

Preliminary Concept Paper

# Mechanisms for Including Publics in Administrative Governance

**TREDESIGNING THE  
GOVERNANCE STACK**  
GEORGETOWN LAW

# Preliminary Concept Paper

## Mechanisms for Including Publics in Administrative Governance

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## Executive Summary

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The administrative state is struggling to counter the growing harms of the information economy. As we have documented in previous reports, existing regulatory tools were designed for an earlier era and are ill-suited to confront information-era harms such as algorithmic discrimination or AI-enabled manipulation. This document is part of a broader effort to rethink the role of the administrative state in governing a digital, data-driven economy. It explores methods for generating and mobilizing public participation—a longstanding pillar of administrative governance.

Public participation in administrative processes serves several recognized purposes: it enhances the legitimacy of agency actions, helps guard against regulatory capture, and improves policy outcomes by surfacing a range of expertise and experience. Participation mechanisms are designed, at least in theory, to enable those affected by regulations to influence their development. In practice, however, it is often difficult for members of the public to meaningfully engage with agencies due to procedures that are opaque, outdated, and influenced by entrenched interests. For many, it is unclear whether participation would have any real impact at all.

In this report, we develop a set of principles to guide the redesign of public participation mechanisms. These include: front-loading public engagement so that publics are involved sooner, building public capacity to enable meaningful engagement, building regulatory capacity to generate ongoing, two-way communication between regulators and publics, and reframing expertise as a public good to help facilitate informed contestation of policy priorities.

Next, we propose specific mechanisms to facilitate the creation of information pipelines that are optimized for the timely transmission of two-way flows of high-quality, context-rich information between agencies and publics. Agencies must actively generate community engagement, gather community information, and facilitate structured deliberation and decision-making on issues central to the substance and design of regulatory oversight.

Last, we propose recommendations for institutional redesign to embed participation mechanisms throughout the regulatory lifecycle. Public participation should begin at the agenda setting stage and extend through regulatory monitoring and enforcement of public mandates. Implementing these changes requires both appropriate resource allocation and some reorganization of internal agency processes.

# Introduction

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The administrative state is struggling to counter the growing harms of the information economy. As we have documented in previous reports, existing regulatory tools were designed for an earlier era and are ill-suited to confront information-era harms such as algorithmic discrimination or AI-enabled manipulation. Regulatory action is often fragmented and constrained by outdated statutory authority and limited technical capacity. Agencies also face structural challenges in anticipating how networked digital systems evolve, especially when technologies are deployed at scale before societal implications are known.

One of the traditional pillars of the administrative state is public participation. Public participation in administrative processes serves several recognized purposes: it enhances the legitimacy of agency actions, helps guard against regulatory capture, and improves policy outcomes by surfacing a range of expertise and experience. Participation mechanisms are designed, at least in theory, to enable those affected by regulations to influence their development. Rulemaking processes are structured to provide for public input, and enforcement decisions are informed by complaints and evidence gathered from those affected by the behaviors of regulated entities. Agencies also routinely engage with interested stakeholders as they develop official guidances and other, less formal best practice documents.

Nonetheless, it is difficult for ordinary members of the public to engage meaningfully with administrative agencies. Procedures are opaque and outdated, timelines are slow, and processes are often dominated by actors with specialized knowledge or organized influence. Regulatory discourse tends to be technocratic and impenetrable, potentially deterring participation even when it is formally invited. For many, it may not be clear whether engagement would have any meaningful effect at all.

These concerns have shaped our approach to structuring meaningful inclusion of publics in administrative governance. Meaningful inclusion requires that agencies do more than simply hear from publics. A functioning participatory democracy should treat engagement as a positive good and work to increase its quality and impact, integrating public participation into decision-making processes and incorporating public input into the results of such processes.<sup>2</sup> These goals necessitate moving past traditional participatory mechanisms and, instead, building new channels for communication and information gathering and establishing new processes for deliberation and decision-making. Moreover, public willingness to engage should not be taken for granted. Of special concern for us are mechanisms that help to surface and interpret public concerns about information-era harms, which manifest in complex ways.

We divide this document into four parts. Part 1 identifies core institutional failures that have hindered meaningful public participation in administrative governance. In Part 2, we articulate principles for a reimagined information pipeline between the administrative state and the publics it serves: focusing on timing, two-way flow, depth, and information quality. Part 3 describes a set of mechanisms for operationalizing these principles. By generating community engagement, gathering community information, and facilitating structured deliberation, regulators can more meaningfully incorporate public input in decision-making. Finally, in Part 4, we propose institutional design features necessary to support public involvement across the regulatory lifecycle—from agenda setting to enforcement and review.

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<sup>2</sup> See Archon Fung, *Putting the Public Back into Governance: The Challenges of Citizen Participation and Its Future*, 75 PUB. ADMIN. REV. 513 (2015). In recognition of the fact that the public comprises a range of diverse groups with specific interests, this concept paper will often use the word “publics” instead of the monolithic phrase “the public.”

# Part 1: The Lost Promise of Public Participation

Currently, there are deep disconnects between the ideal accounts of public participation in administrative policymaking and enforcement and existing administrative processes and institutional logics. A robust body of literature identifies and explores these disconnects, which are not just design flaws but also reflect deeper tensions about whose voices matter and about the distribution of power in administrative governance.<sup>3</sup> Below, we organize the institutional failures into three main categories—barriers to motivation resulting from process paralysis and opacity, barriers to access resulting from the capture and weaponization of participatory processes, and barriers to dialogue resulting from the technocratic framing of policy discourses.

## Process Paralysis and Opacity

Affected publics have little incentive to participate in regulatory processes that do not appear to make a difference to their lives. As described in our previous concept paper on policymaking mechanisms, contemporary poli-

cymaking processes are procedurally rigid and very slow.<sup>4</sup> Many are also highly politicized, and issued rules can be tied up for years in litigation before taking effect.<sup>5</sup> The wide range of less formal mechanisms through which regulators develop policy tend to be opaque to those not already versed in administrative practice. And unlike representatives of regulated entities, whose job it is to pay attention to ongoing rulemakings and synthesize informal guidances, ordinary people have many other demands on their time and attention.

