



EXPLAINER

PROGRESSIVE
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Delivering Results: An Overview of Federal Implementation Processes Updated March 16, 2022

Summary

Activists, organizers, and everyday people fight hard for policies that ensure every family has the chance to thrive. However, our communities will only experience the full benefits of a law if it is implemented in a way that puts equity first. The way regulations are enforced or federal funds are spent can make the difference between window-dressing the status quo and transformational change.

One great example of the importance of community involvement is the disability community's [advocacy](#) to ensure that newly enacted civil rights protections were implemented in a meaningful way. Congress forbade discrimination in employment on the basis of disability in Section 504 of the Rehabilitation Act of 1973. However, in order for people with disabilities to truly hold employers accountable, the Health, Education, and Welfare agency (HEW) needed to issue regulations telling employers how to interpret the statute. Under pressure from big corporations, HEW delayed issuing the regulations for years. Disability rights groups continued campaigning for the regulations until HEW finally issued draft regulations in 1977. When the Carter administration took office and attempted to weaken the existing draft regulations, activists led sit-ins and protests nationwide until the regulations were finally instituted with no change.

Disability rights activists ensured that Section 504 was implemented in a way that supported their community. They understood that just passing laws was not enough. We have to keep fighting for the change we need at every step of the process. Without sustained community organizing, policymaking favors entrenched special interests with the power, access, and funding to engage in drawn-out and complex implementation processes.

This explainer is intended to support community organizers working to ensure that the demands of the people closest to the problems are reflected in the final policy. It lays out the three primary ways policies are implemented: rulemaking, grant funding, and plan development. For each, it will explain the process, the stakeholders, the timeline, and key intervention points that can transform the

outcome. This includes delaying tactics that slow the implementation of harmful legislation, or which may be used by moneyed interests to impede our activism.

Rulemaking

Most laws, after passage, are implemented via agency [rulemaking](#). **Rules** (also known as regulations) are a series of explanations laid out by agencies that describe how a law will be interpreted and enforced within the limits set by Congress. They often include definitions, details, and examples that guide managerial and judicial decisions. Rules can significantly impact how a law is interpreted.

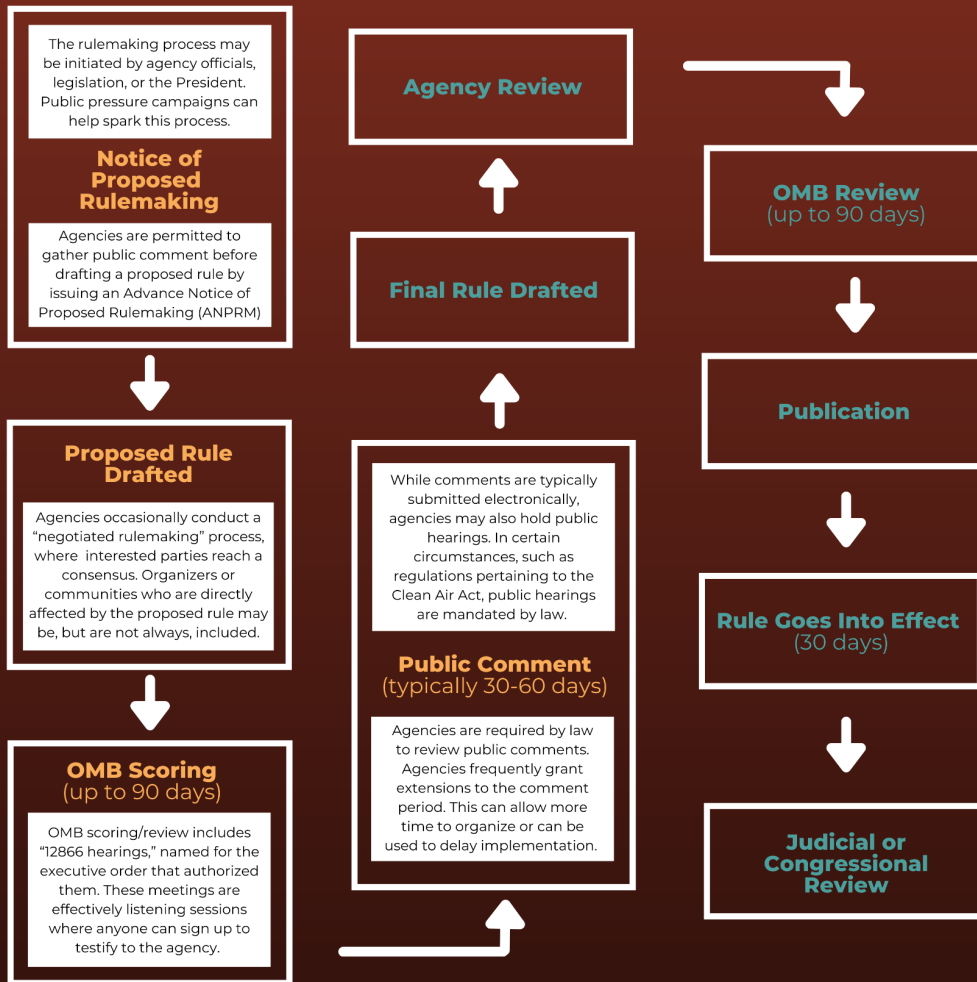
There are several different types of rulemaking processes. Notice-and-comment rulemaking is the most commonly used, but agencies may also undergo formal rulemaking, hybrid rulemaking, direct final rulemaking, or negotiated rulemaking. Agencies may also issue [subregulatory guidance](#), though this guidance does not carry the same weight as rules that undergo the full rulemaking process. However, subregulatory guidance can still have a significant impact on how laws affect our communities.

