human Services’ (HHS) practice that expanded public participation in the regulatory process. The APA has an exception from its notice and comment requirements for rules related to “loans, grants, benefits, or contracts.”³⁷ For more than 50 years, HHS has applied the notice and comment provisions of the APA to such rulemakings anyway. In its determination to do so in 1971, known as the Richardson Waiver, HHS noted that its action, “should result in greater participation by the public in the formulation of this Department’s rules and regulations. The public benefit from such participation should outweigh any administrative inconvenience or delay which may result from use of the APA procedures in the five exempt categories.”³⁸

When the Trump administration sought to reduce research funding from the National Institutes of Health, it was sued for, among other things, taking this action without undergoing notice and comment, as required by the Richardson Waiver.³⁹ Shortly thereafter, HHS issued a Federal Register notice withdrawing the Richardson Waiver, arguing that, “The extra-statutory obligations of the Richardson Waiver impose costs on the Department and the public, are contrary to the efficient operation of the Department, and impede the Department's flexibility to adapt quickly to legal and policy mandates.”⁴⁰ The notice made no mention of the benefits of public participation discussed in the Richardson Waiver or why it decided to abandon long standing policy.

³⁵ Department of State, “Determination: Foreign Affairs Functions of the United States,” 90 FR 12200 (Mar. 14, 2025), available at <https://www.federalregister.gov/documents/2025/03/14/2025-04116/determination-foreign-affairs-functions-of-the-united-states>.

³⁶ Kathleen Claussen and Timothy Meyer, “The Trump Admin’s Attempt to Redefine a ‘Foreign Affairs Function,’” *Lawfare* (May 13, 2025), available at <https://www.lawfaremedia.org/article/the-trump-admin-s-attempt-to-redefine-a--foreign-affairs-function>.

³⁷ 5 U.S.C. § 551(a)(2).

³⁸ Department of Health, Education, and Welfare, “Public Participation in Rulemaking,” 36 FR 2532 (Feb. 5, 1971), available at <https://www.federalregister.gov/citation/36-FR-2532>.

³⁹ Alexander Tin, “RFK Jr. rolls back transparency policy on Medicaid and NIH changes,” *CBS News*, Feb., 28, 2025, available at <https://www.cbsnews.com/news/rfk-jr-transparency-policy-medicare-nih/>.

⁴⁰ Department of Health and Human Services, “Policy on Adhering to the Text of the Administrative Procedure Act,” 90 FR 11029 (Mar. 3, 2025), available at <https://www.federalregister.gov/documents/2025/03/03/2025-03300/policy-on-adhering-to-the-text-of-the-administrative-procedure-act>.

While the waiver was repealed in response to a rulemaking related to NIH, HHS has a wide range of rules related to loans, grants, benefits, and contracts. The exact scope of the waiver's application to programs like Medicaid is uncertain; there is limited relevant caselaw because HHS has utilized notice and comment for these types of rules for more than fifty years. However, the agency has significant grantmaking authority related to healthcare and scientific research that affects hundreds of billions of dollars in spending every year and regulations related to these grants have significant impacts on hospitals, insurers, universities, low-income individuals who receive health coverage through Medicaid, and many other stakeholders.⁴¹

Reducing Accountability and Efficacy by Eliminating Public Participation in Rulemaking

The Trump administration's attack on public participation, particularly its extreme legal claims that would effectively eliminate public comments, would have significant negative effects on the rulemaking process. Public participation provides a measure of public accountability for agency actions, can provide information to agencies that lead to better rules, and builds trust with participating stakeholders.⁴² All these benefits would be lost in the absence of public engagement.

Public Participation Provides a Form of Accountability

Public participation provides a means of public accountability for agency actions. Agencies need to put forward their regulatory proposals in a public forum, provide time for them to be reviewed by members of the public, allow for anyone to provide comments on the proposal, and then respond to significant comments. The quality of the agency's justifications, as well as the impacts of the proposal itself, can be carefully considered by relevant stakeholders. In addition, the public comment process can help raise concerns that may motivate actions by other branches of government, including consideration by a court in reviewing the rulemaking.

Public Participation Can Improve Agency Rulemakings

While agencies have access to a significant amount of technical information and expertise that they utilize in developing rules, robust public participation provides them with an opportunity to benefit from the expertise of the broader public. This includes relevant experts weighing in on technical information or providing insights on emerging trends in science or technology. The public comment process allows affected parties to explain the impacts of a rule in their industry or community that may not be anticipated by the agency in a particular context. Public participation also allows agencies to better understand the interests and views of impacted communities, including how they may weigh competing values that the agency is seeking to balance (and may weigh them differently than agency technical experts expect). Meaningful participation can also provide insight as to how impacted communities prioritize addressing

⁴¹ The withdrawal of the Richardson Waiver will not have a significant impact on Medicare, which has its own statutory notice and comment requirements. See 42 U.S.C. §§ 1395hh.

