

November 8, 2023

Using the “Hidden Levers” of Government

Alexander Hertel-Fernandez

THE FORGE

Two years ago, The Forge [featured](#) a trio of progressive organizers discussing the hidden levers of government involved in regulatory enforcement and implementation that often go neglected by the progressive movement.

Alex Hertel-Fernandez, who served in the Biden-Harris Administration at the U.S. Department of Labor and the White House Office of Management and Budget, takes stock of efforts by federal agencies to encourage more participation in using these “hidden levers,” including challenges and opportunities for organizers and government alike.

The hundreds of executive agencies that make up the federal government are responsible for implementing the laws passed by Congress, and **they often have substantial discretion in how they decide to interpret those laws and translate Congressional statutes into the day-to-day machinery of government.** (Though conservative courts are [increasingly](#) constraining this discretion.) These decisions govern our access to public benefits like nutrition assistance for children or disability benefits; protections related to civil rights, health, and safety; and important public services such as transit, housing, and education.

Throughout that process, progressive movement organizations have numerous opportunities for shaping government decisions, including through both formal and informal channels. All too frequently, however, the voices the government typically hears are large private sector businesses and other well-resourced, savvy players and not the communities most affected by the government's actions. These actors, especially businesses, are more likely to know how to use the hidden levers of government and exercise both [direct](#) and [informal](#) influence over them.

Yet, when progressive groups do engage, it can yield significant benefits for the communities’ groups work with and represent. Consider the case of access to unemployment insurance.

Looking across the U.S., there are 1,166 unique terms that [appear](#) in unemployment insurance application materials. These include jargon such as “base period” and “monetary determination” that are often impenetrable to most members of the public yet carry enormous significance in determining whether unemployed workers are eligible to receive benefits, and if so, how much workers might receive.

The complexity of unemployment insurance applications [can help](#) explain why before the COVID-19 pandemic many workers who might have been eligible for benefits did not apply. And although the federal government broadened access to

unemployment benefits during the pandemic, the burden of the application process can also explain why many workers still [struggled](#) to complete and submit their claims.

This was some of the feedback that my colleagues in the U.S. Department of Labor (DOL) and I heard from groups representing unemployed workers during one of our regular listening sessions with worker groups. DOL convened these meetings every three weeks to help understand worker experiences with unemployment insurance during the pandemic. Acting on that feedback, DOL embarked on new initiatives to help states [develop](#) clearer and more standardized definitions of key terms used in unemployment insurance applications and encourage states to use [more](#) plain language in communicating with workers.

The regular meetings between DOL and workers groups — and the candid input workers groups provided based on their members' experiences — are one example of the ways that progressive movement organizations can work with government agencies to shape the use of public power, what some have [dubbed](#) co-governance.

These relationships, as in the case of unemployment insurance forms, can result in policy that is more responsive to the needs of communities the progressive movement represents. However, progressive groups sometimes overlook these pivotal "hidden levers" of government. The cost of this oversight is significant. Progressive organizers miss the chance to make policy work better on the ground for the communities they represent. The progressive movement as a whole also cedes ground to better-organized and better-resourced organizations who use these levers to undermine our causes. As such, we miss out on opportunities for building longer term power within government institutions.

Reflecting on my own experience in the federal government, I want to demystify some of the levers that movement organizations should familiarize themselves with and consider using. I also want to sketch out possible strategies for building stronger muscles around such co-governance. Even if they do not always do so now, progressive movement organizations can play a vital role in aggregating the views of the communities they represent to government, forming a bridge for those communities to government agency staff and decisions.

Below, I draw attention to several key processes where broader and more inclusive public input can result in better policy and opportunities to build progressive governing power.

Regulations Writing the Rules of the Road

Regulations, or rules, are agency policies interpreting and implementing

Congressional legislation. Regulations could include an agency's interpretation of who qualifies for a social program, the specific actions businesses must take to limit worker exposure to toxic chemicals, or accommodations individuals with disabilities must receive when accessing health care.

