




EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 19, 2023

MEMORANDUM FOR: REGULATORY POLICY OFFICERS AT EXECUTIVE DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF COMMISSIONS AND BOARDS

FROM: Richard Revesz 
Administrator
Office of Information and Regulatory Affairs

SUBJECT: Fall 2023 Data Call for the *Unified Agenda of Federal Regulatory and Deregulatory Actions*

This memorandum requests information for the compilation of the Fall 2023 *Regulatory Plan* (“*Regulatory Plan*”) and *Unified Agenda of Federal Regulatory and Deregulatory Actions* (“*Unified Agenda*”). Publication of the *Regulatory Plan* and *Unified Agenda* represents a key component of the regulatory planning mechanism prescribed in Executive Order (“EO”) 12866, “Regulatory Planning and Review,”¹ as reaffirmed and amended in EO 13563, “Improving Regulation and Regulatory Review,”² and EO 14094, “Modernizing Regulatory Review.”³ The *Regulatory Plan* and *Unified Agenda* provide important public notice and transparency about proposed regulatory actions within the Executive Branch. This process highlights agency priorities, promotes planning and coordination, and encourages public participation in the regulatory process.

Submissions for the Fall 2023 *Regulatory Plan* and *Unified Agenda* are due by **August 17, 2023**.

As you design your submissions we ask that you give careful attention to ensuring that your agency is developing—and including in your *Regulatory Plan* and *Unified Agenda* submissions—actions that advance the Administration’s stated priorities: (1) actions that tackle the climate change emergency; (2) actions that advance equity and support underserved, vulnerable and marginalized communities; (3) actions that create and sustain good jobs with a free and fair choice to join a union and promote economic resilience in general; and (4) actions that improve service delivery, customer experience, and reduce administrative burdens. In particular, we ask that your *Regulatory Plan* and *Unified Agenda* submissions reflect the principles and requirements identified in applicable Executive Orders. In addition, we ask that

¹ 58 Fed. Reg. 51735 (Oct. 4, 1993).

² 76 Fed. Reg. 3821 (Jan. 21, 2011).

³ 88 Fed. Reg. 21879 (Apr. 11, 2023).

you consider whether there are any regulatory changes you can develop that reflect lessons learned from the COVID-19 pandemic, including regulatory or policy flexibilities introduced during the pandemic that your agency is considering making permanent, as well as actions that would further support the country's pandemic preparedness in the future.

Priorities for the Fall 2023 Regulatory Plan and Unified Agenda

While our spring data call applied only to the *Unified Agenda*, which is published twice a year, this data call also includes the *Regulatory Plan*, which is published only once a year. The *Regulatory Plan* serves as a defining statement of the Administration's and each agency's regulatory and deregulatory policies and priorities. Section 4(c) of Executive Order 12866, "Regulatory Planning and Review," incorporated in Executive Order 13563, "Improving Regulation and Regulatory Review," requires agencies to submit an annual regulatory plan as part of the Fall edition of the *Unified Agenda of Federal Regulatory and Deregulatory Actions*.

Agencies can further the objective of open government by making clear, meaningful, and informative contributions to the *Regulatory Plan* and *Unified Agenda*. An effective *Regulatory Plan* and *Unified Agenda* submission will indicate how agencies are moving forward with the Administration's priorities, and will also inform the public of an Agency's immediate regulatory principles and areas of focus. As you prepare your *Regulatory Plan* and *Unified Agenda* submissions, please keep in mind the underlying objectives of better planning and coordination of the regulatory process, and the need to make the regulatory process transparent and accessible to all Americans, including traditionally underserved stakeholders. Specifically, your *Regulatory Plan* should discuss your regulatory priorities, including legislative and programmatic activities that affect regulation, and should provide context for the regulations identified in the *Regulatory Plan*. In addition, as you prepare your *Regulatory Plan* and *Unified Agenda* submissions, please keep in mind the following:

Reflective of Administration Priorities: The Administration has clearly identified key areas of regulatory focus, as mentioned above.

Responsive to Executive Action: The President has directed agencies, through both Executive Orders and other Executive actions, to review and reconsider previously published regulations. The President also issued a series of Executive actions directing agencies to take affirmative steps to address climate change;⁴ empower workers and increase their wages;⁵ promote racial equity and address issues of gender identity, sexual discrimination, disability, religious discrimination, persistent poverty, and immigration;⁶ address pandemic preparedness and access to healthcare;⁷ improve access to and delivery of public programs and services by

⁴ Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 25, 2021); Exec. Order No. 14008, 86 Fed. Reg. 7619 (Feb. 2, 2021), Exec. Order 14026, 86 Fed. Reg. 22835 (Apr. 24, 2021).

⁵ Exec. Order No. 14008, 86 Fed. Reg. 7619 (Feb. 2, 2021), Exec. Order 14026, 86 Fed. Reg. 22835 (Apr. 24, 2021).

