

Written Testimony of Ms. Esa L. Sferra-Bonistalli

Before the Little Hoover Commission

**Hearing on Ex Parte Practice in Informal Rulemaking and
Quasi-Legislative Processes within State Agencies**

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Thank you for the opportunity to present testimony regarding the federal landscape of *ex parte* communications in informal rulemaking. With more than a half-century of history at the federal level, these types of communications became a hot topic again last year because of a project undertaken by the Administrative Conference of the United States. The Conference is an independent federal agency with a mission similar to this Commission's. I was the research consultant for that project. I produced a scholarly report that serves as the basis for the Conference's current recommendation regarding federal agency policies on *ex parte* communications.

In this testimony, I present my research and conclusions from that report, as well as my experience of over a decade as a federal regulatory attorney advising agencies regarding *ex parte* communications.

Scholarly Examination of *Ex Parte* Communications in Federal Rulemaking

My report examines legal and policy issues related to *ex parte* communications in federal informal rulemaking, sets forth the legal requirements for handling them, and identifies best practices for balancing their value and potential harm. The report describes how current *ex parte* communications usually occur and why, and specifically identifies the value and potential harm of such communications. The report also examines the legal framework regarding *ex parte* communications at the federal level, and the current *ex parte* communication policies of a sampling of federal agencies.

For the report, I interviewed agency personnel and public stakeholders to learn how current *ex parte* communications are made and why. I spoke with representatives from a mix of executive branch and independent agencies, including agencies with varying forms of *ex parte* communication policies from promulgated rules to no known policy. I also spoke with a cross-section of public stakeholders that represented perspectives of large and small businesses and industries subject to federal regulation, consumers and government watchdogs represented by non-profit organizations, and academia.

Ex Parte Communications: What, How, Why

In my report and this testimony, I use the term "*ex parte* communication" to mean *an interaction, oral or in writing, between a public stakeholder and agency personnel regarding a rulemaking outside of written comments submitted to the public docket during the comment period.* A quick refresher on federal informal rulemaking under the Administrative Procedure Act provides

context for this definition. Based on the APA's procedural requirements, the lifecycle of an informal rulemaking in its simplest form includes issuance of a notice of proposed rulemaking (an NPRM), followed by a public comment period, and then issuance of a final rule. The public comment period is the APA-required stage for interaction between public stakeholders and agency personnel regarding the rulemaking. Rulemaking-specific interaction occurring outside of written comments submitted during the comment period are *ex parte* communications. And *ex parte* communications in federal informal rulemaking may occur before an NPRM is issued or after an NPRM is issued either during or after the comment period.

Ex parte communications have occurred and continue to occur at all types of federal agencies, regarding all types of rulemaking topics, and are almost always in-person. *Ex parte* communications at the federal level are mostly initiated by public stakeholders, but may be initiated by agency personnel, likely when they need more data that is not readily available through other means. *Ex parte* communications are almost always oral except if a public stakeholder has new information. New information usually is presented in an official written comment to ensure its inclusion in the rulemaking docket. *Ex parte* meeting requests may target decisionmakers, but *ex parte* communications are not limited to decisionmakers and can involve all levels of agency personnel, depending on the topic, the rulemaking, the agency, and the particular issue.

Ex parte communications provide several benefits to the rulemaking process. These communications, however, have the potential to harm the rulemaking process if not managed properly. Thus, agencies must balance the actual and potential benefits of *ex parte* communications with the potential and perceived harms of them.

The benefits of *ex parte* communications include:

- Providing public stakeholder data and expertise, both pre-NPRM to help an agency formulate the NPRM proposal and post-NPRM to update or refresh any data that may have become stale during the rulemaking process.
- Amplifying or clarifying submitted written comments post-NPRM by orally providing context or detail that public stakeholders may not be willing to put in writing. Written comments are carefully drafted for tone and presentation. In-person communications can be more direct and provide a fuller description of an issue, problem, informative data, or potential solution. *Ex parte* meetings during or after the public comment period rarely involve new information, and the intention of such a meeting is often to present the already or soon-to-be submitted information in-person to a decisionmaker who may not have read the entire record.
- Furthering “good government” at any stage of the rulemaking by providing additional opportunity for public stakeholder interaction with the agency, especially for public stakeholders who may not have the resources to submit specific and detailed comments during the comment period, or who are not completely familiar with the rulemaking process. Some public stakeholders, especially small entities, can more easily engage in a large, complex rulemaking once the issues that most affect them are focused and highlighted by written comments.