Over time, Congress, federal agencies, and the courts have established a common process by which agencies develop and enact regulations. Crucially, agencies are usually required to seek and respond to public comments from any member of the public during this process. Unless in the case of emergency or exceptional circumstances, agencies **must** typically draft a proposal for new or revised regulations and publish that proposal for public comment during a set period of time, typically 60 to 90 days.

During that comment period, any member of the public can submit their views on the proposal. In fact, unlike other forms of political participation, such as voting, non-citizens and citizens of other countries can participate. Once the comment period closes, agencies will review public submissions and are legally required to respond to significant issues raised by the public. Based on the comments, an agency may revise their proposal and will then publish a final rule, which will also include a summary of public comments the agency received and how the agency is responding to those comments.

While agencies are unlikely to abandon regulatory proposals wholesale on the basis of public comments, agencies can and do use comments to shape decisions about how to design different regulatory alternatives, to elaborate the potential benefits and costs of regulation, and to justify their decisions.

Despite the fact that the regulatory process is open to participation by any interested member of the public, agencies often do not receive many comments on any given rule. What is more, the comments that they do receive tend to **come from** well-resourced, private-sector businesses and other large organizations and more advantaged individuals in the mass public. For example, **individuals with graduate or professional degrees are about five times more likely to report having contacted federal agencies than individuals with less than a high school degree and owners of private-sector businesses are nearly twice as likely to report contacting agencies compared to workers in private-sector businesses.** These disparities matter, and they mean that large segments of the public are not having their views represented in the design and implementation of important laws.

Progressive organizers can contribute different types of comments on proposed regulations that each can represent our communities' interests and build governing power. One of the most important roles that these organizations can play is in working with their members to compile lived experiences relevant to the regulation in question. These comments can help illuminate what is at stake with a particular regulation, including the problems to be addressed, potential impacts on individual members of the public, and the trade-offs involved in different policy design choices.

For a DOL regulation on workplace health and safety, for instance, worker centers could compile the lived experiences of workers who have been exposed to the health or safety threats being explored by DOL, including the risks that workers face, how those risks have affected their and their families' well-being, and what steps could reduce or eliminate those risks. These comments can also provide feedback to agencies about the relevant costs and benefits agencies should be considering — a [key part](#) of the regulatory design process. Comments summarizing lived experiences of members of the public can be especially helpful for agencies in helping to characterize hard-to-quantify benefits, like those related equity, dignity, and fairness, that agencies are required to account for, but [often go undiscussed](#).

While individual members of the public can of course submit their own comments, movement organizations can play a critical role in mobilizing participation from a broad cross-section of individuals, helping those individuals understand what is at stake in a regulation (and translating agency jargon into language and concepts relevant to members of the public), collecting individual submissions, and compiling them into topics that make sense for the proposed rule and agency staff.

In this way, movement organizations can lower the costs of participation for members of the public and play a mediating role in helping to make lived experiences legible and maximally relevant to agency staff working on a regulation. Compiling submissions from multiple individuals into a single comment can also help streamline agencies' work. That is because processing dozens or hundreds of individual comments can often slow agencies down, delaying the enactment of final regulations.

In addition to aggregating and synthesizing individual lived experiences, progressive organizations can also contribute other forms of comments, including quantitative data they may have gathered on the risks or harms faced by their communities (such as from surveys) or insight on regulatory strategies or enforcement gleaned from their deep experience in particular sectors, industries, or occupations.

It is important for progressive organizers to know that the arguments that are most persuasive to federal agencies in the regulatory process are different from those that might be successful in electoral or legislative politics. Federal agencies (and the courts reviewing those agencies) place a high value on evidence and logical reasoning, and so the more that progressive organizations can build on that evidence, the more successful their arguments are to land with agencies. Progressive organizers need not shy away from sharing powerful narratives that convey raw emotion, but they should complement those narratives with evidence-based conclusions.

Beyond the impact that comments can have on the substance of regulations, the process of recruiting members of the public to participate in commenting can help progressive organizations build greater understanding of government processes across their membership, empowering their members to more closely track what federal agencies do and how it impacts their communities.

The Restaurant Opportunities Centers United (ROC), a network representing workers in the restaurant industry, offers one example of how progressive organizations can mobilize individuals directly affected by potential regulations to offer comments based on their lived experiences to inform the regulatory process.