From time to time, Congress has experimented with new requirements and processes intended to facilitate public accountability and increase public involvement.<sup>6</sup> For the most part, however, it has simply layered new procedural requirements on top of existing ones. So, for example, the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act augment existing processes by creating optional, earlier phases.<sup>7</sup> Those processes, moreover, seem designed to give additional advantages to organized industry stakeholders.<sup>8</sup> Other interventions

3 Kindra Jesse DeArman, *Is Public Participation Public Inclusion? The Role of Comments in US Forest Service Decision-Making*, 66 ENV'T MGMT. 91 (2020); Michele Estrin Gilman, *Beyond Window Dressing: Public Participation for Marginalized Communities in the Datafied Society*, 91 FORDHAM L. REV. 503 (2022); Cynthia Farina et al., *Democratic Deliberation in the Wild: The McGill Online Design Studio and the RegulationRoom Project*, 41 FORDHAM URBAN L. J. 1527 (2014); but see Brian D. Feinstein, *Identity-Conscious Administrative Law: Lessons from Financial Regulators*, 90 GEO. WASH. L. REV. 1 (2022) (highlighting the ways that some agencies are already made accountable to discrete segments of the public).

4 JULIE COHEN ET AL., DESIGNING POLICYMAKING MECHANISMS FOR REGULATORY DYNAMISM (2025), at 6, [https://www.law.georgetown.edu/tech-institute/wp-content/uploads/sites/42/2025/05/Tech\\_Policymaking\\_25-5.pdf](https://www.law.georgetown.edu/tech-institute/wp-content/uploads/sites/42/2025/05/Tech_Policymaking_25-5.pdf).

5 *Id.* at 6 (citing GOVERNMENT ACCOUNTABILITY OFFICE, IMPROVEMENTS NEEDED TO MONITORING AND EVALUATION OF RULES DEVELOPMENT AS WELL AS TO THE TRANSPARENCY OF OMB REGULATORY REVIEWS (2009)); see also CURTIS COPELAND, CONG. RSCH. SERV., RL 32240, THE FEDERAL RULEMAKING PROCESS: AN OVERVIEW 3 (2013)).

6 U.S. DEPARTMENT OF TRANSPORTATION, PROMISING PRACTICES FOR MEANINGFUL PUBLIC INVOLVEMENT IN TRANSPORTATION DECISION-MAKING, <https://www.transportation.gov/sites/dot.gov/files/2022-10/Promising%20Practices%20for%20Meaningful%20Public%20Involvement%20in%20Transportation%20Decision-making.pdf>; see also MICHAEL SANT'AMBRIGIO & GLEN STASZEWSKI, PUBLIC ENGAGEMENT WITH AGENCY RULEMAKING, <https://www.acus.gov/sites/default/files/documents/Public%20Engagement%20in%20Rulemaking%20Final%20Report.pdf> [hereinafter PUBLIC ENGAGEMENT].

7 Federal Advisory Committee Act, 5 U.S.C. app. §§ 1–16 (1972); Negotiated Rulemaking Act, 5 U.S.C. §§ 561–570 (1988).

8 *Id.*



billed as streamlining regulatory processes (e.g., the Paperwork Reduction Act) and opening them to public inspection (e.g., the Freedom of Information Act, the Government in the Sunshine Act) have not yielded the promised benefits, creating layers of bureaucratic constraint without affording meaningful public access and opportunity to be heard.<sup>9</sup>

Meanwhile, agency decisions about the enforcement of existing public mandates are largely insulated from public input. Many agencies do have processes to receive complaints from the public, and some agencies also publish data and other information summarizing their enforcement activities, but organized processes to receive public input on enforcement priorities are much rarer.<sup>10</sup> As a result, affected publics generally have little idea whether enforcement staff are pursuing agendas that address the principal harms that they experience and little opportunity to advocate for changes in enforcement priorities. Industry actors, for their part, have come to rely on the secrecy that surrounds agency investigations—and on the high probability that, if an enforcement action becomes public knowledge, it will do so via a consent decree that contains no admission of fault.

## Capture

Participation requires mechanisms that are capable of producing effective representation of a broad range of public interests and viewpoints. The goals of broadly inclusive and effective participation are undermined

when some communities are missing from the conversation or when the conversation is dominated by louder, more powerful voices. Today, industry groups are over-represented in ongoing regulatory conversations, and industry groups also routinely co-opt and weaponize participatory mechanisms.<sup>11</sup>

As described in our concept paper on policymaking mechanisms, comments submitted by ordinary members of the public can be difficult to integrate meaningfully into policymaking processes. Notice-and-comment rulemaking typically elicits large numbers of comments. Interventions from members of the public tend to be relatively short and unsophisticated and may frame and describe the issues and/or the ultimate stakes in a wide variety of ways. Industry interventions tend to be more effectively crafted and more tightly focused on the issues that regulators themselves have identified as salient.<sup>12</sup> Additionally, some comments that appear to be from ordinary members of the public also reflect industry messaging.<sup>13</sup> Unless very good care is taken, the resulting feedback loops will effectively exclude much public input.

Perhaps more fundamentally, public participation in policymaking processes often comes too late to matter. Although regulators sometimes solicit public input before beginning a rulemaking process, most often the public is invited to comment after a proposed rule has been drafted (informal or “notice-and-comment” rulemaking) or to participate in a consensus committee after the committee’s mandate has been determined

9 Government in the Sunshine Act, 5 U.S.C. § 552b (2006); Freedom of Information Act, 5 U.S.C. § 552 (2006); Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3521 (2006 & Supp. 2011).