The potential harms of *ex parte* communications include:

- Impropriety or the appearance of impropriety in the decision-making process. Generally, *ex parte* communications in a rulemaking could be seen as compromising the apparent legitimacy of a rule because these communications occur outside the APA-set procedures. One of the primary concerns associated with *ex parte* communications is that undue influence exerted in private meetings may subvert the democratic principles underlying informal rulemaking. *Ex parte* communications in a rulemaking also could create actual or perceived unfairness in uneven levels of access to agency representatives by public stakeholders.
- Practical concerns regarding agency resources and docket clutter. *Ex parte* communications require agency resources, both for engaging in them and for disclosing them if that burden lies with agency personnel. They could also make a large rulemaking docket more cluttered and bury salient information among repetitive communications.

In balancing the benefit versus the harm of *ex parte* communications, the stage of rulemaking when they occur is important.

- Pre-NPRM *ex parte* communications are the least suspect since they occur as an agency is formulating a rulemaking proposal and has resources already devoted to data-gathering. Also, influential communications at this stage, or at least any information received through such communications the agency is relying on for its proposal, will be disclosed in the NPRM itself to fulfill other legal requirements.
- Post-NPRM *ex parte* communications generally present more potential for the appearance of or actual impropriety and for affecting agency resources because they occur outside the APA-set procedure for the public to present information and perspective. Private meetings with select stakeholders could give the appearance that such meetings will influence decisionmakers more than all the public comments. And if agencies do not account for the possibility of *ex parte* communications at this stage, they may find themselves without adequate resources to address even unwelcomed communications.
- Post-comment period *ex parte* communications in particular prompt the most concern because they occur when an agency is supposed to be deliberating on all the information provided during the comment period rather than potentially taking in new information, and when the agency should be focused on making final policy decisions based on the information in the rulemaking docket rather than engaging in private meetings.

Based on my research and experience, I advocate that disclosure of *ex parte* communications is key to achieving the necessary balance of benefits and harms because it can

remedy the impropriety concerns associated with *ex parte* communications, while appropriate agency planning can mitigate the practical concerns.

I provide more detail on this advocacy for disclosure after summarizing the history of *ex parte* communications, current federal agencies' policies, and the Conference's current recommendation regarding *ex parte* communications.

Federal Legal History

The issue of *ex parte* communications first arose a decade after the 1946 enactment of the federal APA, which created the current procedural requirements for informal rulemaking. In 1956 and 1959, the D.C. Circuit decided cases involving *ex parte* communications in broadcast television allocation rulemakings,¹ and a follow-on case in 1961 involving *ex parte* communications during a textile definition rulemaking.² Many agencies have had some sort of general *ex parte* communication policy in place since the early 1960s, but many of these first policies did not specifically address rulemaking. Most early policies were in response to a recommendation, issued in 1962 by the first incarnation of the Conference, addressing *ex parte* communications in the federal adjudicatory and other non-rulemaking proceedings.³

Then in 1977, the D.C. Circuit's opinion, *Home Box Office v. Federal Communications Commission*,⁴ prompted consideration of *ex parte* communications in federal rulemaking. In *Home Box Office*, the court essentially prohibited all *ex parte* communications in federal informal rulemaking except those that occurred pre-NPRM, and required disclosure if a post-NPRM *ex parte* communication nonetheless occurred. *Home Box Office* was a departure from the court's previous cases dealing with *ex parte* communications, which found them permissible in federal rulemakings that were purely quasi-legislative processes. The court had previously found *ex parte* communications impermissible in only one case, and that case concerned a rulemaking that was quasi-adjudicatory, rather than quasi-legislative, in nature.⁵

In response to *Home Box Office*'s prohibition on *ex parte* communications, the Conference specifically recommended against a general prohibition on *ex parte* communications in informal rulemaking, and focused on disclosure. Recommendation 77-3, *Ex parte Communications in Informal Rulemaking*,⁶ advises that a general prohibition would eliminate the flexibility necessary for agencies to develop rulemaking procedures appropriate for their particular areas of regulation and would make informal rulemaking overly strict and formal.

¹ *Van Curler Broadcasting Corporation v. United States*, 236 F.2d 727 (D.C. Cir. 1956); *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221 (D.C. Cir. 1959).

² *Courtaulds (Alabama) Inc. v. Dixon*, 294 F.2d 899 (D.C. Cir. 1961).

³ Recommendation 16 of the Temporary Conference of the United States (1962).

⁴ 567 F.2d 9 (D.C. Cir. 1977).

