

*Submitted via Regulations.gov*

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June 6, 2023

Richard L. Revesz  
Administrator, Office of Information and Regulatory Affairs  
The White House Office of Management and Budget

Re: Request for Comments on Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review) (Docket ID No. OMB-2022-0011)

Dear Administrator Revesz:

Thank you for issuing this critical proposed update to Circular A-4 and “Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)” regarding EO 12866 meetings. We are providing comments on the EO 12866 meetings reforms below. Public Citizen is pleased that the Biden administration is taking important steps to modernize the regulatory process. A strong and modern regulatory system will protect consumers, workers, public health, and the environment; empower members of marginalized communities; and enable swift action to address the climate crisis.

Public Citizen is a national public interest organization with more than 500,000 members and supporters. For over 50 years, we have successfully and zealously advocated for stronger health, safety, worker, consumer protection, and environmental safeguards, as well as for a robust and effective regulatory system that works in the public interest, not for corporate special interests. For more on our work, please visit our website at [citizen.org](http://citizen.org).

Public Citizen chairs the Coalition for Sensible Safeguards (CSS). CSS is an alliance of more than 150 consumer, labor, scientific, research, faith, community, environmental, 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. This comment is submitted only on behalf of Public Citizen.

Ensuring that the regulatory process is responsive to the public is critical to our work. The U.S. Office of Information and Regulatory Affairs (OIRA) regulatory review process has often served as a barrier to, rather than as a catalyst for, regulations that are designed to protect the public. As the President’s [Memorandum](#) on Modernizing Regulatory Review (Memorandum) points out, the regulatory review process has historically disregarded important values like human dignity, equity, and the interests of future generations; failed to account for a wide range of regulatory benefits and is insufficiently attentive to

distributional concerns, thus inappropriately burdening disadvantaged or marginalized communities; discouraged stronger protections instead of proactively promoting them; imposed costly delays; and been marked by a lack of basic transparency that is necessary for upholding the democratic values this administration champions.

The Biden administration should be applauded for following through on its commitment to modernizing regulatory review with proposals to improve and strengthen the rulemaking process, including regulatory analysis. The administration's proposals are the most important and impactful set of reforms to the regulatory process in decades. These reforms will make the process more efficient, inclusive, accountable, and effective at protecting the public.

While Public Citizen is strongly supportive of the changes to the regulatory process outlined in the proposed update to Circular A-4 and draft guidance on EO 12866 meetings, we believe there is more to be done. We support many aspects of this proposed update to Circular A-4 and draft guidance on EO 12866 meetings, and we also urge the implementation of additional changes that build on this framework as soon as possible.

### **Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)**

The EO has several common themes: first, the importance of broadening public participation, actively seeking out different perspectives to include in the regulatory process; second, considering the nonquantifiable impacts of rules; and third, taking seriously the distributional and equity impacts of rulemaking. An important part of actively seeking out different perspectives to include in the regulatory process is reforming the EO 12866 meetings process. EO 12866 meetings are meetings that members of the public can request with OIRA officials about regulations under OIRA review.

An important part of actively seeking out different perspectives to include in the regulatory process is reforming the EO 12866 meetings process.

Public Citizen appreciates how the draft guidance on EO 12866 meetings values public participation, stating in Section A, Question 3:

The Modernizing E.O. directs the OIRA Administrator to implement reforms designed to reduce the risk or the appearance of disparate and undue influence on regulatory development. The reforms outlined here serve to facilitate meeting requests from individuals and groups that have not historically requested such meetings, including those from underserved communities, improve the efficiency and effectiveness of the regulatory review process, and increase transparency around the E.O. 12866 meetings process, while treating all members of the public—no matter their resources or viewpoints—consistently and fairly.

In order to ensure effective and durable public participation in EO 12866 meetings, the Biden administration must take all necessary and appropriate action to bolster public involvement in this important democratic process. We will now comment on how this can be accomplished by responding to questions posed by this draft guidance.

**Section B, Question 1: How will OIRA provide information to facilitate the initiation of meeting requests from potential participants who have not historically requested such meetings, including those from underserved communities?**

Public Citizen agrees that the strategies under consideration outlined in the draft guidance are good and necessary. In particular, “offering periodic and accessible public training on effective participation in E.O. 12866 meetings, in collaboration with agencies and civil society organizations so as to reach communities that might not have historically participated in the E.O. 12866 meeting process before,” is critical. OIRA should also reach out directly to community leaders, in addition to civil society organizations, to provide trainings on how to submit meeting requests through [www.reginfo.gov](http://www.reginfo.gov) and prepare for 12866 meetings. All trainings must be offered in languages other than English consistent with Executive Order 13166, accessible by persons with disabilities, and scheduled at times that work with the community leaders’ and civil society organizations’ schedules. Meeting people where they are at is critical to accomplishing this goal, and education for people on the ground who are directly affected by the regulation at issue is key. Further, OIRA must ensure that communities and community members have the technological ability to comment, including web access, and take steps as necessary to ensure communities have the tools to request and attend meetings (i.e., by providing instructions through the mail and online on how to attend virtual 12866 meetings and download any necessary software or web applications, and providing locations of local libraries and community centers with computers and web access if web access is unreliable or unavailable to households in the community).

