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I. INTRODUCTION

A. The Silent Poor

After a violent summer of urban unrest and civil disorder, President Johnson established the National Advisory Commission on Civil Disorders in 1967 to find out what happened in our nation's cities, why it happened, and to suggest ways to prevent it from occurring again. One of the findings of the Commission was that from the vantage point of the poor ghetto resident, local government was distant and unconcerned. For the poor person, particularly the poor black ghetto resident, the possibility for effective change either in his personal life style or in the political system appeared remote.[1] Reflecting upon this gulf between the poor black ghetto resident and his government, the Commission noted, "No democratic society can long endure the existence within its major urban centers of a substantial number of citizens who feel deeply aggrieved as a group, yet lack confidence in the government to rectify perceived injustice and in their ability to bring about needed changes."[2]

The growing sense of powerlessness and frustration among disadvantaged minority groups and the poor in general can be attributed, in part, to the lack of programs and procedures designed to assist the poor in communicating with state and federal agencies, in participating in the decision-making process, or in protesting arbitrary

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1. *See* REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 287-88 (Bantam ed. 1968).

2. *Id.* at 288.

administrative action. In addition, a combination of ignorance, suspicion, and resentment of our judicial and political institutions has resulted in poor persons often shunning whatever opportunities they might have to gain formal review of unsatisfactory administrative determinations.[3]

Given the poor's disenchantment with and distrust of our established institutions, two trends seem to warrant particular attention. The first trend is the developing realization that "the law" cannot solve all the problems of the poor and the disadvantaged. Litigation may be the most important means for effecting social justice and eliminating patent discrimination, but legal solutions alone cannot eliminate poverty or its effects. Nor will legal solutions necessarily give the poor a greater voice in government or even ensure that their voice is heard. For example, our nation's poor remain alienated, bitter, and distrustful of our legal institutions despite the initial promise of *Powell v. Alabama*[4] that there is a fundamental right to counsel in criminal cases and despite landmark Supreme Court decisions within the past seven years that have expanded and implemented the sixth amendment right to counsel at practically all stages of the criminal process.[5] Moreover, the poor remain singularly detached from the decision-making process despite the rapid growth of legal service programs.[6]

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3. *See* Gellhorn, *The Ombudsman's Relevance to American Municipal Affairs*, 54 A.B.A.J. 134, 138 (1968).

4. 287 U.S. 45 (1932). In *Powell*, the Court held that the fourteenth amendment "embraced" those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions . . . ." *Id.* at 67.

5. Coleman v. Alabama, 399 U.S. 1 (1970) (right to counsel at preliminary hearing, a critical stage of proceedings); Mempa v. Rhay, 389 U.S. 128 (1967) (right to retained or appointed counsel during probation revocation proceedings); United States v. Wade, 388 U.S. 218 (1967) (right to retained or appointed counsel during pretrial identification procedure); *In re* Gault, 387 U.S. 1 (1967) (requires state to guarantee due process to all children alleged to be delinquent by guaranteeing their right to adequate notice of charges, to retained or appointed counsel, to confront and cross-examine witnesses, to be advised of the privilege against self-incrimination); Miranda v. Arizona, 384 U.S. 436 (1966) (person being interrogated in custody must be advised that he has right to retained or appointed counsel during interrogation, right to remain silent, and that what he says may be introduced into evidence against him at a later time); Escobedo v. Illinois, 378 U.S. 478 (1964) (right to counsel upon request when person is taken into custody and is being interrogated and the inquiry about crime begins to focus on him); Massiah v. United States, 377 U.S. 201 (1964) (prohibits government eavesdropping on conversation between defendant and government informer in absence of defendant's counsel); White v. Maryland, 373 U.S. 59 (1963) (right to counsel during a preliminary hearing that is deemed a "critical stage" in the proceedings); Douglas v. California, 372 U.S. 353 (1963) (right to counsel to prepare criminal appeals); Gideon v. Wainwright, 372 U.S. 335 (1963) (right to counsel for indigent criminal defendant in more serious criminal trials). *See* Gill, *Current Trends in Criminal Law and its Administration*, POPULAR GOV'T 20 (June 1968).

6. *See* E. BROWNELL, LEGAL AID IN THE UNITED STATES 10 (Supp. 1961). *See also* THE URBAN INSTITUTE, *Design of an On-Site Evaluation System for the Office of Legal Services of the Office of Economic Opportunity*, Appendix 1 (1970).

It has been demonstrated that the benefits of free legal advice and services to the poor are neutralized if the poor are expected to continue to support and respect institutions that have neither involved them in the decision-making process nor sought to earn their confidence. It has been suggested by many urbanologists, therefore, that the treatment of citizens by police, welfare, housing, public utility, sanitation, health, and school officials should be subject to public scrutiny through administrative review and fair hearing procedures. The views of those citizens most affected by the decisions of government agencies, moreover, should be solicited prior to the formulation and implementation of bureaucratic policy.[7]

The second trend has been a dramatic increase in the scope and significance of the rulemaking authority of both federal and state administrative and regulatory agencies since World War II. Congress and state legislatures have enacted broad statutory provisions that empower executive departments or agencies to interpret and apply a variety of administrative rules and regulations to broad classes of individuals.[8] Administrative agencies traditionally have borne the responsibility for executing laws or applying general legislative provisions to specific cases; however, administrative agencies, perhaps as a response to the increasing complexity and technicality of the issues subject to state and federal legislation, are now "increasingly in the position of making more generalized rulings with the force of law."[9]

B. Rulemaking and the Poor

The "rulemaking" referred to in this article is that defined by section 1(7) of the Revised Model State Administrative Procedure Act and the corresponding section 2(c) of the Federal Administrative Procedure Act.[10] "Rule" means "the whole or a part of an agency statement of general or particular applicability . . . designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements of an agency . . . ."

7. "From the foot patrolman who would rather curb a riot than receive training in police-community relations, to the school administrator who would rather break a school boycott than let parents decide what goes on inside the school, the agencies of the state have failed to involve the neighborhood in the process of decision or to create a climate where the decision of others can be respected." Berger, *Law, Justice, and the Poor*, in URBAN RIOTS: VIOLENCE AND SOCIAL CHANGE 59 (R. Conney ed. 1968).

8. *See* Mikva, *Interest Representation in Congress: The Social Responsibilities of the Washington Lawyer*, 38 GEO. WASH. L. REV. 651, 654 (1970).

9. *Id.*

10. 5 U.S.C. § 1001(c) (1964), *as amended* 5 U.S.C. § 551(5) (Supp. IV, 1969).

"Rulemaking" means "agency process for the formulating, amending, or repealing of a rule."[11]

In essence, administrative rulemaking entails publishing proposed rules and inviting interested parties to submit written comments on such rules.[12] