

Last month, the Government Accountability Office (GAO) published a [report](#) finding that federal agencies published about 35 percent of the major rules issued between 2003 and 2010 without seeking public comment through a notice of proposed rulemaking (NPRM). As Susan Dudley explained in a policy [commentary](#) on GAO's report, "This means that a significant percentage of new regulations expected to have an impact of \$100 million or more on the economy are given the force of law without public input. GAO finds a sharp increase in the practice of issuing a final regulation without first seeking public comment in 2009, when 40 percent of all major final rules were issued without notice and comment, compared to 26 percent in 2008." Unfortunately, a look at the recently-released [Unified Agenda](#) indicates that this trend may be continuing, and that agencies may continue to regulate without seeking public comment.

The Unified Agenda of Regulatory and Deregulatory Actions, generally published by the Office of Management and Budget twice yearly, outlines agencies' regulatory plans for the coming year and gives the public an opportunity to see what is coming down the regulatory pike. For rules such as interim final regulations, which do not require NPRMs before finalization, publication in the Unified Agenda may be the only chance the public will have to know of an impending rule before it has the force of law.

Unlike in past years, there was only one Unified Agenda published for all of 2012. This gives the public a narrower view of upcoming regulatory actions than in previous years, when the public had twice as many opportunities to see what upcoming regulatory actions they should expect. Even more worrying, of the economically significant rules in the final rulemaking stage that were published for the first time in the 2012 Unified Agenda, 55% were interim final rules, only one of which went through public comment.

The 2012 Unified Agenda doesn't live up to President Obama's standards for transparency

Also of concern for the Administration's goal of transparency and public involvement is that the Treasury Department lists plans to issue several final regulations this year for which proposals were issued a decade or more ago. If these are issued without further notice and comment, they may face legal challenge, particularly given the number of events that have transpired since the rules were initially proposed. Treasury and the Federal Deposit Insurance Corporation also list several interim final rules (issued without first seeking public comment) on the Agenda for the first time.



In his January 2009 [memorandum](#) on transparency and open government, President Obama stated that his administration is “committed to creating an unprecedented level of openness in Government.” In the same memo, President Obama stresses that public participation “enhances the Government's effectiveness and improves the quality of its decisions.” These themes are echoed in [Executive order 13563](#), which instructs executive branch agencies to adopt new rules through a process that includes participation from the public.

Clearly, transparency and public participation are important to for the effective administration of the American rulemaking process. Unfortunately, evidence from the 2012 Unified Agenda suggests that many economically significant regulations may be put in place over the coming year without the benefit of public involvement.

