

## Guidance Implementing Section 2(e) of Executive Order 14094 (Modernizing Regulatory Review)

December 20, 2023

This guidance, in the form of questions and answers, implements Section 2(e) of Executive Order (E.O.) 14094 (Modernizing Regulatory Review).<sup>1</sup> That section of E.O. 14094 concerns the process for persons not employed by the executive branch to request meetings with Office of Information and Regulatory Affairs (OIRA) officials regarding the substance of regulatory actions under OIRA review—a process established under Section 6(b)(4) of E.O. 12866 (Regulatory Planning and Review).<sup>2</sup> This guidance refers to such meetings as “E.O. 12866 meetings.”

E.O. 14094 directs the OIRA Administrator to implement reforms designed to reduce the risk or the appearance of disparate and undue influence on regulatory development. Specifically, Section 2(e) of E.O. 14094 states that the Administrator of OIRA shall, to the extent practicable and consistent with law:

- (i) Provide information to facilitate the initiation of meeting requests regarding regulatory actions under OIRA review from potential participants not employed by the executive branch of the Federal Government who have not historically requested such meetings, including those from underserved communities; and
- (ii) Implement reforms to improve the procedures and policies with respect to OIRA’s consideration of meeting requests initiated by persons not employed by the executive branch of the Federal Government regarding the substance of regulatory actions under OIRA review to further the efficiency and effectiveness of such meetings. These reforms may include:
  - (A) efforts to ensure access for meeting requesters who have not historically requested such meetings;
  - (B) discouraging meeting requests that are duplicative of earlier meetings with OIRA regarding the same regulatory action by the same meeting requesters;
  - (C) consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness; and
  - (D) disclosure of data in an open, machine-readable, and accessible format that includes the dates and names of individuals involved in all substantive meetings

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<sup>1</sup> See Executive Order 14094 of April 6, 2023 (Modernizing Regulatory Review), 88 Fed. Reg. 21,879 (Apr. 11, 2023).

<sup>2</sup> See Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), 58 Fed. Reg. 51,735 (Oct. 4, 1993).

and the subject matter discussed during such meetings, as required by section 6(b)(4)(C)(iii) of Executive Order 12866, so as to better facilitate transparency and analysis.

## **A. Background**

### **1. What is an E.O. 12866 meeting?**

E.O. 12866 establishes and governs the process under which OIRA reviews agencies' significant regulatory actions. E.O. 12866 meetings occur at the initiative of outside parties who request a meeting with OIRA to present their views about a regulatory action that is under OIRA review. OIRA invites representatives from the agency or agencies taking the regulatory action (action agency) to these meetings, though participation may be limited by scheduling or other considerations.

E.O. 12866 meetings serve as listening sessions for OIRA officials. OIRA benefits from receiving a diverse array of perspectives from the public during regulatory review. Members of the public can share their views with OIRA on a regulatory action under review, as well as any scientific, technical, social, or economic information, or information drawn from individual experiences that may be helpful to OIRA officials while reviewing a regulatory action. During such meetings, OIRA officials may ask clarifying questions, but will not share deliberative or pre-decisional information about the regulatory action under review.

E.O. 12866 meetings with OIRA and the action agency are not a substitute for submitting comments to the action agency under its applicable regulatory procedures, but rather provide an opportunity to emphasize or highlight information relevant to the regulatory review process under E.O. 12866.<sup>3</sup> OIRA typically reviews regulatory actions, such as rules, undertaken by other agencies. Accordingly, OIRA is not the action agency and views shared only through the E.O. 12866 review process would not be considered properly submitted during the notice and comment period.