10 See, e.g., *FraudNet*, GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/about/what-gao-does/fraud>; *Commission Actions*, FED. TRADE COMM’N, <https://www.ftc.gov/news-events/news/commission-actions>; *Strategic Enforcement Plan Fiscal Years 2024–2028*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028>; *CFPB Seeks Public Input on Consumer Credit Card Market*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-public-input-on-consumer-credit-card-market/>.

11 Sidney Shapiro, Elizabeth Fisher & Wendy Wagner, *The Enlightenment of Administrative Law: Looking Inside the Agency for Legitimacy*, 47 WAKE FOREST L. REV. 463 (2012); Stephen M. Johnson, *Beyond the Usual Suspects: Acus, Rulemaking 2.0, and A Vision for Broader, More Informed, and More Transparent Rulemaking*, 65 ADMIN. L. REV. 77 (2013).

12 Cynthia R. Farina et al., *Knowledge in the People: Rethinking “Value” in Public Rulemaking Participation*, 47 WAKE FOREST L. REV. 1185 (2012).

13 See, e.g., Steven J. Balla et al., *Responding to Mass, Computer-Generated, and Malattributed Comments*, 74 ADMIN. L. REV. 95 (2022).

(FACA process or negotiated rulemaking). When regulators engage in alternative, less formal modes of policy-making—for example, drafting guidances and other best practice statements or structuring compliance processes—they often solicit input from identifiable stakeholders.<sup>14</sup> Such stakeholders, however, most often tend to be representatives of affected industries rather than of the public or affected communities.

Many agencies turn to civil society organizations as their main conduits to non-industry voices, but such organizations can be imperfect representatives. In tech policy, many civil society groups focus primarily on channeling elite, credentialed opinions rather than on serving as representatives of grassroots movements or amplifying the voices and concerns of ordinary people and their communities.<sup>15</sup> While some civil society groups do focus meaningfully on grassroots outreach, many are small and rely on higher-profile organizations to lead message development. Additionally, some self-styled civil society organizations rely principally on industry support and work to amplify industry talking points, and some are astroturf organizations formed with industry sponsorship.<sup>16</sup>

## Technocracy

Last but not least, meaningful inclusion requires mutual understanding and effective dialogue. Those goals are undermined when regulators and affected publics appear to be speaking different languages. Policymaking and enforcement discourses can be highly technocratic. This

makes them relatively inaccessible to affected publics, while giving industry groups an additional leg up in their efforts to influence results.

In the modern administrative state, regulators rely—and need to rely—on a wide variety of expert policy discourses that can be inaccessible to publics. To an extent, this is necessary. Sound policymaking often turns on complex and technical topics. As examples, effective policymaking and/or enforcement of public mandates may require consideration of scientific and technical evidence, such as information about the biological and ecological effects of chemical pollutants or the damage tolerances of aircraft components.<sup>17</sup> It may involve various quantitative modeling of the behaviors of financial or ecological systems. Or it may involve various kinds of specialized qualitative information, such as strategies for detecting and countering cybersecurity threats or election misinformation.<sup>18</sup> Our economy and our society are sprawling and complex, and regulatory oversight needs to be concomitantly complex in response.

Although some kinds of subject matter expertise are essential for effective regulatory oversight, it does not follow that all claims of subject matter expertise should elicit automatic deference. For example, as we have described in previous reports, policymaking and enforcement decisions in the modern administrative state rely far too heavily on cost/benefit analysis, and the emphasis on quantifiable economic metrics can cause regulators to discount or overlook entirely important categories of harm, such as the systemic harms of discriminatory

14 See, e.g., *FTC Seeks Public Comment on Modernizing Its Digital Deception Guidance*, NATIONAL LAW REVIEW (June 16, 2022), <https://natlawreview.com/article/ftc-seeks-public-comment-modernizing-its-digital-deception-guidance>;

15 Ari Ezra Waldman, *Civil Society and the Crisis of Privacy Law*, 74 EMORY L.J. 1079 (2025).

16 See, e.g., Eamon Javers et al., *How Google and Amazon Bankrolled a ‘Grassroots’ Activist Group of Small Business Owners to Lobby Against Big Tech Oversight*, CNBC (Mar. 30, 2022), <https://www.cnbc.com/2022/03/30/how-google-and-amazon-bankrolled-a-grassroots-activist-group-of-small-business-owners-to-lobby-against-big-tech-oversight.html>; Edward Walker & Andrew Le, *Poisoning the Well: How Astroturfing Harms Trust in Advocacy Organizations*, 10 SOC. CURRENTS 184 (2022).

17 U.S. ENVIRONMENTAL PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE ASSURANCE ANNUAL RESULTS FOR FISCAL YEAR 2024, <https://www.epa.gov/system/files/documents/2025-03/eoy2024.pdf>.

18 *Cybersecurity Toolkit and Resources to Protect Elections*, CISA, <https://www.cisa.gov/cybersecurity-toolkit-and-resources-protect-elections>.

algorithmic decision-making in lending, healthcare, hiring, and policing that are not readily quantifiable.<sup>19</sup> Many have documented how over-reliance on cost-benefit analysis is the direct result of an intentional and well-funded campaign to constrain the work of government by burrowing deep into its justificatory logics and procedural rules.<sup>20</sup>

More generally, failure to translate expert policy discourses effectively for ordinary citizens produces two types of deleterious effects on policy and enforcement processes. First, it facilitates the capture of policymaking processes by regulated entities. As we elaborate in Part 2 below, scientific and technical material must be subjected to rigorous interrogation according to standards of the originating expert communities, and those standards also need to be demystified. Second, regulatory reliance on expert policy discourses can crowd out other important kinds of information. Community information and other forms of local knowledge have essential roles to play in policymaking and enforcement. Policies developed with little understanding of their effects on particular communities will be less effective and will face resistance and resentment. Regulators, for their part, often lack the cultural competency to communicate effectively with the publics whose decisions they affect.