In this explainer, we provide an overview of **notice-and-comment rulemaking** because it is the most common rulemaking process advocates are likely to encounter. This process is very technical and involves a series of codified steps. Because of its granularity, notice-and-comment rulemaking is a lengthy process (often taking two to three years). But it also includes dedicated time for public comment, which creates opportunities for communities to make their voices heard.

Timeline and Intervention Points

The timeline associated with the federal rulemaking process can vary greatly depending on the size, scope, and controversy of a proposed rule and the type of rulemaking process followed by the agency. Agency capacity is also a consideration: smaller agencies that are less able to devote staff to writing a regulation and reviewing public comments sometimes require more time to issue a final rule. The chart below sets out the process for notice-and-comment rulemaking. [You can also view an animated version of the federal rulemaking process here.](#)

THE RULEMAKING PROCESS



Process

Agencies are often directed to begin the rulemaking process after the passage of a law. However, the process can also be initiated by members of the public. [Anyone](#) may file a petition with an agency to request a rule be created, changed, or rescinded. While each agency has different submission requirements, all are required to consider public petitions.

To begin the rulemaking process, the applicable agency (typically spelled out within the law) will typically publish a **Notice of Proposed Rulemaking (NPRM)** in the

Federal Register. The agency drafts a preliminary rule proposal and sends it to different departments and teams within the agency for review and comment.

When the agency-level feedback has been incorporated into the **proposed rule**, the agency sends it to the Office of Management and Budget (OMB) for scoring. OMB conducts a cost-benefit analysis, a process that typically takes 90 days. OMB's cost-benefit analysis has been criticized for failing to adequately quantify the public costs and benefits associated with proposed regulations (e.g., the societal costs of the worsening climate crisis in environmental regulations or the savings associated with everyone having access to medical care under Medicare for All). That said, in 2021, the Biden Administration [directed](#) OMB to start including many of these concerns in their analysis. In particular, OMB will now consider impacts on public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations—even if they are difficult to quantify.

After incorporating OMB feedback, the agency posts the proposed rule and gathers public comments on the proposed rule over 30 to 60 days. It solicits this input through written comment or through hearings held by agency staff. Public hearings are an especially effective tool for federal agencies to solicit input from low-income, minority, and rural communities that often lack the resources necessary to weigh in. For example, the EPA held multiple field hearings in Alaska to solicit input from Alaskan Natives on the proposed rollback of the Clean Water Act under the Trump Administration. Agencies may also elect to request a second comment period to allow for “reply comments” (comments that respond to those submitted in the first period).

