

[Docket No. GSA-GSA-2020-0002]

June 5, 2020

Emily W. Murphy, Administrator
c/o Tobias Q. Schroeder
General Services Administration
1800 F Street NW
Washington, D.C. 20006



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*Submitted Via Federal eRulemaking Portal at
www.regulations.gov*

**RE: Modernizing Services for Regulation Management,
Fed. Reg. No. Notice-MR-2020-01.**

Dear Administrator Murphy:

The American Civil Liberties Union is an advocacy organization that views public participation in national policy-making as vital to ensuring a responsive, effective, and accountable federal government. With this mission in mind, we offer the following general recommendations and guiding principles in response to the General Services Administration's (GSA) request for input on the modernization of Electronic Rulemaking Management.¹ These comments represent a starting point for engaging with GSA and individual agencies on the electronic rulemaking process and do not reflect the full diversity or entirety of our views, interests, and activism on the topic.

As GSA acknowledges, "public participation in rulemaking is an essential function of good governance" that "enhances the quality of law and its realization through regulations."² That is why GSA should take great care to avoid creating new obstacles to public participation as it considers upgrades to the shared information technology services it provides to federal agencies, including the <https://www.regulations.gov> website and the Federal Docket Management System.

In particular, we ask GSA to follow this non-exhaustive list of guidelines:

- **Protect the ability of mass commenting campaigns to continue submissions without undue or unreasonable obstacles.** We understand the concerns that mass comments submitted by bots or entities operating under a false identity for bad faith reasons pose a burden on agency staff and compromise the quality of information generated by the rulemaking process. However, those sources of comments must be distinguished from mass commenting campaigns in which bona fide individuals are participating as part of larger advocacy efforts or grassroots movements—which GSA should not enable agencies to disregard or discourage.
- **Do not institute an authentication process that would require individual registration and verification of identity by the federal government before commenting.** Agencies currently allow people to file anonymous comments, although some ask commenters to provide a name; such openness allows agencies to receive feedback that they may find valuable regardless of the submitter's identity. This practice should be retained. Specifically, any upgrades to GSA's eRulemaking system provided to agencies should not require members of the public wishing to comment to first register with the federal government by creating an account and submitting personal or identifying information to be authenticated—which could have chilling effects on participation by ordinary commenters. As we have seen in numerous other contexts, the federal government's collection and retention of people's personal data connected to their opinions also raise numerous privacy, civil liberties, and identity theft concerns.
- **Maximize transparency into the automated processes, algorithms, and related tools used by GSA to manage the initial submission of comments and to process large volumes of submitted comments.** GSA and the agencies it serves should be transparent about any computer software, techniques, or algorithms—including increasingly sophisticated artificial intelligence (AI) technology—that they are using to regulate access to comment submission interfaces and to analyze or process comments after submission. To facilitate external oversight and transparency, GSA should consider making open source any AI or related code, including machine

¹ 85 Fed. Reg. 21003, Apr. 15, 2020; 84 Fed. Reg. 72364, Dec. 31, 2019.

² Gen. Servs. Admin., Public Comments Make A Difference (last accessed June 3, 2020), available at https://www.regulations.gov/docs/FactSheet_Public_Comments_Make_a_Difference.pdf.

learning tools, used to filter, categorize, process, or otherwise manage submitted comments, as well as any related training data and validation or test results. With respect to gatekeeping techniques or tools that affect the submission steps, GSA should, at a minimum, provide reports on the types of filters, blocks, or other technologies that were installed and active during the course of a comment period, if not make those technologies open source outright, as well as ensure that safeguards are available to address appeals or grievances from commenters who were inappropriately blocked by such a system. Finally, GSA should regularly engage the broader stakeholder community in developing and refining its use of these technologies.

- **Preserve the public's ability to submit hard copy letters.** Despite the advantages of submitting public comments electronically, sending hand-written or paper copy letters still remains a common method of submission, especially for those who do not have a computer or internet access at home. Notices for public comment on GSA's eRulemaking platform should provide information on how to submit hard copy responses, and going forward, GSA should avoid any changes that would have the practical effect of moving the federal rulemaking system to an electronic-only one.

We share GSA's goal to improve the Electronic Rulemaking Management system and look forward to further conversation about its efforts. Thank you for the opportunity to share our views and for your consideration of our feedback. If you have any questions, please contact Kate Oh at koh@aclu.org or (202) 715-0816.

Sincerely,



Ronald Newman
National Political Director



Kate Oh
Policy Counsel