How to Win Friends and Influence Policy

Session 210, March 14, 2024

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DISCLAIMER: The views and opinions expressed in this presentation are solely those of the author/presenter and do not necessarily represent any policy or position of HIMSS or Informa.
Meet Our Speaker

Zach Withers, JD
Product Manager
CMS
Conflict of Interest Slide

• Zach Withers, JD

• Has no real or apparent conflicts of interest to report.
Agenda

• Why We’re Here
• A Case Study
• Thoughts for Government
• Thoughts for the Private Sector
• Open Discussion
Learning Objectives

• **Learning Objective #1**: (For regulators) Collect the information attendees need to develop reality-based regulations

• **Learning Objective #2**: (For regulators) Identify design-determinative facts needed before attendees write a proposed regulation, instead of in response to a proposed regulation

• **Learning Objective #3**: (For regulated entities) Identify an organization’s critical knowledge that policymakers need to know

• **Learning Objective #4**: (For regulated entities) Express that knowledge to policymakers effectively
If You’re Reading Ahead: This Deck Looks Really Weird Without Narration

Come See the Session or Watch the Recording!
A Few Relevant Disclaimers...
I do not represent the opinions of CMS
This is not Legal Advice
Language Professors Hate Him!

Doctor’s discovery revealed the secret to speaking any language in just 10 days. Watch this shocking video and discover how you can rapidly learn any language in just 10 days using this sneaky linguistic secret... Free from the computer... Free from memorization... and absolutely guaranteed!

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- A Few Relevant Disclaimers
Why We’re Here
The Fundamental Questions of Our Age
The Fundamental Questions of Our Age

Regulators

Why did our carefully-drafted policy not yield expected outcomes?

Regulated Entities

What universe is our regulator living in?
The Fundamental Questions of Our Age... Answered by a Venn Diagram

Someone with critical information
Someone who needed to know it
Communication didn’t happen
What I Believe
What I Believe

1. This Serves No One’s Interests
What I Believe

1. This Serves No One’s Interests

2. We Can Fix It
Case Study: CMS and Advanced Explanations of Benefits
CMS and Advanced Explanations of Benefits

The Law

• No Surprises Act of 2020¹
• Provider: Good Faith Estimate
• Insurer: Advanced Explanation of Benefits

¹ See https://www.cms.gov/nosurprises
CMS and Advanced Explanations of Benefits

The Players

Congress: Wrote the mandate
CMS: To write the rules
DSAC: To find the facts

- Case Study: CMS and Advanced Explanations of Benefits
CMS and Advanced Explanations of Benefits

The Billion-Dollar Questions

• How can we make this work?
• How can we minimize burden?
• What else do we need to know?
CMS and Advanced Explanations of Benefits

The Process

- Formal Request for Information
- Desk Research
- Expert Discussions
- Outreach
- 31 Stakeholder Interviews
- Total Time: 3 months
CMS and Advanced Explanations of Benefits

The Response

• Nearly 100% of entities contacted volunteered to be interviewed
• 0% interview no-show rate
• Conversations were candid, intelligent, and highly detailed
• Sometimes we got yelled at
• That’s a good thing
CMS and Advanced Explanations of Benefits

The Bottom Line
CMS and Advanced Explanations of Benefits

The Bottom Line

The Work We Did Will Lead to Better Regulatory Outcomes
Thoughts for Government
TL;DR for the Government

1. You don’t know what you don’t know
2. Notice and comment is a tool, not the tool
3. Get out there and learn something
You don’t know what you don’t know

Image by Hellisp, Creative Commons CC BY 2.5
You don’t know what you don’t know

Image by Pedro Szekely, Creative Commons CC BY-SA 2.0
You don’t know what you don’t know
You don’t know what you don’t know

Effective Policy

- Desk/Academic Research
- Public Comment
- Regulator Expertise
- Field Research
Notice and Comment is a tool, not the tool
Notice and Comment is a tool, not the tool

Who Comments

Large Organizations w/ Policy Apparatus

Activists
Notice and Comment is a tool, not the tool

Who Comments

Key Stakeholders

- Large Organizations w/ Policy Apparatus
- Activists
Notice and Comment is a tool, not the tool

Who You Need to Talk To

Key Stakeholders

Large Organizations w/ Policy Apparatus
Activists
Notice and Comment is a tool, not the tool

And what’s in these comments?
Notice and Comment is a tool, not the tool

How We Wish Comments Were Written

Key Insights

Sent Right to You!
Notice and Comment is a tool, not the tool

How Comments Are Written

Key Insights | Lawyers | Comms | Leadership | What Gets Sent

Big Argument: Send Nothing

Big Argument: Send Nothing

Big Argument: Send Nothing
Notice and Comment is a tool, not the tool

How Comments Are Written (Take Two)