The agency integrates the public comments into the drafting process of its **final rule**, which repeats the intra-agency and OMB review processes. Following OMB review of the final rule, the agency publishes the final rule, which takes effect 30 days thereafter.

This lengthy process can be circumvented through two rarely-used [shortcuts](#). In **direct final rulemaking**, an agency publishes a final rule immediately, with a note of the effective date. If a single adverse comment is filed before that date, the agency rescinds the rule and undertakes the standard process. Otherwise, the rule goes into effect on the appointed date.

In **interim final rulemaking**, an agency issues a final rule, effective immediately, and undertakes the standard review process afterward—while the rule is in effect. The agency then revises the rule after collecting feedback. Because of its immediacy, the

interim final rulemaking process is intended for use only in emergencies—though agencies are increasingly using it in less urgent circumstances.

Final rules can be overturned in three ways: agency reconsideration, **judicial review**, or **Congressional review**. An agency may decide to rescind a rule that was issued previously—sometimes replacing it with a new rule using the standard process. Most invalidated rules, however, are subjects of legal challenge, where judges make decisions on a rule's legality after listening to lawyers present cases. The current Supreme Court, dominated by far-right activist conservatives, has increasingly attempted to curtail the government's administrative capabilities by overturning rules and drafting expansive decisions that forbid regulation.

Congress can also invalidate a rule by passing a **joint resolution of disapproval** within 60 legislative days of the rule being issued. As with any bill, the joint resolution must be signed by the president and can be vetoed. Until the Trump Administration, Congress had only successfully passed a joint resolution of disapproval [once](#). But the Trump Administration aggressively used the process to [overturn sixteen rules](#) that got in the way of profits for big corporations and corporate special interests. These include [waterway protections](#), [internet privacy protections](#), and the requirement that [employers document workplace injuries](#).

Strengths and Weaknesses

Rulemaking's greatest weakness is also its strength: it takes a long time. The median rule takes [roughly a year](#) to go into effect, though most rules that affect daily life take a much longer time—as many as four to seven years. This means that after a rule is finalized, it cannot be quickly overturned and typically requires the same years-long process be undertaken to impose a new rule.

Rulemaking is supposed to be very transparent and accessible to the public. While it is not necessarily possible to see every comment, the federal government publishes the names of those who submitted them and those who scheduled hearings. Anyone can submit comments through [regulations.gov](#) and/or schedule 12866 hearings through [reginfo.gov](#). However, rulemaking campaigns are difficult to sustain because the rulemaking process is complex, rules are frequently written in technocratic jargon, and comment submission tools are challenging to use. The rulemaking process is also highly centralized and often requires a nationally-organized campaign in order to ensure that community voices are reflected in the process.

Grants

Grants are a form of federal financial assistance that governments distribute to lower levels of governments or government contractors. There are three primary grant types: block grants, categorical grants, and general revenue-sharing. Because general revenue-sharing has not been used since the 1980s, this explainer only outlines the first two.

Historically, state and local governments and organizations—as well as federal legislators—could request federal funding for local projects through **earmarks**, also called **congressionally-directed spending**. These are noncompetitive grants appropriated by Congress specifically targeting particular local projects. They were effectively banned in 2010, but they were recently reinstated for the 2022 omnibus spending bill. Earmarks provide targeted funding for specific projects which can allow communities to fight for the projects they need most, but they can also reflect the pet projects of well-connected special interests. The chief strength of earmarks is that they provide dedicated funding for a specific project and allow for state and local governments, as well as some nonprofits, to push for projects that reflect the unique needs of their communities. We will discuss earmarks further in our forthcoming “Must-Pass Bills” explainer, but the CPCC included an overview of earmarks in an [explainer on the appropriations process](#).

Block Grants

Block grants are federal funds distributed by formula. They can only be used for a specific set of programs, but do not restrict what activities the recipient can engage in. Block grants can be both flexible and unreliable sources of funding to achieve a particular policy objective. The Department of Transportation is currently facing this challenge as it distributes formula-based infrastructure funding to states. Although this money was intended to be used to fix existing infrastructure, many states are using the funding to expand highways [instead](#).