An overcorrection would be dire, however, because a regulatory culture characterized by the relativization of knowledge and by reflexive distrust of specialized expertise would pose a profound, even existential, threat to the public welfare. Our prescription is different. We need an equally intentional countermovement, one that can remove the invasive species of cost-benefit analysis, root and stem, without turning away from the public benefits that effectively mobilized expertise can provide. Since complexity and technical discourse are necessary, if the goals of effective representation and meaningful dialogue are to be achieved, both specialized information and the various types of uncertainty that attach to expert interpretation of such information must be translated and demystified.

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19 See, e.g., Rebecca Kelly Slaughter et al., *Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the Federal Trade Commission*, 23 YALE J.L. & TECH. SPECIAL ISSUE 1 (2021); Will Douglas Heaven, *Bias isn't the only problem with credit scores—and no, AI can't help*, MIT TECH. REV. (June 17 2021), <https://www.technologyreview.com/2021/06/17/1026519/racial-bias-noisy-data-credit-scores-mortgage-loans-fairness-machine-learning/>.

20 K. Sabeel Rahman, *Modernizing Regulatory Review*, THE REGULATORY REVIEW (May 15, 2023), <https://www.theregreview.org/2023/05/15/rahman-modernizing-regulatory-review/>; Eloise Pasachoff, *The President's Budget as a Source of Agency Policy Control*, 25 YALE L. J. 2182 (2016).



## Part 2: Principles for Reimagining Public Involvement

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Achieving the goals of relevance and timeliness, broadly inclusive and effective participation, and mutual understanding and effective dialogue requires rethinking participation mechanisms from the ground up. This Part identifies four important principles that should drive restructuring efforts. Current mechanisms for public participation create discrete, one-way information flows between agencies and publics. We envision pipelines between agencies and publics in which information flows run deeply, continuously, and iteratively: engaging publics in the framing of administrative priorities, building and maintaining public capacity for meaningful involvement in administrative processes, building and maintaining agency capacity for meaningful engagement with publics, and harnessing and demystifying the power of specialized expertise.

### Timing: Front-Loading Public Engagement

Timing is an important factor in regulatory efficacy. As described in our concept paper on policymaking mechanisms, regulators need to be able to act earlier and more nimbly to understand and address the emergent harms and risks created by information-economy systems and processes. As noted above, the same is true for publics. Across the board, publics need to be involved earlier in administrative processes, helping to set agendas instead of commenting on already decided policies.

Effective inclusion mechanisms can create space for public involvement at all stages of policy development and implementation. To begin, it is essential to bring ordinary people and communities into the early-stage conversations in which policymaking and enforcement agendas are formulated at a macro level. At the meso level, public input about impacts and values also can and should shape the priorities that inform the formulation of specific guidances and rules, the development of standards and best practices conventions, and the specifications for digital technologies for government use. And at the micro level, inclusion mechanisms should more

effectively mobilize public input on proposed rules, guidances, standards, government tools and systems, and enforcement actions.

### Two-Way Flow: Building Public Capacity

Genuine public participation in regulatory processes requires more than just the creation of opportunities for public input at all stages of the regulatory lifecycle. To ensure that publics can help formulate, monitor the enforcement of, and iteratively assess rules and standards, agencies must develop strategies and tools for building public capacity to engage meaningfully with policy-making and enforcement processes.

Information professionals and librarians have developed the concept of *information literacy* as a framework for equipping individuals to navigate and assess the information they encounter. Information literacy refers to “the set of integrated abilities encompassing the reflective discovery of information, the understanding of how information is produced and valued, and the use of information in creating new knowledge and participating ethically in communities of learning.”<sup>21</sup> Agencies

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21 Framework for Information Literacy for Higher Education, AM. LIBR. ASS'N, <https://www.ala.org/acrl/standards/ilframework>; Presidential Committee on Information Literacy: Final Report, AM. LIBR. ASS'N, <https://www.ala.org/publications/whitepapers/presidential>.

should use the information literacy framework to assess and improve their communications with publics so that publics can engage with information about administrative processes and outputs in meaningful ways.

To ensure the integrity of information literacy efforts, transparency about the processes through which agencies shape their communications with publics is also essential. Regulators should establish clear, open communication practices that allow for periodic audit and reporting.

## Depth: Building Regulatory Capacity

Genuine public participation also requires more than just receiving public input; it requires ongoing, two-way communication between regulators and publics. To facilitate the conscious integration of public input at all stages of the regulatory lifecycle, regulators must develop the capacity for inclusive and sustained public dialogue.

By analogy to the concept of information literacy described above, regulators themselves must develop *community-responsive information literacy*—the capacity to recognize, assess, and value the diverse forms of information that publics and communities possess. This includes not only formal datasets and technical evidence, but also local knowledge, lived experiences, and culturally-grounded insights (many of which are overlooked in traditional regulatory approaches). By developing this broader literacy, regulators are equipped to more accurately interpret and incorporate public input in ways that are more informed, contextually grounded, and socially responsive. Fully embracing this approach requires relationship-building, iterative feedback systems, and a commitment to participatory deliberation and co-creation. Community-responsive information literacy is thus a foundational orientation toward regulation that centers the knowledge and perspectives of publics.

A key part of engaging with publics is recognizing that not every voice or perspective should be included in every participatory process. In particular, to mitigate the risks of capture and manipulation and ensure that public voices and concerns are not drowned out by the voices and concerns of entrenched interests, regulators must develop strategies for restricting and/or counterbalancing industry input. Implemented carefully and transparently, such strategies can create space for communities to build power and participate authentically.

## Information Quality: Expertise as a Public Good

Within the information pipelines running between agencies and publics, expertise should function as a public good<sup>22</sup>—a resource that, when properly structured, benefits all citizens and communities regardless of their political affiliation, education levels, resource levels, or other demographic characteristics. This framing has two significant implications for the design of administrative processes.

