

GAO Highlights

Highlights of [GAO-20-413T](#), a testimony before the Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives

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 testimony summarizes GAO's June 2019 report on public comment posting practices (GAO-19-483). In that report, GAO examined (1) the identity information collected by comment websites; (2) the guidance agencies have related to the identity of commenters; (3) how 10 selected agencies treat identity information; and (4) the extent to which the selected agencies clearly communicate their practices associated with identity information. The 10 agencies were selected on the basis of the volume of public comments they received on rulemakings. For this testimony, GAO obtained updates on the status of recommendations made to the selected agencies.

What GAO Recommends

In June 2019, GAO made recommendations to eight of the selected agencies regarding implementing and communicating public comment posting policies. The agencies generally agreed with the recommendations and identified actions they planned to take in response. Since the June 2019 report, one agency has implemented GAO's recommendation and seven agencies have identified additional planned actions.

View [GAO-20-413T](#). For more information, contact Seto J. Bagdoyan at (202) 512-6722 or bagdoyans@gao.gov.

February 6, 2020

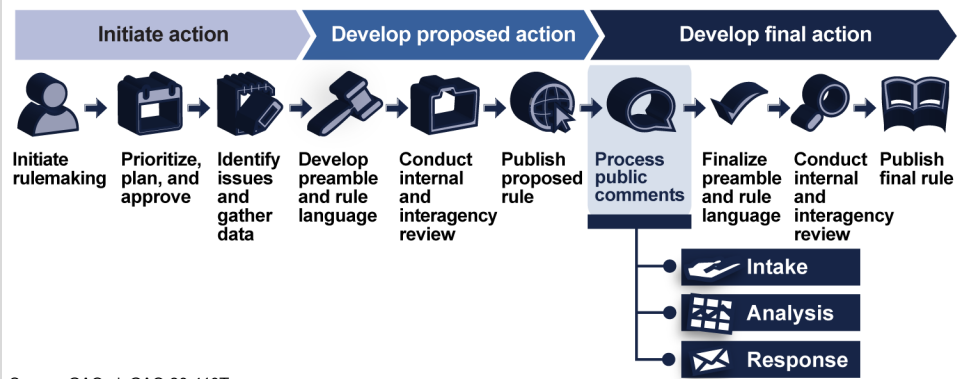
FEDERAL RULEMAKING

Selected Agencies Should Clearly Communicate How They Post Public Comments and Associated Identity Information

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-20-413T

In June 2019, GAO found that 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, and all selected agencies accept anonymous comments in practice.

GAO found in the June 2019 report that seven of 10 selected agencies have some internal guidance associated with the identity of commenters, but the substance of this guidance varies. This reflects the differences in the way that the selected agencies handle commenter identity information internally.

GAO also found that the selected agencies' practices for posting public comments to comment websites vary considerably, particularly for duplicate comments (identical or near-identical comment text but varied identity information). For example, one agency posts a single example of duplicate comments and indicates the total number of comments received, but only the example is available to public users of Regulations.gov. In contrast, other agencies post all comments individually. As a result, identity information submitted with comments is inconsistently presented on public websites.

The APA allows agencies discretion in how they post comments, but GAO found that some of the 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. If not, public users of the comment websites could reach inaccurate conclusions about who submitted a particular comment, or how many individuals commented on an issue.