



June 2019

FEDERAL RULEMAKING

Selected Agencies
Should Clearly
Communicate
Practices Associated
with Identity
Information in the
Public Comment
Process

Why GAO Did This Study

Federal agencies publish on average 3,700 proposed rules yearly and are generally required to provide interested persons (commenters) an opportunity to comment on these rules. In recent years, some high-profile rulemakings have received extremely large numbers of comments, raising questions about how agencies manage the identity information associated with comments. While the APA does not require the disclosure of identifying information from a commenter, agencies may choose to collect this information. This report examines (1) the identity information collected by Regulations.gov and agency-specific comment websites; (2) the guidance agencies have related to the identity of commenters; (3) how selected agencies treat identity information; and (4) the extent to which selected agencies clearly communicate their practices associated with identity information.

GAO selected a nongeneralizable sample of 10 federal agencies on the basis of large comment volume. GAO surveyed 52 program offices within these agencies about their comment process; and reviewed comment websites, agency guidance, and posted comment data. GAO also interviewed relevant agency officials.

What GAO Recommends

GAO is making a total of eight recommendations to the selected agencies to more clearly communicate to the public their policies for posting comments and associated identity information to Regulations.gov and agency-specific comment websites. The selected agencies generally agreed with the recommendations.

View [GAO-19-483](#). For more information, contact Seto J. Bagdoyan at (202) 512-6722 or bagdoyans@gao.gov.

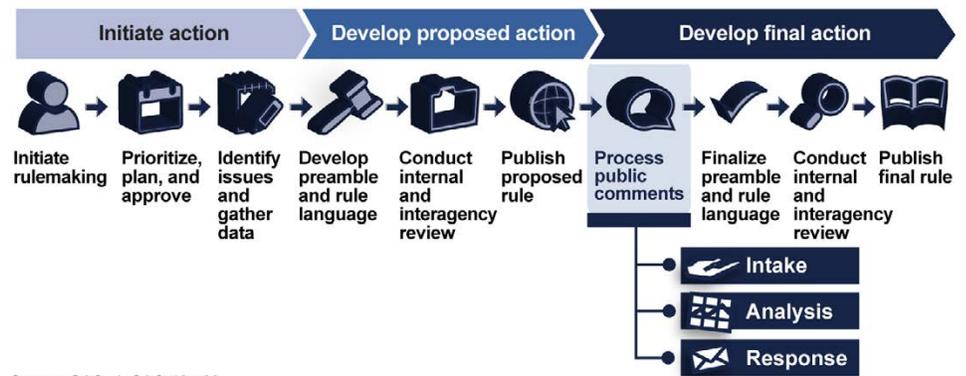
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Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process

What GAO Found

The Administrative Procedure Act (APA) governs the process by which many federal agencies develop and issue regulations, which includes the public comment process (see figure below).

The Rulemaking Process under the Administrative Procedure Act



Source: GAO. | GAO-19-483

Regulations.gov and agency-specific comment websites collect some identity information—such as name, email, or address—from commenters who choose to provide it during the public comment process. The APA does not require commenters to disclose identity information when submitting comments. In addition, agencies have no obligation under the APA to verify the identity of such parties during the rulemaking process.

GAO found that seven of 10 selected agencies have some internal guidance associated with the identity of commenters, but the substance varies, reflecting the differences among the agencies. The guidance most frequently relates to the comment intake or response to comment phases of the public comment process.

With the discretion afforded by the APA, selected agencies' treatment of commenters' identity information varies, particularly when posting duplicate comments (identical or near-identical comment text but varied identity information). Generally, officials told GAO that their agencies (1) post all comments within the comment system; or (2) maintain some comments outside of the system, such as in email file archives. For instance, one agency posts a single example of duplicate comments and indicates the total number of comments received. However, within these broad categories, posting practices vary considerably—even within the same agency—and identity information is inconsistently presented on public websites.

Selected agencies do not clearly communicate their practices for how comments and identity information are posted. GAO's key practices for transparently reporting government data state that federal government websites should disclose data sources and limitations to help public users make informed decisions about how to use the data. As a result, public users of the comment websites could reach inaccurate conclusions about who submitted a particular comment, or how many individuals commented on an issue.

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Abbreviations

APA	Administrative Procedure Act
API	application programming interface
BLM	Bureau of Land Management
CFPB	Consumer Financial Protection Bureau
CIO	Chief Information Officer
CMS	Centers for Medicare & Medicaid Services
CSV	comma separated values
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
ECFS	Electronic Comment Filing System
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FDMS	Federal Docket Management System
FWS	Fish and Wildlife Service
IP	Internet Protocol
NPRM	Notice of Proposed Rulemaking
PDF	Portable Document Format
PMO	Program Management Office
SEC	Securities and Exchange Commission
URL	Uniform Resource Locator
WAF	web application firewall
WHD	Wage and Hour Division

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June 26, 2019

Congressional Requesters

Regulations are the means by which federal agencies establish legally binding requirements and are rooted in agencies' statutory authority. Typically, regulations require regulated parties to take specified actions or prohibit them from taking certain actions. Agencies use regulations to carry out statutory directives to achieve public policy goals such as protecting the health and safety of the public and the environment and facilitating the effective functioning of financial markets. The Administrative Procedure Act (APA) governs the process by which many federal agencies develop and issue regulations.¹ The APA establishes procedures and broadly applicable federal requirements for informal rulemaking, also known as notice-and-comment rulemaking.² Federal agencies publish an average of 3,700 proposed rules, or Notices of Proposed Rulemaking (NPRM), each year as part of informal rulemaking pursuant to the APA.

Among other things, the APA generally requires agencies to publish an NPRM in the *Federal Register* and provide interested persons (commenters) an opportunity to comment on the proposed rule.³ Agencies must give consideration to any significant comments submitted during the comment period when drafting the final rule. This process provides, among other things, the public an opportunity to present information to agencies on the potential effects of a rule, or to suggest alternatives. To fulfill the notice-and-comment process requirements of

¹5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 5372, 7521. The APA was originally enacted into law in 1946, Pub. L. No. 79-404, 60 Stat. 237 (1946). In addition to the requirements under the APA, an agency may also need to comply with requirements related to rulemaking imposed by other statutes.

²The APA describes two types of rulemaking, formal and informal. Formal rulemaking includes a trial-type "on-the-record" proceeding, when rules are required by statute to be made on the record after opportunity for an agency hearing. In such cases, requirements under 5 U.S.C. §§ 556-557 apply. Most federal agencies use the informal rulemaking procedures outlined in 5 U.S.C. § 553, which include notice-and-comment rulemaking. The rulemaking process described in this report is informal rulemaking.

³The *Federal Register* is the daily journal of the federal government, and is published every business day by the National Archives and Records Administration. The *Federal Register* contains federal agency regulations, proposed rules and notices of interest to the public, and executive orders, among other things.

the APA, agencies may rely on Regulations.gov or their own comment websites to receive public input on proposed rules.⁴ During the course of the notice-and-comment process, agencies may choose to collect information associated with the identity of the commenters, such as name, email, or address (identity information).⁵

In recent years, some high-profile rulemakings have received extremely large numbers of comments. For example, during the public comment period for an Environmental Protection Agency (EPA) 2014 rulemaking on greenhouse gas emissions, the agency reported that it received more than 4 million total comments.⁶ Similarly, during the public comment period for the Federal Communications Commission's (FCC) 2017 Restoring Internet Freedom NPRM, FCC received more than 22 million comments through its public comment website.⁷ Subsequently, media and others reported that some of the comments submitted to FCC were suspected to have been submitted using false identity information.⁸

You asked us to review issues related to identity information associated with public comments on proposed rulemakings. This report examines (1) the identity information selected agencies collect through Regulations.gov and agency-specific comment websites, (2) the internal guidance selected agencies have related to the identity of commenters, (3) how

⁴Regulations.gov is an interactive public website providing the general public with the opportunity to access federal regulatory information and submit comments on regulatory and nonregulatory documents published in the *Federal Register*.

⁵As discussed later in this report, other information may be collected by the comment websites that can be used to identify the source of comments, such as Internet Protocol (IP) addresses.

⁶Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (79 Fed. Reg. 34,830 (June 18, 2014) and 80 Fed. Reg. 64,662 (Oct. 23, 2015)).

⁷Restoring Internet Freedom (82 Fed. Reg. 25,568 (June 2, 2017) and (83 Fed. Reg. 7,852 (Feb. 22, 2018))).

⁸Comments using false identity information include any comments submitted with identity information that does not accurately represent the individual submitting the comment in question. This could include anonymized names, such as "John Doe," fictitious character names, such as "Mickey Mouse," or improper use of identity information associated with a real person. As an example of the interest in such comments, the Office of the New York State Attorney General has established a specific website that allows members of the public to search FCC's comment website for comments that may have misused identity information and, if any such instances are identified, to file a consumer submission to the Attorney General's office.

selected agencies treat identity information collected during the public comment process, and (4) the extent to which selected agencies clearly communicate their practices associated with posting identity information collected during the public comment process.

To address these objectives, we selected 10 agencies (selected agencies) as case studies that received a high volume of public comments during the course of rulemaking proceedings from January 1, 2013, through December 31, 2017, including eight agencies that use Regulations.gov as their agency's comment website ("participating agencies") and two agencies that operate agency-specific comment websites ("nonparticipating agencies"). We identified agencies based on the lists of participating and nonparticipating agencies provided on Regulations.gov. Six of the selected agencies are component agencies within a larger department, as indicated below. The selected agencies are as follows:

Participating Agencies

- Bureau of Land Management (BLM), Department of the Interior;
- Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services;
- Consumer Financial Protection Bureau (CFPB);
- Employee Benefits Security Administration (EBSA), Department of Labor (DOL);
- Environmental Protection Agency (EPA);
- Fish and Wildlife Service (FWS), Department of the Interior;
- Food and Drug Administration (FDA), Department of Health and Human Services and;
- Wage and Hour Division (WHD), DOL.

Nonparticipating Agencies

- Federal Communications Commission (FCC); and
- Securities and Exchange Commission (SEC).

All 10 agencies were selected based on the total number of rulemaking comments that Regulations.gov and other agency-specific comment websites reported they received from January 1, 2013, through December

31, 2017. We selected this period to include comments submitted to rulemakings across two presidential administrations and five complete calendar years. At the time our review began, 2017 was the most recent complete calendar year. The selected agencies represent a nongeneralizable sample, and findings from this report cannot be generalized to all agencies that receive public comments as part of their rulemaking proceedings. However, as reported by Regulations.gov, the comments submitted to the eight participating agencies we selected represent more than 90 percent of all comments submitted to all participating agencies during the 5-year period.⁹

To select participating agencies, we obtained publicly available data from Regulations.gov for all agencies that had rulemaking dockets—the repository of documents related to a particular rulemaking—where comments were submitted from January 1, 2013, through December 31, 2017.¹⁰ On the basis of the comment numbers reported by the website, we selected the eight participating agencies with more than 500,000 comments submitted to dockets that accepted comments during this time. As of March 2018, there were 128 nonparticipating agencies, most of which issued less than one NPRM per year during the 5-year period. To identify nonparticipating agencies that received a high volume of comments, we obtained a list of rules submitted to GAO for review under the Congressional Review Act from January 1, 2007, through December

⁹We made our selection of participating agencies to include agencies that received a high volume of comments based on the total number of comments as reported by Regulations.gov. We determined that the data from Regulations.gov are sufficiently reliable for the purposes of this report, to include providing us with a relative comparison of comment volume between participating agencies for the purposes of case study selection. However, in working with these data, we found that, in some cases, the total numbers as reported by Regulations.gov do not accurately reflect the total number of comments submitted to an agency. Therefore, we are not including these total numbers in this report.

¹⁰Dockets that accepted comments from January 1, 2013, through December 31, 2017, may have also received comments outside of this date range. These comments are included in the total comment count used to select participating agencies.

31, 2017.¹¹ We identified four agencies with more than 10 rules submitted during the period (at least one rule per year). We then contacted these agencies to determine how many total comments were submitted to the agencies from January 1, 2013, through December 31, 2017, on all rulemakings. Two of the four agencies were unable to provide us with the total number of comments received over the 5-year period; accordingly, we selected the two that provided us with comment numbers, FCC and SEC. Both FCC and SEC received a number of comments comparable to the selected participating agencies. Within the 10 selected agencies, we identified 52 program offices with regulatory responsibilities and sent them survey questionnaires related to the public comment process in October 2018. All 52 program offices responded to the questionnaire, but the responses cannot be generalized to program offices outside of the selected agencies. For additional detail about the program offices we identified and survey development and administration, see appendix I.

To determine what identity information the selected agencies collect during the public comment process, we reviewed the data fields agencies require to be submitted with public comments and the optional data fields available to commenters on Regulations.gov and the agency-specific comment systems. We reviewed relevant system documentation for Regulations.gov and the agency-specific comment systems, such as user guides, system architecture documentation, and system logs. We also reviewed documentation associated with system modernization or reengineering efforts. In addition, we interviewed relevant information technology officials from the eRulemaking Program Management Office (PMO), FCC, and SEC and surveyed program offices about the information that is collected from public users of the comment systems as well as agency practices associated with anonymous comments.¹² Public

¹¹Congressional Review Act, Pub. L. No. 104-121, title II, subtitle E, § 251, 110 Stat. 847, 868 (Mar. 29, 1996), codified at 5 U.S.C. §§ 801–808. The statute requires all federal agencies to submit a report on each new “rule” to both houses of Congress and to the Comptroller General before it can take effect. 5 U.S.C. § 801(a)(1)(A). For purposes of the Congressional Review Act, a “rule” is defined under § 804(3). The agency must submit to the Comptroller General a complete copy of the cost-benefit analysis of the rule, if any, and information concerning the agency’s actions relevant to specific procedural rulemaking requirements set forth in various statutes and executive orders governing the regulatory process. *Id.* § 801(a)(1)(B).

¹²The eRulemaking PMO leads the eRulemaking Program and is responsible for the development and implementation of Regulations.gov, the public-facing comment website, and the Federal Docket Management System (FDMS), which is the agency-facing side of the comment system used by participating agencies.

users are members of the public interested in participating in the rulemaking process via Regulations.gov or agency-specific websites. They may or may not submit a comment.

To determine what internal guidance selected federal agencies have related to the identity of commenters in the federal rulemaking process, we first determined whether each of the selected agencies had any documented policies, procedures, or guidance associated with each phase of the comment process generally. For those agencies that did, we reviewed these documents to determine whether they explicitly included requirements associated with identity information. We also included questions about guidance in our survey of program offices. On the basis of the responses, we followed up directly with program offices to obtain additional informal guidance that is used at the program office level, rather than agency-wide.

To determine how selected agencies treat identity information associated with public comments, our survey of all 52 program offices with regulatory responsibilities included questions about their practices associated with comment intake (including identifying duplicate comments and posting comments to the public website), comment analysis (including reviewing comments and considering their content), and response to comments. We obtained comment data for all rulemakings within the 10 selected agencies that accepted comments from January 1, 2013, through December 31, 2017, and reviewed them to determine the ways in which agencies treat the identity information submitted with comments. To assess the reliability of these data, we reviewed related documentation, interviewed knowledgeable agency officials, and traced selections to the source documents. We determined these data to be reliable for the purposes of selecting case study agencies and identifying comments that could help us understand how the selected agencies publicly post comments. We also interviewed relevant officials at the selected agencies, as well as officials from the eRulemaking PMO, to better understand the data; Regulations.gov and FDMS; and agency-specific comment systems.

To determine the extent to which the selected agencies clearly communicate their practices associated with posting identity information collected during the public comment process, we reviewed Regulations.gov, agency-specific comment websites, and the selected agencies' websites for any information provided to public users. We then

compared this information to key practices for transparently reporting open government data.¹³ We also interviewed relevant officials from the eRulemaking PMO and the selected agencies about how they communicate with public users.