### **2. How do I request an E.O. 12866 meeting?**

OIRA has an “open door” policy with respect to meeting requests, meaning that any individual may request a meeting regarding a regulatory action under review. OIRA will make all reasonable efforts to meet with anyone requesting a meeting. However, OIRA staff do not affirmatively reach out to outside parties to schedule E.O. 12866 meetings or to solicit specific views. OIRA does not schedule or prioritize E.O. 12866 meetings based on identity (for

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<sup>3</sup> *See id.* at 51,744 (“This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.”). The E.O. 12866 process does not substitute for E.O. 13175 requirements to conduct Tribal consultations. *See* Executive Order 13175 of Nov. 6, 2000 (Consultation and Coordination with Indian Tribal Governments), § 9(a), 65 Fed. Reg. 67,249, 67,251 (Nov. 9, 2000).

example, size or status of a requesting organization, or political affiliation) or viewpoint (for example, whether the requester supports or opposes the regulatory action under review).

In an effort to facilitate meeting requests, OIRA is now providing detailed written [step-by-step instructions, as well as a video \(also translated into Spanish\)](#), on its website RegInfo.gov on how to schedule a meeting.<sup>4</sup> E.O. 12866 meetings, for example, can be scheduled through RegInfo.gov by clicking on the “Regulatory Review” tab and then selecting “EO 12866 Meetings.” Clicking on “EO 12866 Meetings” then takes the requester to a search page where there is a button labeled “Schedule” near the top of the page for requesting a meeting. Selecting that “Schedule” button then takes the meeting requester to a page asking the requester to identify the Regulatory Identification Number (RIN) of the regulatory action of interest.<sup>5</sup>

To further facilitate the meeting request process, OIRA is now also providing additional avenues through which outside parties can request meetings without locating a regulatory action’s RIN first. As described in more detail on [RegInfo.gov](#), meeting requesters, for instance, can now schedule meetings directly from the list of all actions currently pending review or through the individual entry for a regulatory action by clicking “pending review” and then clicking the link to schedule a meeting. After OIRA receives a meeting request, the requester will be sent an email from a scheduler to confirm the meeting.

OIRA encourages requesters to submit E.O. 12866 meeting requests as soon as possible after the start of OIRA review. Although E.O. 12866 generally permits up to 90 days for review, reviews can and often do conclude in fewer than 90 days. Meetings unfortunately cannot be requested or granted after OIRA has concluded review on a regulatory action. In fact, E.O. 12866 meetings may be cancelled in the event that OIRA concludes review on the regulatory action in advance of the meeting date. That being said, OIRA will make every effort to notify meeting requesters as soon as possible if meetings need to be cancelled or rescheduled. OIRA endeavors to grant all E.O. 12866 meeting requests, and early submission of such requests facilitates prompt scheduling. Occasionally, however, OIRA cannot accommodate all requests, and the guidance below details how OIRA will prioritize meeting requests in those rare circumstances.

Because it can be difficult to know when OIRA formally accepts a significant regulatory action for review (and therefore when it becomes possible to request an E.O. 12866 meeting) without frequently checking OIRA’s main website, OIRA encourages members of the public to consider downloading OIRA’s mobile application version of RegInfo.gov, RegInfo Mobile. RegInfo Mobile permits members of the public to subscribe to individual regulatory entries for updates on progress, including when regulatory actions formally arrive at OIRA for review. OIRA’s homepage now features the option to download RegInfo Mobile more prominently.

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<sup>4</sup> Available at “Meetings on a Regulatory Action under Review with the Office of Information and Regulatory Affairs (E.O. 12866 meetings),” Office of Information & Regulatory Affairs, <https://www.reginfo.gov/public/do/eo/eomHowTo>.

<sup>5</sup> A RIN consists of a 4-digit agency code plus a 4-character alphanumeric code designed to identify an individual regulatory action.

