

Interest Group Representatives

Focus Group Report

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Evaluation Report

Interest Group Representatives Focus Group

Abstract

Sixteen interest group representatives and academics were invited to participate in a focus group to evaluate the rulemaking process. Many participants shared that they were advocates and generally agreed that they were motivated to shape the outcome of rules. Organizational challenges faced by several interest groups were diminished resources and a push toward e-activism that effectively silences the digitally disadvantaged. Useful tools and methods for most interest group representatives were a timeline for rulemakings, access to the comment database, duplicate and near duplicate detection, keyword searches, and commenter information. Agencies can further these objectives through cross-agency standardization of comment submission and web interfaces, and confirmation of submitted files. E-mail was a particularly useful submission method. Many suggested that agency culture built on openness and accessibility was highly valued. Many participants suggested that agencies should use IT tools to encourage citizen participation and substantive comments while not dismissing mass mailings as inconsequential. In addition, it was suggested by some that agencies' emphasis should be on compilation of data and rational decision making. Participants learned that it was particularly helpful if they would include the rulemaking section number and stakeholder identification in their comments and cutback on PDFs. The majority of participants wanted continued dialogue and more transparency in agencies' decision making.

Introduction

Interest group representatives as well as academics were invited to an eRulemaking workshop held at the National Science Foundation in Arlington, Virginia, on September 5, 2003. The session began with opening comments and presentations by the principal investigators. Dr. Stuart Shulman and Dr. Stephen Zavestoski presented opening remarks and explained the overall direction of the workshop. This was followed by a talk by Dr. Jamie Callan, entitled "Accessing and Analyzing Large Public Comment Databases." The discussion focused on statistical techniques that could be used to organize and identify key information. Afterward Dr. Eduard Hovy's presentation, "Design of Information Access and Presentation to Support eRulemaking," highlighted

the types of technology such as text clustering and summarization that would support eRulemaking. In addition, representatives from the EPA and NSF addressed the group. This commentary provided the framework to engage the group in a discussion of the applicability of IT tools for eRulemaking as well as other pertinent topics.

In order to facilitate this process, 16 interest group representatives and academics were divided on the basis of interest group affiliation into two groups of 9 and 7 members each. In addition, the four principal investigators facilitated and participated in the focus group discussion. The 16 participants signed informed consent forms before the discussion commenced. The participants were instructed that their participation was strictly voluntary and that they may choose not to respond to a question or to withdraw from the group at any time. Permission to tape record the focus group was granted by the participants for the exclusive purpose of accurately capturing and retaining their comments for analysis. The participants were assured that their comments would be kept confidential. In addition, the participants were assured that their comments would not be attributed to them in any way, nor would the analysis identify any participants by name or title/role (unless they specified otherwise). The discussions lasted approximately 1 ½ to 2 hours. Time constraints prevented all members from commenting on every question posed. Some topics generated more discussion in one group than in the other.

The main topics of interest were to ascertain the goals of interest groups when participating in rulemaking, and the role of agencies and electronic tools in facilitating this process as well as setting the stage for future social science research. This report is a summary of the focus group results.

Interest Group Goals

Participants were first asked to discuss their goals when participating in rulemaking. Many interest group representatives reported that their participation in rulemaking was motivated by several goals: to influence the outcome of a rulemaking, to be an advocate, mobilize, and educate their members, to conduct outreach by ensuring “that more people get involved in the whole process,” or to hold agencies and Congress accountable. Six participants indicated that they intended to shape the outcome of the rule while two others were more skeptical. Two participants specifically suggested that were motivated to influence the rule by offering substantive “high-quality comments.” One participant suggested that comparatively speaking there was a better opportunity to influence the “governing process” because of the “politicized” nature of rulemaking. One person noted that the “pre-proposal stage” was critical but dependent on resources, which precluded many interest groups from effective participation. In addition, this individual added, “There’s not a lot of impact of all those comments in the actual final outcome of the rule.”