We conducted this performance audit from February 2018 through June 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

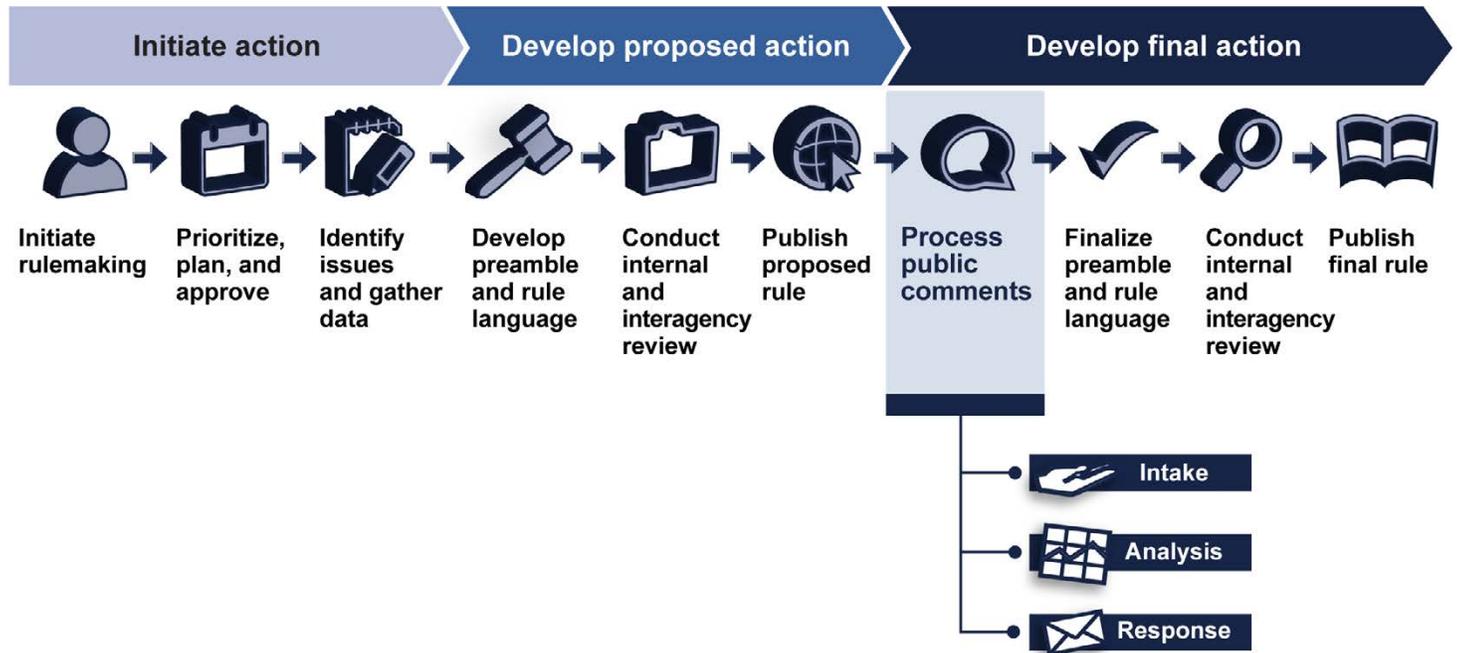
Background

The Rulemaking Process under the APA

Under the APA, agencies engage in three basic phases of the rulemaking process: they initiate rulemaking actions, develop proposed rulemaking actions, and develop final rulemaking actions. Built into agencies' rulemaking processes are opportunities for internal and external deliberations, reviews, and public comments. Figure 1 provides an overview of the rulemaking process.

¹³GAO, *Open Data: Treasury Could Better Align USAspending.gov with Key Practices and Search Requirements*, [GAO-19-72](#) (Washington, D.C.: Dec. 13, 2018).

Figure 1: The Rulemaking Process under the Administrative Procedure Act



Source: GAO. | GAO-19-483

Note: Not all agencies are required to participate in all steps for all rulemaking proceedings.

The public comment portion of the rulemaking process generally comprises three phases:

1. **Comment Intake:** During this phase, agencies administratively process comments. This may include identifying duplicate comments (those with identical or near-identical comment text, but unique identity information), posting comments to the agency’s public website, and distributing comments to agency subject-matter experts within responsible program offices for analysis.

-
2. **Comment Analysis:** During this phase, subject-matter experts analyze and consider submitted comments. This may include the use of categorization tools within FDMS or outside software systems.¹⁴
 3. **Comment Response:** During this phase, agencies prepare publicly available responses to the comments in accordance with any applicable requirements. Agencies are required to provide some response to the comments in the final rule, but in some cases, an agency may also prepare a separate report to respond to the comments.

Legal Requirements for Public Comments

As illustrated in figure 1 above, the public has the opportunity to provide input during the development of agencies' rules. Among other things, the APA generally requires agencies to

- publish an NPRM in the *Federal Register*;
- allow any interested party an opportunity to comment on the rulemaking process by providing "written data, views, or arguments";
- issue a final rule accompanied by a statement of its basis and purpose; and

¹⁴Categorization tools can include manual coding using common software such as Excel, or automated software that can group comments by issue area or keywords.

-
- publish the final rule at least 30 days before it becomes effective.¹⁵

The APA requires agencies to allow any interested party to comment on NPRMs. The APA does not require the disclosure of identifying information from an interested party that submits a comment. Agencies therefore have no obligation under the APA to verify the identity of such parties during the rulemaking process. Instead, the APA and courts require agencies to consider relevant and substantive comments, and agencies must explain their general response to them in a concise overall statement of basis and purpose, which in practice forms part of the preamble of the final rule.¹⁶ Courts have explained that significant comments are comments that raise relevant points and, if true or if adopted, would require a change in the proposed rule.¹⁷ However, courts have held that agencies are not required to respond to every comment individually.¹⁸ Agencies routinely offer a single response to multiple identical or similar comments. As explained by Regulations.gov’s “Tips for Submitting Effective Comments,” “the comment process is not a vote,” and “agencies make determinations for a proposed action based on sound reasoning and scientific evidence rather than a majority of votes. A

¹⁵The APA allows agencies to issue final rules without the use of an NPRM under various exceptions, such as those dealing with military or foreign affairs and agency management or personnel. 5 U.S.C. § 553(a). APA requirements to publish a proposed rule generally also do not apply when an agency finds, for “good cause,” that those procedures are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b). In such cases, agencies may solicit comments through the *Federal Register* when publishing a final rule without an NPRM, but the public does not have an opportunity to comment before the rule’s issuance, nor is the agency obligated to respond to comments it has received. In 2012, we reported that agencies did not publish an NPRM, enabling the public to comment on a proposed rule, for about 35 percent of major rules (generally those rules with an annual impact on the economy of \$100 million or more) and about 44 percent of nonmajor rules published during 2003 through 2010. See GAO, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments*, [GAO-13-21](#) (Washington, D.C.: Dec. 20, 2012).

¹⁶5 U.S.C. § 553(c). Pursuant to 1 C.F.R. § 18.12(c), an agency may include in the preamble, as applicable: a discussion of the background and major issues involved; any significant differences between the final rule and the proposed rule; a response to substantive public comments received; and any other information the agency considers appropriate.

¹⁷*Safari Aviation Inc. v. Garvey*, 300 F.3d 1144, 1151 (9th Cir. 2002); *Am. Min. Congress v. EPA*, 907 F.2d 1179, 1188 (D.C. Cir. 1990).

¹⁸*Am. Min. Congress v. EPA*, 907 F.2d 1179, 1187 (D.C. Cir. 1990) (citing *Thompson v. Clark*, 741 F.2d 401, 408 (D.C. Cir. 1984)). See also, *Action on Smoking and Health v. C.A.B.*, 699 F.2d 1209, 1216 (D.C. Cir. 1989).

single, well-supported comment may carry more weight than a thousand form letters.”

The APA includes provisions on the scope of judicial review that establishes the bases under which a court shall find an agency’s action unlawful.¹⁹ Among these APA bases are when the court finds that agency action, findings, and conclusions were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and “without observance of procedure required by law.”²⁰ How an agency managed and considered public comments may be relevant during judicial review. For example, one basis for a court’s reversal of an agency action has been that, upon review of the statement of basis and purposes, the court concludes the agency failed to consider or respond to relevant and significant comments.²¹ Conversely, courts have upheld agency rules when the courts have found the statement of basis and purposes demonstrate the agency considered the commenter’s arguments.²²

The E-Government Act of 2002

The E-Government Act of 2002 requires agencies, to the extent practical, to accept comments “by electronic means” and to make available online the public comments and other materials included in the official rulemaking docket.²³ Executive Order 13563 further states that regulations should be based, to the extent feasible, on the open exchange of information and perspectives. To promote this open exchange, to the extent feasible and permitted by law, most agencies are required to provide the public with a meaningful opportunity to participate in the regulatory process through the internet, to include timely online

¹⁹5 U.S.C. §§ 701–706. The APA provisions govern judicial review unless the enabling statute for a particular regulatory program specifies a different standard.

²⁰5 U.S.C. § 706(2)(A), (D).

²¹Indep. U.S. Tanker Owners Comm. v. Lewis, 690 F.2d 908, 919 (D.C. Cir. 1982); La. Fed. Land Bank Ass’n, FLCA v. Farm Credit Admin., 336 F.3d 1075, 1080 (D.C. Cir. 2003).

²²City of Waukesha v. EPA, 320 F.3d 228, 258 (D.C. Cir. 2003).

²³Pub. L. No. 107-347, § 206, 116 Stat 2899, 2915–2916 (2002), codified at 44 U.S.C. § 3501 note.

access to the rulemaking docket in an open format that can be easily searched and downloaded.²⁴

Most agencies meet these responsibilities through Regulations.gov, a rulemaking website where users can find rulemaking materials and submit their comments, but all agencies are not required to use that platform. In October 2002, the eRulemaking Program was established as a cross-agency E-Government initiative and is currently based within EPA. The eRulemaking PMO leads the eRulemaking Program and is responsible for developing and implementing Regulations.gov, the public-facing comment website, and FDMS, which is the agency-facing side of the comment system used by participating agencies.²⁵

As of March 2018, Regulations.gov identified 180 participating and 128 nonparticipating agencies. These agencies may be components of larger departmental agencies. Some nonparticipating agencies, including FCC and SEC, have their own agency-specific websites for receiving public comments. The comment systems within the scope of this report are as follows:

- **FDMS and Regulations.gov:** FDMS is federal government-wide document management system structured by dockets (or file folders) that offer an adaptable solution to service a wide range of regulatory activities routinely performed by federal agencies.²⁶ The public-facing website of FDMS is Regulations.gov, which is an interactive website that allows the public to make comments on regulatory documents, review comments submitted by others, and access federal regulatory information. Regulations.gov allows commenters to submit comments to rulemakings by entering information directly in an electronic form on the Regulations.gov website. This form also allows commenters to attach files as part of their comment submission, and can be

²⁴Exec. Order No. 13,563, § 2(b), 76 Fed. Reg. 3,821 (Jan. 18, 2011). However, this Executive Order does not apply to independent regulatory agencies such as the FCC, SEC, and CFPB.

²⁵According to the Director of the PMO, as of January 2019, efforts are under way to move the PMO from EPA to the General Services Administration, though the overall governance structure will remain unchanged. The Director of the PMO expects the transition to be completed by October 1, 2019.

²⁶Many of the eRulemaking partner agencies rely on FDMS and Regulations.gov to support a number of activities beyond rulemaking for public viewing or to solicit public comment such as publication of guidance documents, agency directives, policy interpretations, and Paperwork Reduction Act notices.

customized by each participating agency. Appendix II provides an example of one comment form from Regulations.gov. Additionally, all participating agencies allow comments to be submitted by mail or hand delivery. At their discretion, some participating agencies also allow comments to be submitted via email. See table 1.

Table 1: Acceptable Comment Submission Types for Selected Participating Agencies

Agency	Regulations.gov	Email	Mail or hand delivery
Bureau of Land Management (Department of the Interior)	Yes	No	Yes
Centers for Medicare & Medicaid Services (Department of Health and Human Services)	Yes	No	Yes
Consumer Financial Protection Bureau	Yes	Yes	Yes
Employee Benefits and Security Administration (Department of Labor)	Yes	Yes	Yes
Environmental Protection Agency	Yes	Yes	Yes
Fish and Wildlife Service (Department of the Interior)	Yes	No	Yes
Food and Drug Administration (Department of Health and Human Services)	Yes	No	Yes
Wage and Hour Division (Department of Labor)	Yes	No	Yes

Source: GAO. | GAO-19-483

- FCC’s Electronic Comment Filing System (ECFS):** ECFS is a web-based application that allows anyone with access to the internet to submit comments to FCC rulemaking proceedings. ECFS allows commenters to submit comments to rulemakings through two main avenues: brief text comments submitted as Express filings, and long-form comments submitted as Standard filings.²⁷ Both types of filings

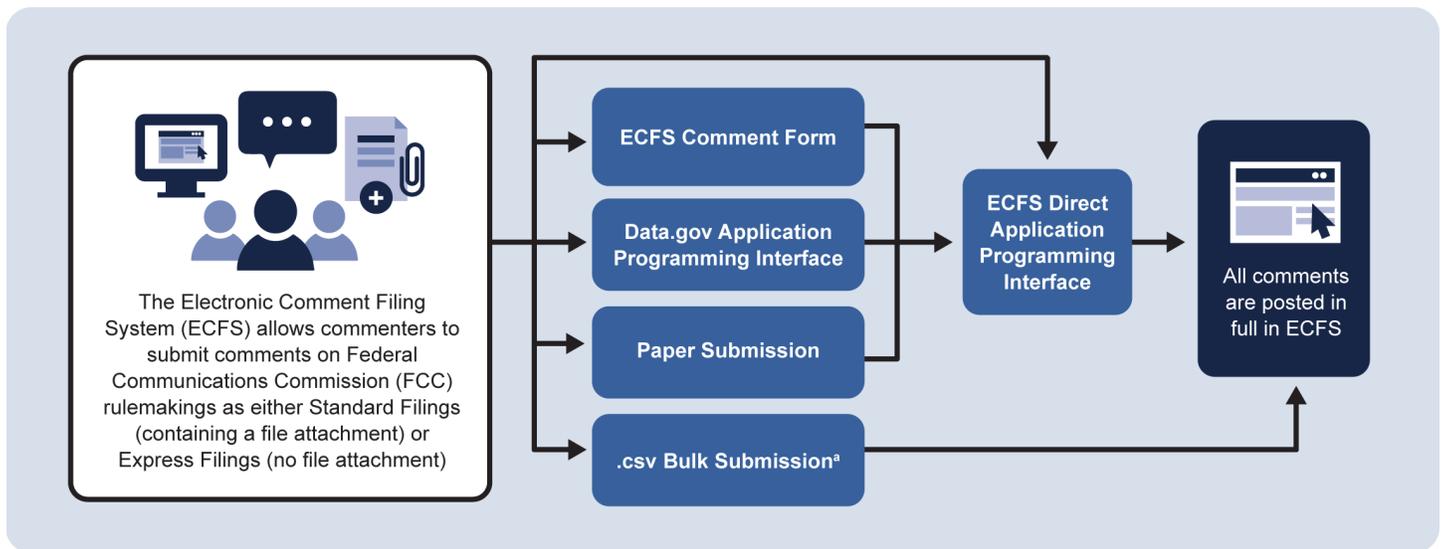
²⁷FCC’s ECFS also accepts comments that are not part of the rulemaking process. In addition to Express and Standard filings, users can submit Non-Docketed filings in response to certain FCC proceedings that have not been assigned a docket number or rulemaking number.

can be submitted through an ECFS comment form, which requires commenters to enter information directly into an electronic form on the ECFS website. See appendix III for examples of the comment forms used by ECFS. Additionally, interested parties with the appropriate technical capabilities can submit either type of filing directly to ECFS via a direct application programming interface (API) or through a public API that is registered with the website Data.gov.²⁸ Filing comments through an API allows interested parties the ability to file a large number of comments without having to submit multiple individual comment forms. Finally, to accommodate a large volume of comment submissions for the 2015 Open Internet rulemaking, FCC allowed interested parties to submit Express comment filings in bulk through formatted CSV files that were submitted via a dedicated email address and then uploaded into ECFS.²⁹ Similarly, for the 2017 Restoring Internet Freedom rulemaking, FCC allowed commenters to submit Express comment filings in bulk through a dedicated file-sharing website, and the comments were then uploaded into ECFS. With the exception of these two rulemakings, FCC does not allow comments to be submitted electronically outside of ECFS. Figure 2 shows how ECFS facilitates public commenting by using the processes discussed above.

²⁸An API sets up machine-to-machine communication and allows users to connect directly with a website to provide or access data. Data.gov is a data catalog for a variety of U.S. government data sets, managed and hosted by the General Services Administration's Technology Transformation Service.

²⁹CSV, or comma separated values, is a simple format for representing a rectangular array (matrix) of numeric and textual values. It is a delimited data format that has fields/columns separated by a comma character and records/rows/lines separated by characters indicating a line break.

Figure 2: The Federal Communications Commission’s Public Comment Submission Process as of April 2019



Source: GAO analysis of FCC information. | GAO-19-483

^aThis option was only available for two proceedings: the 2015 Open Internet rulemaking and the 2017 Restoring Internet Freedom rulemaking. CSV, or comma separated values, is a simple format for representing a rectangular array (matrix) of numeric and textual values.

- SEC’s Comment Letter Log:** When SEC requests public comments on SEC rule proposals, the public can submit comments to rulemakings through an online form, which requires commenters to enter information in an electronic form on SEC’s website. This form also allows commenters to attach files as part of their submission. When commenters submit a comment, it is sent to SEC staff as an email. SEC also allows comments to be submitted via email and mail. After review, staff upload the comment and any associated data into the Comment Letter Log, which is the internal database that SEC staff use to manage the public comment process, and post the comment to the public website. See appendix IV for an example of a comment form on SEC’s website.

Selected Agencies Collect Some Information from Commenters and Accept Anonymous Comments through Regulations.gov and Agency-Specific Websites

Selected Agencies Collect Some Identity Information through Comment Forms

Consistent with the discretion afforded by the APA, Regulations.gov and agency-specific comment websites use required and optional fields on comment forms to collect some identity information from commenters. In addition to the text of the comment, each participating agency may choose to collect identity information from the Regulations.gov comment form by requiring commenters to fill in other fields, such as name, address, and email address before they are able to submit a comment. Participating agencies may also choose to collect additional identity information through optional fields.³⁰ For example, while EPA does not make any fields associated with identity information available to commenters, CFPB makes all fields available and requires that commenters enter something into the first name, last name, and organization name fields before a comment can be submitted. Table 2 shows the fields on Regulations.gov in which each of the participating agencies we analyzed require commenters to enter information and the optional fields available for commenters to voluntarily enter information.

³⁰As of April 2019, the eRulemaking Advisory Board is considering modifications to Regulations.gov comment form requirements as part of a broader modernization effort. Specifically, according to PMO officials, one goal for the modernized Regulations.gov/FDMS will be to include a standardized comment form for use by all participating agencies. As of April 2019, this new form is being internally tested by the eRulemaking PMO, and also requires commenters to choose whether they are an individual, an organization, or an anonymous entity before they are able to submit the comment. However, the PMO is expected to transition its operational programs from its current home in EPA to the General Services Administration in the fall of 2019. As a result, PMO officials stated that proposed modifications from the modernization will likely not be addressed until after the PMO operational transition is complete.