Categorical Grants

Categorical grants specify programs and activities that recipients can engage in. Because the government has tighter control over how recipients spend the money, categorical grants are much more common than block grants. They can be distributed by formula (**formula categorical grant**) or awarded on a competitive basis through an application process (**project categorical grant**). There are also **formula-project categorical grants** which typically allocate funds to states based on a formula, but then allow states to oversee a competitive grants process to distribute those funds in turn. Finally, **open-end reimbursement categorical grants** provide

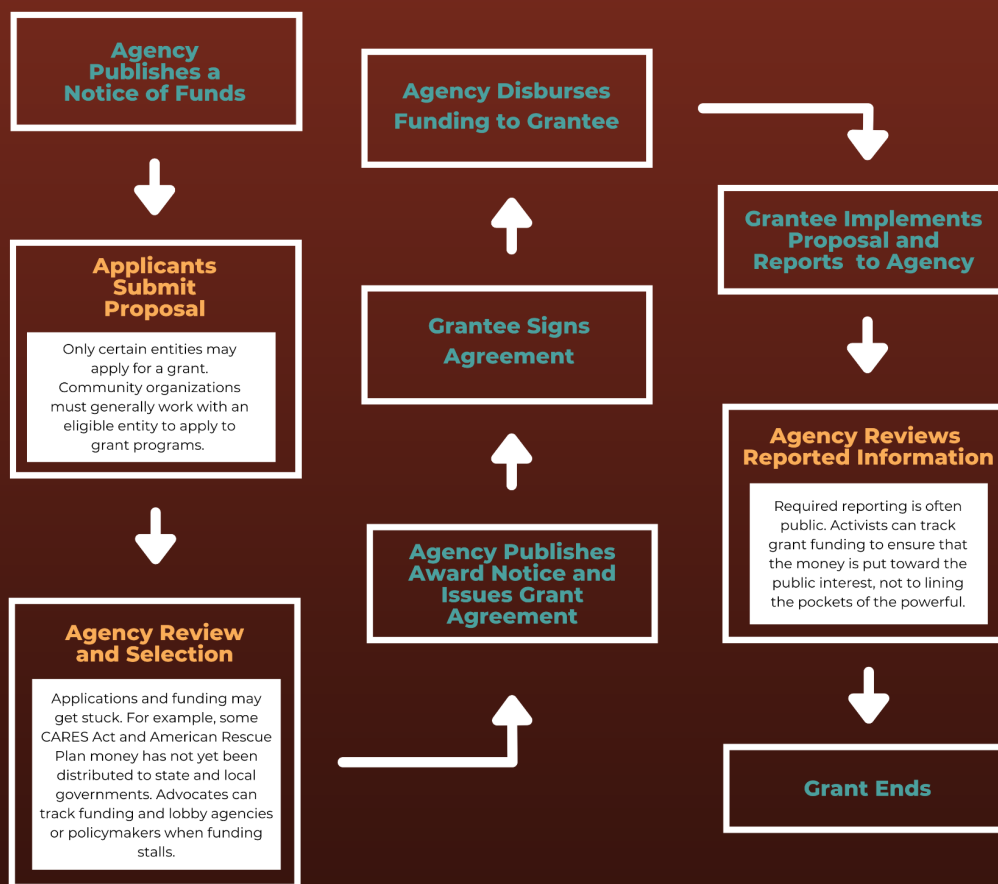
reimbursement of a portion of recipient costs, which eliminates competition among recipients. Because open-end reimbursement grants do not have a cost maximum, only the federal government can establish them.