In 2022, ROC [submitted](#) a comment on DOL's initiatives to protect workers from heat-related hazards. ROC's submission synthesized comments from hundreds of restaurant workers. Those workers described the firsthand risks they faced working in hot conditions, including the risks from heat exhaustion, heat stroke, fainting, vomiting, and other health conditions. Importantly, those workers also raised concerns with how their employers were responding to those threats, including ignoring or downplaying workers' complaints. These comments powerfully illustrated, using first-hand experiences, what was at stake for restaurant workers in DOL's heat-related enforcement and rulemaking, the disparate impacts of heat stress on vulnerable workers, and the type of DOL responses that could better protect those workers.

The Biden-Harris Administration has recently taken a number of steps to encourage agencies to be more proactive and inclusive in their engagement of the public during the regulatory process. In an [executive order](#) issued earlier this year, President Biden called on all agencies to incorporate "equitable and meaningful" participation from the public in the development and review of regulations, especially participation from underserved communities. And while working at the

Office of Management and Budget (OMB), I helped to author a more detailed [set of instructions](#) to agencies on strategies that agencies should undertake to meet those goals of equitable and meaningful participation. With that OMB guidance in place, progressive movement organizations have an important opportunity to push agencies to make the charge from the President real, including by ensuring that agencies are making rulemaking accessible to more members of the public and drawing from the lived experiences of individuals likely to be affected by agency action to inform regulatory proposals and analysis.

Making Paperwork Work for More People

Similar to regulations, federal agencies have a [formal process](#) to design or revise forms, including the paperwork that individuals might fill out to access federal loans, grants, or benefit programs. Any form that will be completed by more than nine members of the public must be reviewed by OMB and put out for public comment twice, once for 60 days and then subsequently for 30 days. The two comment periods, during which any member of the public can submit feedback to agencies, are an important opportunity for members of the public to raise concerns with specific aspects of the form — for instance, the burden that it might impose on them — or to suggest alternative means of collecting the necessary information.

Despite the promise of these comment periods, most forms receive no feedback from the public. This is an enormous missed opportunity for progressive organizations to bring the perspectives of the communities they represent into government and streamline access to public programs. It is also a missed opportunity for those organizations to mobilize their members around the challenges they face in accessing public benefits and services and addressing those barriers.

In May, the U.S. Department of Agriculture (USDA) [announced](#) that it would be revising the paperwork required to run the National School Lunch Program. Those are forms that USDA estimates will be completed by over 3.5 million households to access free or reduced meals at their children's schools, a program that [plays](#) a critical role in improving students' health, well-being, and academic performance. Yet USDA received [no](#) responsive comments from the public on the form.

Imagine instead if the USDA form had received comments from movement organizations representing low-income parents who depend on the school meal program, describing the aspects of the form that were challenging to complete or that had deterred them from applying in the past. And imagine if those organizations had also complemented the parents' comments with comments submitted by legal aid organizations that had compiled specific suggestions for

improving the form, such as which fields could be simplified or cut entirely. With those comments on the record, USDA would have needed to respond to the members of the public and detail the steps they were taking to simplify access to school meals or the reasons that they could not undertake such steps.

To take advantage of more of these opportunities, progressive organizers could more systematically track the federal calls for public comments on government forms. When comment periods open, organizers should consider opportunities for aggregating the perspectives of their members or other affected communities to more accurately detail the experiences of using those forms; relevant burdens or barriers associated with the forms; the costs of not being able to complete or access the benefits or services associated with the forms; and ideas for simplifying or even eliminating the information collected on the forms. The federal government is primed to hear this kind of feedback: OMB has recently [launched](#) a new effort to streamline access to public benefits and services by addressing the “[administrative burdens](#)” often present in government paperwork.

One potential opportunity for future public engagement around forms involves grantmaking. Every [year](#) federal agencies issue thousands of grant applications totalling over half a trillion dollars in potential funding. Because grants involve applications and paperwork, they are also often available for public comment through the process detailed above. This gives members of the public an opportunity to ensure that grant applications are clear, simple, and accessible to all eligible organizations, including smaller organizations that might be deterred by more complex applications.