Table 2: Required and Optional Comment Form Fields on Regulations.gov by Agency as of December 2018

Field	Agency							
	Bureau of Land Management	Centers for Medicare & Medicaid Services	Consumer Financial Protection Bureau	Employee Benefits Security Administration	Environmental Protection Agency	Fish and Wildlife Service	Food and Drug Administration	Wage and Hour Division
Comment	Required	Required	Required	Required	Required	Required	Required	Required
First Name	Optional	Optional	Required	Optional	n/a	Optional	Optional	Required
Middle Name	Optional	n/a	Optional	Optional	n/a	Optional	Optional	Optional
Last Name	Optional	Optional	Required	Optional	n/a	Optional	Optional	Required
Mailing Address	Optional	n/a	Optional	Optional	n/a	Optional	n/a	Required
City	Optional	Optional	Optional	Optional	n/a	Optional	n/a	Required
State or Province	Optional	Required	Optional	Optional	n/a	Optional	n/a	Required
Zip/Postal Code	Optional	Required	Optional	Optional	n/a	Optional	Optional	Optional
Country	Optional	Required	Optional	Optional	n/a	Optional	n/a	Required
Email Address	Optional	Optional	Optional	Optional	n/a	Optional	Optional	Optional
Phone Number	Optional	n/a	Optional	Optional	n/a	Optional	n/a	Optional
Fax Number	Optional	n/a	Optional	n/a	n/a	Optional	n/a	n/a
Upload Files	Optional	Optional	Optional	Optional	Optional	Optional	Optional	Optional
Submitter's Representative	Optional	n/a	Optional	n/a	Optional	Optional	Optional	n/a
Organization Name	Optional	Required	Required	Optional	Optional	Optional	Required	Optional
Government Agency Type (i.e., Federal/State/Local)	Optional	n/a	Optional	n/a	Optional	Optional	n/a	n/a
Government Agency	Optional	n/a	Optional	n/a	Optional	Optional	n/a	n/a
Category (e.g., Academia, Consumer Group, Individual Consumer)	n/a	Optional	n/a	n/a	n/a	Optional	Required	n/a

Source: eRulemaking Program Management Office. | GAO-19-483

Note: "n/a" indicates that a field is not available to a commenter on the agency's electronic comment forms.

FCC requires that all commenters complete the following fields on both the Standard and Express comment forms in ECFS: (1) name, (2) postal address, and (3) the docket proceeding number to which they are submitting a comment.³¹ The ECFS comment form also allows commenters to voluntarily provide additional information in optional fields, such as email address. Similarly, SEC's comment forms require commenters to provide (1) first and last name, (2) email address, and (3) the comment content, before a comment can be successfully submitted. The comment form also allows commenters to voluntarily provide other information in optional fields, such as their city and state.

Agencies Accept Anonymous Comments

Regardless of the fields required by the comment form, the selected agencies all accept anonymous comments in practice. Specifically, in the comment forms on Regulations.gov, ECFS, and SEC's website, a commenter can submit a comment under the name "Anonymous Anonymous," enter a single letter in each required field, or provide a fabricated address. In each of these scenarios, as long as a character or characters are entered into the required fields, the comment will be accepted. Further, because the APA does not require agencies to authenticate submitted identity information, neither Regulations.gov nor the agency-specific comment websites contain mechanisms to check the validity of identity information that commenters submit through comment forms.

As part of the Regulations.gov modernization effort, the Office of Information and Regulatory Affairs (within the Office of Management and Budget) and the Department of Justice proposed language for a disclosure statement on every comment form that would require the commenter to acknowledge that they are not using, without lawful authority, a means of identification of another person with any comment they are submitting. Commenters would be required to acknowledge their agreement with the statement before their comment could be submitted.

³¹As of April 2019, FCC is undertaking a reengineering effort to update ECFS, beginning with a discovery phase that involves, among other things, identifying system requirements that will help FCC meet APA requirements and improve the security of ECFS. According to FCC's Chief Information Officer (CIO), the discovery phase of the ECFS reengineering process began in the first quarter of fiscal year 2019 and is expected to be completed in May 2019. After the discovery phase, FCC will move to an implementation phase, which will include awarding a contract for the project, development and implementation of the new system, and going live with the new system. According to the CIO, the new system is expected to be completed by April 2020.

According to PMO officials, even with this disclosure statement, anonymous comments would still be permitted and accepted by Regulations.gov. This disclosure statement was proposed in response to allegations of comments being submitted to rulemakings on behalf of individuals without their permission. As of April 2019, this proposed language has not yet been approved by the Executive Steering Committee for Regulations.gov. However, the proposed disclosure statement would be provided on the Regulations.gov comment form, and it is unclear whether similar information would be made available to commenters submitting comments via email or mail.

In contrast to the other selected agencies, according to FCC officials, FCC rules require the submission of the commenter's name and mailing address, or the name and mailing address of an attorney of record. However, in March 2002, FCC initiated a rulemaking related to the submission of truthful statements to the commission.³² Among other issues, FCC sought comment on whether rulemaking proceedings should be subject to an already existing rule that prohibited the submission of written misrepresentations or material omissions from entities that are subject to FCC regulation. In its final rule, issued in March 2003, FCC decided to continue to exempt comments to rulemakings from this rule because of the potential that such a requirement would hinder full and robust public participation in such policy-making proceedings by encouraging disputes over the truthfulness of the parties' statements.³³ According to FCC officials, to comply with APA requirements, the commission tries to minimize barriers that could prevent or discourage commenters from participating in the commenting process, and in practice accepts anonymous comments. See figure 3 for an example of an anonymous comment in ECFS.

³²67 Fed. Reg. 10,658 (Mar. 8, 2002).

³³68 Fed. Reg. 15,096 (Mar. 28, 2003).

Figure 3: Example of Anonymous Comment Submitted to the Electronic Comment Filing System

Anonymous comment submissions

An interested party can submit a comment under the name “Anonymous Anonymous,” enter a single letter in the name field, or provide a fabricated address. In each of these scenarios, as long as some characters are entered into the webform, Electronic Comment Filing System (ECFS) will accept the submission.



Filing Detail			
ID	1130868926637	Proceeding	17-108
Name of Filer	Commenter Name	Filing Status	DISSEMINATED
Type of Filing	COMMENT	Viewing Status	
Unrestricted			
Date Received	Nov 30, 2017	Date Posted	Dec 1, 2017
Address	123 Nunya Business	City	Anytown State
IL	ZIP	54321	
Brief Comment	I just want to say that I fully support Net Neutrality backed by Title II oversight. This is big issue for many people, like myself, who have only one or two ISPs to choose from. You are betraying people who have no other alternatives for the greed of mega-corporations. This will not be forgotten.		

Fabricated address

Source: GAO analysis of ECFS information. | GAO-19-483

Note: We did not include the identity information associated with these comments other than the address, which is obviously fabricated.

Additionally, in our survey of program offices with rulemaking responsibilities at selected agencies, 39 of 52 offices reported that they received anonymous comments on some rulemakings for which their office has been responsible since 2013. The remaining 13 offices responded that they did not receive or were unaware of receiving anonymous comments, though most of these offices do not have high levels of rulemaking activity or receive a high volume of comments.³⁴

³⁴Specifically, eight of the 13 program offices reported that the largest rulemaking for which they were responsible during the period received fewer than 500 comments. Further, nine of the 13 also reported that their office solicits comments on five or fewer rulemaking proceedings in a typical year.

Regulations.gov and Agency-Specific Comment Websites Collect Some Information about Public Users' Interaction

Regulations.gov and agency-specific comment websites also collect some information about public users' interaction with their websites through application event logs and proxy server logs.³⁵ This information, which can include a public user's Internet Protocol (IP) address, browser type and operating system, and the time and date of webpage visits, is collected separately from the comment submission process as part of routine information technology management of system security and performance. The APA does not require agencies to collect or verify this type of information as part of the rulemaking process.

Regulations.gov collects some information from commenters accessing the website but it is never linked to any specific comment. In Regulations.gov, proxy server logs capture information such as the country from which a user accesses the site, the user's browser type and operating system, and the time and date of each page visit on the website. According to PMO officials, this information is provided to the eRulemaking PMO in summary statistics that are used to assess what information is of least interest to Regulations.gov visitors, determine technical design specifications of the website, and identify system performance problems. This information is collected about all public users visiting Regulations.gov, regardless of whether they submit a comment. Further, because the PMO receives this information in the form of summary statistics, it cannot be connected to any specific comment. The eRulemaking PMO also monitors IP addresses that interact with Regulations.gov via security firewalls, but, according to PMO officials, the web application firewall (WAF) logs (a type of application event log) have never been connected to specific comments, though in some cases the

³⁵Application event logs are generated by applications running on servers, end-user devices, or the web. One type of application event log is a web application firewall (WAF) log, which logs information about adverse events that triggered the firewall, including the type of threat identified by the firewall, date/time stamp, IP address, and relevant Uniform Resource Locator (URL). A proxy server log contains requests made by users and applications on a network. Proxy servers provide an application-level gateway intermediary typically between a user client web browser seeking resources from application servers. The proxy server may provide services related to, for example, implementing internet access controls such as in blocking access to websites with known security risks.

URL the blocked user was attempting to access may be captured in the log.³⁶

FCC officials stated that the current ECFS application architecture does not facilitate FCC identifying the source IP address of the submitter of a specific comment filed in ECFS. FCC collects information about public users' interactions with ECFS through its web-based application proxy server logs, including the IP address from which a user accesses the site and the date and time of the user's interaction. However, ECFS does not obtain or store IP addresses as part of the comment data it collects when a public user ultimately submits a comment. Within the current architecture, ECFS would require officials to match date and time stamps from the proxy server log to the ECFS comment data to connect a given IP address to a specific comment.³⁷

SEC officials stated it would be difficult to match the large number of daily hits to their general website to the much smaller number of comments submitted to their rulemaking proceedings. SEC collects information about public users' interactions with the SEC.gov website through proxy server logs, including the IP address from which a user accesses the website and the user's date, time, and URL requests. However, according to officials, a public user never directly interacts with the Comment Letter Log, and none of the information from the proxy log is included as part of the data it collects in association with comment submissions.³⁸ Despite this difficulty, SEC officials stated that linking the proxy log data from the general SEC.gov website to a specific comment in the Comment Letter Log could be done on a case-by-case basis.

³⁶An IP address is a code that identifies a computer network or a particular device on a network, consisting of four numbers separated by periods. There are many ways to obscure IP addresses, such as by using a Virtual Private Network, which is a program that creates a safe and encrypted connection over a less secure network, such as the public internet. A URL is the address of a resource on the internet. According to PMO officials, the firewalls are monitored for IP address activity that may be indicative of a denial of service attack, which is a cyberattack in which the perpetrator seeks to make a machine or network resource unavailable to its intended users by temporarily or indefinitely disrupting services of a host connected to the internet.

³⁷Until the discovery phase of the ECFS reengineering effort is completed in May 2019, officials could not comment on whether this issue would be addressed by the new system.

³⁸Specifically, when a commenter submits a comment using the comment form on SEC.gov, officials receive that comment and its associated identity information as an email, which is then entered into the Comment Letter Log by SEC staff.

Most Selected Agencies Have Some Internal Guidance Related to Commenter Identity

Seven of 10 selected agencies have documented some internal guidance associated with the identity of commenters during the three phases of the public comment process, but the substance of this guidance varies, reflecting the differences among the agencies and their respective program offices.³⁹ For example, as shown in table 3, BLM has no internal guidance related to identity information, while CFPB has internal guidance related to the comment intake and response to comments phases.

Table 3: Presence of Internal Agency Identity-Related Guidance Associated with the Public Comment Process

Agency	Comment intake	Comment analysis	Response to comments
Bureau of Land Management	No	No	No
Centers for Medicare & Medicaid Services	No	Yes	Yes
Consumer Financial Protection Bureau	Yes	No	Yes
Employee Benefits Security Administration ^a	Yes	Yes	Yes
Environmental Protection Agency	Yes	No	No
Federal Communications Commission	No	No	No
Fish and Wildlife Service	No	No	No
Food and Drug Administration	No	Yes	Yes
Securities and Exchange Commission	Yes	No	No
Wage and Hour Division ^a	Yes	Yes	Yes

Source: GAO analysis of agency data. | GAO-19-483

^aThe Employee Benefits Security Administration and Wage and Hour Division provided GAO with Department of Labor guidance that applies to all agencies within the department.

³⁹As used in this report, “guidance” refers to documented items such as internal standard operating procedures and training materials designed to assist agency staff in carrying out their daily responsibilities. We are not referring to formal guidance documents, defined by the Office of Management and Budget as an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statutory or regulatory issue.

For selected agencies that have guidance associated with the identity of commenters, it most frequently relates to the comment intake or response to comment phases of the public comment process. The guidance for these phases addresses activities such as managing duplicate comments (those with identical or near-identical comment text but varied identity information) or referring to commenters in a final rule. In addition, some agencies have guidance related to the use of identity information during comment analysis. Agencies are not required by the APA to develop internal guidance associated with the public comment process generally, or identity information specifically. For the three selected agencies that did not have identity-related guidance for the public comment process, cognizant officials told us such guidance has not been developed because identity information is not used as part of their rulemaking process. For example, BLM officials stated that the only instance in which identity information would be considered is when threatening comments are referred to law-enforcement agencies.

Identity-Related Guidance for Comment Intake

According to our analysis of the internal guidance the selected agencies provided, five of the 10 agencies have documented identity-related guidance associated with the comment intake phase. (See table 4.) Identity-related guidance for the comment intake phase addresses posting comments and their associated identity information to public comment websites. The guidance generally falls into two categories: (1) the treatment of duplicate comments (those comments with identical or near-identical content, but unique identity information) and (2) the management of comments reported to have been submitted using false identity information.

Table 4: Presence of Agency Identity-Related Guidance Associated with Comment Intake

Agency	Duplicate comments	Comments with potentially false identity information
Bureau of Land Management	No	No
Centers for Medicare & Medicaid Services	No	No
Consumer Financial Protection Bureau	Yes	Yes
Employee Benefits Security Administration ^a	Yes	Yes
Environmental Protection Agency	Yes	Yes
Federal Communications Commission	No	No
Fish and Wildlife Service	No	No
Food and Drug Administration	No	No
Securities and Exchange Commission	No	Yes
Wage and Hour Division ^a	Yes	Yes

Source: GAO analysis of agency data. | GAO-19-483

^aThe Employee Benefits Security Administration and Wage and Hour Division provided GAO with Department of Labor guidance that applies to all agencies within the department.

Duplicate Comments

Four of the 10 selected agencies have documented guidance on defining and posting duplicate comments, which may also be referred to as mass mail campaigns.⁴⁰ However, in accordance with the discretion afforded them under the APA, agency definitions of duplicate comments and recommendations on how to manage them during comment intake vary.⁴¹ Specifically, for EBSA and WHD—the selected agencies within the Department of Labor (DOL)—one comment letter with multiple signers is considered one comment, while the same comment submitted by multiple signers as separate letters is counted separately. In both cases, however, each individual signer may provide unique identity information. In contrast, EPA guidance states that mass mail submissions often include attachments containing either bundled duplicate messages or a single

⁴⁰For example, EPA established a document subtype of “Mass Mail Campaign” in FDMS, and refers to duplicate comments as those belonging to mass mail campaigns.

⁴¹As discussed previously in this report, the APA requires that agencies consider the significant issues raised in the comments, not the total number of comments received in favor of or opposed to a particular rulemaking proceeding.

comment with multiple signatures. For EPA, each signature is counted as a duplicate comment submission.

As of February 2019, CFPB's draft guidance does not explicitly define duplicate comments, but it does note that "duplicate identical submissions" are not subject to the agency's policy of posting all comments. Instead, the official responsible for managing the docket during comment intake may remove duplicate comments from posting or decide not to post them. According to CFPB officials, this policy is only applicable to comments that contain entirely identical comment content and identity information, and does not apply to mass mailing campaigns. Similarly, when DOL agencies receive duplicate comments as part of mass mail campaigns, the agency can choose to post a representative sample of the duplicate comment to Regulations.gov along with the tally of the duplicate or near-duplicate submissions, or post all comments as submitted. EPA guidance states that duplicate comments submitted as part of mass mailings are to be posted as a single primary document in Regulations.gov with a tally of the total number of duplicate comments received from that campaign. However, as discussed later in this report, EPA may post all duplicate comments it receives, depending on the format in which they are submitted.

Comments with Potentially False Identity Information

Five of the 10 selected agencies have documented internal guidance on how to manage posting comments that may have been submitted by someone falsely claiming to be the commenter. However, the procedures related to addressing comments with potentially false identity information also vary among agencies. For EBSA and WHD, guidance from DOL states that if a comment was submitted by someone falsely claiming to be the commenter, the identifying information is to be removed from the comment and the comment is treated as anonymous and remains posted.⁴² In cases where an individual claims that a comment was submitted to CFPB or SEC using the individual's identity information without his or her consent, both agencies' guidance provide staff with discretion to redact, reattribute, or otherwise anonymize the comment letter in question.⁴³

⁴²DOL guidance does not indicate how officials determine that a comment was submitted using false identity information.

⁴³CFPB's guidance is in draft form as of February 2019, and may be subject to further revision.