Four participants noted that they were hired to “advance the interest of our members.” However one participant suggested that a “balance” must be maintained between the goals of the public and industry. One individual said, “Since we represent average Internet users, our goal is also to make it easier for them to comment directly. It depends on the situation.” Another participant indicated that comments provide a public record so that agencies are held accountable.

The person stated the following:

Then, when we go to Congress, we can say, ‘Look you have this procedure that is supposed to take into account the fact there is XY& Z. In the last rulemaking you had a preponderance of comments from the public which said XY & Z, and yet they ignored it—that’s why it’s time to go forward with reform.’ So, it’s important to have a really public record.

Agencies Facilitate and Impede Goals

How agencies can help. Overall, most participants suggested that making the commenting process easy would facilitate the rulemaking process. Discussion points were web forms and interfaces, usability, access to the database of submitted comments and descriptive statistics, and agency outreach and personnel availability. There was an observation by some participants that members should not be forced to “use a government-run web form.” Some participants noted a concern about the capability of on-line forms to receive attachments. A person said, “An automated receipt that provides confirmation of your comment doesn’t necessarily indicate your attachments came through.” Four participants recommended a “standard that allows advocacy groups to submit comments that directly interfaces with any databases that are being developed.”

One participant reflected:

Because the majority of Congress has switched over to web forms to replace public e-mail addresses, we’ve actually negotiated directly with each of those offices to integrate into our interface their requirements. Not just e-mail, but if they have a fixed list of pull-down subjects you must use in order to use their web form, we actually feed that into the interface. . . . The tool is also set up to send

regulatory comments, and to the extent of regulations.gov creates a standard interface. Then, it is just one interface to program into it.

Another person responded:

You can't expect a vendor to write custom programming to write to each particular regulations.gov web form. I want the Notice of Federal Rulemaking to include some information that I can plug into my web action center tools so that the stuff is much more standardized. . . . Then I can have my vendor build me a product to use just once to meet the requirement.

In response to a question of whether interfaces should differ for first-time users and professional users, there was general agreement that standardization and usability were important.

One individual stated:

I think they should make sure there are a lot of options open, but that the process is standardized. Therefore, regular users will know what the standards are when they go to each different place, but also, there are many options for the new user to choose from so that they can submit in a way that is easy for them.

In addition, many participants indicated that it would be helpful to have access to submitted comments and summary statistics as well as agency staff to “answer questions.” Two participants mentioned the importance of agency outreach to a cross-section of interest groups. One person stated that outreach is specifically desired when regulations impact their group or their members. One of these individuals indicated that rulemaking is an inherently adversarial process punctuated by amiable relations with

agencies. This participant stated, “So at one level, we are viewed as a resource. At the same time, we fight with agencies about a lot of things. . . . It’s not personal. It is just the way the process works.”

Difficulties encountered. It was suggested by many participants that agencies impede interest groups’ goals through a lack of cross-agency standardization in submission requirements, reduction in submission methods (i.e., e-mail), or technical barriers. The lack of standardization in comment submission requirements (i.e., triplicate, hardcopy, etc.), mandatory demographic characteristics, and short comment periods increased the burden on many interest groups. In reference to submission requirements for a specific rulemaking, one participant said, “All comments were to be filed in triplicate and hard copy. The agency required the three copies be together, and we had to collate separate piles of three for each person.” Four participants agreed that limiting methods of submission, particularly e-mail, hindered a democratic process. One participant listed strictures that made it difficult to submit comments.

This person said:

Those that don’t accept certain types of submissions; those that put a lot of requirements onto what you have to submit—requiring names and addresses and very specific types of fields on submission makes it more difficult to get a larger number of submissions, and then those that are not responsive are probably the most frustrating.