Type	Block	Categorical				Earmarks
How is money distributed?	Formula	Formula	Competitive - Project	Formula - Project	Open-End Reimbursement	Defined in legislation
How restricted are the funds?	General program	Specified activities	Application activities only (constrained to specified activities)	Application activities only (constrained to specified activities)	Specified activities	Specified activities
Who gets the money?	States and tribal govts (depending on formula)	States and tribal govts (depending on formula)	Local govts or private entities (must apply)	States, then local govts or private entities (must apply)	States and tribal govts, usually	Specified recipients
Are you guaranteed funding?	Yes	Depends on statute	Depends on statute	States: Yes Grantees: No	Yes	Yes

Timeline and Intervention Points

While the precise timeline varies from grant to grant, most competitive grants take under a year from announcement to disbursement. After distribution, funding can be allocated for years at a time. Federal grant applicants (and eventual grantees) can be state governments, local governments, or private contractors, depending on the purpose of the grant.

THE GRANT PROCESS



Process

Most grants are project categorical grants or formula-project categorical grants. This is because governments do not typically have the internal capacity to undertake major projects. Instead, they hire contractors to plan and execute government programs through a competitive grant process. Formula categorical grants, where they occur, are typically direct budget supplements to agencies and lower governments.

Congress funds grants through the appropriations process (which is described in [this CPCC document](#)). The grant money is allocated to state or local governments when

the administering agency (1) calculates formulas or establishes a review panel and (2) publishes a **notice of funds**. Potential grantees then [submit](#) a proposal describing how they would carry out the project. These plans often include **impact statements** that describe the impact of the proposal on the environment, historical sites, or equity. When a proposal is approved, the agency publishes an award notice and issues a grant agreement which the agency and the grantee both sign. This obligates the funding to the lower government, allowing it to either conduct its own subgrant process or use the money directly.

Through the lifetime of the grant, the agency [tracks](#) expenditures and distributes funds, monitors recipient compliance with program requirements, and conducts audits to assess efficacy and limit abuse. At the same time, the grantee submits regular performance and financial reports from both itself and from subgrantees.

The subgrant process works similarly to the initial grant process, though subgrants are almost always awarded on a competitive basis rather than by formula.

Strengths and Weaknesses

Grants are the primary way government action is used to invest in our communities. Once funds have been allocated, they are very rarely rescinded, except in cases of gross noncompliance. For this reason, the process of financial distribution from Congress is called **obligation**. However, until the money is actually distributed, it is still in the hands of the agency, and Congress may reclaim it. For example, Republicans have tried to claw back unobligated CARES Act funding [on numerous occasions](#).

Formula grants—both block and categorical—often are more restrictive than competitive project grants. Their funding can be used only for defined purposes, but can be more equitable because they are distributed using a transparent formula. Project grants frequently require states and local governments to consult with each other and with other stakeholders. This could be an opportunity for public input. Often, however, governments consult primarily with business interests and lobbyists, leading to preferential treatment during the proposal review stage.

Grants also have few direct intervention points for community feedback. Other than advocating for their local government to apply for a grant, there is little opportunity for organizers to provide input. Nowhere is this more clear than when several state governments refused to expand Medicaid under the Affordable Care Act. The policy gave millions of low-income families access to affordable health insurance and was fully funded by the federal government. But because state governments [did not want to apply](#) for the funding, community organizers were unable to intervene.

The grants timeline can also work against community organizers. Because project categorical grants are often awarded on a rolling basis, they frequently favor affluent communities that can quickly prepare a proposal. They may also be captured by contractors or other entrenched interests who produce a “shovel-ready” proposal for underfunded or inexperienced local and state government entities.

Implementation Plans

When federal legislation impacts state or local governance, Congress or a federal agency may require state governments to draft an implementation plan.

Implementation plans are documents that describe how a government intends to comply with legislation or rules, laying out the regulations it will impose, the services it will fund, and the timeline at which different steps will be taken. They may be required by mandate—as in the Clean Air Act, or as a prerequisite for receipt of funding—as in the American Rescue Plan Act.