First, regulators must contextualize specialized information and expert interpretation appropriately. To prevent expertise from becoming an opaque instrument of power, regulators must take care that both expert policy discourses and the various kinds of uncertainty that can attach to them are demystified. Like the various forms of community knowledge noted in the previous section, technical expertise also develops via the lived experience of expert practitioners; unlike community knowledge, however, technical expertise develops via more formal sets of conventions for developing and testing hypotheses and for acknowledging and describing uncertainties.<sup>23</sup> Experts sometimes disagree, and expert consensus also can shift over time as new information becomes available. Positioning expertise as a public good requires acknowledging and unpacking these processes in ways

22 Roger Pielke Jr., *The Politicization of Expertise*, THE AMERICAN ENTERPRISE (Mar 5, 2025), <https://theamericanenterprise.com/the-politiciz>.

23 HARRY COLLINS & ROBERT EVANS, *RETHINKING EXPERTISE* (2017).

that make them visible to all stakeholders. When regulatory processes are working poorly, claims by and about experts can fuel capture by industry actors and politicization by both industry actors and industry critics. When regulatory processes are working well, specialized information and expert interpretation should facilitate informed contestation over policy priorities.

Second, regulators must situate expert policy discourses appropriately within larger regulatory dialogues, taking care that they do not crowd out the other kinds of information that are also important. Experts sometimes tend to sort themselves into disciplinary, methodological, and ideological silos without investing enough effort in interdisciplinary bridging. Regulators should be especially cautious when the experts all seem to be using the same methods, jargon, and approaches, and they should take care to ensure that they are hearing not only competing viewpoints but also competing approaches and methods. Another marker for diversity of expert viewpoints is diversity of funding sources. When most of the support for experts engaged with an agency comes from one kind of funder—for example, industry or trade associations—regulators should seek out experts funded in other ways, or those without external funding.<sup>24</sup>

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24 See, e.g., Alice Fabbri et al., *The Influence of Industry Sponsorship on the Research Agenda: A Scoping Review*, 108 AMER. J. PUB. HEALTH e9 (2018).

## Part 3: Mechanisms for Developing Meaningful Involvement

The mechanisms described in this Part are intended to facilitate the creation of information pipelines that are optimized for the timely transmission of two-way flows of high-quality, context-rich information. Such pipelines can support the development of three types of mechanisms for deepening public involvement in administrative policymaking and enforcement. Agencies must generate community engagement, gather community information, and facilitate structured deliberation and decision-making on matters relevant to the substance and structure of regulatory oversight.

### Generating Community Engagement

Outreach to lay the groundwork for ongoing, meaningful participation requires careful planning and execution. Regulators need to meet communities where they are—geographically, socially, and culturally. This requires the community-responsive information literacy described in Part 2, above, and it also requires deploying thoughtful digital mechanisms to build public capacity for meaningful, informed participation in administrative processes.

Traditional, often passive, outreach models (such as public comment portals or town halls) must be reconfigured to facilitate ongoing dialogue. While field office or mobile engagement units staffed with subject matter experts can facilitate in-person dialogue to address issues such as content moderation, algorithmic curation, and data or labor extraction, parallel digital infrastructure building must complement this work. Dedicated, well-designed options

for engaging with regulators can increase access and lower participation barriers.<sup>25</sup> Partnerships with community organizations can offer additional trust-building support and serve as intermediaries to translate community knowledge into regulatory outputs. Agencies should build sustained partnerships with community organizations and networks that can help identify how to reach affected publics and how to make participation meaningful and impactful. These partnerships can serve as the foundation for structured, ongoing feedback loops that connect regulatory decisions to the evolving needs and perspectives of publics over time.<sup>26</sup>

Participation burdens remain a persistent barrier to inclusive governance. Too often, the design of administrative procedures—from lengthy comment forms to opaque submission portals—places disproportionate responsibility on individuals to decipher rules and advocate for themselves.<sup>27</sup> To reduce these burdens, outreach mechanisms should prioritize clarity, accessibility, and agency. There

25 See, e.g., *Deliberative Approaches to Inclusive Governance: An Essay Series*, CENTRE FOR MEDIA, TECHNOLOGY & DEMOCRACY (2025), <https://www.mediatechdemocracy.com/deliberative-approaches-to-inclusive-governance> [hereinafter *Deliberative Approaches*]; see also Renee Irvin & John Stansbury, *Citizen Participation in Decision Making: Is It Worth the Effort?*, 64 PUB. ADMIN. REV. 55 (2004).

26 See, e.g., Naomi Levy, Amy E. Lerman & Peter Dixon, *Reimagining Public Safety: Defining “Community” in Participatory Research*, 49 L. & SOC. INQUIRY 68 (2024); Ben Palmquist, *Equity, Participation, and Power: Achieving Health Justice Through Deep Democracy*, 48 J. L., MED. & ETHICS 393 (2020).

27 See Farina et al., *supra* note 12; Amy Widman, Pamela Herd & Donald Moynihan, *Tackling Administrative Burdens: The Legal Framework and Innovative Practices*, 76 ADMIN. L. REV. 243 (2024).

should be clear channels for input, clear communication about how input will be used, and accountability for following through on commitments to listen to and learn from public input. Moreover, participation should be understood as a form of knowledge work, and regulators should ensure that publics are not drained of their time, dignity, or resources without receiving something of value in return.<sup>28</sup> Some of the more sustained forms of public participation described below will require monetary reimbursement. In other cases, needs for reciprocity will be satisfied if communities see their contributions acknowledged and translated into policies that demonstrate responsiveness to public concerns.

Finally, outreach mechanisms must be integrated into long-term institutional commitments. Assessing the efficacy of outreach will require new types of metrics. To ensure credibility and accountability, agencies should enlist independent institutions, such as the Pew Research Center and similar organizations, to assess and report on public perceptions of fairness, responsiveness, and respect.<sup>29</sup> These legitimacy indicators play a central role in whether publics trust regulatory institutions and remain willing to participate over time.