Another individual suggested that the “infrastructure of these agencies sometimes is inadequate to receive mass comments from citizens.” One participant mentioned how “SPAM filtering” and “randomly generated images with numbers on them . . . which

require an authentication code” thwart the commenting process. In regard to SPAM and mass form letters, three individuals were receptive to registering their organizations with an agency. One person questioned what the “registration process” would be like for new groups. The participant wondered if it might create barriers or alternatively not provide “a robust protection against SPAM.”

How should agencies use IT tools?

Interest group representatives discussed how agencies should use IT tools in rulemaking. The emphasis was on promotion of citizen participation, examination of substantive comments, rational decision making, consensus building, and compilation of data. Overall, many participants wanted more transparency in how agencies made decisions. Two individuals suggested that the goal “should be to encourage citizens to participate in democracy. The process should be giving ordinary people opportunities to put comments in.” Three interest group representatives affirmed that substantive comments should not be overlooked. One of these individuals suggested that IT tools should help agencies make good decisions and build consensus.

The participant said:

The purpose of IT is to develop a comprehensive objective record, so the agencies can make rational decisions. The Congressional side is for politics. That is why I’ve been talking about sound science and good data. If we can use the technology to really get to the quality of the information upon which these decisions are based, I think we could get both sides to agree a little bit more.

However, another individual challenged the idea of sound science because it “is built on degrees of uncertainty.” It therefore makes a “technocratic decision making process

inherently political,” the participant stated. Another person commented, “The agencies should not be manipulating data to reach a political outcome.” Furthermore, Another individual pointed out, “We should also recognize that Congress, a lot of times, purposely doesn’t make a decision about something, and puts it off to the agency.”

Another individual argued that the burden to collect and analyze data should not fall on interest groups. The participant stated, “The federal government should have that research completed as a basis before they even begin these rulemakings. We should be supplementing good information they already have” instead of compiling it.

Useful Tools & Methods

Many participants defined various electronic and other tools that would further their goals. Tools that would provide a timeline on rulemakings, search and sort the comment database, and expedite handling of their comments were discussed. One participant was impressed with the “pre-and post-promulgation tracking,” and another recommended a timeline as a tracking device. Otherwise, the latter participant stated, “We just have to keep on remembering to call on the issues.” Another individual was supportive because the interest group would like to know if “an agency decides they will never issue a final ruling on something after receiving the public comments.” In addition, a participant suggested a timeline that would educate the public about rulemaking by “having descriptions of the different steps in the process.”

One participant indicated that IT tools help interest groups view the database of comments. Two people mentioned that it would be helpful when viewing comments online if there were a “view all page.” On regulations.gov, two persons indicated that it would be beneficial to analyze the differences and similarities between their comments

and other groups. Another person was interested in reviewing particular types of comments and downloading them in order to conduct analysis. Also, a participant shared that it was cumbersome to find the “comments from a couple of particular groups. . . . There were five or six groups working on it together, and each of us only found a few of them.” There was also recognition that IT tools need to be tailored to a “number of users.” When viewing comments, one participant was concerned that citizens would make erroneous assumptions because they would be unaware that other stakeholders had not weighed in on the matter.

It was suggested that these tools must be “incredibly user-friendly,” so interest group representatives could run frequencies, and search and sort functions to understand “how specific comments differ from canned letters with duplicates and duplicates plus.” In addition, an individual suggested that it would be helpful to separate the duplicate comments from the other unique comments. This person stated, “This would make it a more easily searchable database for the agency as well as for us. These two kinds of comments serve two different purposes.” One participant commented that assessing near duplicates would be a great benefit for interest groups. The individual stated, “If, for instance, half the people have changed the letter to add this one position,” it is worth knowing. Another person was interested in the “keyword tools” to search for “phrases” in order “to get a sense of the range of ideas in comments and keywords that were there.” Two individuals believed it would be useful to know if some regions of the country were less responsive to their outreach, so they could alter their approach.