⁶ Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 25, 2021); Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 25, 2021); Exec. Order No. 14010, 86 Fed. Reg. 8267 (Feb. 5, 2021); Exec. Order No. 14012, 86 Fed. Reg. 8277 (Feb. 5, 2021); Presidential Memorandum of January 26, 2021, "Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies," 86 Fed. Reg. 7487 (Jan. 29, 2021).

⁷ Exec. Order No. 13998, 86 Fed. Reg. 7205 (Jan. 26, 2021); Exec. Order No. 14009, 86 Fed. Reg. 7793 (Feb. 2,

reducing administrative burden;⁸ and promote equitable and meaningful participation in the regulatory process,⁹ among other priorities. Agencies should ensure their proposed priorities reflect these directives.

Accurate Timelines and Improved Public Notice: The *Regulatory Plan* and *Unified Agenda* allow the public to anticipate upcoming rulemakings and thus must contain the most up-to-date and accurate information. Agencies should continue to promote accuracy by removing actions for which no substantial activity is expected within two years. Actions listed as “Active” should be finalized within 12 months of *Regulatory Plan* and *Unified Agenda* publication. “Long-term” actions should generally be issued between 12 and 24 months. The *Regulatory Plan* and *Unified Agenda* may include actions slated for beyond 24 months, however, if their inclusion provides meaningful information to the public. Agencies should also consider what interim steps need to be prioritized to advance long-term actions slated for 12–24 months or beyond in a timely fashion. In making decisions regarding designations of actions as “long-term” or “active,” we encourage agencies to take a comprehensive assessment of their capacity in light of the priorities noted above, and any actions that have statutory- or litigation-related deadlines.

Transparency and Public Engagement: The *Regulatory Plan* and *Unified Agenda* are important tools for communicating with the public about agency regulatory activities, including how agencies have engaged with the public in developing regulatory priorities, as well as future opportunities for engagement. Consistent with EO 14094—and accompanying OIRA guidance on Broadening Public Participation and Community Engagement in the Regulatory Process¹⁰—agencies should take the following steps in developing their *Regulatory Plan* and *Unified Agenda* submissions:

- Describe in Statements of Regulatory Priorities how, if at all, past or ongoing public participation and community engagement informed the development of agency regulatory priorities and, as practicable and appropriate, describe select future opportunities for public participation and engagement in the regulatory process.
- When developing *Unified Agenda* entries, draw on past or ongoing participation and engagement, as practicable and appropriate, to inform the selection of issues to be addressed by, and described in, the *Regulatory Plan* and *Unified Agenda*.
- When developing *Unified Agenda* entries, describe, as practicable and appropriate, participation and engagement with the public undertaken by the agency in developing the regulatory proposal.

You will find a detailed discussion of these new requirements along with implementation examples in the Appendix of this memorandum. Additionally, agencies should ensure that Statements of Regulatory Priorities and Abstracts are written in plain language, easy to

2021).

⁸ Exec. Order No. 14058, 86 Fed. Reg. 71357 (Dec. 13, 2021); OMB M-22-10 (Apr. 13, 2022).

⁹ Exec. Order No. 14094, 88 Fed. Reg. 21879 (Apr. 11, 2023).

¹⁰ OIRA Memorandum, *Broadening Public Participation and Community Engagement in the Regulatory Process* (July 19, 2023).

understand, and inform readers of the reason the rulemaking is under development and what the agency intends to accomplish, while being careful to avoid disclosing pre-decisional information. To help promote accessibility, agencies should provide URLs of websites with more information about a rulemaking whenever available.

Preparing and Transmitting Submissions

Detailed instructions for submitting the Fall 2023 *Regulatory Plan* and *Unified Agenda* entries are available online at www.rocis.gov. Please follow the procedures carefully and include all required documents. Agencies may direct questions regarding the content of their *Regulatory Plan* and *Unified Agenda* submissions to the appropriate Office of Information and Regulatory Affairs (OIRA) desk officer. For further information concerning automated production, information requirements, format, or submission of materials, contact the Regulatory Information Service Center at (202) 482-7340.

Consistent with prior practice, the complete *Regulatory Plan* and *Unified Agenda* will be published online at www.reginfo.gov as well as in the *Federal Register* in a streamlined format.

OIRA appreciates prompt attention to this call for data. All submissions are due by **August 17, 2023**. The value of the *Regulatory Plan* and *Unified Agenda* depends on the accuracy and timeliness of their content. We urge you to take this opportunity to help us make these documents as useful to the public as possible.

Appendix

This appendix contains guidance and examples for implementation of the new requirements under the OIRA Memorandum on Broadening Public Participation and Community Engagement related to the *Unified Agenda*, and more specifically, changes to how you should prepare your *Statement of Regulatory Priorities*.

Changes to Agency Statements of Regulatory Priorities: The memo asks agencies to (1) discuss how, if at all, past or ongoing participation and engagement informed the development of priorities, including by describing specific engagement activities (for instance, listening sessions, meetings with community organizations, or requests for information) and describing the information received from the public and how it is being used by the agency; and (2) to the extent practicable, discuss their plans for future participation and engagement over the next calendar year, including signaling upcoming opportunities for interested and affected communities to participate in their regulatory activities, for specific regulations as well as broad priorities and regulatory programs.

