

Consumer Rights Regulatory Engagement and Advocacy Project
CRREA



Decoding the Unified Agenda: A Guide for Advocates

Introduction

Federal regulatory agencies publish their plans for rulemaking in the spring and in the fall in the [Federal Register](#) and to www.reginfo.gov. These plans for rulemaking are known as an agency's "**Unified Agenda**." The term Unified Agenda can also refer to the collective Regulatory Plan and Unified Agenda of all agencies of an administration.

The Unified Agenda provides a treasure trove of information that can aid advocates, policymakers, and leaders of social movements to decide whether to engage and commit resources to advocacy on a particular rulemaking. However, this information is often presented in jargon and coded language.

This guide will empower you to decode the Unified Agenda. Four critical "how-tos" can help you decide when to engage and commit resources¹:



- 1 Identifying Important Issues**
How to spot rules in the Unified Agenda that implicate significant matters of policy.
- 2 Assessing Your Potential Strategic Contribution**
How to determine whether you have access to information, stories, or other data relevant to the potential rulemaking.
- 3 Making Your Plans**
How to establish the amount of time you have to gather and provide information to the agency.
- 4 Pushing Your Agenda**
How to move forward if a rulemaking of interest is absent or stalled.

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Identifying Important Issues

How to spot rules in the Unified Agenda that implicate significant matters of policy.

The Unified Agenda can be overwhelming. A single agency might have thirty rulemaking activities listed at a time, so making informed judgments about engagement can be a daunting prospect.

+ Agencies' cost-benefit analysis should identify and discuss the impacts of rules on affected communities, including harms to equity and fairness, as well as pure dollars and cents considerations.

“Priority”
The significance assigned to a regulation by an agency.

However, agencies assign a **“Priority”** to rulemakings. You will want to pay attention to rules designated by the agency as **“Economically Significant”** or **“Other Significant”** in their Priority.

You can generate a custom list for your organization of all Unified Agenda Priority rulemaking activities at the agencies you monitor that implicate significant policy matters. You can also search Priority rulemakings across the entire administration for specific terms of interest to you, such as **“fair lending.”**

At later stages in the rulemaking, two other information fields may be available. First, rules may be designated as **“Major,”** typically indicating the rule is expected to have an annual economic effect of at least \$100 million. Second, rules may be designated as covered by the **“Regulatory Flexibility Act,”** meaning the rule will likely impact small businesses. Because both designations are often made at later stages of the rulemaking, the Priority field is more helpful initially.

- Takeaways:**
- The assigned Priority of the rulemaking will signal the importance of a rulemaking.
 - Pay attention to rules designated as Economically Significant or Other Significant in their Priority.

Assessing Your Potential Strategic Contribution

How to determine whether you have access to information, stories, or other data relevant to the potential rulemaking.

As an advocate, you have the power to say, with authority, what rules will impact the communities you work with, and how. This is precisely the kind of substantive input that agencies are required to consider in rulemaking and often struggle the most to get.

There are two key fields in the Unified Agenda to review as you begin your research: the “**Abstract**” and “**Legal Authority**” fields.

Agencies also write explanations of their strategic goals in a “Statement of Regulatory Priorities,” published with the fall Unified Agenda on www.reginfo.gov under “The Regulatory Plan.” The CFPB uniquely publishes this statement twice each year, in the “[Current Agenda Agency Preambles](#)” section of www.reginfo.gov.

Read the Agency’s Summary of the Planned Rule

For every rulemaking activity, the agency must draft a short Abstract to describe the rulemaking. Agencies often describe their planned activities in the Abstract in very technical terms. For example, an agency may state that they are amending a particular document to make it consistent with another source of law, with little description of the problem the agency seeks to solve or explanation of the anticipated effects of a rule on stakeholders.

“Abstract”
A brief description of the problem addressed by a regulation, often given in technical terms.

Review the Agency’s Cited Legal Authority for the Rule

The Legal Authority field cites to what Congress told the agency to do. Congress is often quite specific about what problem an agency should solve, with whom the agency should consult, and what information the agency should consider. There may also be case law or legislative history that explains the statute’s purpose and its implementing regulations.

“Legal Authority”
A citation to the section(s) of the United States Code (U.S.C.), Public Law (Pub. L.), or Executive Order (E.O.) that authorize(s) the regulatory action.

Example: Some entries in the Consumer Financial Protection Bureau's (CFPB) Unified Agenda cite its Legal Authority as 12 U.S.C. 5512. This provision of the United States Code articulates the CFPB's general rulemaking authority. The law lists six specific considerations for the CFPB in allocating its resources to determine whether to pursue rulemaking under 12 U.S.C. 5512. Three of the considerations for the CFPB in exercising its authority under 12 U.S.C. 5512 are:

- the risks and costs to consumers associated with buying or using a type of consumer financial product or service;
- understanding by consumers of the risks of a type of consumer financial product or service;
- the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers.

Given these considerations, any rulemaking the CFPB engages in that cites 12 U.S.C. 5512 is a rulemaking on which consumer advocates are likely to have critical information.