Gov't Affairs  Experts  What Gets Sent

I’m Busy!
Get Out There and Learn Something

• Decide who you need to talk to
• Get them to talk to you
• Let them talk
• Listen
Get Out There and Learn Something

Who You Need to Talk To

Key Stakeholders

- Activists
- Large Organizations w/ Policy Apparatus
Get Out There and Learn Something

Who You Need to Talk To

Key Stakeholders

- Entities that are supposed to benefit from the regulation
- Entities that will need to comply with the regulation
- Entities that those entities rely on (e.g. vendors)
Get Out There and Learn Something

Get the right knowledge in the room and participating

• Leadership
• Workflow Experts
• Line Level Doers
• Technology Experts
Get Out There and Learn Something

Get the right knowledge in the room and participating

- Leadership
- Workflow Experts
- Line Level Doers
- Technology Experts

Don’t stop here!
Get Out There and Learn Something

It has to be a conversation, not an interrogation

• Planned questions set the stage...
• ...but most key insights come from follow-ups
• Participants will steer you towards what’s really important
• You’ll learn things you didn’t know to ask about
Thoughts for the Private Sector
TL;DR for the Private Sector

1. Your regulator is doing their job
2. Regulators cannot know everything you know
3. Leverage Your Opportunities for Feedback
4. Make Your Comments Count
5. If you can’t engage, partner with someone who can
Your regulator is doing their job

• Congress writes laws. Regulators implement them.

• “Regulator decides not to implement the law” is... against the law.

• Your regulator’s job is to make the law work.

• Your regulator’s second job is to minimize public burden.

• You can cooperate or fight... but the reg is getting written.
Regulators cannot know everything you know

Your regulator understands your industry.

Your regulator doesn’t live your industry.

The devil’s sure in the details, isn’t it?
Leverage Your Opportunities for Feedback
Leverage Your Opportunities for Feedback

The Federal Regulatory Process

- Research
- Proposed Rule Drafting
- Notice and Comment
- Final Rule Drafting
Leverage Your Opportunities for Feedback

The Federal Regulatory Process

Research

Proposed Rule Drafting

Notice and Comment

Final Rule Drafting

Sometimes, written public comment solicited via Request for Information (RFI)

Happens behind closed doors

Proposed rule is published for comment in Federal Register

Happens behind closed doors
Leverage Your Opportunities for Feedback

1. Written comments are often the only feedback regulators get before finalizing a rule.
2. Comments are read, taken seriously, and acted upon.
3. Regulators may assume that silence is disinterest, approval, or lack of knowledge.
Make Your Comments Count

This. Is. Not. Lobbying.
Make Your Comments Count

• The regulator needs to know:
  • How will this rule affect your business?
  • Why?
  • What are the numbers?
  • How specifically could it be revised to be better?
# Make Your Comments Count

<table>
<thead>
<tr>
<th>Not Helpful</th>
<th>More Helpful</th>
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<tbody>
<tr>
<td>“The National Association of Shoemakers requests the Federal Shoe Authority to not regulate shoe soles, or alternately to allow shoemakers flexibility in how such rules are complied with. This will reduce burden on shoemakers, thereby benefitting America’s feet and preserving jobs.”</td>
<td>“Section 11 of the Proposed Rule requires that shoe soles be made of rocks. 0% of shoe factories have equipment capable of processing rocks, nor is such equipment readily available. In addition, any compliant shoes would be unwearable. See our White Paper attached.”</td>
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Make Your Comments Count

- Good comments come from a multidisciplinary team:
  - Engineering: What’s technically feasible?
  - Line Staff: What can our workflows accommodate?
  - Leadership: What would this rule do to our key interests?
  - Legal/Gov Affairs: Wrap the answers up and send them out.
Make Your Comments Count

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LEAST important!
Engage With Partners

- Some of you already monitor and comment
- Some of you will start
- Some of you don’t have time
- Trade associations and other groups can do this on your behalf – but you have to engage with them
- Time invested pays off in better rules and reduced burden
Wrapup and Discussion
The Final TL;DR

1. **Government**: You can’t regulate properly without understanding the day-to-day realities of the people you’re regulating. Go out and talk to them.

2. **Industry**: Regulations are going to happen. They don’t have to be nonsense. Regulators are your ally in this – but you have to engage in good faith.

3. **Everyone**: This will take effort. It’s an investment. It pays off. We’ve done it.
Discussion Time

Government:
• How have you engaged successfully with industry to educate the regulatory process?
• How do you wish you could engage with industry?
• What do you want the industry people in this room to hear about government?

Industry:
• How have you engaged successfully with government to educate the regulatory process?
• How do you wish you could engage with government?
• What do you want the government people in this room to hear about industry?
Session Feedback:

How to Win Friends and Influence Policy

Please scan this QR code on your mobile or tablet device to access the session feedback survey.
Thank You

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