According to internal guidance from CFPB, EPA, and SEC, if agency officials are able to confirm that a comment was submitted by someone falsely claiming to be the commenter, such as by the agency sending an email to the address associated with the comment, the comment may not be made available to the public. SEC officials stated that although they have discretion to remove the comment from public posting, the typical response is to encourage the individual making the claim to submit another comment correcting the record. Similarly, if a member of the public contacts EPA claiming that a comment was submitted using his or her identity information without consent and agency staff cannot confirm it, EPA guidance directs staff to ask the requester who submitted the claim to submit another comment to the docket explaining that the original comment was submitted without the individual's consent. Both comments will be included in the docket.⁴⁴

Identity-Related Guidance for Comment Analysis

According to our analysis of the guidance the selected agencies provided, four of the 10 agencies have identity-related guidance for the comment analysis phase (see table 5). Identity-related guidance for the comment analysis phase includes criteria for coding comments for analysis, including by identifying the type of commenter (such as an individual or interest group).

⁴⁴According to FCC officials, the agency developed a similar policy for the Restoring Internet Freedom NPRM. Specifically, when FCC received a claim from a member of the public that a comment was submitted to the Restoring Internet Freedom NPRM using his or her identity information without the individual's consent, officials directed the individual to enter the complaint as a new comment, but did not remove the original comment.

Table 5: Presence of Agency Identity-Related Guidance Associated with Comment Analysis

Agency	Comment analysis
Bureau of Land Management	No
Centers for Medicare & Medicaid Services	Yes
Consumer Financial Protection Bureau	No
Employee Benefits Security Administration ^a	Yes
Environmental Protection Agency	No
Federal Communications Commission	No
Fish and Wildlife Service	No
Food and Drug Administration	Yes
Securities and Exchange Commission	No
Wage and Hour Division ^a	Yes

Source: GAO analysis of agency data. | GAO-19-483

^aThe Employee Benefits Security Administration and Wage and Hour Division provided GAO with Department of Labor guidance that applies to all agencies within the department.

Specifically;

- CMS guidance states that, during review, comments should be separated by issue area and tables may be used to assist in the grouping of comments and preparing briefing materials. While this guidance notes that these tables may be used to group commenters based on their identity during review, when summarizing comments later in the process the guidance indicates that CMS officials should avoid identifying commenters by name or organization.
- FDA training materials address how to prepare comment summaries to help ensure the agency has properly identified all comments regarding an issue. To conduct a quality-control check on the comment review process, FDA sorts the comments by commenter and reviews the comments from a sample of key stakeholders, including interested trade associations and consumer or patient groups, to confirm that relevant issues were identified.
- For EBSA and WHD, guidance from DOL recommends attaching the “organization name” to comments within a docket to improve transparency and help the agency and public users search for organizations within Regulations.gov. In addition, DOL guidance

suggests flagging comments for additional review, including at least one flag based on identity.⁴⁵

Identity-Related Guidance for Responding to Comments

According to our analysis of the guidance the selected agencies provided, five of the 10 agencies have documented identity-related guidance for responding to comments. (See table 6.) Identity-related guidance for the response to comments phase includes guidance for agency officials on how, if at all, to address identity information related to comments in developing the final rule.

Table 6: Presence of Agency Identity-Related Guidance Associated with Responding to Comments

Agency	Response to comments
Bureau of Land Management	No
Centers for Medicare & Medicaid Services	Yes
Consumer Financial Protection Bureau	Yes
Employee Benefits Security Administration ^a	Yes
Environmental Protection Agency	No
Federal Communications Commission	No
Fish and Wildlife Service	No
Food and Drug Administration	Yes
Securities and Exchange Commission	No
Wage and Hour Division ^a	Yes

Source: GAO analysis of agency data. | GAO-19-483

^aThe Employee Benefits Security Administration and Wage and Hour Division provided GAO with Department of Labor guidance that applies to all agencies within the department.

Specifically;

- As discussed previously, during comment analysis, CMS guidance indicates that officials should avoid identifying commenters by name or organization when summarizing comments. These summaries may then be used as a basis for the agency's formal comment summary included in the preamble of the final rule.
- CFPB guidance states that a summary of the rulemaking process should be developed for the preamble of the final rule and include

⁴⁵Specifically, DOL guidance instructs officials to flag any comments submitted by members of Congress.

how many comments are received and from which type of commenter. CFPB is to describe both the commenters and comments in general terms rather than identify commenters by name or entity. For example, rather than naming a specific financial institution, CFPB may refer to “industry commenters” in the final rule.

- For EBSA and WHD, guidance from DOL states that when several commenters suggest the same approach to revising or modifying the proposed rule, the names of specific commenters can be cited as a list in a footnote. When choosing which commenter should appear first in the list, DOL agencies are to select the commenter with the strongest or most detailed discussion on the issue. However, it is not necessary to always identify commenters by name, and, according to DOL officials, the department’s general practice is not to do so. Instead, the agency may use phrases such as “several commenters,” or “comments by the ABC Corporation and others.” DOL agencies may also reference commenters by type rather than name, using terms including “municipal agency, state workforce agency, employer, academic representative, agency, and industry,” among others.
- FDA training materials recommend that the final rule include a very brief explanation of the number and scope of comments to the proposed rule, including who submitted them. Commenters are not identified as individuals, but rather by commenter type, such as trade associations, farms, or consumer advocacy organizations, among others.

Selected Agencies’ Treatment of Identity Information Collected during the Public Comment Process Varies

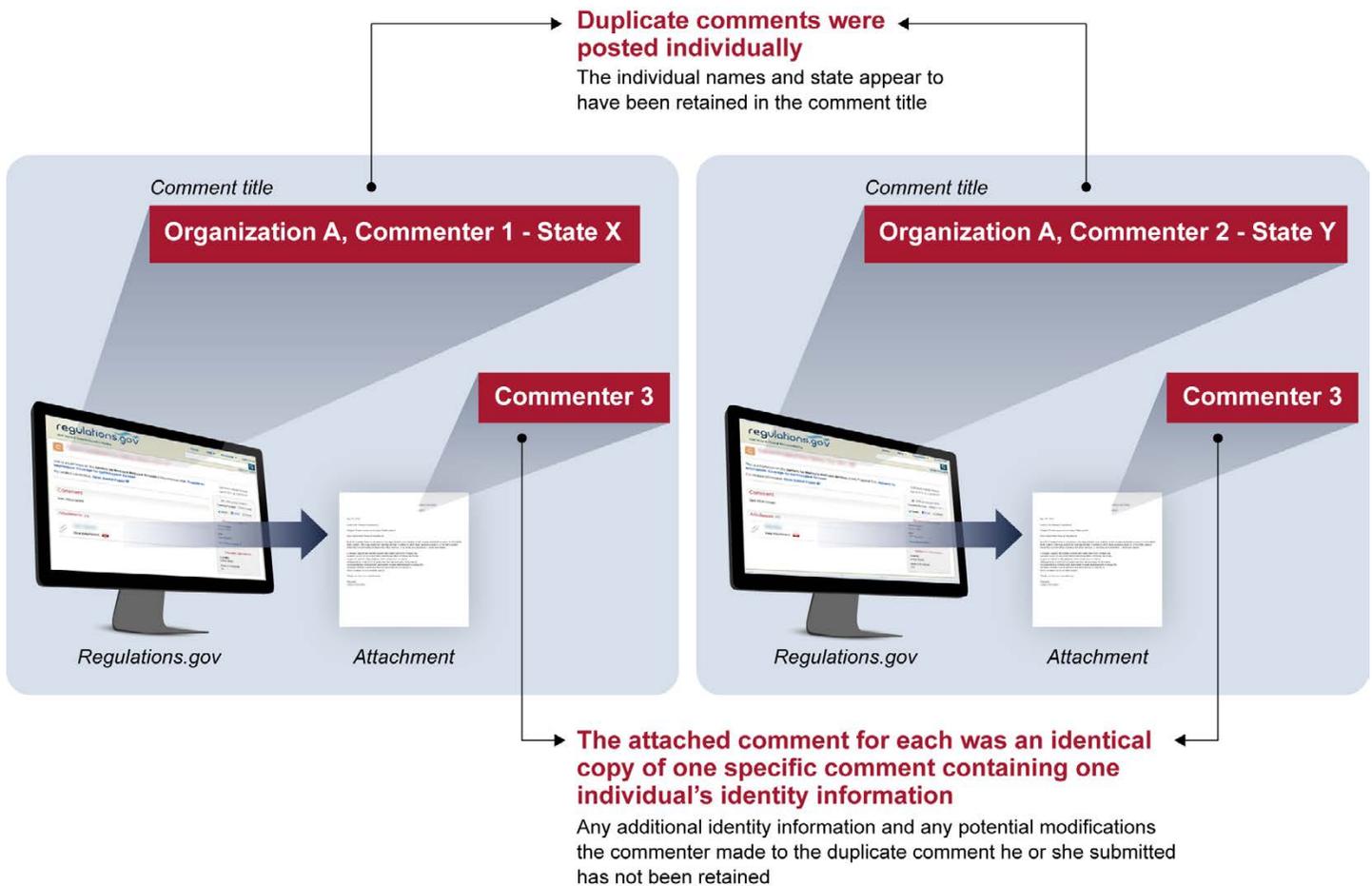
Within the discretion afforded by the APA, the 10 selected agencies’ treatment of identity information during the comment intake, comment analysis, and response to comments phases of the public comment process varies. Selected agencies differ in how they treat identity information during the comment intake phase, particularly in terms of how they post duplicate comments, which can lead to identity information being inconsistently presented to public users of comment systems. Selected agencies’ treatment of identity information during the comment analysis phase also varies. Specifically, program offices with responsibility for analyzing comments place varied importance on identity information during the analysis phase. All agencies draft a response to comments with their final rule, but the extent to which the agencies identify commenters or commenter types in their response also varies across the selected agencies.

Selected Agencies Vary in Their Treatment of Identity Information during the Comment Intake Phase

Within the discretion afforded by the APA and E-Government Act, selected agencies vary in how they treat identity information during the comment intake phase, which includes identifying duplicate comments and posting comments to the public website. Further, the way in which the selected agencies treat comments during the comment intake phase results in identity information being inconsistently presented on the public website. Generally, officials told us that their agencies either (1) maintain all comments within the comment system, or (2) maintain some duplicate comment records outside of the comment system, for instance, in email file archives. Specifically, officials from four selected agencies (CMS, FCC, FDA, and WHD) stated that they maintain all submitted comments in the comment system they use. Officials from the other six agencies (BLM, CFPB, EBSA, EPA, FWS, and SEC) stated that their agencies maintain some comment records associated with duplicate comments outside of the comment system.

Among the four agencies that maintain all submitted comments within their comment system, our review of comment data showed that practices for posting duplicate comments led to some identity information or comment content being inconsistently presented on the public website. For example, according to CMS officials responsible for comment intake, CMS may post all duplicate comments individually, or post duplicate comments in batches. When duplicate comments are posted in batches, the comment title will include the name of the submitting organization followed by the total number of comments. However, as discussed previously, CMS does not have any documented policies or guidance associated with the comment intake process, and we identified examples where the practices described by CMS officials differed. On one CMS docket, for instance, staff entered more than 37,000 duplicate comments individually, with the commenter's name and state identified in the comment title. However, the attached document included with each of the posted comments was an identical copy of one specific comment containing a single individual's identity information. While all the individual names appear to have been retained in the comment titles, and the count of total comments is represented, any additional identity information and any potential modifications made to each duplicate comment submitted have not been retained either online or outside of FDMS, and are not presented on the public website. (See fig. 4.)

Figure 4: Example of How the Centers for Medicare & Medicaid Services Posts Duplicate Comments

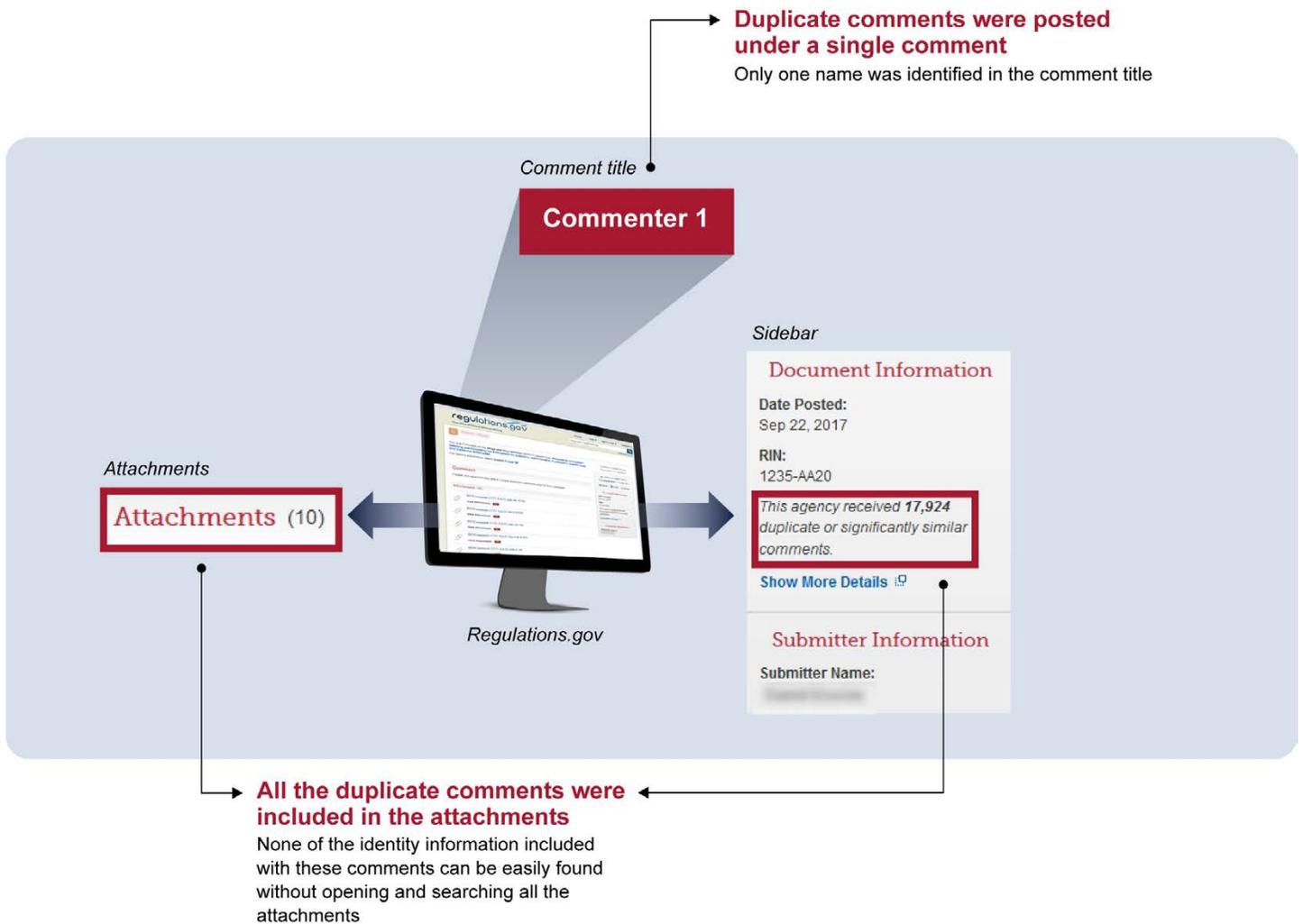


Source: GAO analysis of Regulations.gov information. | GAO-19-483

Note: We did not include the identity information associated with these comments. Instead, each unique piece of identity information is identified by a different number or letter.

Similarly, although our analysis of WHD comments did not suggest that any comments were missing from Regulations.gov, on one WHD docket almost 18,000 duplicate comments were associated with a single comment with one individual's name identified in the comment title. While all of the comments are included within 10 separate attachments, none of the identity information included with these comments can be easily found without opening and searching all 10 attachments, most of which contain approximately 2,000 individual comments. (See fig. 5.)

Figure 5: Example of How the Wage and Hour Division Posts Duplicate Comments



Source: GAO analysis of Regulations.gov information. | GAO-19-483

Note: We did not include the identity information associated with these comments. Instead, each unique piece of identity information is identified by a different number or letter.