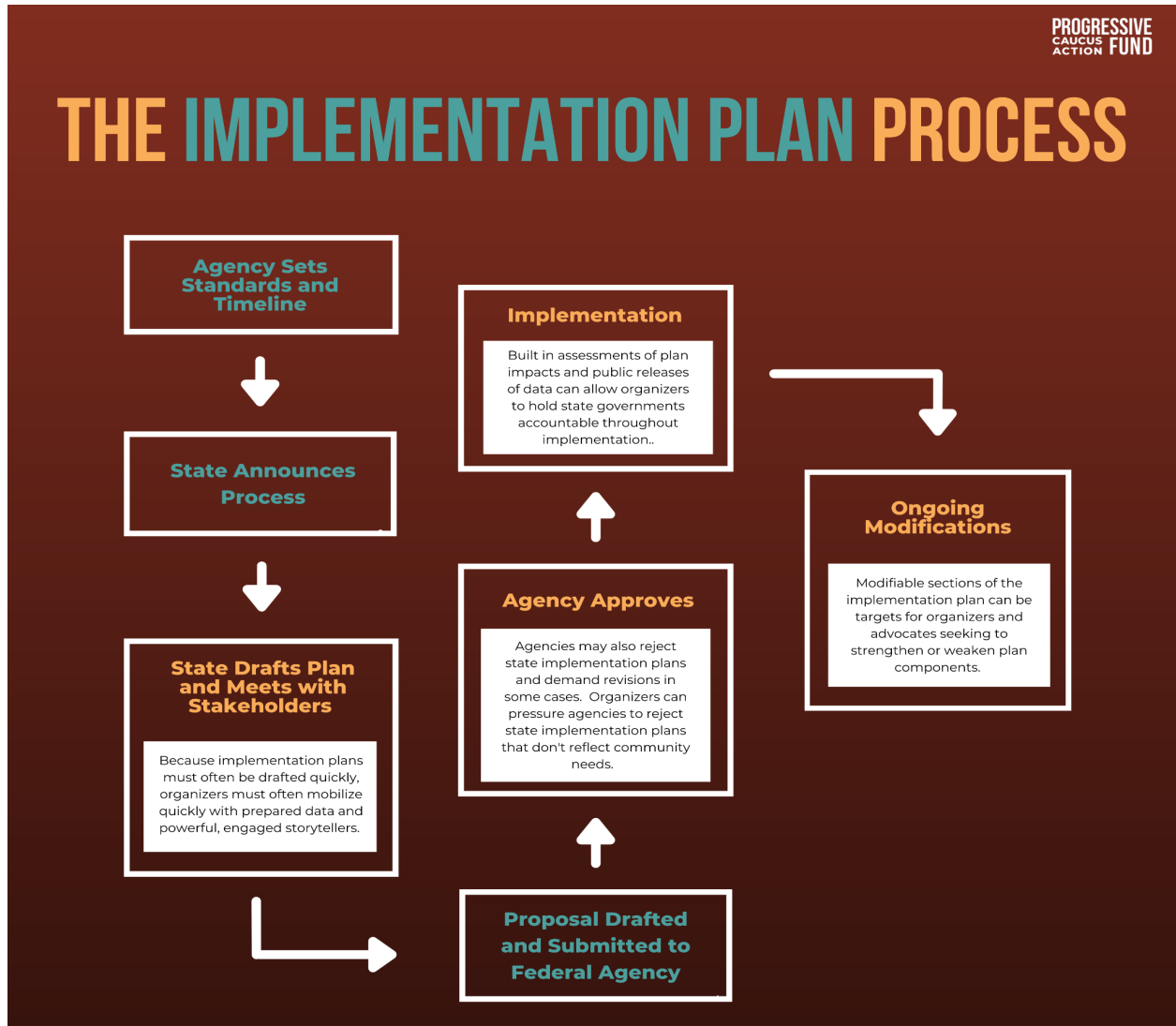
The originating legislation outlines specific aims and standards that the implementation plan must include. In contrast to rulemaking processes which may apply to states or directly limit the behavior of businesses, implementation plans instruct states to create a plan to implement a policy (which in turn may impact private entities). In some cases, these are specific targets or regulations that a state must enforce. In others, the state is given more leeway in their methodology, or are permitted to change later. Because implementation plans have a strict timeline, states put significantly more effort into how to meet the specific requirements, and leave looser or modifiable sections to a hasty drafting process.