⁴² 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>.

various issues, which agencies can then take into account in setting their own priorities for action.⁴³

Public Participation Builds Trust in the Regulatory Process

Robust public participation in the regulatory process can increase stakeholder trust in both the process for developing the rule and the agency itself.⁴⁴ Critical to building this trust is agencies making clear to participants in the process that their views are being carefully considered and can have a meaningful impact, even if the agency does not adopt those views in every case. And effective participation in a rulemaking can serve as the foundation for ongoing dialogues with relevant stakeholder communities, which can help agencies better prioritize regulatory actions, identify new and emerging issues, and improve acceptance of agency actions.

Meaningful participation in a regulatory process also increases the likelihood that people view that process as fair, which in turn means they are more likely to view the process as legitimate.⁴⁵ This view of the process's legitimacy is important on its own terms, given the significant authority government agencies exercise in a range of important areas. It also has important benefits with respect to specific rules, as stakeholders are more likely to comply with requirements they view as legitimate.

Improving Public Participation, Not Destroying It

The Trump administration is seeking to undermine public participation in the regulatory process for the same reason it has attacked other government processes: to speed its efforts regardless of legal requirements and undermine forms of public accountability for its actions.

In the last Trump administration, courts repeatedly pushed back against attempts to circumvent APA requirements to quickly change regulations.⁴⁶ Given the brazen nature of the current efforts

⁴³ For example, in soliciting feedback on proposed changes to streamline processes for the Supplemental Security Income program, which helps low-income older Americans and those with disabilities, the Social Security Administration received feedback from advocates suggesting different changes to the process would be more beneficial. Those comments informed the development of a subsequent rulemaking addressing the changes suggested by the commenters. See Social Security Administration, "Expand the Definition of Public Assistance Household Proposed Rule," 88 FR 67148 (Sept. 29, 2023), available at <https://www.federalregister.gov/documents/2023/09/29/2023-21550/expand-the-definition-of-a-public-assistance-household>.

⁴⁴ Research suggests that people care about the responsiveness of their government, and that when people feel as if their participation in government processes is utilized to improve programs it increases their trust in government. See Office of Management and Budget, "Methods and Leading Practices for Advancing Public Participation and Community Engagement with the Federal Government," 89 FR 19885 (Mar. 20, 2024), available at <https://www.federalregister.gov/documents/2024/03/20/2024-05882/methods-and-leading-practices-for-advancing-public-participation-and-community-engagement-with-the>.

⁴⁵ E. Allan Lind and Christiane Arndt, "Perceived Fairness and Regulatory Policy: A Behavioural Science Perspective on Government-Citizen Interactions," Organization of Economic Development Regulatory Policy Working Papers, No. 6 (Dec. 17, 2016), available at https://www.oecd.org/en/publications/perceived-fairness-and-regulatory-policy_1629d397-en.html.

⁴⁶ Center for Policy Integrity, "Round-Up: Trump Era Agency Policy in the Courts," last accessed June 28, 2025, available at <https://policyintegrity.org/trump-court-roundup>.

to undermine public participation, there are likely to be numerous legal challenges to rulemakings that fail to undergo notice and comment for the specious reasons put forward by the Trump administration.

Should the Trump administration's efforts to undermine participation prove successful, however, they would have significant consequences. Not only would they remove an important means of ensuring public accountability for regulatory actions, but they would degrade the information available to agencies in making rulemakings and further undermine trust in government.

Rather than seeking to eliminate public participation, policymakers should be looking to improve it. Fully realizing the benefits of public participation will require changes to the status quo as it existed even before the Trump administration's attacks. Putting a regulation out for public comment is not sufficient to ensure meaningful engagement; rather, if no other actions are taken, it will likely result in comments from the same set of sophisticated actors who tend to dominate the comment process. Agency rules are too complicated and the regulatory process itself is too opaque and little-known to allow for easy engagement from those unfamiliar with or too busy to spend significant time engaging with the process. These roadblocks can make it difficult for individuals with relevant lived experience to participate, whether due to lack of time, resource constraints, knowledge deficits, or concerns that their views will not be truly considered.

But there are steps agencies can take to address these concerns that build on recent efforts to improve public participation. Agencies should be considering how to obtain input from the public earlier in the process, when it can have the greatest impact. They should be looking to establish regular dialogue with relevant stakeholders, particularly those groups that have traditionally participated less in the regulatory process, to improve information gathering and build trust. Agencies should proactively reach out to stakeholders, including through trusted intermediary groups such as community-based organizations, and seek to make the regulatory process as accessible as possible to a wide range of people and groups. And they should follow up with those who participate to make sure they understand the impact of engagement and are encouraged to participate in the future.

Over the past few years, agencies had been taking steps in these directions, steps which can be built upon to further improve public participation.⁴⁷ Unfortunately, the Trump administration has instead chosen to go in the opposite direction, seeking to make public participation in the regulatory process worse instead of better, making it even harder for people to effectively engage in rulemaking.

⁴⁷ For examples, see 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>.