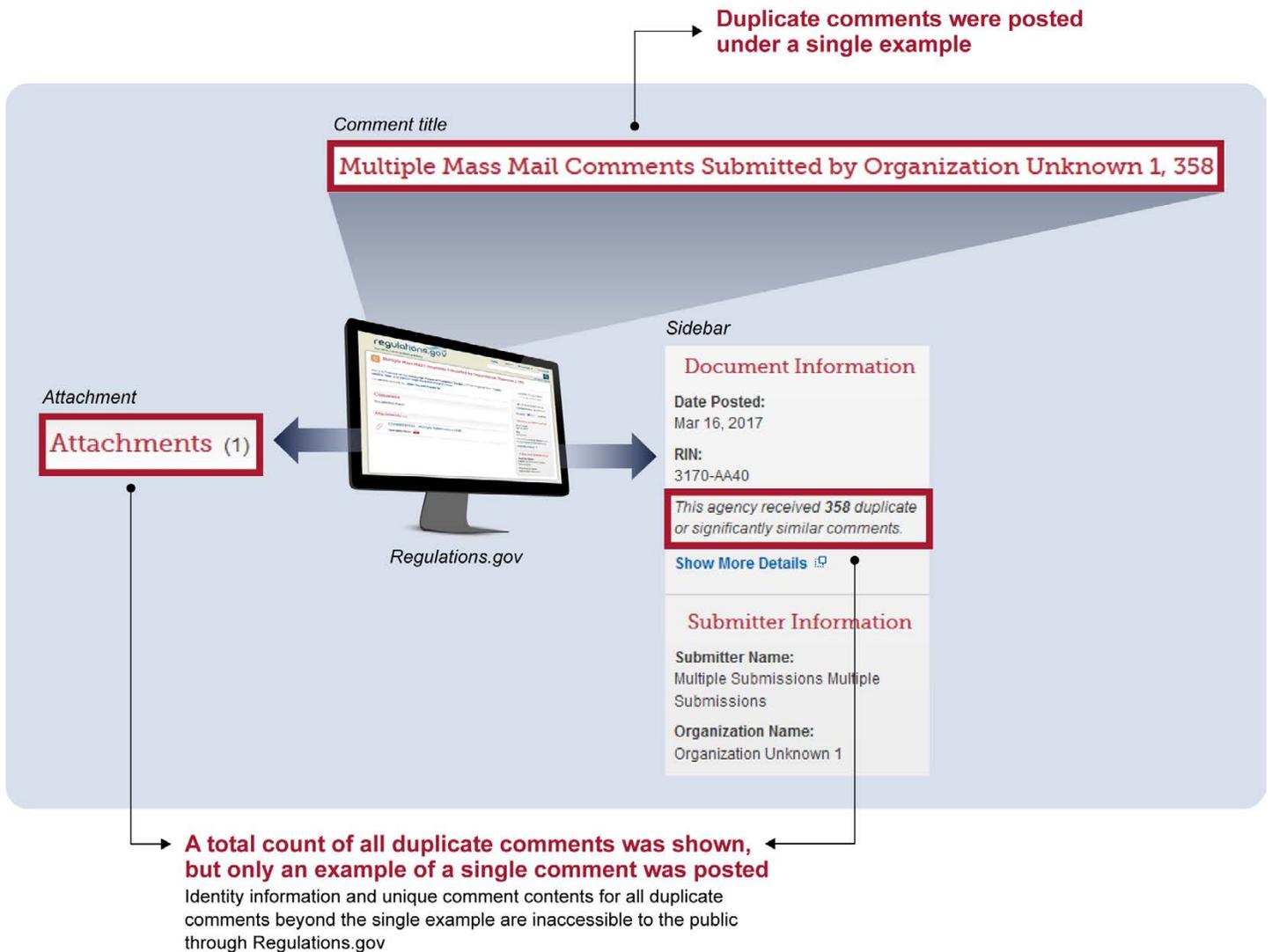
Our review of comment data showed that the selected agencies that maintain some comment records outside of the comment system (six of 10) also follow practices that can inconsistently present some identity information or comment content associated with duplicate comments. For BLM and FWS, agency officials responsible for comment intake stated that all comments received through Regulations.gov are posted, but a single example may be posted when duplicate paper comments are

received.⁴⁶ As discussed previously, neither BLM nor FWS have internal guidance or policy associated with comment intake. For CFPB, EBSA, EPA, and SEC, the agency may post a single example along with the total count of all duplicate comments, but does not necessarily post all duplicate comments online. Thus, identity information and unique comment contents for all duplicate comments may not be present on the public website. For example, on one CFPB comment, the agency posted an example of a submitted comment containing only the submitter's illegible signature.⁴⁷ None of the other associated identity information for the posted sample, or any of the duplicate comments, is included in the comment data. (See fig. 6.)

⁴⁶According to BLM officials, although this is the agency's practice, there have been some instances where a technical issue with FDMS has prevented them from publicly posting all duplicate comments submitted through Regulations.gov.

⁴⁷According to CFPB officials, they anticipate finalizing a new policy related to how duplicate comments are treated that would result in all comments being posted.

Figure 6: Example of How the Consumer Financial Protection Bureau Posts Duplicate Comments

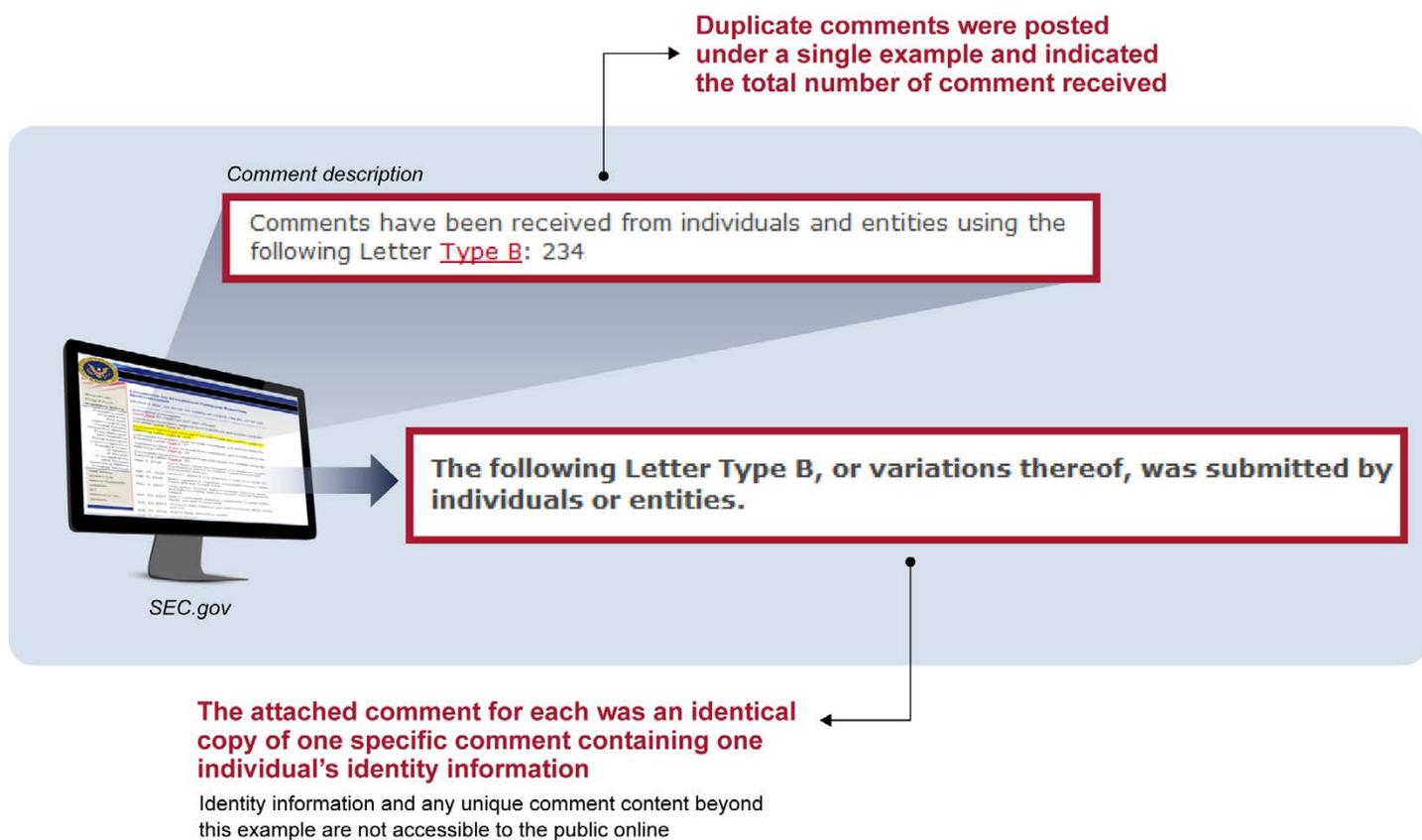


Source: GAO analysis of Regulations.gov information. | GAO-19-483

Similarly, for all duplicate comments received, SEC posts a single example for each set of duplicate comments and indicates the total number of comments received. As a result, the identity information and

any unique comment content beyond the first example are not present on the public website.⁴⁸ (See fig. 7.)

Figure 7: Example of How the Securities and Exchange Commission Posts Duplicate Comments



Source: GAO analysis of Securities and Exchange Commission information. | GAO-19-483

The Importance of Identity Information to Comment Analysis Varies

On the basis of the results from our survey, program offices with responsibility for analyzing comments differ in the importance they place on identity information during the analysis phase. Because subject-matter experts are responsible for reviewing public comments and considering whether changes to the proposed rule should be made, program offices generally analyze comments. Officials from all but one of the 52 program

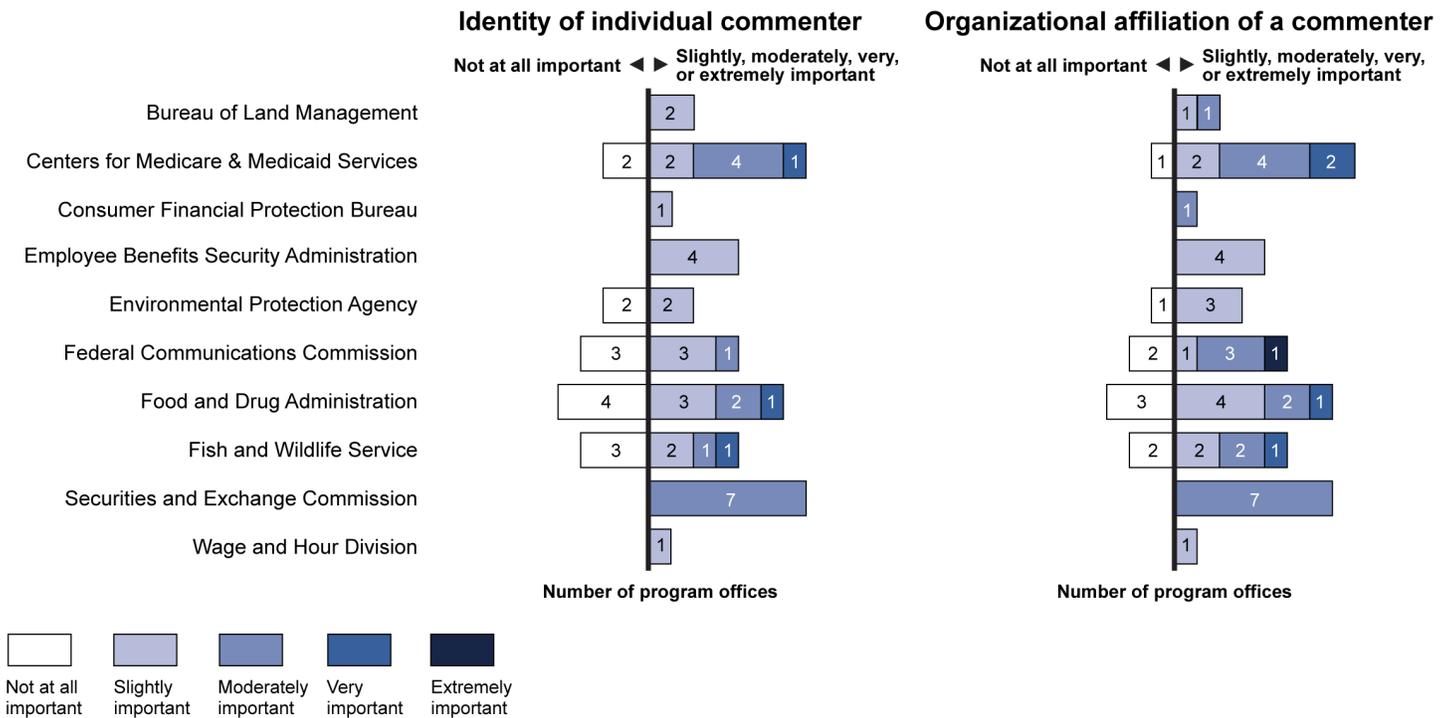
⁴⁸According to SEC officials, if the unique content includes an argument distinguishing it from the other duplicate comments, it will be counted and posted separately.

offices we surveyed responded that they were responsible, in whole or in part, for analyzing public comments.⁴⁹

In our survey of program offices with regulatory responsibilities in the 10 selected agencies, at least one program office in each agency reported that the identity or organizational affiliation of a commenter is at least slightly important to comment analysis. Additionally, five of the 10 selected agencies (CMS, EPA, FCC, FDA, and FWS) had at least one program office that reported that the identity or organizational affiliation of a commenter is not at all important to comment analysis. None of the 52 program offices we surveyed responded that the identity of an individual commenter is extremely important to their analysis, while only one program office responded that the commenter's organizational affiliation is extremely important to its analysis. (See fig. 8.)

⁴⁹Officials from one program office within EPA responded that they are not responsible for analyzing public comments, but noted this responsibility is shared between program offices and a work group.

Figure 8: The Importance of Individual Commenter Identity and Organizational Affiliation to Comment Analysis



Source: GAO analysis of survey data. | GAO-19-483

According to officials we interviewed from eight of the 10 selected agencies, the substance of the comment is considered during analysis rather than the submitted identity information.⁵⁰ Officials from six of these agencies emphasized that because the agency accepts anonymous comments, identity is not relevant to their analysis of comments. However, officials from four of the eight selected agencies stated that, in certain instances, identity information may be noted. In the case of FDA, officials explained that commenters are required to indicate a category to which they belong, such as “individual consumer” or “academia.” According to FDA officials, however, these categories were used to assist in writing the comment response, rather than informing the analysis. Officials from the Department of the Interior’s Office of the Solicitor (responsible for part of the comment process at BLM and FWS) stated

⁵⁰During our interview with CFPB officials at the agency level, officials did not comment on whether identity information was considered during comment analysis.

that the agency may make particular note of comments submitted by a law firm, as these comments can help the agency understand the position of the law firm and to prepare a defense in the event that a lawsuit is filed. Similarly, officials from EPA stated that they are familiar with many commenters and their positions on certain issues, due to prior legal interactions. In another example of how an agency may consider the identity of a commenter, officials from FWS stated that when scientific data are provided in support of a comment, subject-matter experts will verify the data and their source.

Selected Agencies Differ in How They Identify Commenters When Responding to Comments

All selected agencies draft a response to comments with their final rule, but the extent to which the agencies identify commenters in their response varies. In our survey of program offices with regulatory responsibility, officials from 51 of 52 offices stated that they are responsible in whole or in part for responding to comments.⁵¹ Of those responsible, at least one program office from eight of the 10 agencies (28 of 52 offices) reported that they identified comments by commenter name, organization, or comment ID number in the response to comments for at least some rulemakings since 2013.⁵² In the case of WHD, officials we interviewed explained that when they discuss a specific comment in the preamble to the final rule, they provide the name of the organization that submitted the comment so that anyone interested in locating the response to the comment may do so easily.

We found that EBSA and FCC also identified commenters by individual or organizational name in their response to comments, while EPA referred to comments by their comment ID number. For example, in a rule finalized in 2018, EPA referred to comment ID numbers in the response to comments: “Two comments: EPA-R06-RCRA-2017-0556-0003 and EPA-R06-RCRA-2017-0556-0005 were submitted in favor of the issuance of the petition.” EPA officials noted that there is variation within the agency in terms of how commenters are identified when the agency is responding to comments, and there may be some situations where the commenter is identified by name.

⁵¹Officials from one program office within EPA responded that their office is not responsible for responding to public comments, but noted this responsibility is shared between program offices and a work group.

⁵²For participating agencies, a comment ID number is also known as a document ID. This is the unique identifier established for a document and includes the agency acronym, the year created, the docket, and the document number.

Officials from all program offices within CFPB and BLM responded to the survey that they never identified comments by commenter name, organization, or comment ID in their responses to public comments. In its response to comments in a 2014 final rule, for example, CFPB stated that “industry commenters also emphasized the need to coordinate with the States,” without specifying the organization or specific comments. Similarly, in its response to comments document for a 2016 rule, for example, BLM responded directly to the themes and issues raised by comments while stating that the issue was raised by “one commenter” or “some commenters.”

Selected Agencies’ Practices Associated with Posting Identity Information Are Not Clearly Communicated to Public Users of Comment Websites

The 10 selected agencies have implemented varied ways of posting identity information during the comment intake process, particularly regarding posting duplicate comments, as allowed by the APA. Our analysis of Regulations.gov and agency-specific comment websites shows that these practices are not always documented or clearly communicated to public users of the websites. Public users are members of the public interested in participating in the rulemaking process via Regulations.gov or agency-specific websites. They may or may not submit a comment. In part to facilitate effective public participation in the rulemaking process, the E-Government Act requires that all public comments and other materials associated with the rulemaking docket should be made “publicly available online to the extent practicable.” There may be situations where it is not practicable to post all submitted items, for example when resource constraints prevent the scanning and uploading of thousands of duplicate paper comments. Because the content of such comments is still reflected in the administrative record, such practices are not prohibited by the APA or the E-Government Act.

However, key practices for transparently reporting open government data state that federal government websites—like those used to facilitate the public comment process—should fully describe the data that are made available to the public, including by disclosing data sources and limitations.⁵³ This helps public users make informed decisions about how to use the data provided. In the case of identity information submitted with public comments, for example, public users may want to analyze identity information to better understand the geographic location from which comments are being submitted, and would need information about the

⁵³[GAO-19-72](#).

availability of address information to do so. The Administrative Conference of the United States has made several recommendations related to managing electronic rulemaking dockets.⁵⁴ These include recommendations that agencies disclose to the public their policies regarding the treatment of materials submitted to rulemaking dockets, such as those associated with protecting sensitive information submitted by the public.⁵⁵

As described earlier in this report, the varied practices that selected agencies use with regard to identity information during the public comment process results in the inconsistent presentation of this information on the public websites, particularly when it is associated with duplicate comments. Although the APA and E-Government Act do not include any requirements associated with the collection or disclosure of identity information, we found that the selected agencies we reviewed do not effectively communicate the limitations and inconsistencies in how they post identity information associated with public comments. As a result, public users of the comment websites lack information related to data availability and limitations that could affect their ability to use the comment data and effectively participate in the rulemaking process themselves.