Implementation plans often affect government and business operations for decades, yet they are typically drafted quickly. In the case of the Obama Administration’s Clean Power Plan (stymied by court challenges and later repealed by the Trump Administration), states had two years to develop an implementation plan—or four years if they asked for an extension. The [Clean Power Plan](#) directed states to cut emissions of greenhouse gases from the electricity sector to 30% of 2005 levels by 2030. States could meet these targets by either upgrading power plant technology or shifting towards more renewable energy sources. If a state failed to submit a plan by the deadline, the Environmental Protection Agency would impose its own plan on the state.

Community organizing can dramatically impact plans on a state-by-state level if organizations are able to mobilize quickly, build off of existing organizing, and work with elected champions to ensure a fair and inclusive process.

Timeline and Intervention Points

Because implementation plans are wholly designed by state or local governments, they vary significantly based on state rulemaking laws. Similarly, there is a lot more flexibility in how (and whether) the government solicits public input because states are not subject to the same requirements as federal agencies. The timeline below is a good overview of typical steps in the development process—though precise time periods will be directed by federal instruction and the individual decisions of states.



Process

The development process for implementation plans varies significantly based on the originating legislation or executive order. Thus, it is important for organizers to pay

close attention to the procedural language in order to determine who the stakeholders are and how the process can be influenced.

In general, a federal agency sets the standards, reporting requirements, and timeline that state implementation plans must adhere to. When these stipulations have been finalized, states begin their development process. They are usually required to determine for themselves whether they are compliant with each standard. In a transparent process—which is not always followed—states will gather public comment through listening sessions and town halls.

Implementation plan campaigns should have two stages: an agency-level campaign and a state-level campaign. Organizers should pressure the agency to adopt standards that require transparency, public input, and extensive oversight. This ensures that the state-level process is fair and allows subsequent local organizing its best chance at success.

A final—and unique—component of implementation plans is that they are frequently iterative. After a plan is finalized, changes are often permitted. While modifications must be approved by the federal agency, they represent an important opportunity for long-term organizing.

Strengths and Weaknesses

Implementation plans are very locality-specific. For example, the proposed Clean Power Plan [process](#) had unique targets for each state, and states were able to choose their regulatory actions and implementation plan design processes freely. This meant some states designed their plans largely behind closed doors, with only a few stakeholders involved. Other states engaged in wide and participatory processes that included local meetings and listening sessions that provided opportunities for community involvement.

Organizers know their communities better than corporate lobbyists, so the local focus can give organizers an edge where they have existing campaigns or engaged bases. It also underscores the importance of sustained organizing across all community-led movements so that we are positioned to act when short-lived opportunities for change arise.

Implementation plans are often shaped by those with the initiative and resources to assist state governments with development. Speed usually benefits large corporations who can afford lobbyists and a policy team. But it can also benefit organizers willing to seize the moment and mobilize quickly.

Depending on the originating vehicle, implementation plans may be overturned by unfriendly officials at the federal level. For example, the Clean Power Plan was immediately [challenged](#) in court and then eventually replaced by the Trump Administration. Since then, courts and agencies have fought over the Environmental Protection Agency's ability to impose these regulations. The future of this type of administrative rulemaking and accompanying implementation plan will hinge on the Supreme Court's forthcoming decision on this [issue](#).

The fate of the Clean Power Plan is also an example of the precarious nature of implementation plans under judicial review and a shift in Presidential Administrations. However, public organizing around the Clean Power Plan created change in some communities in spite of the fossil fuel industry's court challenge. Several states voluntarily continued their processes to set emission reduction goals and the community organizing sparked by the Clean Power Plan has continued to shape the climate movement in many local communities.

Conclusion

The disability justice community popularized the phrase “nothing about us without us.” When policy decisions are made at the federal level, community organizers must be involved if these decisions are to advance equity and sustainability. This explainer described the three most common processes through which legislation impacts communities. Rulemaking shapes how laws are interpreted by courts and regulators, Grant administration affects how funding reaches communities. And, finally, implementation plans outline long-term agendas for local change. Organizers, advocacy organizations, nonprofits, and local officials who are familiar with these processes can affect how federal policy impacts their communities.