⁵ *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221 (D.C. Cir. 1959) (noting that "whatever the [rulemaking] proceeding may be called it involved not only allocation of TV channels among communities but also resolution of conflicting private claims to a valuable privilege, and that basic fairness requires such a proceeding to be carried on in the open").

⁶ 42 Fed. Reg. 54,253 (Oct. 5, 1977), available at <https://www.acus.gov/research-projects/ex-parte-communications-informal-rulemaking>.

Home Box Office, while prompting quite a reaction, was a quick moment in federal regulatory history. Four years later, the D.C. Circuit made clear that *Home Box Office* was an anomaly and affirmed Recommendation 77-3's stance against a general prohibition on *ex parte* communications. In its seminal, and last substantial, case concerning *ex parte* communications, *Sierra Club v. Costle*,⁷ the D.C. Circuit explained that such informal contacts play an important role in federal rulemaking because of the policymaking function of rulemakings:

Under our system of government, the very legitimacy of general policy making performed by unelected administrators depends in no small part upon the openness, accessibility, and amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives, and upon whom their commands must fall. As judges we are insulated from these pressures because of the nature of the judicial process in which we participate; but we must refrain from the easy temptation to look askance at all face-to-face lobbying efforts, regardless of the forum in which they occur, merely because we see them as inappropriate in the judicial context. Furthermore, the importance to effective regulation of continuing contact with a regulated industry, other affected groups, and the public cannot be underestimated. Informal contacts may enable the agency to win needed support for its program, reduce future enforcement requirements by helping those regulated to anticipate and share their plans for the future, and spur the provision of information which the agency needs.⁸

Thus, *ex parte* communications in informal rulemaking are not prohibited by law, but what role they play depends on agency policy. Immediately after Recommendation 77-3, many existing agency policies already aligned with Recommendation 77-3's recommendation for disclosure of post-NPRM oral communications. A few agencies specifically updated or issued rules adopting Recommendation 77-3. Only one agency issued rules directly as a result of *Home Box Office*; the FCC, which was the agency party in that case. Since Recommendation 77-3, agencies have created new or revised existing *ex parte* communication policies for a variety of agency-specific reasons arriving at the current state of agency policy.

Current Federal Agency Policy

To understand current agency practices regarding *ex parte* communications, I examined the *ex parte* communication policies set forth in rules, written policy, and unwritten policy of eighteen agencies. This sampling of federal agency policies reveals that current agency practice seems to occur on a spectrum: some agencies permit or even welcome *ex parte* communications; other agencies discourage or refuse them. This spectrum regarding *ex parte* communications also reflects a spectrum about how agencies conduct rulemaking. For example, the FCC initiates a rulemaking with a general proposal and then uses a comment period, reply comment period, and *ex parte* communications to focus the issues and find the best solution to the problems the rulemaking was initiated to address. Other agencies attempt to refine the issues as much as

⁷ 657 F.2d 298 (D.C. Cir. 1981).

⁸ *Sierra Club*, 657 F.2d at 401 (citations omitted).

possible pre-proposal, so that the proposed rule reflects the government's best efforts to identify the problem and its best solution.

Most policies cover both oral and written *ex parte* communications, although some only cover oral *ex parte* communications. The majority of policies focus on post-NPRM *ex parte* communications, and one agency focuses solely on post-comment period *ex parte* communication. The rest cover all *ex parte* communications regardless of whether they occur pre-NPRM or post-NPRM.

Regardless of how welcoming or restrictive these agencies' policies are towards *ex parte* communications, however, all policies require disclosure. In fact, this is the only commonality among all the federal agency policies sampled in the report. These policies cover which types of communications must be disclosed, when they must be disclosed and by whom, any exception from disclosure, and any sanctions for violations of the disclosure policy. A summary of the disclosure commonalities among these agency policies is provided in an appendix to this testimony.

Current agency policies that restrict *ex parte* communications may, in response to the Administrative Conference Recommendation 2014-4, begin shifting towards becoming more welcoming.

Administrative Conference Recommendation 2014-4

Recommendation 2014-4, "*Ex Parte*" Communications in Informal Rulemaking,⁹ reflects the current federal consensus regarding such communications. The recommendation was crafted by a Conference committee of federal public and private practitioners, and deliberated on and adopted by the entire Conference membership, which includes practitioners, federal officials, and experts from the private sector, non-profits, and academia. Recommendation 2014-4 focuses on prompting agencies to craft thoughtful and tailored policies that fit the resources and nature of each agency's rulemaking work.