## Gathering Community Information

Outreach mechanisms must be coupled with structured methods for gathering community input that ensure timely, high-quality, and in-depth information collection. Regulatory systems should embed formal processes

for collecting, integrating, and iteratively refining community-sourced information to inform policymaking, standard-setting, regulatory monitoring, and enforcement processes.

Mechanisms for gathering community information range from traditional tools such as in-person forums and focus groups to digital tools and platforms. Digital tools can reduce cost and add flexibility, but without thoughtful integration, they can become underutilized and ineffective mechanisms. Research on tech-facilitated conversation networks shows that digital platforms can help facilitate online discussions, help participants refine priorities, and generate actionable guidance.<sup>30</sup> However, these tools must be paired with clear institutional commitments: for example, the Obama Administration piloted forums for public question and petition submissions, which could have been used as a first step for gathering community knowledge; however, the effort lacked follow-through and was never institutionalized in any way.<sup>31</sup> Additionally, the design and implementation of digital tools for gathering community information must explicitly prioritize core public values such as privacy, safety, and equity. For example, platforms should limit data collection to what is strictly necessary, ensure accessibility for non-dominant language speakers, and provide clear protections against harassment or misuse.

In some cases, regulators may facilitate participatory audits or create independent public advocate mechanisms that allow community members to co-create evaluation metrics, document harms, flag enforcement

28 See, e.g., Seema Kakade, *Environmental Evidence*, 94 U. COLO. L. REV. 757 (2023); Mel Langness et al., *Equitable Compensation for Community Engagement Guidebook*, URBAN INST., <https://www.urban.org/research/publication/equitable-compensation-community-engagement-guidebook>.

29 For an example of such a study, see *Public Trust in Government: 1958-2024*, PEW RESEARCH CENTER, <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/>.

30 See, e.g., *Deliberative Approaches*, *supra* note 25.

31 Micah Sifry, *Why Tech-Enabled E-Democracy Often Fails: Lessons From Barack Obama's Presidency*, CENTRE FOR MEDIA, TECHNOLOGY & DEMOCRACY, <https://www.mediatechdemocracy.com/why-tech-enabled-e-democracy-often-fails>; Jonathan Weinberg, *The Right to be Taken Seriously*, 67 U. MIAMI L. REV. 149, 212-14 (2012).



gaps, and channel complaints into insights that inform policy and oversight. Carefully designed campaigns to crowdsource community knowledge can further enhance information collection.<sup>32</sup>

To effectively implement these methods, regulators must be equipped with the community-responsive information literacy described in Part 2. Developing the capacity to communicate with and learn from affected publics will require training, tools, and institutional support. This includes (but is not limited to) professional development in ethical facilitation, frameworks for seeking and creating space for underrepresented perspectives, and internal workflows that allow for meaningful consideration and incorporation of community input. To help ensure that information gathering processes are culturally appropriate and not exploitative, regulators can also build enduring partnerships with community-based and civil society organizations to co-design methods for information collection.

Processes of gathering community information should be dynamic and iterative. As with the policymaking mechanisms we described in an earlier concept paper, regulators need the institutional capacity to continuously tune participation mechanisms in response to emerging forms of harm or shifting participation patterns. Parameters such as the scope of participation, methods, and the weight given to different types of information can be iteratively adjusted based on feedback, participation gaps, and regulatory goals. For example, a regulator might begin with open forums, learn from participation patterns or feedback, and refine the approach toward more focused community gatherings with representation from publics who were absent in the initial forums.

Participation mechanisms also must be designed and iteratively tuned to account for the risks of capture and manipulation. As participation systems become more digitally-mediated, they are increasingly vulnerable to tactics like astroturfing, mass submissions, fake accounts, and coordinated flooding of input channels that distort the appearance of consensus or public opinion.<sup>33</sup> To maintain the integrity of participatory processes, mechanisms for generating engagement should include ways to detect and mitigate inauthentic or manipulative engagement and to weigh input based on indicators of representativeness, relevance, and credibility.

## Facilitating Structured Deliberation and Decision-Making

Publics should also have structured deliberative opportunities to participate actively in shaping policy. Well-designed deliberative mechanisms can create opportunities for constructive exchanges between publics, regulators, and subject matter experts, enabling many kinds of knowledge and lived experience to be integrated into decision-making processes.<sup>34</sup> This section focuses on top-down deliberative processes that are designed to facilitate broad-based, inclusive participation and mitigate asymmetries in access, voice, and power.

The structured deliberative processes we envision have four essential elements. First, regulators must define and clearly explain participation criteria using dimensions such as lived experience, geographic relevance, and community affiliation. In some cases, it may be feasible for community organizations to select representatives;

32 Farina, *supra* note 3; Kakade, *supra* note 28; Amy Widman, *Inclusive Agency Design*, 76 ADMIN. L. REV. 23, 54-55 (2022).

33 Mario Kovic et al., *Digital astroturfing in politics: Definition, typology, and countermeasures*, 18 STUDIES COMM'C'N SCI. 69, 71 (2018). Yet, these tactics are not new. Scholars have described the administrative state's failure to filter out excessive amounts of phone calls, letters, comments and notices of appeal. Wendy E. Wagner, *Administrative Law, Filter Failure, and Information Capture*, 59 DUKE L. J. 1321 (2010); see also Balla et al., *supra* note 13.

34 Mark S. Reed et al., *A Theory of Participation: What Makes Stakeholder and Public Engagement in Environmental Management Work?*, 26 RESTOR. ECOL. S7, <https://doi.org/10.1111/rec.12541>.



in others, once an initial pool of eligible participants has been identified, lotteries may be used to support randomized selection. In all cases, transparent recruitment procedures are critical.