Some interest group representatives commented on how they could facilitate agencies’ processes. One person learned that rule writers “seek comments from certain

interest groups or stakeholders.” Therefore, it is important to include stakeholder-identifying information (i.e., teacher). From an agency perspective, PDFs are difficult to handle, and it is useful if a comment includes the section number of the rule. However, another individual was hesitant to include the section number. The participant stated, “We don’t think the scope of their questioning related to the rulemaking is sufficient; so often times, we are providing answers to questions they didn’t ask.” This individual was concerned that if comments not directly relevant to a specific section were placed in the “other category” they would be “marginalized.” It was noted by one participant that the IT tools presented by the research team “were tools that rule makers use.” Nevertheless, it was observed that agencies would be better able to “effectively process information” with this technology.

Interest Group Concerns

One participant raised the issue that eRulemaking must guard against the tendency to silence the “non-electronic voice.” In addition, another participant suggested that the economic/interest side was markedly absent from the workshop. The individual stated, “I think that is an important voice to hear and to include.” At these workshops, one participant suggested that “average people” should be included. Several participants suggested that all stakeholders should have a voice in these discussions.

The point was also made by three participants that ranking the type of comments such as: “qualitative vs. quantitative,” “substantive vs. non-substantive,” and “mass form letter vs. non” was a cause for concern. One individual agreed that there is “a distinction in sorting and reading mass comments versus other comments.” However, it was

suggested that mass communications should not be labeled non-substantive because they would be “instantly” marginalized.

Organizational Challenges to eRulemaking

Organizational challenges that were noted by most participants were limited financial resources and the impact of digital disenfranchisement. One participant pointed out that interest groups have limited resources and only choose a few “hot topics . . . a year . . . to be effective.” One individual hoped that software costs could be reduced because “people who really just need to get a pathway into government. . . making that easier for them through the basis of competition is a good thing.”

Another person stated that the organizational culture “is very much pushing e-activism.” This person also noted, “When they [government entity] are overwhelmed with the written stuff, they tend to ignore it and pay attention only to the electronic.” Two participants suggested that e-mail was more effective for rulemaking, and hard copies were better for Congress; one person challenged this statement while two individuals suggested that “it depends on the member.”

Most participants indicated the digital divide precludes certain groups of people and communities from public participation. An individual stated, “We’ve always got to deal with those who do not and will not have it [information technology].” A participant shared that “income, age and ethnicity impact the access to tools used to comment on the Internet.” One individual said, “In order for our communities to access egov efficiently and easily is going to take a significant investment in technology.”

Research Topics: Sample Selection

In regard to sampling users who had participated in rulemaking, one person suggested randomly sampling 100 people who had commented on e-docket. Another suggestion offered by this individual was to go directly to interest groups and “ask for volunteers who have commented on a rulemaking in the last year.” Another participant recommended contacting “ALA’s government document group . . . about setting up in specific public libraries” to get people to comment. This person added, “That way you are getting real people—a very small percentage of whom will comment.”

Summary

Overall, the workshop provided a forum for interest group representatives to share their views about rulemaking and their relationship with agencies, to learn about IT tools that could better enable participants to achieve their objectives, and to shape the direction of social science research. It was reported by many participants that eRulemaking is an additional cost for interest groups and increases digital inequality. Many participants explained that one of their primary goals was to influence rulemakings consistent with members’ interest. In addition, most participants sought open access to the comment database so that agencies and Congress were held accountable. Several participants suggested that agencies should support political participation through the solicitation of substantive comments while not devaluing citizen involvement in the form of mass mailings.

In regard to IT tools, many participants were interested in data management tools such as duplicate and near duplicate detection, keyword searches, or demographic characteristics on commenters. Several participants desired a method for submission of

technical files and confirmation that all files including attachments had been received. Cross-agency standardization of comment submission, web interfaces, and e-mail submissions would be valuable to many interest groups. Participants also learned techniques that could get their comments heard by agencies. In sum, many participants were receptive to engaging in a dialogue with agencies but desired more visibility in their decision making.