



WORLD **PRIVACY** FORUM

Comments of the World Privacy Forum

to the Office of Management and Budget (OMB) regarding "Request for Feedback on Draft Guidance: Broadening Public Participation and Community Engagement with the Federal Government"

Submitted via <https://www.performance.gov/participation/>

Office of Management and Budget
725 17th Street
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The World Privacy Forum welcomes the opportunity to respond to OMB's *Request for Feedback on Draft Guidance: Broadening Public Participation and Community Engagement with the Federal Government*. See: <https://www.performance.gov/participation/> and https://assets.performance.gov/files/OMB_ParticipationEngagement_DRAFTToolkitOutline_vF.pdf. See also: <https://www.performance.gov/blog/2024-public-participation-federal-government/> .

The World Privacy Forum is a non-partisan 501(c)(3) public interest research group focused on conducting research, analysis, and education in the area of privacy and complex data ecosystems and their governance, including in the areas of identity, AI, health, and others. WPF works extensively on privacy and data governance across multiple jurisdictions, including the U.S., India, Africa, Asia, the EU, and additional jurisdictions. For more than 20 years WPF has written in-depth, influential research regarding systemic data issues. These include medical identity theft, India's Aadhaar identity ecosystem — peer-reviewed work which was cited in the landmark Aadhaar Privacy Opinion of the Indian Supreme Court — The Scoring of America, an early and influential report on machine learning and consumer scores. Most recently, WPF published *Risky Analysis*, a report on AI Governance Tools that establishes the beginnings of an evaluative environment for these tools. WPF co-chairs the UN Statistics Data Governance and Legal Frameworks working group, and is co-chair of the WHO Research, Academia, and Technical Constituency. WPF researchers participate in the OECD.AI AI Expert Groups, among other activities. WPF research on complex data

ecosystems governance has been presented at the National Academies of Science, the Mongolian Academies of Science, and the Royal Academies of Science. See our reports and other data at World Privacy Forum: <https://www.worldprivacyforum.org>.

We focus here on a subject with which we have some experience and expertise, and then we broaden our suggestion to other topics.

The World Privacy Forum pays attention to the Privacy Act of 1974 and to agency activities related to that Act, and has done so for more than 20 years. We have filed many detailed comments across U.S. agencies over the decades. We are the first to note that following federal agency Privacy Act of 1974 activities through publications in the Federal Register is challenging. We regularly review notices, but even at our level of high attention we do not always have time to search the Federal Register or to review Privacy Act of 1974 notices that appear. Like everyone else, the WPF does not have the resources to do everything we want to do.

The federal government could take steps that would make review of Privacy Act of 1974 notices a bit easier. The Office of the Federal Register could establish a system that would affirmatively send a weekly summary of all publications that relate to the Privacy Act of 1974. Those who are interested could sign up to receive that weekly summary. Providing this option is similar to services available all over the Internet that allow interested parties to receive notices about activities, posts, or subjects that are of interest to them.

We note that WPF is already signed up to receive daily Federal Register notices regarding Privacy Act of 1974-related notices. But we have had to craft multiple convoluted alerts in order to narrow the field. A dedicated service could make this much easier for organizations to focus the alerts to their areas of interest.

For example, a Privacy Act of 1974 notification service might be provided on a government-wide basis or on an agency-by-agency basis. Some people might only be interested in Privacy Act activities of one agency. Some might be interested in notice of Privacy Act of 1974 changes by all agencies. A notification service could be structured in many ways, and the Office of the Federal Register would likely learn over time how best to serve interested parties. The Office could start by asking those who might be interested what would be the best way to proceed. We also observe that the function that we propose could alternatively be managed by the Federal Privacy Council. (<https://www.fpc.gov/> .)

Further, the Federal Privacy Council could manage a way to provide notice a bit further back in the process. Any agency that begins planning an activity affecting privacy likely to result in a change to a Privacy Act of 1974 notice, an entirely new notice, or a significant consequence for privacy interests could notify the privacy community of what the agency is planning well before the Privacy Act of 1974 notice stage. The Federal Privacy Council could develop simple standards to guide the timing and content of advance agency notices. This would be extremely helpful for NGOs.

We also suggest that each agency's Privacy Officer might be tasked with the responsibility of identifying relevant agency activities and to draft a public notice. The notice of an agency activity affecting privacy could be part of the notification system we proposed above about the Privacy Act of 1974, or it could be a separate topic with a separate notice system.

The benefits here could be significant. For example, those who are interested could talk to the agency about its plans before all the decisions are final. We offer one anecdote from a colleague that illustrates the benefits. The agency, the privacy group, and the participants are not identified here because the activity was off-the-record. An agency planning a new activity with significant consequences for privacy agreed to come to a meeting sponsored by a privacy organization to discuss that activity. There was some reluctance to do so on the part of the agency, and some mistrust all around during the initial meeting. But the meeting proceeded, and what emerged after several meetings was a somewhat different approach to the problem that the agency faced. That different approach was both more protective of privacy while at the same time allowing the agency to achieve its goals in a better and more efficient manner. It was noteworthy that at the end of the consultations, the agency representative went out of their way to thank the participants for their assistance. This example illustrates how early consultations can sometimes lead to better results from multiple perspectives. This type of cooperation is rarely possible when an agency makes all the planning and design decisions for an activity, and the public only sees a Privacy Act of 1974 notice after the activity is fully planned.

We have offered detail on privacy-related matters, but the same ideas would work in other field and in many other ways. There could be regular notices for those interested in Freedom of Information rule changes or Paperwork Reduction Act disclosures by federal agencies. Notification lists could be organized by agency, agency component, or subject. For example, regular notices could inform those interested in health or energy matters. We emphasize as we did with the privacy planning example above that notifications need not be limited to matters that appear in the Federal Register. Agencies and programs might have their own notification methods for their own issues and their own clienteles.

The World Privacy Forum once again thanks OMB for the opportunity to participate in this worthwhile government effort.

Respectfully submitted,

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