The recommendation explicitly advises against restrictions on pre-NPRM *ex parte* communications, and offers agencies the option of disclosing the occurrence or content of such *ex parte* communications. The recommendation is a bit more hesitant regarding post-comment period *ex parte* communications, and leaves it to the agency to determine whether they should be permitted; however, the recommendation cautions that *ex parte* communications will possibly still occur regardless of agency restrictions, and policies should account for such possibilities.

The recommendation specifically encourages disclosure of both the occurrence and content of post-NPRM *ex parte* communications. The recommendation encourages use of digital technology to aid in the management and disclosure of *ex parte* communications. The recommendation, however, is silent on what constitutes adequate disclosure of content. It instead uses the term "significant new information" to signal the type of content that should be disclosed.

⁹ 79 Fed. Reg. 35,993 (June 25, 2014), available at <https://www.acus.gov/research-projects/ex-parte-communications-informal-rulemaking>.

Disclosure of this content would necessarily have to explain what the new information is and why it is significant.

The recommendation advises agencies provide equal access to agency personnel for all public stakeholders once the NPRM is issued, and if the agency cannot accommodate all *ex parte* meeting requests, to hold a public meeting of some sort in lieu of private meetings. The recommendation offers the use of reply comment periods and other public stakeholder opportunities to respond to post-comment period *ex parte* communications. The recommendation also offers guidance for the rare occurrence of “quasi-adjudicatory” rulemakings.

Considerations for the Commission

Based on my research, my involvement with the Conference’s deliberation on Recommendation 2014-4, and the response to my report, I think there is a shift towards embracing *ex parte* communications or at least reconsidering restrictions on them. Several agencies and individual practitioners found my report useful as a source setting forth the legal requirements and history of *ex parte* communications. Some practitioners charged with enforcing restrictive *ex parte* communication policies did not understand the reasons behind those policies and now have the information to disagree with them. Thus, I think most restrictions that persist or are implemented will likely focus on post-NPRM *ex parte* communications only, specifically the post-comment period ones.

I urge disclosure in lieu of restrictions. *Ex parte* communications cannot truly be prohibited or avoided; *ex parte* communications will occur, at least unknowingly, from within and outside the agency regardless of agency policy. Even disclosure of *ex parte* communications does not seem to discourage public stakeholders from making them. Also, although digital technology has not yet affected how *ex parte* communications are made – indeed, most *ex parte* communications still occur as old-fashioned, face-to-face meetings – it has the potential to increase the ease and speed, and thus potentially the occurrence, of such communications.

A posture of welcoming *ex parte* communications and a policy of disclosure can maximize the benefit while minimizing the potential harms of *ex parte* communications. Agencies can avoid resource burdens of engaging in *ex parte* communications by welcoming and planning for them. Agencies can also use *ex parte* communications to offset other resource burdens in rulemaking. For example, contentious rulemakings already require greater resources because of the likelihood of receiving overwhelming numbers of written comments and agencies could use *ex parte* meetings, with individual stakeholders or groups of stakeholders, to help general relations and attempt to manage the written comment burden. Also, pre-NPRM *ex parte* communications may help an agency avoid resource issues later in a rulemaking if the agency already knows public stakeholder opinions and information.

Disclosure policies allow agencies to utilize *ex parte* communications to the maximum benefit in obtaining information necessary to develop rules and engaging stakeholders because they can ensure rulemaking proceedings are not subject to the appearance of or actual impropriety, improper influence, or unfairness because of *ex parte* communications. Tailored

disclosure policies that place the burden of disclosure on the communicator can also alleviate agency resource concerns and avoid adding duplicative content to rulemaking dockets.

I offer the following specific considerations for agency *ex parte* policies:

