



# OVERVIEW OF COMMENT PROCEDURES ON FEDERAL FORMS

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## I. Introduction

Federal regulations and forms implement statutes that Congress enacts. Under the Federal Register system and the Administrative Procedures Act (APA), the public can have a direct impact on shaping federal rules.<sup>1</sup> In addition, the public can comment when the federal government issues forms, called “information collections” under the pertinent law.<sup>2</sup> This practice advisory will outline the process for researching and commenting on federal forms. A previous advisory covers the process specific to commenting on proposed regulations, which has many parallels to the forms comment process.<sup>3</sup>

Federal forms and their comment process are often overlooked by advocates, even those who regularly follow changes in regulations and comment on them. However, form changes can be significant and sometimes can be used to change policy by agencies.<sup>4</sup> Forms should not dictate policy. They should follow existing regulations and administrative guidance. As with changes to regulations, there is a highly structured process under which federal forms can be issued, re-issued without change, or altered, and the public must be given an opportunity to comment. The statute pertaining to forms is the Paperwork Reduction Act (PRA), which was enacted in 1980 and reauthorized in 1995 to ensure that forms issued by the government would serve to benefit, rather than burden, the public.<sup>5</sup>

In the immigration world, forms by several agencies influence the application of immigration law. United States Citizenship and Immigration Services (USCIS), the Executive Office for Immigration Review (EOIR), and the United States Department of State (DOS), as well as the various branches of the United States Department of Homeland Security (DHS) frequently

<sup>1</sup> Federal Register Act, 44 U.S.C. Chap. 15 (July 26, 1935) and the Administrative Procedures Act (APA), 5 U.S.C. §§ 551-559 (June 11, 1946). Section 553 outlines the steps to be taken in creating federal rules.

<sup>2</sup> Specific rules for information collections are outlined in the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 et seq.

<sup>3</sup> ILRC, *How to Submit a Comment on Federal Regulations* (Mar. 13, 2023), <https://www.ilrc.org/resources/how-submit-comment-federal-regulations>.

<sup>4</sup> The USCIS Form I-912, *Request for Fee Waiver*, for example, was altered by the first Trump administration to eliminate eligibility for a fee waiver based on receipt of a means-tested benefit, even when the underlying guidance reflected that this was still an eligibility ground. See a description of these issues in ILRC, *Template on Fee Waiver Comment* (July 2019), [https://www.ilrc.org/advanced-search?resource\\_type%5B%5D=16&terms=](https://www.ilrc.org/advanced-search?resource_type%5B%5D=16&terms=).

<sup>5</sup> PRA, 44 U.S.C. § 3501.

engage in “information collections,” that is, the issuance and altering of forms. These forms impact how the law is applied to immigrants. The forms process provides an opportunity for the public to participate by commenting. Agencies are required to consider public comments. Forms are sometimes proposed in conjunction with a proposed regulation, but often they are announced without a regulation as a Notice of Information Collection in the Federal Register.

When an agency fails to follow proper procedures under the PRA and APA, they can be challenged in the courts. The courts can enjoin a regulation and its accompanying forms where the agency fails to follow the law and does not make a satisfactory explanation for its action, including a rational connection between the facts and the choices made,<sup>6</sup> as well as a rational consideration of the public’s concerns about a form and the burden it poses. Violations of the APA and PRA were cited in various lawsuits against rules and forms during the first Trump administration and, as a result, those rules and forms did not go into effect.<sup>7</sup>

## II. Background: The APA and the PRA

Sometimes forms are issued together with or to implement proposed regulations, which are subject to rules of the APA. The federal regulatory process—a combination of the requirements of the Federal Register Act and the APA—was established as part of New Deal legislation in the 1930’s which gave agencies broad powers to regulate social and economic issues, while ensuring that the public would have notice of the existence of such regulations.

Under the principles of fairness, the APA provides that rules cannot be enforced if they are not first published in the Federal Register, and they cannot be effective until a designated period after publication. Additionally, rules must contain an explanation and rationale as well as information on how to contact the agency responsible for the rule. Agencies must give notice of proposed rules, collect public comments, and consider them before finalizing the proposed document.<sup>8</sup>

Besides the APA, there are specific rules in the PRA about creation and alteration of forms. When a notice announcing a form is published in the Federal Register, called a Notice of Information Collection, it provides official notice of a document’s existence, content, and purpose.