Prior to the COVID-19 pandemic, OIRA primarily hosted E.O. 12866 meetings in person in Washington, D.C. During the COVID-19 pandemic, OIRA switched to exclusively virtual E.O. 12866 meetings (currently on WebEx or Zoom). Given OIRA's goals of facilitating broader participation in the E.O. 12866 process, including for requesters who have not historically requested such meetings or face challenges in traveling to Washington, D.C., OIRA has decided to retain telephonic or virtual meetings as the exclusive means of holding meetings. OIRA may revisit this decision in the future. OIRA will also generally continue to maintain an audio-only format in virtual meetings as it has been found to be more technologically reliable (e.g., less susceptible to lagging or freezing), though OIRA will continue to consider alternative formats in the future as well.

## **B. Facilitation of E.O. 12866 Meetings**

### **1. How is OIRA providing information to facilitate the initiation of E.O. 12866 meeting requests from potential participants who have not historically requested such meetings, including those from underserved communities?**

OIRA is pursuing a variety of strategies to facilitate participation by those who have not historically requested E.O. 12866 meetings, including those from underserved communities. These efforts complement OIRA's July 19, 2023, memorandum to agencies for broadening participation and engagement at other stages in the regulatory process.<sup>6</sup> Drawing from comments received through public engagement, OIRA will:

- Make the E.O. 12866 meeting request button available in additional areas of OIRA's website, making it easier to request a meeting without inputting the regulatory action's unique RIN;
- Provide plain language information and a video (also translated into Spanish) on E.O. 12866 meetings on [OIRA's website](#), including information on the purpose of such meetings, how members of the public can request meetings, what meeting requesters can expect before and during meetings, and what information meeting requesters might consider sharing;
- Offer periodic and accessible trainings to the public on effective participation in E.O. 12866 meetings; and
- Improve notice of E.O. 12866 meeting opportunities by encouraging action agencies to alert the public about the opportunity to request E.O. 12866 meetings on regulatory actions that are under review by OIRA.

OIRA is also committed to the inclusion of people with disabilities. Requesters with

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<sup>6</sup> Office of Management & Budget, *Broadening Public Participation and Community Engagement in the Regulatory Process* (July 19, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.

disabilities who may need a reasonable accommodation should include that information in their request or, if the need is not apparent at that time, as soon afterward as is feasible. In addition, OIRA is currently reviewing how non-English interpretation services can be made available for E.O. 12866 meetings. Until further information is provided, a requester should note needing non-English interpretation services as far in advance as possible when submitting a meeting request. OIRA will consider those requests on a case-by-case basis. Finally, OIRA will continue to offer the option to conduct E.O. 12866 meetings over the telephone, especially for those who lack access to internet capabilities.

## **2. Who are members of “underserved communities”?**

As defined by E.O. 14091 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), the term “underserved communities” refers to “populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in Executive Orders 13985 and 14020.”<sup>7</sup> As stated in E.O. 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), and E.O. 14020 (Establishment of the White House Gender Policy Council), examples of individuals who may have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life include members of the following communities: Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in U.S. Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities. Vulnerabilities are often heightened with geographic location; linguistic isolation; or lack of access to affordable housing, transportation, health care, and energy.

### **C. Efforts To Ensure Access for Relatively New E.O. 12866 Meeting Requesters**

#### **1. What efforts will OIRA take to ensure access to those “who have not historically requested” E.O. 12866 meetings?**

For purposes of this guidance, the term “not historically requested” describes a subset of members of the public, including organizations and individuals, who have not participated in the E.O. 12866 meeting process within the last three years. These requesters are less likely to be regular participants. As discussed further below, OIRA plans to collect information to determine whether E.O. 12866 meeting requesters have historically requested and participated in E.O. 12866 meetings.

When applying this criterion, OIRA will focus on the meeting participants themselves, rather than their representatives who request the meeting. In other words, individuals or organizations that meet this criterion will be considered not to have “historically requested”

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<sup>7</sup> Executive Order 14091 of Feb. 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), § 10(b), 88 Fed. Reg. 10,825, 10,832 (Feb. 22, 2023).

meetings, even if represented by an organization, such as a law firm, that frequently requests meetings for itself or on behalf of other individuals or organizations. Likewise, if an individual or organization that has not “historically requested” meetings makes a request for a meeting on behalf of another individual or organization that participated in an E.O. 12866 meeting within the last three years, OIRA will apply the criterion to the participants and not to the representative that requested the meeting on their behalf.

