Dear Administrator Revesz,

The Coalition for Sensible Safeguards (CSS), an alliance of over 150 labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, welcomes the opportunity to provide feedback on the recent notice from the White House Office of Information and Regulatory Affairs (OIRA) regarding “Broadening Public Engagement in the Federal Regulatory Process.”[[1]](#footnote-1)

We commend OIRA for recognizing the valuable role that the regulatory system plays in our society. As the notice observes, “Federal regulations make a difference in people’s lives every day—from improving access to safe, effective, and affordable hearing aids to ensuring people are safe at work.” As the administration works to promote greater public engagement, it is crucial that it continue articulating a positive vision of the regulatory system in this fashion.

Similarly, we commend OIRA for including in the notice an explanation of why public participation in the regulatory system is important. It will be essential for the administration to continue conveying this message if it is to effectively rebut common critiques of the regulatory system that attempt to portray it as “undemocratic” or “unaccountable” to the public. At the same time, championing the various benefits of public participation will further encourage members of the public to take fuller advantage of the regulatory system’s participatory opportunities.

# Feedback on Recommendations Included in the Notice

We are generally supportive of the recommendations included in the notice (with one exception detailed below), and we agree that they would effectively broaden public engagement in the regulatory process.

# Barriers to Public Engagement That are Not Addressed by the Recommendation in the Notice

As the notice recognizes, many of the biggest barriers that members of the public face generally arise from two overarching factors: (1) ordinary members of the public are not like professional advocates or lobbyists and cannot be reasonably expected to act as if they were, and (2) the intrinsically complex and technical nature of most regulations. Accordingly, the recommendations included in the notice are designed to address these types of barriers to public engagement and would effectively do so.

We urge OIRA to consider that effective public participation is exceedingly resource intensive and that cost is an obstacle to public engagement. Given the unique challenges this barrier presents, we urge OIRA to devise recommendations that are specifically designed to address it. Paradoxically, this problem arises from having so many opportunities to participate. The public can thus become overwhelmed and is prevented from competing with better-resourced corporate entities in all of the available participatory forums. The lesson to be drawn is that ensuring meaningful participation requires focusing on the *quality* of a few participatory opportunities, rather than the *quantity* of opportunities offered.

# Other Recommendations that OIRA Should Consider for Promoting Greater Public Engagement in the Regulatory Process

As OIRA works towards completing its final set of recommendations, we urge it to embrace the following principles:

* *Identify the unique strengths that the public has to offer and design recommendations so that they leverage those strengths*. For those looking to promote public participation in the regulatory process, the general strategy has been, in effect, to turn the public into something resembling professional advocates or lobbyists. We think a more useful approach is to consider how agencies can integrate the public *as they are* into the rulemaking process as best as possible.

One general approach is to design participatory processes to effectively capture the unique expertise the public holds – namely, that which comes from their situated knowledge and lived experience. As political philosopher John Dewey aptly pointed out, “The man who wears the shoe knows best that it pinches and where it pinches, even if the expert shoemaker is the best judge of how the trouble is to be remedied.”[[2]](#footnote-2) It is thus essential that federal agencies take the necessary steps to obtain this kind of feedback so that it could be incorporated into their decision-making.  
  
A second general approach is to design participatory processes so that they resemble or benefit from activities that the public will ordinarily be carrying out anyway. For instance, creatively designed “citizen science” programs can take advantage of this approach. Similarly, the public can be enlisted in compliance monitoring programs that take advantage of their existing “on the ground” presence.

* *Consider how to institutionalize the reforms that emerge from this initiative so that they become fully integrated into the standard operating procedures at agencies*. While we support the many recommendations included in the notice, we are concerned that they may not have much on-the-ground impact or long-term durability if they are not successfully integrated into the standard operating procedures at agencies. Thus, we urge OIRA to consider mechanisms for institutionalizing the reforms that emerge from this initiative.  
    
  OIRA could direct agencies to create a tailored Regulatory Participation Plan for each rulemaking that is based on a standardized framework that OIRA creates. The goal of the Plan should be to ensure that agencies are getting input from the right members of the public at the right stages of the regulatory development process. Moreover, OIRA could direct agencies to create a Public Participation Statement, which for each rulemaking would document what public participation mechanisms were employed, why they were selected, and what impact public participation had on the rule’s substance. Finally, OIRA could consider establishing something like an Interagency Council on Public Participation, which would provide agencies with a forum to share best practices and lessons learned from their experimentation with different public participation mechanisms.
* *Look for ways to combine this initiative with other regulatory reform initiatives that OIRA is currently undertaking, including Modernizing Regulatory Review*[[3]](#footnote-3). Historically, the institutions of OIRA’s centralized regulatory review and cost-benefit analysis have operated in ways that tended to exclude members of the public.[[4]](#footnote-4) As it works to carry out this initiative, OIRA should give careful attention to ways that the regulatory review process and cost-benefit analysis can each be reformed to actively promote, rather than discourage, public engagement in the regulatory system.

# Suggestion for Removal of Recommendation that will not Support Public Participation

CSS overwhelmingly support this notice and its recommendations. The one notable exception is the recommendation that agencies “proactively disseminate relevant materials, especially through… industry intermediaries (such as trade associations).”

Several decades of experience with the Small Business Administration’s (SBA) Office of Advocacy has made clear that trade associations are not a reliable intermediary for reaching small businesses.[[5]](#footnote-5) That is because trade associations often work to advance the interests of their large firm members, which are often directly at odds with the unique interests of the small firms within the relevant industry. For instance, trade associations working the SBA Office of Advocacy often take positions on regulations that benefit large firms, but which are inconsistent with the interests of affected small businesses.

Consequently, this recommendation would be unhelpful, and we urge OIRA to reject it.

# Conclusion

We appreciate your attention to this input on the notice and its recommendations for promoting greater public engagement in the regulatory system. We look forward to continuing working with you on this critical issue.

Sincerely,

1. Off. Info. & Reg. Affairs, Off. Mgmt & Budget, Exec. Off. President, *Broadening Public Engagement in the Federal Regulatory Process*, <https://www.whitehouse.gov/omb/information-regulatory-affairs/broadening-public-engagement-in-the-federal-regulatory-process/> (last visited Mar. 6, 2023). [↑](#footnote-ref-1)
2. John Dewey, The Public and Its Problems: An Essay in Political Inquiry 224 (Edited by Melvin L. Rogers, 2016). [↑](#footnote-ref-2)
3. Memorandum from President Joseph H. Biden, Jr., to the Heads of Executive Departments and Agencies on Modernizing Regulatory Review (Jan. 20, 2021), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>. [↑](#footnote-ref-3)
4. Rena Steinzor et al., Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment (Ctr. Progressive Reform White Paper 1111, 2011), *available at* <https://grist.org/wp-content/uploads/2011/11/oira_meetings_1111.pdf>. [↑](#footnote-ref-4)
5. *See* Sidney Shapiro & James Goodwin, Distorting the Interests of Small Business: How the Small Business Administration Office of Advocacy’s Politicization of Small Business Concerns Undermines Public Health and Safety (Ctr. Progressive Reform White Paper 1302, 2013), *available at* <https://cpr-assets.s3.amazonaws.com/documents/SBA_Office_of_Advocacy_1302.pdf>; Rena Steinzor et al., The Small Business Charade: The Chemical Industry’s Stealth Campaign Against Public Health (Ctr. Progressive Reform Issue Alert 1501, 2015), *available at* <https://cpr-assets.s3.amazonaws.com/documents/Small_Biz_Charade_Silica_1501.pdf>. [↑](#footnote-ref-5)