⁵⁴The Administrative Conference of the United States was established by statute in 1964 as an independent agency of the federal government. Its purpose is to promote improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies conduct regulatory programs, administer grants and benefits, and perform related governmental functions.

⁵⁵78 Fed. Reg. 41,352, 41,360 (July 10, 2013).

Selected Agencies’
Practices Associated with
Posting Identity
Information on
Regulations.gov Vary and
Are Not Clearly
Communicated to Public
Users

Public users of Regulations.gov seeking to submit a comment are provided with a blanket disclosure statement related to how their identity information may be disclosed, and are generally directed to individual agency websites for additional detail about submitting comments. The Regulations.gov disclosure statements and additional agency-specific details are provided on the comment form, and a user seeking to review comments (rather than submit a comment) may not encounter them on Regulations.gov.⁵⁶ Regulations.gov provides the following disclosure statement at the bottom of each comment submission form:

Any information (e.g., personal or contact) you provide on this comment form or in an attachment may be publicly disclosed and searchable on the Internet and in a paper docket and will be provided to the Department or Agency issuing the notice. To view any additional information for submitting comments, such as anonymous or sensitive submissions, refer to the Privacy Notice and User Notice, the Federal Register notice on which you are commenting, and the Web site of the Department or Agency.

Similar information is provided to all public users in the Privacy Notice, User Notice, and Privacy Impact Assessment for Regulations.gov and the eRulemaking Program.⁵⁷ While all of these note that any information, personal or otherwise, submitted with comments may be publicly disclosed, public users are not provided any further detail on Regulations.gov regarding what information, including identity information, they should expect find in the comment data.

We found that when Regulations.gov provides public users with additional agency-specific information about the comment intake process, including accepting and posting comments, it is typically provided in the context of the comment form and does not provide public users enough detail to

⁵⁶Agency-specific details may also be provided in the text of the NPRM, but when public users of Regulations.gov extract or search comment data, the comment data are presented in a consistent format, so it is not intuitive for a user to expect that different posting processes would be followed. In recent years, there have been several efforts in academic research and the media to conduct large-scale analyses of comment data. For example, Steven J. Balla et al., *Where’s the Spam? Mass Comment Campaigns in Agency Rulemaking*, working paper (The George Washington University Regulatory Studies Center: Apr. 2, 2018).

⁵⁷The Privacy Notice and User Notice disclose the ways in which Regulations.gov uses, discloses, and manages data associated with the website. The Privacy Impact Assessment is required by the E-Government Act of 2002, and provides public users with documented assurance that privacy issues associated with Regulations.gov have been identified and addressed.

determine what comment data will be available for use when searching comments that are already submitted. Specifically, each comment form contains a pop-up box under the heading “Alternate Ways to Comment,” which reflects the language associated with comment submission methods included in the NPRM on which individuals are seeking to comment. Additionally, three participating agencies in our review (EPA, FWS, and WHD) provide additional detail about posting practices on the comment form under the heading “Agency Posting Guidelines.”⁵⁸ Both FWS and WHD indicate that the entire comment, including any identifying information, may be made available to the public. Although WHD follows DOL policy associated with posting duplicate comments, which allows some discretion in posting practices, according to a WHD official, without exception, all comments are posted to Regulations.gov. In our review of WHD comment data, we did not identify instances where this practice was not followed.

The “Agency Posting Guidelines” provided by EPA inform public users that all versions of duplicate or near-duplicate comments as part of mass mail campaigns may not be posted; rather a representative sample will be provided, with a tally of the total number of duplicate comments received. (See fig. 9.)

⁵⁸The other five participating agencies in the scope of this report do not include any information under the “Agency Posting Guidelines.”

Figure 9: Example of Additional Disclosures about Comment Review and Posting Provided to Commenters on a Comment Form

Agency posting guidelines

Comments will be posted to www.regulations.gov and made available for in-person viewing at the Environmental Protection Agency (EPA) Docket Center's Public Reading Room in their entirety, including any personal information that is included in the body of the submission, with the following exceptions:

- EPA may not post to Regulations.gov all versions of materials that it deems to be a duplicate or near duplicate copies of a mass mail campaign. Instead, a representative sample is provided along with a tally of duplicate and near duplicate copies.
- Comments containing threatening language or profanity will be rejected without notice from the EPA.
- Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points the commenter wishes to make.
- The inclusion of any copyrighted material without accompanying proof of one's explicit right to redistribute that material will result in the comment being blocked from online viewing at Regulations.gov.

Regulations.gov

Source: GAO analysis of Regulations.gov information. | GAO-19-483

However, this information does not provide enough detail to help public users determine whether all of the individual comments and associated identity information are posted within this docket, because it indicates that samples are provided for duplicate comments, rather than all of the copies submitted. We found that one EPA docket received more than 350 separate sets of duplicate comments comprising a total of more than 4.3 million comments (as reported by Regulations.gov) but there is variation in how these comments were posted. Specifically, EPA inconsistently presented duplicate comments: 198 of the 350 duplicate comment sets in this docket were submitted via email. Of the duplicate comment sets

submitted via email, 45 sets have all comments posted in Regulations.gov, while 153 sets have a sample of the comments posted. According to EPA officials, this inconsistency results from the format in which the comments were submitted. For example, when duplicate comments are compiled into a single document and submitted to EPA through one email, all of the comments will be posted, whereas duplicate comments that are emailed separately will be accounted for in the tally accompanying a sample comment.

While the APA and the E-Government Act do not require comments to be posted in any particular way, EPA has established detailed internal guidance for the comment intake process for its Docket Center staff. This document is in draft form, but clearly lays out the processes EPA staff are expected to follow when duplicate comments are submitted in different ways, and what naming conventions will be used in different instances. However, EPA does not provide similar information to public users about the process it uses to determine whether all duplicate comments will be posted, making it challenging for public users to determine whether all comments are available on Regulations.gov.⁵⁹

Participating Agency Websites

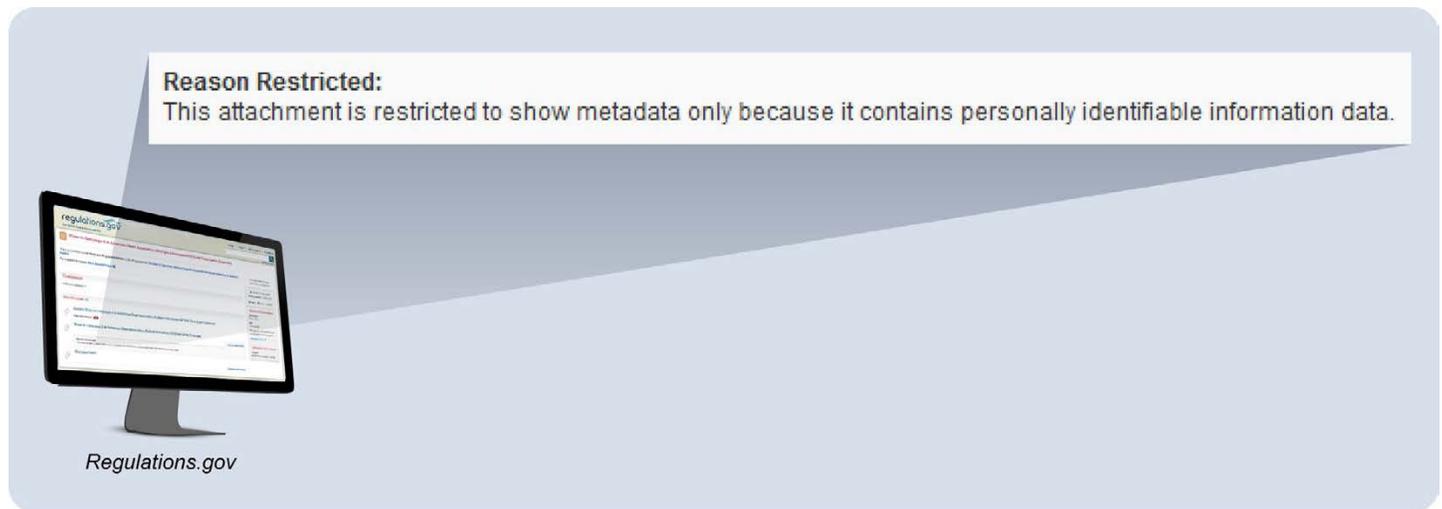
The eRulemaking PMO provides participating agencies with flexibility in how they choose to use FDMS and Regulations.gov, with each department or agency responsible for managing its own data within the website. As a result, Regulations.gov directs public users to participating agencies' websites for additional information about agency-specific review and posting policies. We found that all of the selected participating agencies provide additional information of some kind about the public comment process on their own websites. However, the provided information usually directs users back to Regulations.gov or to the *Federal Register*. Further, even when selected participating agencies include details on their website about the agency's posting practices or treatment of identity information associated with public comments, it does not fully describe data limitations that public users need to make informed decisions about how to use the data provided.

⁵⁹This challenge is not limited to the general public. To compile, review, and prepare a summary report related to the mass mail comments submitted to the docket discussed in this section, EPA officials reported that it took them approximately 55 hours. The compiled information included whether the comments were included in FDMS or not, the location of comments stored outside of FDMS, and the format of the comment submissions for each mass mail campaign.

Specifically, seven of the eight participating agencies (BLM, CMS, CFPB, EPA, FWS, FDA, and WHD) direct public users back to Regulations.gov and the *Federal Register*, either on webpages that are about the public comment process in general, or on pages containing information about specific NPRMs. As discussed previously, however, the disclosure statement on Regulations.gov directs public users to the agency website for additional information. Although three of these participating agencies (EPA, FWS, and FDA) do provide public users with information beyond directing them back to Regulations.gov or the *Federal Register*, only FDA provides users with details about posting practices that are not also made available on Regulations.gov.

- **EPA:** The additional information provided on EPA’s website largely replicates the “Agency Posting Guidelines” provided on the Regulations.gov comment form, as shown in figure 9. As discussed previously, however, the way in which EPA posts duplicate comments varies, and the provided information does not include details about the process the agency uses to determine whether all duplicate comments will be posted.
- **FWS:** One NPRM-specific web page that we identified communicated to public users that all comments will be posted on Regulations.gov, including any personal information provided through the process. This largely replicates the “Agency Posting Guidelines” provided on the Regulations.gov comment form, as well as language included in the NPRM itself. However, according to an FWS official, when the agency receives hard-copy duplicate comments through the mail, only one sample of the duplicate is posted publicly on Regulations.gov. FWS does not have any policies related to this practice and the information FWS provides to public users does not include details about how the agency determines which comment to post as the sample.
- **FDA:** On its general website, FDA includes a webpage titled, “Posting of Comments.” On this page, FDA provides users with a detailed explanation about a policy change the agency made in 2015 related to the posting of public comments submitted to rulemaking proceedings. Specifically, prior to October 2015, FDA did not publicly post comments submitted by individuals in their individual capacity. See figure 10.

Figure 10: Example Food and Drug Administration Explanation for a Comment Withheld from Public Posting



Source: GAO analysis of Regulations.gov information. | GAO-19-483

Note: Metadata summarize and describe the data contained in a dataset.

After October 15, 2015, FDA’s policy is to publicly post all comments to Regulations.gov, to include any identifying information submitted with the comment.⁶⁰ In our review of FDA comments submitted to dockets opened since October 15, 2015, we did not identify instances where this policy was not followed.

The one participating agency in our scope (EBSA) that does not direct public users back to Regulations.gov instead recreates the entire rulemaking docket on its own website. On the main EBSA webpage related to regulations, public users can find links to various websites related to rulemaking, including a “Public Comments” page, but not Regulations.gov.⁶¹ From the “Public Comments” page, public users can access pages that are specific to NPRMs and other activities for which

⁶⁰FDA provides an exception for commenters wishing to submit a comment containing confidential information. To do so, a commenter must submit a comment marked “confidential” by mail or hard-copy delivery, and also provide a redacted version suitable for public posting.

⁶¹Public users are directed to other webpages within the EBSA site, the *Federal Register*, the Electronic Code of Federal Regulations, and Reginfo.gov, which displays regulatory actions and information collections under review at the Office of Information and Regulatory Affairs within the Office of Management and Budget.

EBSA is requesting public comments.⁶² On the NPRM-specific webpages, the rulemaking docket that can be found on Regulations.gov is duplicated, including individual links to each submitted comment.⁶³ Certain document links, such as those for the proposed rule or final rule, direct a public user to the *Federal Register* document, but the comment links do not direct users to Regulations.gov.⁶⁴ While EBSA follows DOL guidance associated with posting duplicate comments, which allows some discretion in posting practices, EBSA does not have a policy for how comments are posted to Regulations.gov or its own website, and in the examples we reviewed the content of the docket pages does not always match. According to EBSA officials, the agency began this practice prior to the development of Regulations.gov, and has continued it because internal staff and other stakeholders find the webpages useful. However, we have previously reported that reducing or eliminating duplicative government activities can help agencies provide more efficient and effective services.⁶⁵

Further, on EBSA's "Public Comments" webpage, public users are informed that comments with inappropriate content will be removed, but no other information associated with EBSA's posting practices is provided on this general page. In one instance on an NPRM-specific webpage, public users are informed that identity information has been removed from certain comments due to the inclusion of personal health information, but most of the NPRM-specific webpages we reviewed did not include this disclosure. Additionally, duplicate comments are posted on the NPRM-specific webpages under the heading "Petitions," and are posted with a number following the title of the comment. While public users are informed that the number represents the total number of comments submitted, not all links include a copy of each individual comment. This practice aligns with DOL guidance, but as a result, the way in which

⁶²These include requests for information, which are not subject to APA Notice and Comment requirements.

⁶³Certain elements available on Regulations.gov are not readily available on the EBSA NPRM-specific page without clicking on additional documents. These include items such as relevant dates, Regulatory Information Number, and Code of Federal Regulations citations.

⁶⁴The *Federal Register* does include links to Regulations.gov.

⁶⁵Duplication occurs when two or more agencies or programs are engaged in the same activities or provide the same services to the same beneficiaries. See GAO's Duplication and Cost Savings web page: <http://www.gao.gov/duplication/overview>.

EBSA posts duplicate comments varies even within dockets, and the provided information does not include details about the process the agency uses to determine whether all duplicate comments will be posted. Additionally, because EBSA recreates rulemaking dockets on its own website without referencing Regulations.gov or explaining the process, public users lack assurance about how EBSA's data sources relate to one another.

Because participating agencies are not required to adhere to standardized posting practices, Regulations.gov directs public users to participating agency websites for additional information about posting practices and potential data limitations. However, the additional information provided on the selected agencies' websites is rarely different from what is provided on Regulations.gov. Further, it does not describe the limitations associated with the identity information contained in publicly posted comments, and in many cases simply directs users back to Regulations.gov. As allowed for under the APA, all of the participating agencies in our review vary in the way in which they post identity information associated with comments—particularly duplicate comments. However, the lack of accompanying disclosures may potentially lead users to assume, for example, that only one entity has weighed in on an issue when, actually, that comment represents 500 comments.

The APA, E-Government Act and relevant Executive Orders establish the importance of public participation in the rulemaking process, to include access to electronic rulemaking dockets in formats that can be easily searched and downloaded. Further, key practices for transparently reporting open government data state that federal government websites—like those used to facilitate the public comment process—should fully describe the data that are made available to the public, including by disclosing data sources and limitations.⁶⁶ Without better information about the posting process, the inconsistency in the way in which duplicate comments are presented to public users of Regulations.gov limits public users' ability to explore and use the data and could lead users to draw inaccurate conclusions about the public comments that were submitted and how agencies considered them during the rulemaking process.

⁶⁶[GAO-19-72](#).

Agency-Specific Comment Websites Do Not Clearly Communicate Posting Policies to Public Users

Both SEC and FCC use comment systems other than Regulations.gov and follow standardized posting processes associated with public comments submitted to their respective comment systems, but SEC has not clearly communicated these practices to the public. Although it appears to users of the SEC website that the agency follows a consistent process for posting duplicate comments, this practice has not been documented or communicated to public users of its website. As discussed earlier, SEC posts a single example for each set of duplicate comments and indicates the total number of comments received. As a result, the identity information and any unique comment content beyond the first example are not accessible to the public online. According to SEC officials, this practice is not documented in formal policy, and is not explicitly communicated to public users of the SEC's comment website. Although SEC does provide public users with some information on its "How to Submit Comments" page, this information is limited to informing public users that all comments will be posted publicly, without any edits to personal identifying information, and no other information related to SEC's posting process is provided. Without clearly communicated policies for posting comments, public users of SEC.gov do not have information related to data sources and limitations needed to determine whether and how they can use the data associated with public comments.

In contrast, FCC identifies its policies for posting comments and their associated identity information in a number of places on the FCC.gov website, and on the ECFS web page within the general website. Regarding comments submitted to rulemaking proceedings through ECFS, public users are informed that all information submitted with comments, including identity information, will be made public.⁶⁷ According to FCC officials, all comments are posted directly to ECFS as they are submitted, without intervention by FCC staff. Further, according to officials, all duplicate comments remain in ECFS as individual comments, unless an organization submits a Standard filing with an attached file containing multiple comments. Our review of ECFS comment data did not identify discrepancies with this practice.