Below, we provide an example of how you might incorporate these two new provisions into your Fall 2023 *Statement of Regulatory Priorities* using a generalized submission from Fall 2022. Example text of what your agency might add to meet these requirements appears in red.

The Department’s fall 2022 Regulatory Agenda and Plan prioritizes initiatives that expand economic and market opportunity at home and abroad, create jobs, and improve access and delivery of our programs, particularly among historically underserved people and communities. Meanwhile, as we’ve responded to immediate needs during the past two years, the Department will continue to leverage our existing programs in response to those unforeseen domestic and international events and national emergencies. Finally, we note that all Department programs, including the priorities contained in this Regulatory Plan, will be structured to advance the cause of equity by removing barriers and opening new opportunities.

As the Department is developing our regulations, we seek to increase participation and engagement of members of the public affected by our regulations, including in the development of our regulatory priorities. In our Regulatory Plan we detail engagement efforts that have helped to inform our priorities to date, as well as future engagement we have planned. Throughout our engagement, the Department is ensuring that we hear from members of the public who have not typically participated in the regulatory process, including families eligible for assistance, communities affected by climate change, and rural workers, among others.

In 2022, the Department:

...

... implemented a final rule that establishes program standards through 2024 to give regulated entities time to transition in the short term as the Agency works to develop long-term standards - based on the newest guidelines and extensive input from a wide range of partners - that will work for individuals and industry alike. This input included multiple online listening sessions with members of the public and industry representatives, held at different times to accommodate work-life schedules of participants and publicized through social media, email, and intermediary organizations such as XXXX and YYYY. This input also included the extensive written comments received through the rulemaking process. Based on public feedback, the Agency changed the final rule in the following ways: XXXX. In 2022, the Agency also implemented streamlining requirements in its programs to simplify the application process, enhance monitoring requirements, offer more clarity on existing requirements, and provide more discretion at the State agency level to manage program operations. These changes reflected feedback received from beneficiaries through two virtual and in-person consultations held in spring 2022 with current beneficiaries of our programs, identified through intermediary organizations such as XXXX.

...

Outlined below are some of the Department’s most important upcoming regulatory actions for 2023. These include efforts to restore and expand economic opportunity; address the climate crisis; and support markets that are free, open, and promote competition. As always, our

Semiannual Regulatory Agenda contains information on a broad spectrum of the Department's initiatives and upcoming regulatory actions.

...

Regulation XXXX

This rule would lower the minimum participation threshold, which would expand access to the program and provide greater flexibility to States and organizations that want to use additional State and local funds to provide benefits to individuals. **This proposal reflects feedback we have received from representatives from local and state governments, as well as families receiving assistance. The Agency heard from these communities that the program could help underserved families more easily access benefits and that this was their top priority. As we develop this regulation, we will be seeking additional public input through two upcoming virtual listening sessions as well as public comment through the rulemaking process. The Agency will be translating relevant outreach materials into Spanish to ensure accessibility for Spanish-language speaking communities, and will advertise these listening sessions on its website, through emails, and through outreach with intermediary organizations, including XXXX and YYYY.**

...

Changes to Agency submissions of entries in the Unified Agenda: In addition to changes in agency Statements of Regulatory Priorities described above, the memo calls on agencies, wherever practicable and appropriate, to draw on past participation and engagement to inform the selection of regulatory proposals for the *Unified Agenda*, including the problems to be addressed, anticipated benefits and costs (and their distribution), and potential regulatory steps to be taken. OIRA expects agencies will draw from past or ongoing participation and engagement in developing *Unified Agenda* entries, not conduct new engagement during the brief window between the *Unified Agenda* data call and submission to OIRA. In addition, when developing *Unified Agenda* entries, agencies, wherever practicable and appropriate, could describe how engagement with the public informed individual regulatory proposals in the relevant abstract text. OIRA recognizes that not every regulatory proposal will warrant significant participation and engagement and that the degree of appropriate participation and engagement will vary. Accordingly, OIRA expects that only some entries will contain discussion of participation and engagement activities, and inclusion of participation and engagement activities will not be a requirement for *Unified Agenda* entries.

Below, we provide an example of how an agency might incorporate these new provisions into the Fall 2023 *Unified Agenda* using a generalized entry from Fall 2022. Example text of what your agency might add to meet this data call and guidance appears in **red**.

DEPARTMENT/AGENCY RIN: XXXX-XXX Publication ID: Fall 2022

Title: RULE TITLE

Abstract: This rule addresses key regulatory barriers to online ordering in the benefit program by making changes to the provisions that prevent online transactions and types of online capable stores from participating in the program. This rule will also allow the Agency to modernize vendor regulations that do not reflect current technology and facilitate the program's transition to fully electronic transactions. **The Agency's inclusion of this rule is based on feedback and public consultations with program recipients, online providers, and researchers, including multiple listening sessions and engagement through a White House Summit. Commenters described how the lack of online ordering in the system creates administrative barriers to accessing benefits and contributes to the stigmatization of the program and its beneficiaries.**