Second, the format and facilitation of the deliberative process must be designed to challenge power dynamics, allow for productive disagreement, and make space for voices often marginalized in formal deliberation. This includes hiring trained facilitators with experience in equity-centered practices; using formats designed to prevent domination by more vocal or privileged participants; setting clear ground rules that prioritize respect and inclusivity; and incorporating multilingual and culturally appropriate approaches. Periods of open discussion should be followed by more tightly structured opportunities to weigh competing values, evidence, and policy options. Each process should culminate in a report that captures both consensus and dissenting perspectives, that is shared with policymakers and the public, and that is integrated meaningfully within agency decision-making.

Third, structured deliberative processes should mobilize expertise as a public good, as described in Part 2, above. Subject matter experts can play key roles in educating participants and helping to ensure that all contributors are able to engage on a more equal footing. Regulators should develop clear procedures for explaining and documenting the provenance of specialized information, for demystifying and documenting the provenance of expert interpretations of such information, and for explaining the various uncertainties that often attach to expert interpretations and the reasons for any disagreement among different experts.

Finally, as with the information gathering mechanisms described in the previous section, the design of mechanisms for focused deliberation must account for the risks of capture and manipulation. Powerful actors will attempt to shape the process and outcomes by influencing participant selection, funding arrangements, and/or the scope of the deliberation.<sup>35</sup> To safeguard process integrity, regulators should build and iteratively refine structural constraints on corporate influence. For example, participant selection should be guided by transparent criteria designed to center affected communities rather than self-nominated industry voices. Regulators should also work with community and civil society organizations and subject matter experts to develop and embed strategies that address disinformation, coercion, or coordinated interference while creating space for dissent and the inclusion of diverse perspectives.

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35 Alex Acs & Cary Coglianese, *Influence by Intimidation: Business Lobbying in the Regulatory Process*, 39 J. L. ECON. & ORG. 747 (2022).

## Part 4: Institutional Design for Meaningful Involvement

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Here, we present recommendations for integrating the three types of participation mechanisms described in Part 3 across the regulatory lifecycle: from agenda setting (macro), to policy instrument design (meso), to regulatory monitoring and enforcement (micro). Institutional structures for participation must be carefully scoped. Over-layering participation risks procedural gridlock, especially in agencies that also must satisfy other process requirements.<sup>36</sup> Throughout this concept paper, we have highlighted what agencies can learn from librarians, community organizations, and social movements about how to motivate and harness public participation, but it is worth emphasizing that the roles of agencies are different than those of librarians, community organizations, and social movements. Agencies must serve other goals in addition to participation—including sound policymaking and effective public administration—and must satisfy other institutional requirements—including accountability to multiple constituencies. In what follows, we aim to propose participation arrangements that are both legible and accessible to publics and operable within larger administrative frameworks.

### Agenda Setting and Iterative Review

Effective governance of the information economy requires institutional mechanisms for setting and iteratively evaluating regulatory agendas that are responsive to public priorities and resistant to capture.<sup>37</sup> As a baseline requirement, each agency should maintain a public advisory body specifically tasked with providing input on the agency's regulatory and enforcement agendas.

To serve as a meaningful participatory mechanism, the existing Federal Advisory Committee Act (FACA) model for advisory committees must be fundamentally restructured. Currently, FACA is optimized for industry stakeholder representation and lacks mechanisms to ensure meaningful participation by publics.<sup>38</sup> It includes no formal requirements for outreach, compensation, or accessible processes. Moreover, FACA does not require facilitators or chairs to have training in community-responsive information literacy or inclusive facilitation methods, and these omissions limit the capacity of committees to engage with publics.<sup>39</sup>

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36 How to overcome process paralysis while preserving appropriate accountability is an important and understudied question that we do not pursue here. For important early work, see Nicholas Bagley, *The Procedure Fetish*, 118 MICH. L. REV. 345 (2019).

37 For a discussion on the purposes of regulatory agenda setting, see Cary Coglianese & Daniel E. Walters, *Agenda-Setting in the Regulatory State: Theory and Evidence*, 68 ADMIN. L. REV. 865, 866 (2016).

38 Joaquin Sapien, *Federal Advisory Panels, Often Slanted Toward Industry, Influence U.S. Rulemaking*, PROPUBLICA, <https://www.propublica.org/article/federal-advisory-panels-often-slanted-toward-industry-influence-us-rulemaking>.

39 Federal Advisory Committee Act, 5 U.S.C. App. § 2 (2012); PUBLIC ENGAGEMENT, *supra* note 6 (discussing FACA-regulated agenda setting committees and the severe limitations of FACA).

We envision a redesigned framework for a Public Advisory Committee Act that satisfies four requirements:

**Representative composition.** Public advisory committees should be designed to facilitate structured deliberation and decision-making by representatives of affected publics, as described in Part 3, above. Agencies can (and should) consult subject matter experts, including those with knowledge of industry perspectives, and bring relevant information to the committees, but the committees themselves should be comprised of members of the public selected by their communities. This approach can help to ensure that public input is not overshadowed by industry influence while still allowing agencies to introduce a full range of considerations.

**Power to shape regulatory priorities.** Rather than simply commenting on proposed rules, public advisory committees should have the authority to propose new regulatory topics, identify gaps in existing oversight arrangements, and formally recommend regulatory action in specific areas. To ensure their input carries structural weight, these bodies should have the authority to compel formal, timely agency responses when their recommendations are not adopted.

**Comprehensible information.** Committee members need access to comprehensible materials that explain the issues under consideration, including (but not limited to) plain-language summaries of technical reports, background information on relevant laws and rules, and structured briefings on data and other information that might inform decision-making. Agencies should provide context, clarify assumptions, and enable informed judgment so that committee participants are not overwhelmed by raw data or technical documentation.

**Standing committees and living agendas.** Public advisory committees must meet regularly and maintain living agendas that evolve alongside technological and societal changes. To ensure accountability over time, committees should adopt staggered terms and term limits. To address burdens that community members may face due to sustained participation, agencies should provide logistical and financial support and should build onboarding processes that help new members engage with the record of past work.