- Agencies should adopt written *ex parte* communication policies and make them publicly available. Public access to and knowledge of agencies' *ex parte* communication policies are important to inform public stakeholders of how to engage with the agency during the entire rulemaking lifecycle.
- Agency policies should use broad terms to define or describe *ex parte* communications to cover all occurrences of these communications, but use appropriate exclusions to limit policy application. Agencies should exclude from *ex parte* communication policies any communication involving only status inquiries or procedural information, which do not relate substantively to a rulemaking.
- Agencies should disclose the occurrence of all *ex parte* communications to avoid the appearance of impropriety or unfair access. Such disclosure can provide enough information to indicate who or what perspectives may have influenced the agency's proposal, to show whether the agency has engaged public stakeholders evenly, and to support a request for more information about a disclosed communication, if necessary. The transparency counters the concern that an agency is doing something outside the bounds of valid public stakeholder interaction. Even non-profit representatives, whom I thought would be opposed to *ex parte* communications, indicated they just need the occurrence of these communications disclosed so they can identify when to devote resources to making their own *ex parte* communications.
- Agencies should disclose the content of all influential post-NPRM (or similar rulemaking proposal) *ex parte* communications to avoid the appearance of undue influence by providing public access to the information. In addition to providing transparency and removing the "privacy" from *ex parte* meetings, such disclosure can prompt any responsive communications necessary to highlight any inaccuracies contained in the communication or to provide a counter-perspective.
- In requiring disclosure of the content of influential communications, it is important to ensure the communication summary fully conveys the content of the communication. The FCC revised its *ex parte* disclosure requirements in 2011 to ensure adequate disclosure because it discovered most content summaries were too vague or truncated. Agency disclosure policies should set baseline requirements for content summaries. Agencies should, however, provide disclosure exemptions for information that has an appropriate legal basis for

doing so in order to preserve a communicator's ability to share such information with the agency.

- Agencies should place the burden on public stakeholders for disclosure of both oral and written *ex parte* communications. This would alleviate some of the concern about agency resources. Agencies should reserve the right to request corrections or revisions if the public stakeholder's summary of the oral *ex parte* communication was inaccurate or incomplete, as well as to submit the agency's version in lieu of or in addition to the public stakeholder's summary. In doing so, sanction provisions may be necessary to help an agency enforce its disclosure requirements against public stakeholders. Agencies should also provide a specific timeframe for disclosure to ensure prompt public notice of *ex parte* communications.
- Agencies should take advantage of digital technology to aid in disclosure of *ex parte* communications, and adopt a default of digital disclosure. Most federal agencies already disclose *ex parte* communications digitally by posting them to online rulemaking dockets. Once planned for and set up, the ease of digital disclosure can alleviate some of the concern about agency resources.
- Digital disclosure, however, still requires agency resources to manage and maintain, so agencies should not be required to disclose the content of every *ex parte* communication, especially duplicative communications or those made via social media. Disclosure of an oral communication's content that reflects information provided previously to the docket should at most require reference to that information by specific citation rather than provide a summary of the communication's content. *Ex parte* communications via social media should not be disclosed in the rulemaking docket because such communications, although *ex parte* ones, are already public.

Thank you again for the opportunity to provide my research, experience, and views on *ex parte* communications in informal rulemaking.

Appendix

SUMMARY: Federal Agency *Ex Parte* Communication Policies¹⁰

Agency	Posture toward <i>Ex Parte</i> Communications	Disclosure Required For	Disclosure Requirements	Disclosure Timing	Disclosure Burden (if specified)	Exemptions from Disclosure	Sanction Provisions
Rec. 77-3	<i>Anti-general prohibition</i>	<i>Recommended for <u>post-NPRM</u> written and appropriate oral ex parte communications</i>	<i>Experiment with means for disclosing oral ex parte communications: written summaries, public meetings, other</i>	<i>“Promptly”</i>	---	<i>Under the Freedom of Information Act, 5 U.S.C. § 552</i>	---
DOJ	Implements Rec. 77-3	All <u>post-NPRM</u> written and oral <i>ex parte</i> communications Post-NPRM	Written summaries of oral <i>ex parte</i> communications	“Promptly”	---	Under the Freedom of Information Act, 5 U.S.C. § 552	---
FEMA	Implements Rec. 77-3	All <u>post-NPRM</u> oral <i>ex parte</i> communications	Written summaries of oral <i>ex parte</i> communications	“Promptly”	---	Under the Freedom of Information Act, 5 U.S.C. § 552	---

¹⁰ This table provides a general overview of agency policies covered in the Administrative Conference Report “*Ex Parte* Communications in Informal Rulemaking” (Final Report – May 2014). For more detail and specifics, see the Report, available at: <https://www.acus.gov/research-projects/ex-parte-communications-informal-rulemaking>.