⁶⁷In addition to posting policies associated with rulemaking proceedings, FCC also provides public users with information associated with other types of comments, such as submissions to FCC's consumer complaint database or comments made on FCC's various social media. For example, guidance provided on FCC's "Comment Policy" web page is specific to informal comments submitted to FCC online, and although it indicates that certain types of comments will be removed from posting, public users are also clearly informed these types of comments are not a substitute for formal submissions to ECFS.

Conclusions

While the public comment process allows interested parties to state their views about prospective rules, the lack of communication with the public about the way in which agencies treat identity information during the posting process, particularly for duplicate comments, may inhibit users' meaningful participation in the rulemaking process. While the APA does not include requirements for commenters to provide identity information, or for agency officials to include commenter identity as part of their consideration of comments, key practices for transparently reporting open government data state that federal government websites—like those used to facilitate the public comment process—should fully describe the publicly available data, to include disclosing data sources and limitations. Without clearly communicating how comments and their associated identity information are presented in the data, public users could draw inaccurate conclusions about public comments during the rulemaking process, limiting their ability to participate in the rulemaking process.

Five selected agencies do not have a policy for posting comments, and the selected agencies generally do not clearly communicate to public users about the way in which they publicly post comments and their associated identity information. In addition, one agency fully duplicates rulemaking dockets on its own website, without informing users that the information may be found in a searchable database on Regulations.gov. Regulations.gov does not provide detailed information about posting policies, and seven of the eight participating agencies in the scope of our review direct public users back to Regulations.gov or the *Federal Register* on their own websites. Further, the available information is provided on the comment form, so public users seeking to review comment data that had been previously submitted may not encounter it. Because all of the participating agencies in our review vary in the way in which they post identity information associated with comments—particularly duplicate comments—the lack of accompanying disclosures may potentially lead users to reach inaccurate conclusions about who submitted a particular comment, or how many individuals weighed in on an issue. As a result, public users of Regulations.gov do not have information related to data sources and limitations that could affect their ability to effectively use the comment data and, consequently, participate in the rulemaking process. Similarly, users of SEC.gov do not have information related to data sources and limitations needed to determine whether and how they can use the data associated with public comments, because the agency lacks a policy for posting duplicate comments and associated identity information to the public. In short, more clearly communicated information about posting policies, particularly with regard to identity information and duplicate comments, could help public users make informed decisions

about how to use the comment data these agencies provide, and how comments may have informed the rulemaking process.

Recommendations for Executive Action

We are making the following eight recommendations to the Directors of BLM, CFPB, and FWS; the Administrators of CMS, EPA, and WHD; the Assistant Secretary of Labor for EBSA; and the Chairman of the SEC, respectively:

The Director of BLM should create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments, and should clearly communicate this policy to the public on the BLM website. (Recommendation 1)

The Administrator of CMS should create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments, and should clearly communicate this policy to the public on the CMS website. (Recommendation 2)

The Director of CFPB should finalize its draft policy for posting comments and their identity information, particularly for duplicate comments, and clearly communicate it to the public on the CFPB website. (Recommendation 3)

The Assistant Secretary of Labor for EBSA should

1. create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments;
2. clearly communicate this policy to the public on the EBSA website; and
3. evaluate the duplicative practice of replicating rulemaking dockets on the EBSA website, to either discontinue the practice or include a reference to Regulations.gov and explanation of how the pages relate to one another. (Recommendation 4)

The Administrator of EPA should finalize its draft policy for posting comments and their identity information, particularly for duplicate comments, and clearly communicate it to the public on the EPA website. (Recommendation 5)

The Director of FWS should create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments, and should clearly communicate this policy to the public on the FWS website. (Recommendation 6)

The Chairman of the SEC should develop a policy for posting duplicate comments and associated identity information and clearly communicate it to the public on the SEC website. (Recommendation 7)

The Administrator of WHD should clearly communicate its policy for posting comments and their identity information, particularly for duplicate comments, to the public on the WHD website. (Recommendation 8)

Agency Comments and Our Evaluation

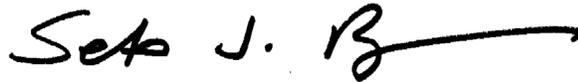
We provided drafts of this product for comment to CFPB, EPA, FCC, SEC, the Department of Health and Human Services, the Department of the Interior, and DOL. We received written comments from three of the selected agencies and the three Departments which are reproduced in appendixes V through X. All of the selected agencies generally agreed with the recommendations directed to them and indicated that they intended to take action to more clearly communicate their posting policies to the public. BLM, EBSA, FWS, and SEC also stated that they intend to develop written policies associated with posting comments.

In its written comments, the Department of Health and Human Services stated that CMS already has policies for standard posting requirements. However, CMS could not provide us with this policy during the course of our review, and in the accompanying technical comments, officials stated that guidance associated with posting comments has not been formalized in a written document. Given that we found significant variation in the way that CMS posts comments, even within a single docket, we continue to believe that it is important for CMS to develop and implement a standard policy for posting comments and their identity information, in addition to communicating this policy to the public on the CMS website.

CFPB and EPA also stated that they intend to finalize their draft policies for posting comments and their associated identity information. In addition, EPA included technical comments in its letter, which we considered and incorporated in this report as appropriate. FCC had no comments on the draft report, but provided technical comments, which we incorporated as appropriate. The remaining selected agencies and departments also provided technical comments, which we considered and incorporated in this report as appropriate.

As arranged with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees; the Director of CFPB; the Administrator of EPA; the Chairmen of FCC and SEC; and the Secretaries of Health and Human Services, the Interior, and Labor. In addition, the report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6722 or bagdoyans@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix XI.

A handwritten signature in black ink that reads "Seto J. Bagdoyan" followed by a long horizontal flourish.

Seto J. Bagdoyan,
Director of Audits
Forensic Audits and Investigative Service

List of Requesters

The Honorable Rob Portman
Chairman
The Honorable Thomas R. Carper
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable James Lankford
Chairman
Subcommittee on Regulatory Affairs and Federal Management
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
House of Representatives

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
House of Representatives

The Honorable Elijah E. Cummings
Chairman
The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform
House of Representatives

The Honorable Gerald E. Connolly
Chairman
Subcommittee on Government Operations
Committee on Oversight and Reform
House of Representatives

The Honorable Yvette D. Clarke
House of Representatives

The Honorable Eliot L. Engel
House of Representatives

The Honorable Hakeem S. Jeffries
House of Representatives

The Honorable Carolyn B. Maloney
House of Representatives

The Honorable Gregory W. Meeks
House of Representatives

The Honorable Paul D. Tonko
House of Representatives

The Honorable Nydia M. Velázquez
House of Representatives

Appendix I: Survey of Program Offices with Regulatory Responsibilities within Selected Agencies

To determine how selected agencies treat identity information associated with public comments, in October 2018 we surveyed and received responses from 52 program offices within the selected agencies about their practices associated with comment intake (including identifying duplicate comments and posting comments to the public website), comment analysis (including reviewing comments and considering their content), and response to comments. To select the program offices to receive survey questionnaires about the public comment process, we first reviewed agency websites to identify all of the program offices in each of the selected agencies. We then identified program offices with regulatory responsibilities described by the websites and that had issued at least one Notice of Proposed Rulemaking (NPRM) from 2013 through 2017, and provided these lists to the selected agencies for confirmation. Table 7 lists the program offices we surveyed.

Table 7: Program Offices within Selected Agencies with Regulatory Responsibilities

Bureau of Land Management (BLM), Department of the Interior
1. Assistant Director for Resources and Planning
2. Assistant Director for Energy, Minerals, and Realty Management
Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services
3. Center for Medicaid and Children’s Health Insurance Program Services
4. Center for Consumer Information and Insurance Oversight
5. Center for Medicare—Parts C and D
6. Office of Financial Management
7. Center for Clinical Standards and Quality
8. Center for Medicare and Medicaid Innovation
9. Center for Program Integrity
10. Office of Information Technology
11. Center for Medicare—Fee for Service
Consumer Financial Protection Bureau (CFPB)
12. Office of Regulations
Employee Benefits Security Administration (EBSA), Department of Labor
13. Office of Exemptions Determinations
14. Office of Health Plan Standards and Compliance Assistance
15. Office of Regulations and Interpretations
16. Office of Policy and Research

**Appendix I: Survey of Program Offices with
Regulatory Responsibilities within Selected
Agencies**

Environmental Protection Agency (EPA)

- 17. Office of Air and Radiation
- 18. Office of Chemical Safety and Pollution Prevention
- 19. Office of Land and Emergency Management
- 20. Office of Water

Federal Communications Commission (FCC)

- 21. Consumer and Governmental Affairs Bureau
- 22. Office of Engineering and Technology
- 23. International Bureau
- 24. Media Bureau
- 25. Public Safety and Homeland Security Bureau
- 26. Wireless Telecommunications Bureau
- 27. Wireline Competition Bureau

Fish and Wildlife Service (FWS), Department of the Interior

- 28. National Wildlife Refuge System
- 29. Fish and Aquatic Conservation
- 30. Ecological Services
- 31. Migratory Birds
- 32. International Affairs
- 33. Wildlife and Sport Fish Restoration Programs
- 34. Chief Law Enforcement
- 35. Center for Biologics Evaluation and Research
- 36. Center for Drug Evaluation and Research
- 37. Center for Devices and Radiological Health
- 38. Center for Food Safety and Applied Nutrition
- 39. Center for Tobacco Products
- 40. Center for Veterinary Medicine
- 41. Office of Chief Counsel
- 42. Office of Combination Products
- 43. Office of Policy
- 44. Office of Regulatory Affairs

Securities and Exchange Commission (SEC)

- 45. Division of Corporation Finance
 - 46. Division of Economic and Risk Analysis
 - 47. Division of Investment Management
 - 48. Division of Trading and Markets
-

49. Office of Municipal Securities
50. Office of the Chief Accountant
51. Office of Credit Ratings
Wage and Hour Division (WHD), Department of Labor
52. Assistant Administrator for the Office of Policy

Source: GAO. | GAO-19-483

Survey Development

We developed a draft survey questionnaire in conjunction with another GAO engagement team conducting work on the public comment process, and pretested it with program office officials from four of the selected agencies in August and September 2018. We interviewed these officials to improve the questionnaire and ensure that (1) the questions were clear and unbiased, (2) the information could be feasibly obtained by program office officials, (3) the response options were appropriate and reasonable, and (4) the survey did not create an undue burden on program office officials. The process of developing the survey was iterative, where we used the results of one pretest to modify the questionnaire for the next pretest.

Survey Administration and Review

We distributed the questionnaires to the program offices as fillable Portable Document Format (PDF) forms, in October 2018 requesting that officials collaborate with others in their office to ensure the responses were reflective of the program office as a whole, rather than one individual's experience. Two agencies, CMS and SEC, have agency-level administrative offices with centralized responsibilities for certain aspects of the public comment process. For these agencies, the selected program offices were instructed to leave certain questions blank, and we provided separate questionnaires for the administrative offices. All 52 program offices completed the survey, but the results cannot be generalized to program offices outside of the selected agencies.

In developing, administering, and analyzing this survey, we took steps to minimize the potential errors that may result from the practical difficulties of conducting any survey. Because we surveyed and received responses from all program offices with regulatory responsibilities in the selected agencies, our results are not subject to sampling or nonresponse error. We pretested and reviewed our questionnaire to minimize measurement error that can arise from differences in how questions are interpreted and the sources of information available to respondents. We also answered

questions from program offices during the survey, reviewed completed questionnaires, and conducted follow-up as necessary. On the basis of this follow-up and with agreement from the responding officials, we edited responses as needed. For CMS and SEC, we edited the blank questions in the program office questionnaires with responses from their administrative offices.

Relevant Survey Questions

Information collected from the survey we conducted will also be used in other forthcoming GAO reports that are focused on the public comment process. The specific questions and response options from the survey that were analyzed in this report are reproduced below. See the body of the report for the results. Other questions included in the survey will be reproduced in the reports that include their results.

3. Approximately how many rulemaking proceedings does your office **solicit comments** on in a typical year? Please only include rulemaking proceedings subject to notice-and-comment under the APA.
(Click one button)

- 0
- 1-5
- 6-10
- 11-15
- 16-20
- More than 20

4. Considering the rulemaking proceedings since 2013 your office has been responsible for that had a public comment period, approximately how many comments were submitted to the one rulemaking that received the **most total comments** during that time period?

- 1-500
- 501-1500
- 1501-5,000
- 5,001-25,000
- 25,001-100,000
- 100,001-500,000

- 500,001-1,000,000
- More than 1,000,000

5. f. Considering the rulemaking proceedings since 2013 your office has been responsible for that had a public comment period, in approximately how many rulemakings have comments been submitted anonymously?

- All or almost all rulemakings
- Most rulemakings
- About half of rulemakings
- Some rulemakings
- No rulemakings
- Don't know

7. Is your program office responsible, in whole or in part, for managing the intake of public comments submitted to federal rulemaking proceedings subject to notice-and-comment under the APA?

- Yes
- No — please identify the responsible office(s) and contact them as necessary to complete the following questions:

10. Is your program office responsible, in whole or in part, for identifying duplicative comments (carrying out a de-duplication process)?

- Yes
- No — please identify the responsible office(s) and contact them as necessary to complete the following questions:

13. Is your program office responsible, in whole or in part, for analyzing public comments submitted to federal rulemaking proceedings subject to notice-and-comment under the APA?

- Yes
- No — please identify the responsible office(s) and contact them as necessary to complete the following questions:

13.b(c). Considering the rulemaking proceedings since 2013, how important to your analysis, if at all, is the identity of the individual commenter?

- Extremely important
- Very important
- Moderately important
- Slightly important
- Not at all important
- Don't know

13.b(d). Considering the rulemaking proceedings since 2013, how important to your analysis, if at all, is the organizational affiliation, if any, of the commenter?

- Extremely important
- Very important
- Moderately important
- Slightly important
- Not at all important
- Don't know

16. Is your program office responsible, in whole or in part, for responding to public comments submitted to federal rulemaking proceedings subject to notice-and-comment under the APA?

- Yes
- No — please identify the responsible office(s) and contact them as necessary to complete the following questions:

16.b.(a). Considering the public responses to comments that your office has drafted for rulemaking proceedings since 2013, how frequently did the responses identify any specific comments by commenter name, organization, or comment ID?

- All or almost all responses
- Most responses
- About half of responses
- Some responses
- No responses
- Don't know

Appendix II: Regulations.gov Comment Form Example

Comments are submitted to Regulations.gov via an electronic comment form. See figure 11 for an example of a comment form from Regulations.gov.

Figure 11: Regulations.gov Comment Form Example

You are commenting on:

The Food and Drug Administration (FDA) Notice: [Post-Marketing Pediatric-Focused Product Safety Reviews; Establishment of a Public Docket; Request for Comments](#)

For related information, [Open Docket Folder](#)

1 Your Information ➤ Your Information ➤ Your Preview ➤ Your Receipt

Information entered will be viewable on Regulations.gov [View Commenter's Checklist \(PDF\)](#) | [Alternate Ways to Comment](#)

Comment (Required)

5000 characters remaining

Upload file(s) (Optional) Drop files here

First Name Last Name

I want to provide my contact information

I am submitting on behalf of a third party

Category (Required)

[Continue](#)

Please see the [Privacy Notice](#) and [User Notice](#) regarding comment submission.

Any information (e.g., personal or contact) you provide on this comment form or in an attachment may be publicly disclosed and searchable on the Internet and in a paper docket and will be provided to the Department or Agency issuing the notice. To view any additional information for submitting comments, such as anonymous or sensitive submissions, refer to the [Privacy Notice](#) and [User Notice](#), the Federal Register notice on which you are commenting, and the Web site of the Department or Agency.

Source: Regulations.gov. | GAO-19-483

Appendix III: Electronic Comment Filing System Comment Forms

The Federal Communications Commission's (FCC) Electronic Comment Filing System (ECFS) allows commenters to submit comments to rulemaking proceedings via a Standard filing and Express filing.¹ A Standard filing allows commenters to attach a file to their comment. See figure 12 for an example of a Standard filing.

Figure 12: Federal Communications Commission Electronic Comment Filing System's Standard Filing Comment Form

The screenshot shows the 'Submit a Filing' form on the FCC's ECFS website. The form is divided into several sections: 'Proceedings(s)', 'Name(s) of Filer(s)', 'Law Firm(s)', 'Attorney/Author Name(s)', 'Primary Contact Email', 'Type of Filing', 'File Number', 'Report Number', 'Bureau ID Number', 'Address of', 'Address International', 'Address 2', 'City', 'State', and 'ZIP'. Each field has a small asterisk indicating it is required. The 'Address of' field has a dropdown menu for 'Address International'. The 'Type of Filing' field has a dropdown menu. The 'Upload Documents' section includes a note: 'Click or drag files here: PDF, text, ppt, pptx, docx, doc, docx, xl, xlsx (overall files) max size: 25 MB per submission (max number of files: 5)'. Below the upload section, there is a note: 'Note: You are filing a document into an official FCC proceeding. All information submitted, including names and addresses, will be publicly available via the web.' At the bottom of the form, there is a checkbox for 'Email Confirmation' and two buttons: 'Continue to review screen' and 'Reset Form'.

Source: FCC.gov. | GAO-19-483

¹FCC's ECFS also accepts comments in response to specific types of FCC actions via Non-Docketed filings. Users are instructed not to use Non-Docketed filings to submit comments in a proceeding for which a docket number or rulemaking number has been assigned.

Appendix III: Electronic Comment Filing System Comment Forms

An Express filing does not allow for files to be attached. See figure 13 for an example of an Express filing.