Takeaways:

- ❑ The language of the Legal Authority cited in the Unified Agenda can serve as your roadmap to effective engagement, providing the criteria an agency must consider in rulemaking.
- ❑ An agency must consider and respond to any relevant substantive comment in a rulemaking. Concrete, factual information tied to the criteria in the cited Legal Authority is hard for an agency to ignore.

Making Your Plans

How to establish the amount of time you have to gather and provide information to the agency.

When an agency publishes a Unified Agenda, it must identify the “**Stage of Rulemaking**” for each action and the specific month it anticipates taking the next step. For example, a rule will be listed in the “*Proposed Rule Stage*” if a Notice of Proposed Rulemaking will be published in the next twelve months. Critically, the Stage of Rulemaking refers to the next thing that will happen, not the current stage.

Each rule in a Unified Agenda is in one of the following stages of rulemaking: the Pre-Rule Stage, the Proposed Rule Stage, or the Final Rule Stage.



Agencies draft and submit their Unified Agendas months before publication. When the Unified Agenda is published, the agency may have already published rules or changed timelines. Some agencies, including the CFPB, publish a blog to accompany the release of the Unified Agenda. This can function to update the timelines.

The “Pre-Rule Stage”

- ❑ Can take years.
- ❑ Presents opportunities for early engagement in a rulemaking.

If a rule is in the Pre-Rule Stage, read the Abstract summarizing the rulemaking activity to see if the agency has explained what pre-rule activity it is contemplating. An agency may use this category to indicate it is planning a public event or a public notice, such as a Request for Information. The Pre-Rule Stage may take years, especially if the agency plans to issue formal, factual reports before it engages in rulemaking.

Pre-rule activities present opportunities for early engagement that are ideal for advocates interested in engaging in an active dialogue with the agency on nuanced issues. Advocates can also monitor pre-rule activities to decide which specific issues to focus on at later stages of the rulemaking process. For example, if the agency publishes a Request for Information, you can read the comments submitted and discover what issues trade associations are highlighting.



In the Pre-Rule Stage, you can:

- ❑ Monitor research;
- ❑ Request meetings with staff to help set the agenda;
- ❑ Send letters to the agency;
- ❑ Engage with members of Congress about implementation of the statute.

“Information Collection Review (ICR)”

Documentation describing information collected by an agency from 10 or more members of the public.

Advocates can monitor research progress by tracking the agency's “**Information Collection Review (ICR)**” activities published to www.reginfo.gov. Advocates may have views as to what questions the agency should ask of whom to gather relevant information. The best time to ask those questions is at the Pre-Rule Stage, while the agency is actively framing the proposed rulemaking.

The “Proposed Rule Stage”

- ❑ Presents the opportunity to prepare your members and allies to engage in the formal notice and comment process.
- ❑ A good time to assess your goals and develop strategies.

When an agency lists a rule in the Proposed Rule Stage, the agency's formal, legally required period for obtaining public comment via the Federal Register will be happening relatively soon. If a rule is in the Proposed Rule Stage, you can expect the agency will publish a Notice of Proposed Rulemaking within the next twelve months.

This notice via the Unified Agenda that a proposed rule is forthcoming affords you time to research the public engagement the agency has already taken in the Pre-Rule Stage. You can use this time to prepare your members and allies to engage in the formal notice and comment process.

The “Final Rule Stage”

- ❑ For problematic rules, now is when you put into action strategies, including congressional oversight, litigation, and public media campaigns, to delay or overturn the rule.
- ❑ You may want to monitor implementation, for timeliness, efficacy, and lawfulness.

If a rule is in the Final Rule Stage, the agency expects to publish a final rule within the next twelve months. Sometimes, a rule will be categorized as in the Final Rule Stage when a final rule has already been published, but the agency will include information in its Unified Agenda entry about the effective date of the rule and plans for implementation.

If a rule is in the Final Rule Stage, it is too late to respond to a Notice of Proposed Rulemaking. However, if the final rule has not yet been issued, you can continue to seek pressure points to delay a rule's issuance. For example, a notice of a forthcoming final rule can be an occasion for congressional letters, publicity campaigns highlighting expected risks or weaknesses of the rule, preparation for litigation, and presentation of new evidence to the agency. You may also want to begin evaluating the desirability and feasibility of a resolution overturning the rule under the Congressional Review Act.

Further, you can continue to monitor the rule's effective date and its progress toward implementation. Advocates in favor of a rule may want to continue engaging with rulemaking agencies to ensure swift implementation so that the public receives the benefits of the rule as soon as possible. Advocates may also choose to monitor an agency's implementation guidance to industry to make sure the agency does not

make decisions via guidance that should have been addressed in formal rulemaking, are contrary to the rule, or are harmful to the public.

Pushing Your Agenda

How to move forward if a rulemaking related to your campaign is absent or stalled.

The exhilaration of a successful legislative campaign can turn to disappointment when, year after year, the executive agency responsible for implementing the law fails to take action. The Unified Agenda provides clues for an advocate to determine whether and how further advocacy could result in faster progress. Looking at what pre-rulemaking activities, including information collection and other research, the agency is engaged in can help you determine the cause of the delay.

