

# How To Write A Better Comment Letter On Agency Proposals

By Matt Kulkin and Josh Oppenheimer (September 2, 2020)

The animated educational series "Schoolhouse Rock!" taught millions of Americans how a bill becomes a law. But the catchy cartoon stopped too soon; it needs a new episode about rulemaking.

After the president signs a bill into law, federal agencies build out the law's requirements through notice-and-comment rulemaking pursuant to the Administrative Procedure Act. During this process, the public has the opportunity to review proposed regulations and provide written comments on how an agency proposes to implement the law.

This October, the federal government will unveil a revamped version of Regulations.gov, the portal through which the public can submit comments on proposed agency rulemakings. The new site will have an optimized search engine to increase search speed and provide users with more relevant results. It also will standardize the comment form, reduce clutter and provide more clarity about where to go to learn more about the rulemaking process.

A sleeker website, though, can only go so far in helping the federal bureaucracy be more responsive to the American people. It's up to us — America's businesses, regulated entities, and citizens — to write comment letters that will help our federal government implement legislation and regulate our activities.

Here are six tips to writing an effective comment letter.

## 1. Keep it short and focused.

Since 2006, Regulations.gov has received almost 10 million comments. This does not include comments submitted directly to the agencies themselves.

For example, the U.S. Securities and Exchange Commission's proposed Regulation Best Interest received over 6,000 comments. Staff must give consideration to the "relevant matter presented" and ensure that the final rule sufficiently responds to any concerns raised.

Comment letters that provide broad, thematic feedback are difficult for agency staff to synthesize and respond to in an adopting release. A comment letter that makes specific, discrete points quickly and clearly is more likely to have its comments recognized and responded to when the proposal is finalized.

## 2. Be responsive.

First, make sure your comments address the actual proposed rule text. This is the most important part of the proposal, as it has the potential to become regulation.

Second, be sure to review the preamble that precedes the proposed rule text. Provide comments on any assumptions, policy goals, or industry trends that inform the agency's



Matt Kulkin



Josh Oppenheimer

proposal.

Third, many proposals contain a list of questions to which the agency wants the public to answer. These can range from broad, overarching questions — e.g., Should the agency make the proposed change to its current rules? — to specific issues — e.g., How would amending this particular rule impact those the agency regulates?

These, and more specific prompts, are not hypotheticals. The agency wants answers to them, and a good comment letter will respond directly to those questions.

An effective comment letter also will refer to particular sections of the proposal, including specific proposed regulatory text, and the relevant statutes to make it easy for staff to categorize one's comments with others who submit letters on the same topic.

### **3. Critiques should follow with an alternative solution.**

It is perfectly acceptable to disagree with an agency's proposal. But any criticism of a proposed rule should be followed with an appropriate, alternative solution. If there is proposed rule text that you oppose, provide specific amendments to the language.

Agencies are required under the Administrative Procedure Act to consider all the comments they receive. While they do not need to necessarily change their proposal because of them, they cannot make a decision that runs counter to the evidence before them without explaining the rationale. Providing a possible alternative may force the agency to defend their approach, rebut your argument, and may help to have your views incorporated into a final rule.

### **4. Use real data and costs.**

It is important not to simply say that a proposal is impractical to implement or too expensive. Anecdotal stories and analogies may be effective on Capitol Hill; unfortunately, they are not as compelling in the regulatory context. Rather, staff are looking for real data and costs to support these statements.

Several regulations have been successfully challenged in recent years by showing that an agency failed to conduct a comprehensive cost-benefit analysis. Commenters should pay particular attention to the assumptions, time, projected costs and identified benefits used in the agency's proposed analysis and provide specific, quantifiable feedback.

### **5. Don't be late.**

Every proposed rule will have a deadline, usually anywhere from 30 to 90 days after the proposal is published in the Federal Register. Make sure to meet the comment deadline. While some agencies will still accept letters after the stated deadline, they are not obligated to consider them when issuing their final rule.

### **6. Follow through.**

The submission of the comment letter is just the start of the advocacy process. We regularly take clients to meet with the head of an agency and the staff after the comment period closes. Depending on the issue and the agency, we often use the letter to solicit support from legislators and will meet with them too.

These meetings allow an opportunity to more fully explain the issues raised in the comment letter and answer questions. But without a letter in the file, a meeting is unlikely to happen.

Regulations.gov's tagline reads: "Make a difference. Submit your comments and let your voice be heard." Following these simple tips to writing an effective comment letter will ensure that your voice is not only heard, but that it is heard clearly and is effective in accomplishing your goals.

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*Matt Kulkin is a partner and Josh Oppenheimer is an associate at Steptoe & Johnson LLP.*

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