

Congress of the United States
House of Representatives
Washington, D.C. 20515

February 15, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Director Mulvaney:

We write to urge that you direct federal agencies to immediately reschedule all canceled public hearings and meetings, reopen comment periods that closed during the shutdown and extend comment periods that were open during the shutdown. The longest-ever shutdown of the federal government significantly harmed the right of the American people to meet with federal agencies and comment on proposed actions. Public participation is a hallmark of good governance and a core tenet of administrative law.

Americans engage in the administrative process in numerous ways, including by attending public hearings or submitting comments on agency actions subject to notice-and-comment procedures. For example, because of the shutdown, the Environmental Protection Agency (EPA) canceled numerous public hearings and meetings, depriving local communities of the opportunity to engage with the agency.¹ In East Chicago, Indiana, more than 1,000 residents were forced to move because of lead and arsenic contamination at the USS Lead Superfund Site.² EPA granted that community's request for a public hearing to discuss the Agency's proposed remediation plans.³ The Agency, however, canceled the hearing because of the shutdown.⁴ Moreover, the public comment period on EPA's remediation plans closed on January 14, 2019, during the shutdown, despite community members seeking an extension.⁵

¹ *EPA shutdown silences public inquiry over Ind. lead cleanup*, Greenwire (Jan. 14, 2019) (www.eenews.net/greenwire/2019/01/14/stories/1060112797).

² *Factions oppose EPA's West Calumet cleanup plan as comment period ends*, The Times (Jan. 24, 2019) (www.nwitimes.com/news/local/lake/factions-oppose-epa-s-west-calumet-cleanup-plan-as-comment/article_12888f55-cc5-5a38-8ca0-4886661f3a3c.html).

³ *EPA cancels Superfund site public hearing amid federal government shutdown*, The Times (Jan. 1, 2019) (www.nwitimes.com/news/local/lake/epa-cancels-superfund-site-public-hearing-amid-federal-government-shutdown/article_7ce2b6b0-f5d7-5448-9ec8-b16b1a3af03c.html).

⁴ See note 1.

⁵ *Id.*

In addition to public hearings and the USS Lead Superfund Site comment deadline, a review of Regulations.gov reveals hundreds of federal agency comment periods closed during or immediately after the shutdown, including a major revision to the Freedom of Information Act (FOIA) regulations of the Department of the Interior.⁶ During the shutdown, furloughed agency staff were unavailable to respond to requests for extensions of deadlines, public hearings, or additional information. Furloughed staff were also unavailable to maintain and update public dockets on Regulations.gov, preventing public access to submitted comments or additional information. Furthermore, both Regulations.gov and FederalRegister.gov had banners during the shutdown suggesting the sites were not fully operational, and at one point, Regulations.gov was completely inaccessible.⁷

It is imperative that federal agencies be responsive and accessible to the American people. The federal government's policy on the shutdown's impairment on public participation must be consistent across the federal government.

We request that you direct agencies affected by the shutdown to promptly reschedule public hearings and meetings that were canceled due to the shutdown. We also would request that you direct these agencies to reopen public comment periods that closed during the shutdown for a period of at least 35 days and extend by at least 35 days the public comment periods that were open during the shutdown, including comment periods which have subsequently closed and those that are still open. This is commensurate with the length of the shutdown and would best facilitate public participation. We also request that you direct these agencies to fulfill these directives to the greatest extent possible while still complying with statutory and judicial requirements.

⁶ *Another Shutdown Victim: FOIA Rules Debate*, E&E News (Jan. 15, 2019) (www.eenews.net/stories/1060114641).

⁷ *Federal rulemaking site goes dark*, Politico (Jan. 17, 2019) (www.politico.com/story/2019/01/17/federal-website-down-shutdown-1108416).

Thank you for your immediate attention to this matter.

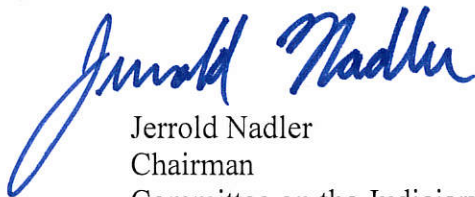
Sincerely,



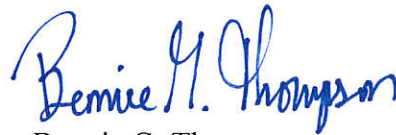
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Chairman
Committee on Energy and Commerce



Elijah E. Cummings
Chairman
Committee on Oversight and Reform



Jerrold Nadler
Chairman
Committee on the Judiciary



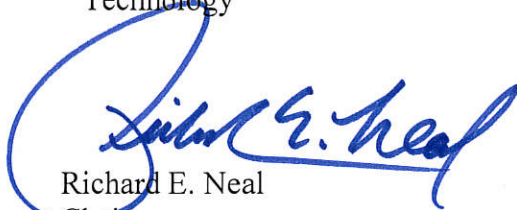
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