**Section C, Question 1: What efforts will OIRA take to ensure access to those “who have not historically requested” 12866 meetings?**

Public Citizen supports this part of the guidance.

**Section D, Question 1: How will OIRA discourage duplicative oral communications in the E.O. 12866 process?**

Public Citizen believes this part of the guidance is good. OIRA’s plan to “not schedule multiple E.O. 12866 meetings for the same meeting requester during a single E.O. 12866 review of the same regulatory action at the same stage of the regulatory process” will promote efficiency in the regulatory process and let more voices be heard as a result.

**Section E, Question 1: How will OIRA approach the Modernizing E.O.’s call to consider “consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness”?**

Public Citizen agrees that EO 12866 meeting consolidation is a good practice that will bring like-minded individuals to the table collectively while conserving OIRA’s time, energy, and resources, and promoting efficiency in the rulemaking process. The draft guidance states:

Individuals or entities interested in requesting a consolidated meeting might review other comments in the public docket for a regulatory action and reach out to similarly minded commenters in advance of requesting an E.O. 12866 meeting. A list of currently scheduled meetings with meeting requester information

(organization and name) is also available to the public at <https://www.reginfo.gov/public/do/eom12866Search> to use for consolidation. OIRA is considering and welcomes public comment and input on further opportunities to improve these disclosures to facilitate consolidation.

However, to better facilitate consolidation, in addition to the suggestions outlined above, it would be wise for OIRA to create an online forum (i.e., containing online groups similar in design to groups that can be created using popular social media websites), perhaps as a part of [www.reginfo.gov](http://www.reginfo.gov), where similarly minded commenters can coordinate. These groups should be created and maintained by OIRA, organized by comment, and commenters can “join” a group if they wish to coordinate a 12866 meeting with other similarly minded commenters. As we state throughout our comment, it is important to meet people where they are at.

It is good that, “OIRA is also considering including a new field in the meeting request form, also discussed below, that would allow requesters to indicate if they would like to convey sensitive information, such as personal or business information about how a regulatory action might impact them as an individual or firm, which may indicate that meeting consolidation would not be appropriate.” However, such accommodation must not be misused by businesses to scapegoat transparency and further perpetuate the “black box” that has historically been the OIRA review process.

Furthermore, it is imperative that OIRA make accommodations at these consolidated meetings for commenters who do not speak English as their first language or are commenters with disabilities.

### **Section F, Question 3: What additional information is OIRA considering collecting and disclosing in the future?**

Public Citizen supports the inclusion of this additional information. However, there are areas for improvement, and we recommend the addition of the following to the list provided in the guidance:

Regarding “narrative descriptions accompanying meeting requests,” OIRA should require, not “encourage,” “meeting requesters to provide a brief summary of the views they anticipate presenting.” Doing so would increase transparency in a meaningful way for the public, agencies, and OIRA. It is imperative that the public know the views of those OIRA is conducting EO 12866 meetings with during the rulemaking process, as these meetings influence that very process.

Regarding “primary meeting requesters,” OIRA should make “individuals or organizations that the primary meeting requester may be representing at the time of the request” a required field. This would, as the guidance states, “be useful, in advance of the meeting, to have information on the individuals and organizations that are being represented in advance.” Furthermore, as the guidance states, “This information could also facilitate better real-time transparency on who is meeting with the government on a particular rule.” For these reasons, this should be a required field.

Regarding “meeting request types,” this is a good idea and the organization types are appropriate. Other categorizations should include coalitions, collectives, religious groups, and educational institutions, both public and private.

Regarding “lobbying status,” OIRA should ask meeting requesters to indicate whether they are registered lobbyists.

Regarding “the collection of some information from meeting requesters for internal purposes,” all of the suggestions listed in the guidance should be implemented. There should also be conflict of interest disclosures submitted by meeting requesters who are employed by or represent corporations or industry. Such requesters should be required to submit documentation disclosing that they have economic ties to a corporate entity or trade association. In addition, this information, including conflict of interest disclosures, should be made public as well. These measures will further transparency and accountability in the rulemaking process.

We thank you for your consideration of our suggestions to improve the EO 12866 meetings process.

### **Conclusion**

Public Citizen appreciates these long overdue changes to EO 12866 meetings and strongly supports these revisions in conjunction with our recommendations to improve this process. Thank you for your time and attention to our comment.

Sincerely,

Public Citizen

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