<sup>6</sup> In one example, a USCIS fee rule and changes to fee waiver standards were enjoined in *ILRC v. Wolf*. The agency published a final rule in August 2020, *Fee Schedule and Changes to Certain Other Benefits Request Requirements*. The rule drastically increased fees for immigration benefits and eliminated fee waivers entirely for almost all application types. ILRC filed a lawsuit with other national immigration advocacy groups, resulting in an injunction which prevented USCIS from implementing the rule. The court enjoined the rule in part because USCIS violated procedural and substantive requirements of the APA. The court found that the rule was arbitrary and capricious. *ILRC et al. v. Wolf, et al.* (Case No. 4:20-cv-05883-JSW) (N.D. Cal.) (Sept. 29, 2020).

<sup>7</sup> For a comprehensive review of regulations promulgated during the Trump administration and the litigation which enjoined many of them, see the Immigration Policy Tracking project maintained by Stanford and Yale law schools at <https://impolicytracking.org/home/>. Another useful litigation tracker is published by Just Security, *Litigation Tracker: Legal Challenges to Trump Administrative Actions*, <https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/>.

<sup>8</sup> For more background on the Federal Register and the APA, see Office of the Federal Register, National Archives and Records Administration, *The Federal Register Tutorial: What It Is and How to Use It* (1999).

The PRA requires the agency creating forms to conduct notice and comment, beginning with a notice in the Federal Register. The process starts with the agency seeking internal approval of a proposed form, after which a period of public participation is prescribed. With limited exceptions, public comments must be collected for two periods. The first comment period is sixty days, and the second one is thirty days. Both comment solicitations must be announced in the Federal Register.<sup>9</sup> Compliance with the PRA is mandatory. After the collection periods have passed, the agency can then move forward and publish the new form for use by the public. A grace period where the agency will accept both the previous version of the form and the new version of the form is often customary, but not mandatory.<sup>10</sup>

### III. Oversight of the PRA by the Office of Information and Regulatory Affairs (OIRA)

The PRA details the authority and processes that an agency must follow to create or change forms.<sup>11</sup>

The PRA created the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) to regulate the forms process.<sup>12</sup> The PRA is designed to ensure that forms benefit the public as well as strengthen government accountability and openness.<sup>13</sup> OIRA reviews public comments on the forms and considers whether the form could be better designed, whether the form is clear, and what the burden is on the public.<sup>14</sup>

OIRA must review forms and approve or disapprove them based on efficiency concerns including those raised by the public during notice and comment periods. The agency should seek to reduce information collection burdens on the public, especially for those individuals and entities most adversely affected. The agency should assess the form to determine its practical utility and public benefit and to promote public access to information.

<sup>9</sup> PRA, 44 U.S.C. § 3501 et. seq, 5 CFR § 1320.5(a)(iv), 5 CFR 1320.8(d)(1). For background on the PRA see Congressional Research Service, *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview* (April 17, 2024), and Office of Personnel Management, *Paperwork Reduction Act (PRA) Guide* (April 2011).

<sup>10</sup> If an agency does not provide a grace period for a new form, advocates have previously been successful at lobbying the agency to give a grace period after the fact.

<sup>11</sup> Congressional Research Service, *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview* (April 17, 2024). A collection of information is defined by regulation as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain a benefit.” 5 CFR § 1320.3.

<sup>12</sup> 44 U.S.C. §§ 3503-3504.

<sup>13</sup> U.S. Office of Personnel Management, *Paperwork Reduction Act (PRA) Guide* (April 2011); U.S. General Services Administration, U.S. Office of Information and Regulatory Affairs (OIRA), U.S. Office of Management and Budget (OMB), *A Guide to the Paperwork Reduction Act* (2019) <https://pra.digital.gov/>.

<sup>14</sup> OIRA, *Your Voice is Needed: How to Share Your Perspective on Federal Government Forms*, [https://www.reginfo.gov/public/jsp/PRA/How\\_to\\_comment\\_on\\_forms\\_under\\_OIRA\\_review.pdf](https://www.reginfo.gov/public/jsp/PRA/How_to_comment_on_forms_under_OIRA_review.pdf).