OIRA stresses that, for the majority of regulatory actions, it is able to accommodate all E.O. 12866 meeting requests and will continue to do so. For the exceedingly rare number of regulatory actions that strain OIRA resources and ability to accommodate all meeting requests, OIRA may prioritize the scheduling of requests that come from those who have not historically requested meetings by scheduling these requests earlier than requests that come from requesters who have historically requested meetings. To make the prioritization of requesters more transparent, OIRA will indicate on its main website when such prioritization takes place.

#### **D. Discouraging Duplicative Oral Communications**

##### **1. How will OIRA discourage duplicative oral communications in the E.O. 12866 process?**

OIRA generally will not schedule multiple E.O. 12866 meetings for the same meeting requester during a single E.O. 12866 review of the same regulatory action at the same stage of the regulatory process. OIRA generally discourages E.O. 12866 meeting requesters from repeatedly making such requests. That said, OIRA welcomes participation from outside parties at different stages of a rulemaking, such as during OIRA’s review of a proposed rule and again during OIRA’s review of a final rule. OIRA recognizes that an industry coalition or union may represent various entities who may have overlapping but unique interests. As a general matter, OIRA will not consider meeting requests from an umbrella coalition or federation as duplicative of requests from individual members of that coalition or federation.

#### **E. Meeting Consolidation**

##### **1. How will OIRA approach E.O. 14094’s call to consider “consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness”?**

OIRA will prioritize scheduling meetings for requesters that request self-consolidated meetings if the volume of meeting requests for a regulatory action is likely to be beyond what is feasible to accommodate under current resource constraints. Consolidated E.O. 12866 meeting requests can be an effective tool to communicate a collective view, while retaining the ability of individual meeting participants to share their views on potential impacts at an appropriate level of nuance. Individuals or entities interested in requesting a consolidated meeting might review other comments in the public docket for a regulatory action and reach out to similarly minded commenters in advance of requesting an E.O. 12866 meeting. A list of currently scheduled meetings with meeting requester information (organization and name) is also available to the

public at <https://www.reginfo.gov/public/do/eom12866Search> to use for consolidation. It should be noted that different groups that may be part of the same umbrella coalition or federation can request consolidated meetings with OIRA (for instance, both a local union and a state federation of which the local union is a part). Such meetings would be considered self-consolidated.

As emphasized above, for the vast majority of regulatory actions, OIRA has been able to accommodate all E.O. 12866 meeting requests and anticipates continuing to do so. OIRA's review of past E.O. 12866 meeting data indicates that there are fewer than five meeting requests for the majority of regulatory actions. OIRA rarely receives more than 50 E.O. 12866 meeting requests for a single E.O. 12866 review.

OIRA is not planning mandatory consolidation of meeting requesters at this time. However, OIRA will prioritize requests from groups of requesters that voluntarily self-consolidate if the volume of meeting requests for a regulatory action is likely to be beyond what is feasible to accommodate under current resource constraints. In circumstances in which OIRA is prioritizing requests from self-consolidated requesters, OIRA will share publicly on its website when OIRA prioritizes requests in this way. More broadly, in the rare circumstances in which prioritization occurs, OIRA will first prioritize requesters who have not historically requested meetings with OIRA, and then self-consolidated requesters. As previously emphasized, OIRA does not and will not prioritize requests based on identity (for example, size or status of a requesting organization, or political affiliation) or the viewpoints of requesters (for example, support for or opposition to the regulatory action).