Agency	Posture toward <i>Ex Parte</i> Communications	Disclosure Required For	Disclosure Requirements	Disclosure Timing	Disclosure Burden (if specified)	Exemptions from Disclosure	Sanction Provisions
FCC	Welcomes except during “Sunshine Period” (with exceptions)	All <u>post-NPRM</u> written and oral <i>ex parte</i> communications	Written summaries of oral <i>ex parte</i> communications: must substantially convey content of oral <i>ex parte</i> communications	2 business days after <i>ex parte</i> communication (with some exceptions)	Communicator	Under appropriate legal authority	For any violation of the <i>ex parte</i> communication rules
CFPB	Welcomes	All <u>post-NPRM</u> written and oral <i>ex parte</i> communications	Written summaries of oral <i>ex parte</i> communications	3 business days after <i>ex parte</i> communication	Communicator	Under appropriate legal authority	For any violation of the <i>ex parte</i> communication policy
EPA	Welcomes	All <u>post-NPRM</u> written and oral <i>ex parte</i> communications that influenced EPA’s decisions The fact of <i>ex parte</i> meetings with senior EPA officials	Written summaries of oral <i>ex parte</i> communications that contain significant new factual information	“Timely notice”	Agency personnel	---	---
CPSC	Welcomes	Advanced notice of, and public attendance for, <u>all</u> oral <i>ex parte</i> communications	Written summaries of <i>ex parte</i> meetings	20 calendar days after <i>ex parte</i> communication	Agency personnel	---	---

Agency	Posture toward <i>Ex Parte</i> Communications	Disclosure Required For	Disclosure Requirements	Disclosure Timing	Disclosure Burden (if specified)	Exemptions from Disclosure	Sanction Provisions
FEC	Neutral	All written and oral <i>ex parte</i> communications received by Commissioners and their staff <u>after draft NPRM circulated to Commission</u> for consideration	Written summaries of oral <i>ex parte</i> communications	3 business days after <i>ex parte</i> communication	Agency personnel	---	For any violation of the <i>ex parte</i> communication rules
NRC	Neutral	<u>All</u> written and oral <i>ex parte</i> communications with new information	Notice of meeting with technical staff	---	---	---	---
DOL	Recommends minimizing post-NPRM	All <u>post-NPRM</u> oral <i>ex parte</i> communications	Written summaries of oral <i>ex parte</i> communications	---	Agency personnel	---	---
DOT	Recommends minimizing post-NPRM (Discouraged in practice)	<u>All</u> written and oral <i>ex parte</i> communications involving agency personnel involved in developing or influence a rulemaking or public stakeholders providing information or views bearing on the substance of a rulemaking	Pre-NPRM <i>ex parte</i> communications discussed in NPRM; memorandum to docket; encourages advance notice and public participation in post-comment period <i>ex parte</i> communications	“Promptly”	Agency personnel	---	---

Agency	Posture toward <i>Ex Parte</i> Communications	Disclosure Required For	Disclosure Requirements	Disclosure Timing	Disclosure Burden (if specified)	Exemptions from Disclosure	Sanction Provisions
NHTSA	Same as DOT	Same as DOT	Same as DOT	Same as DOT	Same as DOT	---	---
FAA	Prohibited during comment-period; strongly discouraged post-comment period	Same as DOT	Same as DOT	---	Same as DOT	---	---
USCG	Discouraged generally	<u>All</u> written and oral <i>ex parte</i> communications	Pre-NPRM <i>ex parte</i> communications discussed in NPRM; other <i>ex parte</i> communications discussed in final rule; memorandum to the docket	---	---	---	---
TSA	Discouraged post-NPRM	<u>All post-comment period</u> written and oral <i>ex parte</i> communications	Written summaries of oral <i>ex parte</i> communications	---	---	---	---
ED	Discouraged post-NPRM	Disclosure of <u>all</u> written and oral <i>ex parte</i> communications generally	n/a	---	---	---	---
FDA	Prohibited post-NPRM (with exceptions)	<u>All</u> written and oral <i>ex parte</i> communications	---	---	---	---	---

Agency	Posture toward <i>Ex Parte</i> Communications	Disclosure Required For	Disclosure Requirements	Disclosure Timing	Disclosure Burden (if specified)	Exemptions from Disclosure	Sanction Provisions
DOI	Prohibited unless all interested parties or persons present	<u>Any</u> written or oral <i>ex parte</i> communications made in violation of prohibition on such communications	Written summaries of oral <i>ex parte</i> communications	---	---	---	For knowingly making a prohibited <i>ex parte</i> communication
FTC	Permitted post-comment period with advance public notice (oral <i>ex parte</i> communications only); Prohibited post-comment period (oral <i>ex parte</i> communications only)	All written and oral <i>ex parte</i> communications received by Commissioners and their staff <u>after Commission vote on NPRM</u>	Written summaries or transcripts of oral <i>ex parte</i> communications	---	Agency personnel	---	---