Figure 13: Federal Communications Commission Electronic Comment Filing System's Express Filing Web Form

For assistance with using ECFS, please contact the ECFS Help Desk at 202-418-0193 or via email at ECFSHelp@fcc.gov.

FC Federal Communications Commission

Filings & Proceedings SEARCH | Submit a FILING | Check filing STATUS | User HELP

Standard Filing | Express Comment | Non-Docketed Filing

ECFS Express

1 COMMENT | 2 REVIEW | 3 CONFIRMATION

Proceeding(s) * Required - Type to search proceedings. Press ENTER key after each selection

Name(s) of Filer(s) *Required - Add Filer(s). Press ENTER key after each entry

Primary Contact Email example@email.com

Address * Required
 International

Address 2

City * Required

State * Required

ZIP * Required

Brief Comments

Note: You are filing a document into an official FCC proceeding. All information submitted, including names and addresses, will be publicly available via the web.

Email Confirmation

Source: FCC.gov. | GAO-19-483

Appendix IV: Securities and Exchange Commission Comment Form Example

One way in which comments are submitted to the Securities and Exchange Commission (SEC) is through an electronic comment form. See figure 14 for an example of a comment form from SEC.gov.

Figure 14: Securities and Exchange Commission Comment Form Example

Submit Comments on S7-30-18
Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

Complete this form to submit your comments. Fields marked with an asterisk (*) are required.

Important: All comments will be made available to the public. Submit only information that you wish to make available publicly. This form should not be used for submitting a tip or complaint (including a whistleblower complaint). If you wish to submit a tip or complaint regarding a potential violation of the federal securities laws, please use our [online form](#), or mail your information to the SEC Complaint Center at the following address: SEC Complaint Center, 100 F Street NE, Washington, D.C. 20549-0213. You can also send a fax to 703-813-6965.

If you would like to submit Microsoft Word, PDF, or WordPerfect files as your comments or as supplementary materials to your comments, you will be able to do so on the next page.

* First Name

Middle Initial

* Last Name

Suffix (if any)

examples:
Jr.
Ph.D.
CPA
Esquire

Professional Affiliation (if any)

examples:
Professor of Economics, University of Providence (or)
Markets Section Chair, Association of Professional Accountants (or)
CEO, Acme Widget Company

City

State / Province

Country

* Email address

Your email address will not be published on the web site

example: name@domainname.domain

* Comments:

If you are submitting your comment in an attached file, put the words "Comments attached" in the text box. You will be able to attach up to 3 documents after you click "continue."

<https://www.sec.gov/cgi-bin/ruling-comments>

[Home](#) | [EDGAR Search Home](#) | [Previous Page](#) | [Privacy Policy](#)

Modified: 05/25/2018

Source: SEC.gov. | GAO-19-483

Appendix V: Agency Comments from the Bureau of Consumer Financial Protection

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



June 7, 2019

Seto J. Bagdoyan
Director, Audits
Forensic Audits and Investigative Service
Government Accountability Office
441 G Street, NW
Washington DC, 20548

Dear Mr. Bagdoyan,

Thank you for the opportunity to review and comment on the draft report by the Government Accountability Office (GAO), titled *Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated With Identity Information in the Public Comment Process* (GAO-19-483). The Bureau greatly appreciates GAO's work over the course of this engagement and believes the report provides the public with important information about how select federal agencies, including the Consumer Financial Protection Bureau, collect and treat identity information associated with public comments on proposed rulemakings.

In the report, GAO makes one recommendation to the Bureau:

- The Director of CFPB should finalize its draft policy for posting comments and their identity information, particularly for duplicate comments, and clearly communicate it to the public on the CFPB website.

The Bureau does not object to GAO's recommendation. The Bureau will finalize its draft policy governing how the Bureau processes public comments for posting to Regulations.gov. Additionally, the Bureau intends to provide on its website an explanation of the Bureau's current practice for posting public comments, including identity information associated with public comments.

consumerfinance.gov

**Appendix V: Agency Comments from the
Bureau of Consumer Financial Protection**

The Bureau looks forward to working with GAO as it monitors the Bureau's progress in implementing this recommendation.

Sincerely,



Kathleen L. Kraninger
Director

Appendix VI: Agency Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF MISSION SUPPORT

Mr. Seto J. Bagdoyan
Director, Forensic Audits and Investigative Service
U.S. Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Mr. Bagdoyan:

Thank you for the opportunity to review and comment on the Draft Report, GAO-19-483, *Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated With Identity Information in the Public Comment Process* (102648). In this letter, the U.S. Environmental Protection Agency (EPA) responds to the U.S. Government Accountability Office's (GAO's) findings, conclusions and recommendations.

In this report, GAO examines (1) the identity information collected by Regulations.gov and agency-specific comment websites; (2) the guidance agencies have related to the identify of commenters; (3) how selected agencies treat identity information; and (4) the extent to which selected agencies clearly communicate their practices associated with identity information.

Recommendation

The Administrator of EPA should finalize its draft policy for posting comments and their identity information, particularly for duplicative comments, and clearly communicate it to the public on the EPA website.

Response to Recommendation

EPA is currently in the process of updating the Docket Center's Document Processing Standard Operating Procedures, which address the process for intake of public comments, including posting them to Regulations.gov when applicable. To address GAO's recommendation, EPA will finalize this document as soon as all updates are complete. Additionally, EPA currently provides information to the public on the EPA website (Commenting on EPA Dockets at <https://www.epa.gov/dockets/commenting-epa-dockets>) about when comments may or may not be posted on Regulations.gov. To address GAO's recommendation, EPA will expand upon the language currently on the website to further explain EPA's process for posting comments on Regulations.gov.

Comments on Draft Report

On pages 22 and 37 - 39, the draft report discusses inconsistencies as to whether all or some of EPA's duplicate and near duplicate comments are available on Regulations.gov. What comments are available on Regulations.gov depends on the format in which the comments are submitted to EPA. These formats can include: 1) duplicate and near duplicate comments that are submitted individually; 2) a single comment that contains, or has an attachment containing, a list of concurring signatures; and 3) a single transmission letter/sample of the mass mail message that has an attachment containing bundled duplicate and near duplicate comments. Regardless of the format type, it is EPA procedure to post to Regulations.gov a primary document for the mass mail campaign with a tally of the total number of duplicate and near duplicate comments received. For duplicate and near duplicate comments that are received individually via email, the primary document will be a representative sample of the email comments received. In this case, only the representative sample comment is available on Regulations.gov. Alternatively, if the primary document is an email that was submitted to EPA including an attachment containing either bundled duplicate and near duplicate comments or multiple concurring signatures, the contents of the attachment will be available on Regulations.gov as part of the primary document. EPA would not alter the comment by removing the attachments when posting it.

To fully explain how duplicate and near duplicate emails are made available on Regulations.gov, EPA recommends the following change (in red italics) to page 38 of the draft report: "Of the duplicate comment sets submitted via email, 45 sets have all comments posted in Regulations.gov while 153 sets have a sample of the comments posted. *The inconsistency in posting is due to the way in which the comments were submitted to EPA. For the duplicate comment sets where all comments were posted, EPA received a single email with an attachment(s) containing compiled comments or signatures. In this case, the single email with the attachment(s) was posted. For the duplicate comments sets where only one sample of the comments was posted, EPA received individual duplicate emails, which were sorted into the appropriate campaigns before posting a representative sample and the tally of all duplicate comments received for the campaign.* While the APA and E-Government Act do not require comments to be posted in any particular way, EPA has established detailed internal guidance for the comment intake process for its Docket Center staff."

Footnote 59 on page 38 of the report states that EPA officials took 55 hours to determine whether the comments for one particular docket were stored in the Federal Docket Management System (FDMS) or not. While EPA did spend 55 hours gathering information about the comments submitted for this docket as requested by GAO, the efforts undertaken by EPA were substantially more significant than currently stated in the report. To respond to GAO's request for information about this docket, EPA staff completed a full assessment of the docket, which is further explained below. EPA also prepared and thoroughly reviewed a complete summary report of the findings.

EPA recommends the following change (in red italics) to footnote 59: "This challenge is not limited to the general public. EPA officials responsible for identifying this information reported *spending approximately 55 hours compiling, reviewing, and preparing a summary report with detailed information about the 4,383,712 comments in the docket, including the 363 mass mail campaigns. This information included whether the comments were stored in FDMS or not, the location of where the comments were stored, the format of mass mail comment submissions (e.g., email, paper, USB, webform, etc.), a full listing of all the mass mail campaigns included in the docket, and the number of comments*

**Appendix VI: Agency Comments from the
Environmental Protection Agency**

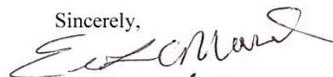
associated with each mass mail campaign. that determining whether the comments were stored in FDMS or not took them approximately 55 hours to complete.”

Finally, it is important to note that the docket referenced in the report is the largest EPA docket ever in terms of number of comments received. In 2014, this docket received 4,383,712 public comments, out of the 6,051,473 total comments EPA received that year. To put that into perspective, in 2013, EPA received just 2,196,931 comments in total.

To provide this context, EPA recommends the following change (in red italics) on page 37: “We found that one EPA docket, *the Agency’s largest docket in terms of comment count to date*, received more than 350 separate sets of duplicate comments comprising a total of more than 4.3 million comments (as reported by Regulations.gov)....”

We appreciate the opportunity to review and respond to the draft report. If you require additional information or would like to discuss further, please contact Patricia Williams (202) 564-0204.

Sincerely,



Vaughn Noga *for*
Chief Information Officer and
Deputy Assistant Administrator for Environmental
Information

cc: Erin Collard, OMS
Patricia Williams, OMS
Janice Jablonski, OMS
Juanita Standifer, OMS
Rebecca Moser, OMS
Courtney Kerwin, OMS
Pam Shenefiel, OMS
Annette Morant, OCFO
Dave Bruno, GAO
Elizabeth Kowalewski, GAO

Appendix VII: Agency Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

JUN 07 2019

Seto Bagdoyan
Director, Forensic Audits and Investigative Service
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Bagdoyan:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "*Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated With Identity Information in the Public Comment Process*" (GAO-19-483).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. D. Bassett for".

Matthew D. Bassett
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED - FEDERAL RULEMAKING: SELECTED AGENCIES SHOULD CLEARLY COMMUNICATE PRACTICES ASSOCIATED WITH IDENTITY INFORMATION IN THE PUBLIC COMMENT PROCESS (GAO-19-483)

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

HHS is committed to maintaining public trust in the regulatory process through transparency and consistency in our notice and comment procedures. The rulemaking process is governed by the Administrative Procedure Act and managed government-wide by the Office of Management and Budget. The Centers for Medicare & Medicaid Services (CMS) has internal policies regarding public posting requirements, including regarding identity information and duplicate comments, in accordance with the Administrative Procedure Act.

The Administrative Procedure Act does not require commenters to provide identity information when submitting public comments. However, if identity information is provided, CMS policy is to post it with the comment. In addition, if multiple identical comments are received (such as form letters), agencies have discretion under the Administrative Procedure Act regarding how to post and identify these comments. CMS often receives duplicate comments or form letters, and our current policy is to post each comment from a unique commenter individually.

HHS appreciates GAO's review, and our response to the recommendation is as follows.

Recommendation 1

The Administrator of CMS should create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments, and should clearly communicate this policy to the public on the CMS website.

HHS Response

HHS concurs with this recommendation.

CMS already has policies for standard posting requirements regarding comments and their identity information, including for duplicate comments. CMS will communicate these policies to the public on the CMS website.

Appendix VIII: Agency Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 14 2019

Seto J. Bagdoyan
Director, Audits
Forensic Audits and Investigative Service
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Bagdoyan:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the Government Accountability Office (GAO) draft report titled, *Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated With Identity Information in the Public Comment Process* (GAO-19-483). We appreciate GAO's review of the public comment process involved with the development and issuance of regulations.

The GAO issued the Department two recommendations to address its findings. Below is a summary of actions the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) have planned to implement the recommendations.

Recommendation 1: The Director of BLM should create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments, and should clearly communicate this policy to the public on the BLM website.

Response: Concur. The BLM will develop and issue policy for standard posting requirements regarding public comments and their identity information. The policy will also include how to address duplicate comments and the requirement for posting the policy on BLM's website.

Recommendation 6: The Director of FWS should create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments, and should clearly communicate this policy to the public on the FWS website.

Response: Concur. The FWS will develop and issue policy for standard posting requirements regarding public comments and their identity information. The policy will also include how to address duplicate comments and the requirement for posting the policy on FWS' website.

**Appendix VIII: Agency Comments from the
Department of the Interior**

If you have any questions about this response, or need additional information, please contact Nancy Thomas at (202) 208-7954.

Sincerely,



Scott J. Cameron
Principal Deputy Assistant Secretary
for Policy, Management and Budget

Appendix IX: Agency Comments from the Department of Labor

U.S. Department of Labor

Office of the Assistant
Secretary for Policy
Washington, D.C. 20210



Seto J. Bagdoyan
Director
Forensic Audits and Investigative Service
U.S. Government Accountability Office
441 G. Street, N.W.
Washington, D.C. 20548

Dear Mr. Bagdoyan:

The U.S. Department of Labor (DOL) is in receipt of the draft Government Accountability Office (GAO) report entitled, "Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process" (GAO-19-483, Job Code 102648).

The report makes a total of eight recommendations. Two of those recommendations apply to the Department of Labor. We support both recommendations. Responses to the recommendations appear on the attached document.

If you would like additional information, or have any questions please contact me at 202-693-5080.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie Swirsky".

Stephanie Swirsky
Deputy Assistant Secretary for Policy

Enclosures

GAO draft report entitled, "Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process" (GAO-19-483, Job Code 102648)

DOL's Response to GAO's Recommendations for Executive Action

Recommendation 4

The Assistant Secretary of Labor for EBSA should:

- (1) Create and implement a policy for standard posting requirements regarding comments and their identity information, particularly for duplicate comments;*
- (2) Clearly communicate this policy to the public on the EBSA website; and*
- (3) Evaluate the duplicate practice of replicating rulemaking dockets on the EBSA website, to either discontinue the practice or include a reference to Regulations.gov and explanation of how the pages relate to one another.*

EBSA response:

- (1) Agreed. EBSA will examine any such written policies of other DOL agencies, including DOL's Wage and Hour Division, and develop a written policy or policies regarding the posting of comments, including those with identical or near-identical comment text but with unique identity information (i.e., duplicate comments).
- (2) Agreed. EBSA agrees that its written policy or policies should be clear and readily available to the public on EBSA's website.
- (3) EBSA will include a reference to Regulations.gov as part of each NPRM webpage that includes public comments together with an explanation of its relation to Regulations.gov as a means to access public comments on EBSA's rulemaking initiatives. Internal and external users have indicated a preference to have public comments available on EBSA's website, among other reasons, because of the convenience of having the comments located in close proximity to the proposed rule and other related interpretive guidance. End users also have commented on and appreciated EBSA's logical and user friendly indexing and presentation of public comments, as compared to the docketing system contained in regulations.gov. EBSA, nonetheless, will raise GAO's recommendation informally with stakeholder groups as part of our evaluation of GAO's report and recommendation.

Recommendation 8

The Administrator of WHD should clearly communicate its policy for posting comments and their identity information, particularly for duplicate comments, to the public on the WHD website.

WHD response:

WHD creates a Notice of Proposed Rulemaking (NPRM) webpage for all rules in which comments from the public are accepted. WHD will add the Agency Posting Guidelines to each NPRM webpage at the time of its creation to provide additional guidance to the public with respect to comment management.

Appendix X: Agency Comments from the Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 10, 2019

Mr. Seto J. Bagdoyan
Director, Audits
Forensic Audits and Investigative Service
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Bagdoyan:

Thank you for your report, "Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process." We appreciate being able to assist the GAO in assessing how various federal agencies process public comment letters.

The public plays an integral role in the Commission's rulemaking process. When members of the public send written comment letters in response to a proposed rule, they provide us with valuable information, including about potential real-world impacts or alternatives approaches for achieving regulatory goals.

For these reasons, I am pleased that the GAO's review did not identify any deficiencies in the practices the SEC's Office of the Secretary follows to intake, analyze, and post comment letters. As the report notes, the Office of the Secretary currently follows a standardized process with respect to posting of duplicate comments (for instance, mass mail letters) that have identical or near-identical comments, but unique identity information. In such cases, the practice is to post a single example for each set of duplicate comments and indicate the total number of other such comments received. The GAO report does not find fault with this practice, but does recommend that the SEC formalize it in a written policy and communicate it to the public on our website. I support this recommendation, which I have asked the staff to promptly implement.

Thank you for the consideration that you and your staff have shown our agency. If you require additional information, please contact Bryan Wood, Director of Legislative and Intergovernmental Affairs, at (202) 551-2010.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Clayton".

Jay Clayton
Chairman

Appendix XI: GAO Contact and Staff Acknowledgments

GAO Contact

Seto J. Bagdoyan, (202) 512-6722 or bagdoyans@gao.gov

Staff Acknowledgments

In addition to the contact named above, David Bruno (Assistant Director), Elizabeth Kowalewski (Analyst in Charge), Enyinnaya David Aja, Gretel Clarke, Lauren Kirkpatrick, James Murphy, Alexandria Palmer, Carl Ramirez, Shana Wallace, and April Yeane made key contributions to this report. Other contributors include Tim Bober, Dahlia Darwiche, Colin Fallon, Justin Fisher, James Healy, Katie LeFevre, Barbara Lewis, and Maria McMullen.

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James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707, U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



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