## **F. Disclosure of E.O. 12866 Meeting Data**

### **1. What information about E.O. 12866 meetings does OIRA currently disclose?**

Public disclosure about meetings with outside parties is a cornerstone of a fair and transparent regulatory review process. The primary purpose of the disclosure requirements in Section 6(b)(4) of E.O. 12866 concerning E.O. 12866 meetings has always been to make transparent any meetings between the public and OIRA while a rule is under E.O. 12866 review. Pursuant to E.O. 12866, OIRA currently publicly discloses, at a minimum, the subject, date, names, and affiliations of meeting participants on the RegInfo.gov website, as well as any written materials provided to OIRA at such meetings.

### **2. How does OIRA currently release information about E.O. 12866 meetings?**

OIRA currently releases information about E.O. 12866 meetings at <https://www.reginfo.gov/public/do/eom12866Search>. The public can search for E.O. 12866 meetings by the RIN for an individual regulatory action. Alternatively, the public can search E.O. 12866 meetings by stage of rulemaking, agency, sub-agency, date range, or meeting type (completed, scheduled, or no show). Results are presented in either a list or a calendar view.

### **3. What additional information will OIRA now collect and disclose?**

Any changes to the information requested and collected from E.O. 12866 meeting

requesters on the meeting request form are subject to the requirements of the Paperwork Reduction Act (PRA) of 1995<sup>8</sup> and the Privacy Act of 1974.<sup>9</sup> Subject to those requirements, OIRA will collect and disclose additional information about specific E.O. 12866 meetings that may be helpful to OIRA, action agencies, and the general public:

- **Narrative descriptions accompanying meeting requests.** An optional narrative description, provided by the requester, that states the purpose of the meeting and a brief, informal summary of the views they anticipate presenting. This information, which will be disclosed, can help OIRA and action agencies invite the appropriate government officials, particularly when regulatory actions may address many subjects and have many separate provisions.
- **Meeting requesters and represented interests.** Individual or organizational meeting requesters often request meetings on behalf of themselves. Sometimes, however, a meeting requester does so on behalf of another individual or organization with interests in the regulatory action. For example, a law firm or government affairs firm may request an E.O. 12866 meetings on behalf of a client who has a stake in the regulatory action. In other cases, a congressional office may facilitate a meeting request for an individual constituent concerned about a rulemaking.

Under these circumstances, OIRA has historically required the name of the individual requesting the meeting and, on a voluntary basis, the meeting requester's organization as well as the individual or organization whose interests will be represented. Going forward, OIRA will require in mandatory fields and disclose the (1) name of the individual requesting the meeting; (2) the meeting requester's organization, if any; (3) the name of the individual or organization whose interests are being represented; and (4) if the previous field names an individual, the individual's organizational affiliation, if any.

This information will facilitate transparency about who requests E.O. 12866 meetings, the interests represented, and the types of organizations involved. In addition, OIRA will also continue to take meeting attendance and, when feasible, update this information for the public record in cases where participant information is not initially provided. As with other collections of information described in this section, the public will have an opportunity to comment on this collection through the PRA process.

- **Previous request or participation in an E.O. 12866 meeting.** OIRA will require meeting requesters (the individual participants rather than their representatives) to note if they have not previously requested or participated in an E.O. 12866 meeting on any regulatory action within the last three years. This information, which will be disclosed, will allow OIRA to track participation of members of the public that have not historically requested meetings. In addition, OIRA will ask and disclose whether a requester has previously requested or participated in an E.O. 12866

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<sup>8</sup> 44 U.S.C. §§ 3501-3521.

<sup>9</sup> 5 U.S.C. § 552a.



meeting associated with the specific regulatory action (at the same stage of the regulatory process).

OIRA also welcomes meeting requesters to specify whether any accommodations will be requested.

#### **4. How is OIRA considering releasing this information?**

OIRA plans to release information about E.O. 12866 meeting requests in an open, machine-readable, and accessible format on its main website. OIRA currently releases information about E.O. 12866 reviews in Extensible Markup Language (XML) reports: <https://www.reginfo.gov/public/do/XMLReportList>.