SUMMARY

State Regulatory Openness Scorecard

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One of the most fundamental principles of American government outlined by our founding fathers is that the people hold the right to “petition the Government for redress of grievances.” Citizens might choose to call their legislator, or write a letter to the governor’s office, but when it comes to bureaucratic agencies, public engagement can be difficult. Notice and comment for federal agencies has long been unified under the Office of Management and Budget and the Federal Register, but, at the state level, the openness of administrative processes varies greatly. This paper attempts to consolidate and compare these varied state systems in an effort to better inform administrative process reform.

Practically every state has passed some kind of legislation outlining administrative procedure. One of the most common systems enacted in some manner by more than a dozen states is the Model State Administrative Procedure Act from the National Conference of Commissioners on Uniform State Laws (NCCUSL). Other states have implemented their own frameworks, often based on the federal Administrative Procedure Act of 1946. Unfortunately, as is often the case, there can be great discrepancies between the spirit of the law and its implementation. States that have the exact same statutory language often manage their systems in very different ways.
Methodology

States are graded on four different sets of criteria.

**Ease of Submitting Comments:** This measures how simple it is to submit comments. This includes the relative ease with which activists can find comment submission forms or contact information. It also looks at how straightforward the process is and how it is presented.

**Transparency/Accessibility:** Can activists access up-to-date regulatory information both past and present? This looks at how easy to find the existing regulatory code is and how easy it is to find information on upcoming rulemakings. This also takes into account whether these documents are searchable and how dense they are to navigate.

**Uniformity:** States have a variety of different agencies promulgating regulations, just like the federal government. The question is whether or not activists hoping to engage have to navigate dozens of different frameworks or if there is some unity in the process. Can all the state’s information be gathered in one place if need be?

**Regulatory Restrictiveness:** Very succinctly, this plank measures how restrictive the code of regulation is in each state. How many restrictions are on the books and how does it impact residents?

In order to quantify regulatory restrictiveness, we rely on the metrics provided by the Mercatus Center at George Mason University State RegData project. This project “used text analysis and machine learning algorithms to quantify how many words and regulatory restrictions each state’s regulations contain as well as to estimate which sectors and industries of the economy those regulations are likely to affect. As in all RegData datasets, regulatory restrictions are a metric designed to act as a proxy for the number of prohibitions and obligations contained in regulatory text, as indicated by the number of occurrences of the words and phrases ‘shall,’ ‘must,’ ‘may not,’ ‘required,’ and ‘prohibited’ in each state’s regulations.”

Each of the four planks is weighted equally. So, states that regulate a lot could receive higher marks than a state that regulates very little if their system is easier and more accessible for residents. This is, after all, a regulatory process scorecard.
Grades

Number grades translate to the following analysis:

24-25 - As good as you can get. Very simple, imposing the least amount of burden on activists as possible.

21-23 - Very simple, but with minor flaws or encumbrments that, while miniscule, are noticeable.

18-20 - Noticeable flaws that could hinder activist participation or weigh down the process, but not significantly.

13-17 - Hovering at, or just below, average. At this point, the process becomes needlessly complicated.

10-12 - The system has perhaps a few redeeming qualities, but is severely flawed.

Below 10 - The system is in need of a complete overhaul and any positive aspects are overshadowed by the immense flaws.
Best of the Best

**Ease of Submitting Comments:**
Iowa’s unified online portal for administrative notice and comment makes submitting comments incredibly easy. Their intuitive user interface and simplified comment system mean that even citizens with minimal experience with regulatory matters can conveniently weigh in on items important to them. If they so choose, Iowans can also submit regulatory comments through the mail or in person, when circumstances permit. Furthermore, Iowa’s website for regulations houses tools to thoroughly educate members of the public that wish to learn more about the state’s regulatory process and how to get involved.

**Transparency/Accessibility:**
Missouri’s centralized website, maintained by the Secretary of State, provides citizens with a one-stop shop for information about regulations. Here, citizens can easily peruse or search through the full Code of State Regulations and the bimonthly Missouri Register (similar to the Federal Register). What makes Missouri’s system particularly accessible is the addition of an automatic e-notification system for rules and rulemakings, along with a rulemaking timeline calendar to help citizens understand rule filing dates. Essentially, citizens can find everything they could possibly need about the regulatory process via the Secretary of State’s website.

**Uniformity:**
Governed by the Idaho Administrative Procedures Act, Idaho’s administrative procedure is as uniform as it gets. The Office of the Administrative Rules Coordinator (OARC) serves the sole purpose of unifying regulatory notice under one roof. They function much like the Office of Management and Budget does at the federal level, providing a funnel for all regulatory changes before being finalized. OARC also maintains a singular online portal for all information regarding regulations, making it quick and easy for citizens to find what they are looking for.

**Regulatory Restrictiveness:**
South Dakota has one of, if not the least, restrictive regulatory code of any state. According to data compiled by the Mercatus Center at George Mason University, through its State RegData project, South Dakota has 44,000 regulatory restrictions on its books. The next highest state is Alaska, with 53,000 regulatory restrictions. By contrast, California is by far the most strictly regulated with 396,000 regulatory restrictions.
The Best and Worst of State Notice and Comment

**Iowa:** To the right, we have an example taken from Iowa’s excellent online regulatory notice and comment portal. Of particular note, Iowa includes all relevant information about the related agency, has a simplified summary of the proposal, and provides an easy-to-use link for submitting comments online.

**Arkansas:** On the other side of the coin, Arkansas’ online system for regulatory notice is overly complicated, requiring citizens to know exactly what they are looking for to find anything. What’s more, this system merely provides regulatory notices, requiring all public comments to be submitted in person or through the mail.

While these are examples of some of the best and worst online systems currently being used by the states, it is worth noting that even a minimal online portal such as Arkansas’ is preferable to some other disparate systems. Hawaii and Massachusetts, for example, are practically stuck in the 20th century when it comes to regulatory notice and comment. Hawaii does not appear to allow online comments, and online regulatory notice is still split amongst the numerous agencies’ webpages. Massachusetts also lacks an online comment system, and the Massachusetts Register is given only in a non-searchable format.