Delays can happen due to:

- A need to gather factual information;
- A lack of resources;
- Interagency coordination;
- A lack of agency commitment.

Example: By using the Information Collection Review “[Search](#)” tab on www.reginfo.gov, selecting the Consumer Financial Protection Bureau, and checking a box for “ICRs that relate to proposed rulemaking,” you can obtain a list at a glance of all agency research connected to rulemaking.

This search reveals that the Bureau recently filed a request with OMB to revise an earlier ICR application related to the Debt Collection rulemaking. You would expect to see this when there is formal research related to rulemaking underway. This makes sense, particularly in light of the Notice of Proposed Rulemaking on time-barred debt disclosures issued by the CFPB in spring 2020.

In contrast, the absence of ICR results corresponding with agency claims of planned rulemaking activity can raise questions. For example, the CFPB has said it is engaging in pre-rule research to implement a rule to protect consumers in the market for Property Assessed Clean Energy (PACE) financing. However, there is no corresponding research activity listed in the Information Collection Review report on the CFPB’s activities. It is possible that the Bureau already has the data it needs or is only gathering data on a small scale. Or, it could mean that the research is not yet in progress, which means the agency is unlikely to propose a PACE rule any time soon.

Delays Due to A Need to Gather Factual Information

A rulemaking effort might be delayed because formal research is either statutorily required or otherwise deemed necessary by the agency. For example, if the rulemaking is controversial, an agency may conduct research first to ensure a robust factual record supporting its action that will withstand a lawsuit.

Advocates can start by looking to the “Pre-Rule Activity” section of the Unified Agenda—what is it saying the agency is doing?—and then evaluate how best to engage.

Delays Due to Lack of Resources

Is the agency trying to make more rules than most agencies can? A search of the Unified Agenda database for “Economically Significant” and “Other Significant” Priority rulemakings shows that eight rulemaking projects are the maximum an agency can plan for at once.

Is the agency trying to do more than it has been able to do in the recent past? OMB’s portal to the Unified Agenda at www.reginfo.gov has separate lists for “Active Rulemaking,” “Inactive Rulemaking,” and “Completed Rulemaking.” The timelines in an agency’s Unified Agenda will typically be unreliable when the agency forecasts completing more rules in the upcoming six-month period than it has been able to complete in previous six-month periods.

Example: In four Unified Agendas from fall 2018 to spring 2020, the CFPB only completed four significant rulemakings. If the CFPB’s recent average output of two significant rules each year holds, completing the seven significant “Active Rulemakings” on its agenda will take more than three years. But the late 2018 transition to a new permanent Director, Kathy Kraninger, and the lifting of a hiring freeze in the summer of 2019 might allow for an uptick in completing significant rulemaking.

When an agency has bitten off more than it can chew, advocates may wish to consider advocating with the agency to prioritize rulemakings and topic areas within rulemakings. In some cases, advocates may want to use an overfull rulemaking agenda to argue for an increase in funding and staffing for an agency.

Delays Due to Interagency Coordination

If the rulemaking requires formal approval by the heads of multiple agencies, the rulemaking will appear on both agencies’ Unified Agendas. The actions will be cross-referenced using the “**Related RIN**” field. Interagency coordination can result in the extremely slow implementation of legislation.



In facing this sort of delay, advocates may make progress toward their desired ends by soft interventions, such as requesting meetings with agency staff. Even if this only has the effect of getting staff at one agency to communicate with staff at another, that itself can ease some of the coordination issues. Public interventions such as generating press attention or congressional letters can also effectively spur action in interagency rulemaking.

Example: It took the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board more than nine years to implement a Dodd-Frank Act requirement that lenders ensure appraisals met certain standards.

Interlocking policy considerations at different agencies can also complicate rulemaking, even when there is no requirement to coordinate. Agencies sometimes allude to this kind of interagency coordination in their Abstract summarizing an intended rulemaking action. Still, advocates may also have to ask agency staff questions to determine the scope and status of coordination in these circumstances.

Example: Any CFPB rulemaking on the ability-to-repay rule for mortgages must take into account decisions made at the Federal Housing Finance Authority and the Department of Housing and Urban Development, among other agencies, about the underwriting required of government-guaranteed or insured mortgage loans.

Delays Due to Lack of Agency Commitment

Sometimes, an agency does not prioritize a rulemaking. When an agency does not advance a rulemaking year after year, advocates should consider meeting with agency staff, letters to the head of the agency, and involving congress members with an interest in the underlying legislation. Sometimes, all it takes is for an agency to realize there is an active constituency for the rulemaking. In egregious cases, advocates may wish to consider bringing a lawsuit against an agency to compel action on Congressionally mandated rulemaking.

Conclusion

The Unified Agenda provides information to monitor and influence rulemaking across the federal government. Using the Unified Agenda, advocates can develop strategies to inform a wide variety of potential interventions and hold agencies accountable.