It also gives members of the public an opportunity to recommend to agencies that grant paperwork that they take into account public engagement with local communities as part of the application evaluation process. These kinds of consultative feedback mechanisms can help strengthen the design of prospective applications to ensure that they are responsive to the needs of local communities, and can also be a lever for community-based organizations to build and engage their memberships and empower local leaders.

Imagine if progressive movement organizations worked with federal agencies to implement more such community consultation and governance requirements into grant application and administration—for instance, so that grants to states to improve administration of unemployment insurance benefits required similar consultation and involvement of workers, especially workers who have experienced unemployment in the past. This kind of engagement could build co-governance

structures deeper into federal grantmaking and ensure greater accountability for agency administration within the communities that are most affected by those programs (and could build on existing [models](#) in the federal government).

Obstacles to Greater Engagement with Government's Hidden Levers--and A Path Forward

If there is so much promise to greater engagement with these hidden levers of government, what is holding progressive organizers and agencies back? Four factors stand out from my experience working at DOL and OMB, as I worked with many outside organizations to engage them to participate in more of these internal mechanics of government.

First, organizations may have been skeptical of the impact their involvement could have on government decisions, or wary of how engaging with government through forms, regulations, and grants could ladder up to more power for their members.

Second, even if they were interested in engaging, some organizations were not familiar with the details of relevant processes, and especially the type of information that would be helpful to provide to government agencies, the offices or staff relevant to engage, and when organizations should contact the government.

Third, other organizations were tracking what was necessary to engage but lacked the time, resources, or staff to be able to add these functions to their work. And last, there were sometimes differences in culture, priorities, and language between agency staff and movement organizations that complicated efforts to engage one another.

Not every progressive organization can or should be seeking to deepen their involvement in federal regulations, forms, and grants, and we benefit from an ecosystem of organizations that focus on different issues, strategies, and levels of government. But given the imbalanced set of voices that the federal government currently hears from, our government would greatly benefit from having more of our movement organizations share their members' perspectives in these processes.

To start building this muscle, progressive organizations can start small: engaging their members in one regulation, form, or grant, and seeing how the experience goes and what worked and did not. Progressive organizations can also seek out partnerships with groups and individuals that have more experience with government processes, including former government officials who can lend insights about the most effective ways of structuring outreach. One example: to develop its comments to OSHA on heat protections, the worker center network ROC United

partnered with Democracy Forward, a legal advocacy organization with expertise in the regulatory process.

Thinking more strategically, progressive organizers should consider pursuing changes to the structure of the federal government and agencies to encourage more opportunities for meaningful and inclusive consultation. OMB's recently proposed revisions to [regulations](#) on grantmaking is a good place to start. OMB is proposing to ask federal agencies to build community engagement more deeply into the design of funding opportunities and their administration. Commenting on the regulation to encourage OMB to adopt strong provisions around consultation and engagement can help deepen the opportunities for co-governance and power-building.

Progressive organizers should be thinking about other levers that they can either create or build on across federal processes — for instance in revisions to regulations around key processes like the Paperwork Reduction Act (which governs feedback on forms).

Over time, the progressive movement can help scale these initiatives by ensuring that organizations and funders recruit and support leaders for these efforts. And progressive organizers can create communities of practice with career government officials at the agencies they are likely to engage repeatedly. These communities, like the one created by DOL with unemployed workers groups, can involve regular and sustained conversations to help build common understandings of problems facing the communities outside organizations represent (for government staff), foster greater understanding of the structures and processes that government staff work within (for outside organizations), and bridge some of the differences in culture, priorities, and vocabulary that can otherwise impede engagement.

Building these new muscles will take time, but the stakes of the current moment mean that such an investment is well worth it. Improving the lives of the communities the progressive movement represents will require better using all available levers of government. That in turn means ensuring that those levers — including seemingly mundane but critical processes such as regulations, forms, and grants — more closely reflect the collective power, experiences, and interests of all people, and especially those who have been left behind by the government.