Each agency proposing an information collection should have a designated senior officer who reports to the agency director. That officer oversees the process of creating forms that comply with the PRA and ensures that they can meet the approval standards of OIRA.<sup>15</sup>

## IV. Public Comments

If OIRA approves a form after internal review, the responsible agency must publish a sixty-day notice in the Federal Register to solicit feedback from the public about the form.<sup>16</sup> Comment requests should solicit information about the practical utility of the form, the accuracy of the agency's estimate of the burden the form will pose, such as the amount of time it will take to complete the form, and whether the form is clear and efficient. Standard questions at this stage of the comment process ask the public to evaluate the necessity for the form, the accuracy of the agency's estimate of the time burden it poses, and the quality and usefulness of the information collected.

When forms are proposed together with a proposed rule, both documents may be commented on. However, because the form and the regulation are separate collections, a commenter who wishes to raise issues on both the form and regulation would need to submit separate comments to have them considered. For example, comments regarding a proposed form will not be considered if they are submitted to the regulation collection only.

For an agency to certify a form after comment collection, it should provide a record supporting certification that supports the practical utility of the form, that it is necessary to the functions of the agency, and that the form is not unnecessarily duplicative of other information accessible to the agency.

Agencies are required by the law to consider a diversity of public and private input, and to provide access to the public of underlying data for a form. Public input must be regularly solicited and considered. Agencies must give adequate notice when initiating or modifying forms.<sup>17</sup>

Agencies must conduct specific research and evaluate the public comments every time they issue or re-issue a form.

The agency must consider the comments after the first comment period. After the proposed form is submitted to OIRA for consideration with the comments analysis,<sup>18</sup> another notice will be published seeking public comment for an additional thirty days. Often the proposed form will have been altered after the first round of comments incorporating some of the suggested changes. OIRA will consider all the comments before making a final decision to approve or disapprove the form.

At the second thirty-day comment stage, comments are submitted directly to the Office of Management and Budget and OIRA,<sup>19</sup> which will review the entire record as well as the

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<sup>15</sup> 44 U.S.C. § 3506(a)(2)(A).

<sup>16</sup> 5 CFR §1320.8(d)(1).

<sup>17</sup> 44 U.S.C. § 3506(d)(1)-(4).

<sup>18</sup> 44 U.S.C. § 3507(a)(2)(b).

<sup>19</sup> 44 U.S.C. § 3507(b), Congressional Research Service, *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview* (April 17, 2024). See a description of the process of

agency's actions on the proposed form before deciding whether to approve or disapprove the form.

Finally, OIRA has sixty days to decide whether the information collection should be approved. The agency will evaluate all the comments and information collected as well as review the usefulness and consistency of the form. If OIRA approves the form, it may be published with a validity period of three years. OIRA can approve a new form, a revised form, or a form issued without change. If OIRA disapproves a form or makes substantive changes to what is proposed by an agency, that information should be made publicly available.<sup>20</sup>

## V. Exceptions to Required Comment Periods

There are limited circumstances where an agency can truncate the comment process for forms, and any such deviation must be justified under the rules in the statute. Only in these circumstances could an agency seek to publish a form that has not been through the usual notice and comment process, and even if such a authorization is allowed, it will only be valid for a maximum of ninety days.<sup>21</sup> The limited circumstances that can change the comment procedure are where the agency can justify that:

- The form is needed prior to the expiration of the normal comment periods;
- The form is essential to the agency mission;
- The agency cannot reasonably comply with the usual time periods for comment and review because public harm would result;
- An unanticipated event occurred; or
- A statutory or court-ordered deadline would be missed.<sup>22</sup>

If emergency processing is requested for a form, the agency responsible must publish a notice in the Federal Register requesting it and stating the time period within which OMB should act to approve or disapprove.<sup>23</sup>

## VI. Form Requirements

The law requires that each form has a control number and, if appropriate, an expiration date. This number follows the form through any future collections and can also be found on the form itself.

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commenting directly to OMB during the second, thirty-day comment period in OMB, OIRA, *Your Voice is Needed: How to Share Your Perspective on Federal Government Forms*, [https://www.reginfo.gov/public/jsp/PRA/How\\_to\\_comment\\_on\\_forms\\_under\\_OIRA\\_review.pdf](https://www.reginfo.gov/public/jsp/PRA/How_to_comment_on_forms_under_OIRA_review.pdf).

<sup>20</sup> Congressional Research Service, *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview* (April 17, 2024).

<sup>21</sup> 44 U.S.C. § 3507(j)(1)-(2), 5 CFR § 1320.13(f).

<sup>22</sup> 5 CFR § 1320.13.

<sup>23</sup> 5 CFR § 1320.13(d).

