

## ADVOCACY IN ACTION: THE FEDERAL RULEMAKING PROCESS AND HOW TO SUBMIT PUBLIC COMMENTS

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*This document provides a brief summary of the federal regulatory process and describes how to prepare public comments, and why this is an important advocacy tool for immigrant justice.*

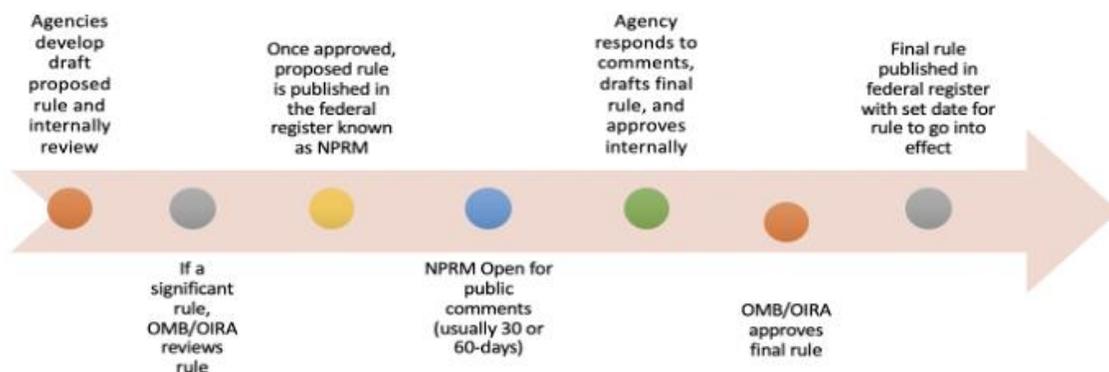
There are several governmental agencies (Department of Homeland Security-DHS, US Citizenship and Immigration Services-USCIS, Immigration and Customs Enforcement-ICE, Customs and Border Patrol-CBP, Department of Justice-DOJ) involved in enacting immigration law via the federal regulation process. Anti-immigrant policies began well before the current Administration, but a recent [Migration Policy Institute](#) report described the 400+ regulatory changes related to immigration from 2017-2020. [Kids in Need of Defense \(KIND\)](#) also documented how these policies dismantle protections for children. In August 2020, organizations across the nation provided a “2021 Action Plan” to address the damage caused by the current administration (find the plan here: [Center for Gender and Refugee Studies](#)).

### OVERVIEW OF THE FEDERAL REGULATION PROCESS

Federal regulation is one of the tools of government to implement public policy and laws enacted by Congress. The terms “rule” and “regulation” are used interchangeably and are meant to carry out or explain a law or policy. Congress authorizes government agencies to issue rules. The procedure that agencies have to follow to write, amend, or rescind rules is called the rulemaking process. Government agencies may decide to begin a rulemaking process because: (1) Congress requires a rule; (2) Agency identifies a problem or need for a new, change or rescission of regulation; (3) Other government bodies or the President makes a recommendation; (4) Public petitions for a new rule, change, or rescission of rule.

The infographic below outlines this process. First, the government agency submits significant rules or rule changes to the Office of Information and Regulatory Affairs (OIRA; the Administrator is nominated by President and confirmed by Senate) in the Office of Management and Budget (OMB). This is to ensure that the government agency meets certain minimum standards and has analyzed the costs and benefits of the rule. An agency can decide to withdraw a rule and not move forward with it. An agency publishes any major change in its policies/rules that will affect citizens to [The Federal Register](#), which is the official publication for the U.S. government agencies’ rules.

Under the Administrative Procedure Act (APA), the agency is required to request public comments, take the input provided into consideration, and provide a response to substantial comments in the final version of the regulation. This is usually done through a Notice for Proposed Rulemaking (NPRM). Agencies will decide a comment period (most often 30 to 60 days) dependent on the complexity of the rule and agency practices, but the public can also request longer comment periods.



