

WHY COMMUNICATION MATTERS

QUICK STATS

- ✘ **CONFERENCE:** Regulation
- ✘ **TEAM:** All federal departments
- **FUMBLE:** Agencies often fail to consult with public prior to issuance of regulations
- **HOW TO RECOVER THE BALL:** Implement the Early Participation in Regulations Act.

Federal agencies can work together with stakeholders to develop appropriate and cost-effective regulations. When agencies provide advance notice of rulemaking to businesses and other impacted entities, positive results generally follow. That is how the process should work. However, too often agencies fail to work with the public early in the process, which can mean the only choice is the preferred agency-developed solution. In other words, if agencies do not talk to the public about a rule, it is easier for the agency to ignore the public's interests and just use the rule the agency originally wanted.



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In general current law only requires notices of proposed rulemaking, which insufficiently capture the beginning of the rulemaking process because agency staff frequently have

already laid out a preferred path at that point, before hearing from the general public. Agency regulations often end up burdening stakeholders in ways that agencies might not have predicted. This could be avoided if the public could provide comments for common-sense solutions.

Abraham Lincoln acknowledged the need for thorough early planning and once quipped, if given “six hours to chop down a tree... I will spend the first four sharpening the axe.” Everyday Americans, from mechanics to small farmers, know how regulations affect the bottom lines of businesses, and regulators should take their valuable input into account. One recent case highlighted the importance of early engagement with stakeholders when the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) developed a better regulation as a result of the public’s early involvement.⁴¹²

A detailed 2015 U.S. Chamber of Commerce report on labor regulatory initiatives outlines how the Chamber proactively commented on an advance notice of OFCCP’s regulatory proposal to strengthen affirmative action requirements under the Rehabilitation Act. The Chamber was concerned about five costly elements of OFCCP’s proposed rule regarding numerical targets for employers that would likely do little to increase the hiring of individuals with disabilities. In this instance

OFCCP agreed with the Chamber and adopted three improvements to the final rule, which eliminated approximately \$250 million of the original rule's estimated first-year costs and still increased the hiring of individuals with disabilities.⁴¹³

RECOVERY

To improve the regulatory system and ensure

regulators follow this regulation's example, Congress should pass S.1820, the Early Participation in Regulations Act of 2015. S. 1820 would require agencies to publish an advance notice of proposed rulemaking for major rules. This will provide greater regulatory predictability to businesses and enable greater communication between agencies and the public.

[For more information, please visit:](#)

[Federal Register: Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities](#)

[U.S. Chamber of Commerce: Key Labor, Employment, and Immigration, Regulatory Initiatives in the Obama Administration](#)