## Application for Naturalization

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form N-400  
OMB No. 1615-0052  
Expires 02/28/2027

When publishing a new form, the agency must show that they met the OMB clearance requirements including proof that the agency conducted the required review, evaluated the public comments, submitted the form to the Director, and published the notice in the Federal Register with the required information.

The proposed form must also describe the reasons for the information collection, the way the information will be used, estimate the burden of the collection, describe whether the collection is voluntary or mandatory, and state that an agency may not issue a form without a valid control number. Also, the form must assess the burden of the information collection on the agency.

## VII. Reading a Federal Register Notice for a Form Revision

All of the information needed to write and submit your comment can be found either in the Federal Register Notice or on regulations.gov. The same Notice of Information Collection will be posted on both sites and often comments can be submitted on both sites. However, submission instructions can vary by agency. Some agencies require that comments be e-mailed to an agency contact. Read the instructions before submitting.

### A. Due date for comments

The notice will contain information about the due dates and the information should be set apart from the rest of the notice.

#### **DATES:**

Comments are encouraged and will be accepted until December 11, 2023.

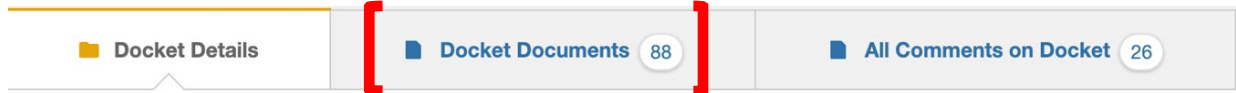
Note that comments must be received before midnight **Eastern Time** on the last day for which comments are allowed.

### B. Accessing proposed forms

Often, and especially when the form is being revised, an agency will make the proposed form available for viewing during the comment period to solicit feedback on proposed changes. USCIS will typically make a “red-lined” version of the form available to show the proposed changes and will often include a table of changes comparing the proposed version of the form with the current version.

Accessing the proposed form is not always straightforward and varies by agency. Proposed forms are not available on the Federal Register web site. If the proposed form is available online, it will be on [regulations.gov](https://www.regulations.gov) and there will be instructions in the Federal Register notice of how to find the documents.

USCIS typically makes the proposed form and any additional documents available on [regulations.gov](https://www.regulations.gov) under a tab labeled “Docket Documents.”



Under this tab will be all the associated documents with the proposed form. Note: you will need to use the sort function to find the most recent documents associated with the collection. We recommend sorting by “Posted (Newer-Older).”

For some agencies, the proposed form will not be available online and a contact will be provided by the agency to request the form. An example of that language is below:

#### **FOR FURTHER INFORMATION CONTACT:**

If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Laeticia Mukala-Nirere, Attorney Advisor, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (703) 305-0470, [EOIR.PRA.Comments@usdoj.gov](mailto:EOIR.PRA.Comments@usdoj.gov) or [Kabina.L.Mukala-Nirere@usdoj.gov](mailto:Kabina.L.Mukala-Nirere@usdoj.gov).

When requesting additional documentation, make sure to ask for the proposed collection instrument and any additional documentation associated with the collection.

In other notices, the public is given the information needed to retrieve the proposed form from the government web site. Below is an example of typical directions on USCIS forms access:

**NOTE:** You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2007-0029 in the search box.

## **VIII. Content of Public Comments on Forms**

The instructions accompanying proposed form notices also include a standard list of issues on which the agency would like to receive comment, such as:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Whether the form enhances the quality, utility, and clarity of the information to be collected.

- Whether the form minimizes the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

In addition to addressing the direct questions on a Federal Register Notice of Information Collection, advocates are encouraged to address policy impacts that a form may have.<sup>24</sup> There can be some overlap with the standardized questions when evaluating the burden that a form or form change can impose on the interested public, the immigrants and the advocates who represent them. For example, in writing a comment on proposed changes or a current form being re-published without change, it is appropriate to comment on the actual amount of time that the form takes for the public to complete and compare it to the time estimated in the notice as the burden on the public.

If the form creates an obstacle for otherwise eligible applicants for a benefit because it asks information not required by the law or regulations, it creates new or unfair standards for eligibility, it requests burdensome, repetitive, or unnecessary supporting documentation, all of these could be objected to as excessive burdens on the public, which the PRA is supposed to prevent. If a proposed form change would increase the amount of time that advocates and immigrants would have to spend completing the form, there should be supporting justification from the agency for that change.