## WHAT YOU NEED TO KNOW ABOUT THE PUBLIC COMMENT PERIOD

**What is it and why is it important?** All members of society are able and encouraged to submit comments during this time-limited period. This is an important opportunity to provide your unique perspective using data and research, professional knowledge or expertise on the subject matter, and personal narratives on the impact of the proposed rule. While many of us have grown accustomed to submitting comments *in opposition* to proposed rules, it is important to note that comments can be submitted *in support* of a proposed rule by detailing why the rule is beneficial or how it provides a helpful framework for effectuating the law. Therefore, public comments can be used to ensure that positive rule-making changes create equitable and just policies.

**How do I prepare and submit a public comment?** Proposed rules are complicated and dense documents to understand. For this reason, we rely on lawyers, legal advocates, and policy experts to interpret the proposed rules to highlight key areas of benefit or concern as well as what the rule actually means. Many of these groups/organizations create template comments to help guide the public comment response. While these templates help to draw our attention to key aspects of the rule, and to specific concerns about the language of the legal framework of the rule, these templates are intended as a guide to help everyone to draft personalized comments. Comments are reviewed using a data algorithm so that all unique comments can be reviewed. Submitting hundreds of the same template without personalization is not effective because these comments will not be considered unique. See [here](#) for more information on how public comment works. We provide some tips below to help you personalize and tailor comment templates.

- It is important to use the templates provided by groups or organizations that you trust, for example, those that focus on legal advocacy for immigrants, the rights of children, global human rights, or U.S. civil rights. Professional organizations usually oppose rule changes that impact health, access to care, and protections for children and families, and these can be helpful to reference.
- Public comments are about quality over quantity. Use the template to focus on a few key elements that you feel equipped to address using data/research, clinical or professional knowledge, or personal experience and knowledge.
- You do not have to include all sections of the template. But, pay attention to parts of the template that highlight critical or prioritized sections.
- Most templates will provide recommendations throughout to indicate where you can specifically tailor or further expand. These parts are usually bracketed, highlighted, or italicized.
- All public comments need to be in English. Look for individuals who can help to translate your comment, if needed, or offer to translate for others.
- Comments do not need to be a certain length, but they need to be substantive and descriptive.
- You can submit more than one comment as long as they are unique. This might be helpful to help you to organize your comments from the multiple roles you represent (researcher and clinician; teacher and parent; legal advocate and service provider).

**What happens after I submit a public comment?** Agencies that are responsible for the proposed rule change must review each unique comment with the expectation that feedback is incorporated into drafting the final review. Public comments can be used in future litigation, as we saw with the delay in the implementation of the Public Charge Rule Change in late 2019.

**How can CIMH contribute to advocacy efforts during public comment periods?** It is critical to generate public comments from diverse perspectives including, but not limited to educators, mental health practitioners, legal advocates, social service providers, community organization staff, and community activists. This provides a richer public comment period response and ensures that there are many ways to interpret the impact on mental health and well-being (e.g., on services, access to care, equity, etc.). Furthermore, it is critical to include

comments based on the lived experience and personal narratives of those who would be directly impacted by the rule change if it was to take effect. Here is a sample of recently submitted public comments:

- ☑ Proposed Change to Flores Agreement (Oct 2018)
- ☑ Proposed Change to Public Charge (Dec 2018)
- ☑ Proposed Change to SNAP; SSDI Eligibility; USCIS Proposed “tip form” (all three in Apr 2019)
- ☑ HUD Proposed rule change to subsidized housing (Jun 2019)
- ☑ USCIS proposed fee increases (Dec 2019)
- ☑ Jointly Filed Proposed Asylum Rule Change (Jul 2020)
- ☑ USCIS & DOJ rule banning asylum during pandemic (Aug 2020)

**What to do now?** Federal rulemaking will continue and, therefore, public comment is an important advocacy tool for immigrant justice. If there is an Administration change, we must be prepared for any upcoming rule changes that amend or rescind regulations created since 2017. Keep in mind that regulatory changes occur in all areas of the law (environmental protections, education, etc.) and advocacy is often intersectional. For example, when we enact laws that deregulate environmental protections, this has ripple effects on global migration patterns.

**Share this resource within your organization to help others learn more about how to submit public comments. We all have a role to play in shaping the legal framework to implement equitable laws and policies for immigrant and refugee communities.**



Join our workgroup if you would like to be more involved in policy advocacy!

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