## Participation in Specific Policymaking Initiatives

A second essential component of institutional redesign involves restructured mechanisms for public participation in specific policymaking initiatives. As a baseline requirement, meaningful participation should be embedded throughout the policymaking lifecycle, not just at the endpoints. This includes early-stage community information gathering, facilitated deliberation, structured agency accountability, and iterative refinement, all informed by interdisciplinary research and engagement with affected publics.

The Negotiated Rulemaking Act of 1990—which authorizes agencies to convene stakeholders with the goal of reaching consensus on the text of a proposed rule—offers a partial and imperfect precedent for the kind of participatory governance we envision.<sup>40</sup> It is partial because it applies only to rulemaking, whereas public participation should extend to the full range of policymaking processes through which agencies create, revise, and operationalize policy. It is imperfect because (like FACA, discussed above) it was designed primarily around the participation of economic stakeholders, privileging industry interests and overlooking community-based concerns.

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40 Negotiated Rulemaking Act of 1990, 5 U.S.C. §§ 561–570 (1990).

We propose an expanded use of mandatory negotiated policymaking that embeds public involvement early and throughout the process.

**Early-stage community information gathering.** First, the process should begin with structured early-stage public input. Agencies should gather information from publics in advance of policy development using the types of mechanisms described in Part 3. This material should be integrated into the committee's deliberations to ensure the committee engages with diverse forms of public knowledge, even from those not seated at the table.

**Facilitated, inclusive deliberation.** Second, deliberative processes should be facilitated and inclusive by design. A trained facilitator should guide discussions, using practices designed to ensure respectful engagement and prevent dominance by more vocal or privileged participants. A neutral convener should be responsible for recruiting a representative cross-section of stakeholders and committee members, drawing on transparent selection criteria as described in Part 3. The emphasis should be on surfacing a range of perspectives, not achieving formal consensus. Final reports should reflect both majority and dissenting views, including the reasoning and projected impact of the proposed policy directions.

**Structured agency response and accountability.** Third, agencies should be required to give structured, public, and reasoned responses to the outputs of participatory policymaking bodies. This includes formally acknowledging the range of views presented, explaining how key recommendations were incorporated or rejected, and responding in particular to minority positions or objections that raise novel risks or evidence.

**Iterative participation.** As described in our previous concept paper on policymaking mechanisms, policymaking should be structured as an iterative process. Similarly, the participatory bodies we envision here should be reconvened at defined intervals or following triggering events.

## Regulatory Monitoring and Enforcement

Finally, institutional architectures for regulatory monitoring and enforcement of public mandates need to ensure that rules, standards, and requirements are implemented in ways responsive to public needs and evolving conditions. A forthcoming module of this project will address specific proposals for oversight and sanctions; here, we describe key elements of an enforcement framework oriented toward responsiveness and meaningful public engagement.

### Participatory monitoring and audit mechanisms.

To enhance oversight between formal review intervals, agencies should develop infrastructure for citizen-led monitoring and audits. This could include digital platforms for reporting harms or violations, threshold-triggered review processes, and structured opportunities for citizen audits. While modeled in part on whistleblower hotlines or complaint portals, monitoring mechanisms should be more procedurally integrated and structured to ensure agency responsiveness. Citizen audits—authorized, participatory assessments conducted by non-state actors and publics—would operate after implementation to ensure fairness, efficacy, and compliance with public mandates.<sup>41</sup> Each audit cycle should include provisions for access to relevant data, trained agency liaisons, and participatory compensation. Equity, clarity of scope, and privacy protections must be embedded into audit design.

**Responsive agency action.** Enforcement processes must include structured mechanisms for institutional response. Audits, citizen monitoring, and public oversight tools must be meaningfully integrated into agency action. Verified findings from participatory audits or reporting platforms should trigger concrete agency responses, including policy revisions, implementation changes, or targeted enforcement actions. Agencies should also be required to issue timely, public-facing response reports that explain how findings were addressed and what remedial steps were taken. These

41 K. Sabeel Rahman, *From CivicTech to Civic Capacity: The Case of Citizen Audits*, 50 PS: POL. SCI & POL. 751 (2017).

reports should not merely check procedural boxes but offer publics a clear, accessible account of how their input shaped outcomes.

**Institutional feedback loops.** Other feedback loops should extend beyond the immediate regulatory context. Findings from audits and monitoring efforts keyed to specific rules can also inform broader revisions to agency policymaking and enforcement priorities, compliance frameworks, and risk assessments. Agencies should be expected to document lessons learned from the implementation of participatory monitoring and audit mechanisms and to incorporate those lessons in their future policymaking and enforcement activities.

**Other avenues for responsive enforcement.** We note, finally, that litigation offers another avenue for public participation in enforcement. Citizen suits and other legal challenges can serve as tools for holding agencies accountable when administrative mechanisms fall short. A separate module of this project will examine the utility of citizen-initiated litigation within the broader enforcement ecosystem.

Each agency should be provided with the resources to create, staff, and operate these offices. This includes funding for specialized tools and training that the offices will need to equip agencies to develop, implement, and iteratively improve the processes described in this report. In addition, we envision creating a centralized entity that would act as a resource hub for agencies to share and further improve the knowledge and techniques that they develop. One path might entail the creation of a Council of Chief Public Participation Officers similar to the Council of Chief Information Officers through which agencies now pool and leverage govtech-related information. Such a council could be situated within the Digital Architectures, Services, and Processes Oversight Board described in our concept paper on regulatory monitoring, or it could exist on a standalone basis.

## Resources and Reorganization

Creating the mechanisms described in Part 3 and integrating them into the regulatory lifecycle as described in this Part will require careful coordination by agency staff with the necessary skill sets and authority. As a baseline requirement, each agency should have an Office for Public Participation whose director reports to the agency's senior leadership. This office would facilitate the creation and oversee the ongoing implementation of the mechanisms and processes we have described. The director should be a career civil servant with a background and qualifications in developing community-responsive information literacy and facilitating collaborative processes.



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