Emphasize harm to specific populations in a comment. How would the change impact persons who are survivors of domestic violence, or persons with disabilities? Any specific harm to vulnerable populations that should be served by the agency should be detailed in the comment.<sup>25</sup> Another population that could be highlighted in a comment is pro se applicants, given the large percentage of applicants who file their own applications. If a form is written in a complex manner which would require an eligible applicant to seek and pay for legal representation, that is an additional burden imposed by the form.

Commenters should feel at liberty to provide real-life examples of the burdens or obstacles faced by themselves or their communities. This information is not always readily available to government officials in charge of the forms. If you provide examples from real clients or cases, be sure to redact any identifiable information before submitting the comment.

ILRC frequently comments on forms and can provide examples of how to comment on policy impacts of forms while also addressing the technical forms questions in the Federal Register notice.<sup>26</sup>

<sup>24</sup> See for example, ILRC, *Template on Fee Waiver Comment* (July 2019), [https://www.ilrc.org/advanced-search?resource\\_type%5B%5D=16&terms=](https://www.ilrc.org/advanced-search?resource_type%5B%5D=16&terms=).

<sup>25</sup> All executive agencies are required to make their services accessible to the public, including persons with disabilities. Section 504, Rehabilitation Act of 1973, 29 U.S.C. § 794.

<sup>26</sup> See, for example: ILRC, *ILRC Comment on Changes to U Visa Forms* (July 24, 2024) <https://www.ilrc.org/resources/ilrc-comment-changes-u-visa-forms>; *ILRC Comment on USCIS's Revisions to Forms I-864, I-864A, and I-864 EZ, Affidavits of Support* (July 8, 2024) <https://www.ilrc.org/resources/ilrc-comments-uscis%E2%80%99s-revisions-forms-i-864-i-864a-and-i-864-ez-affidavits-support>; *Comment on Form N-648* (March 24, 2024) <https://www.ilrc.org/resources/comment-form-n-648>; *ILRC Comment on Proposed Form I-360* (Dec. 16, 2024) <https://www.ilrc.org/resources/ilrc-comment-proposed-form-i-360>; *ILRC Comments on Proposed Changes to Form N-400* (June 20, 2023) <https://www.ilrc.org/resources/ilrc-comments-proposed-changes-form-n-400>; *ILRC N-600 Comment* (Oct. 16, 2023)



## IX. Where to Submit Comments

The Notice will also have explicit directions on where comments are to be submitted. Usually, they are uploaded electronically either on the Federal Register web site or on [regulations.gov](https://www.regulations.gov), but some agencies still have a postal address or email address for submission of written comments and commenters can choose their method of submission. Electronically submitted comments are more efficient and do not face the vagaries of government handling of postal mail or email. Once comments are submitted electronically, they become public records which can be easily reviewed later should an agency fail to consider them as required. Electronic submissions are also assigned a confirmation number, and the submitter can elect to have a confirmation email sent to them to show proof that the comment was submitted.

You will see the directions on how to submit the comment in the notice (note that these directions will differ depending on the agency and the particular notice).

An example of directions to submit online:

### ADDRESSES:

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2008-0025. All submissions received must include the OMB Control Number 1615-0052 in the body of the letter, the agency name and Docket ID USCIS-2008-0025.

An example of directions to either submit online or via email or regular mail:

### ADDRESSES:

You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to [www.Regulations.gov](https://www.Regulations.gov). You can search for the document by entering "Docket Number: DOS-2024-0044" in the Search field. Then click the "Comment Now" button and complete the comment form.
- *Email:* [hanksdp@state.gov](mailto:hanksdp@state.gov).

*Regular Mail:* Send written comments to: Attn: Dustin Hanks, DS/SI/PSS, SA-20 10th Fl., 2201 C St. NW, Washington, DC 20522-2210.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

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<https://www.ilrc.org/resources/ilrc-n-600-comment>; *ILRC Comment on Proposed Changes to Form I-485* (Nov. 7, 2023) <https://www.ilrc.org/resources/ilrc-comment-proposed-changes-form-i-485>.

## X. Conclusion

Almost nothing can be accomplished in the world of immigration without the proper completion of the applicable form. The importance of forms and their content should not be overlooked because it can have a drastic impact on how immigration policies and eligibility for benefits will be applied to an individual. Since the APA and PRA provide a mandatory mechanism for public comment that the government is required to consider, advocates should consider commenting as often as possible on Notices of Information Collection in the Federal Register that impact their clients.



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### About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

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