General Introduction

President Obama recently emphasized that government should be both participatory and collaborative. Collaboration, when properly executed, expands the information and insight that is available to agencies, and the focused deliberation can result in policies that would be difficult to achieve otherwise. The essence of collaboration is the bilateral nature of the discussions, with the agency engaging in a give and take, instead of simply informing itself to make the decision alone.

Collaboration can take many forms and be employed throughout the regulatory process: it might be a scoping session to develop the issues that need to be taken into account in a new rule; it might be a policy dialogue or roundtable in which the science or other important components are discussed; it might be recommendations to the agency concerning a proposed rule; or, indeed, the collaboration might be entirely within the private sector to establish a policy in lieu of mandatory regulation. While these are certainly helpful in informing the agency, they stop short of securing the ultimate benefit of collaboration: an actual agreement or otherwise provide for its dissemination to the bar.

Sponsoring Organizations

Center for the Study of Dispute Resolution (CSDR) of the University of Missouri. It is perennially ranked among the top dispute resolution programs in the country and has been a leader in ADR for well more than a decade. The mission of the CSDR is to develop and promote: appropriate methods for understanding, managing and resolving domestic and international conflict, and the use of dispute resolution techniques to enhance informed decisionmaking. This includes public policy and group decisionmaking and the relationship of democracy and dispute resolution. For a more extensive description, see law.missouri.edu/csdr.

Center for the Study of Rulemaking of American University. The Center has been a creative force in examining a variety of issues with respect to administrative rulemaking. Its conferences and recommendations to improve the processes and techniques used by agencies of government to develop regulations are well known. Among its goals are: examine early and informal public participation in rulemaking and the implications of eRulemaking and early participation with small governments and business; involvement of the public in the development of rules, including electronic means of participation; management systems used by government agencies to support their rulemaking programs; cross-agency and intergovernmental systems to promote collaboration and coordination in rulemaking; the development of federal managers who have primary or major responsibilities related to management of rulemaking processes; and the systematic evaluation of different processes for developing, implementing and enforcing rules and regulations. For a more extensive description, see american.edu/rulemaking.

The Section of Administrative Law and Regulatory Practice of the American Bar Association. The purpose of the Section is: (1) to promote the sound development of local, state and federal administrative law, procedure and practice; (2) to promote regulatory reform through the systematic evaluation of different processes for developing, implementing and enforcing rules and regulations. For a more extensive description, see abanet.org/adminlaw.
Affect the nature of judicial review? Resulted from a collaborative process if they do, does the fact that the policy ensures its legitimacy? If so, what are they? Procedures that should be followed to ensure its legitimacy? If so, are they appropriate. Are there incentives for it or at least remove it adversely affect the ability of an agency or its staff to players in the private sector? If so, is that good or bad? Ansell Arbuckle Bingham Durant Eisner Harter Herz Kerwin Lubbers Meidinger Rosenbloom Russell-Einhorn Steinzor Sunstein

Panel 1: Making Policy

1:00 pm Welcome
Cornelius M. Kerwin President and Professor (and former Dean) of Public Administration, American University; founder of the Center for the Study of Rulemaking

Philip J. Harter Earl F. Nelson Professor of Law, University of Missouri, Senior Fellow, Center for the Study of Dispute Resolution; Chair, Collaborative Governance Committee of the Section of Administrative Law of the American Bar Association

1:15 pm Introduction and Overview: Setting the Stage and Posing the Questions
Cornelius M. Kerwin

1:45 pm BREAK

2:00 pm Panel 1: Making Policy
Christopher Ansell Associate Professor of Political Science, University of California, Berkeley
Lisa Blomgren Bingham Keller-Runden Professor of Public Service and Director of the Indiana Conflict Resolution Institute (ICRB) at the School of Public and Environmental Affairs, Indiana University
Jeffrey S. Lubbers Fellow in Law and Government, Washington College of Law, American University, Co-Director, Center for the Study of Rulemaking
Nikolai Malyshev Senior Economist, Regulatory Policy Division, Public Governance and Territorial Development, Organisation for Economic Co-operation and Development (OECD)
Rena I. Steinzor Jacob A. France Research Professor, University of Maryland School of Law, and President of the Center for Progressive Reform (CFPR)

Thursday, April 2

4:00 pm Adjourn

Friday, April 3

3:00 pm Small group breakout sessions: Developing Recommendations

4:30 pm BREAK

4:45 pm Panel 2: Implementation and Enforcement
Neil R. Eisner Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation
Michael Herz Vice Dean, Professor of Law and Director, Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law
Errol Meidinger Professor and Vice Dean, University at Buffalo Law School, State University of New York

6:30 pm RECEPTION President’s Office Building

Malcolm Russell-Einhorn Director, Center for International Development, Rockefeller College of Public Affairs and Policy, University at Albany Law School, State University of New York

10:00 am BREAK

11:00 am What It Takes to Do It Right: 25 Years of Ruminations on Collaborative Governance
Philip J. Harter Followed by an overview of major points raised at the conference and a group discussion and Q&A

Cass R. Sunstein (invited) Announced Nominee, Director of Office of Information and Regulatory Affairs of the Office of Management and Budget

1:30 pm Plenary Session: Reporting back and discussing recommendations

2:30 pm Develop proposals and next steps:

3:45 pm BREAK

4:00 pm Adjourn

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American University School of Law, President of the Center for Progressive Reform (CFPR)

3 Panel 3: Legal and Institutional Changes Necessary for Collaborative Governance

Donald R. Arbuckle Clinical Professor of Public Administration, School of Economic, Political, and Policy Sciences, University of Texas at Dallas; formerly, Deputy Administrator, Office of Information and Regulatory Affairs of the Office of Management and Budget
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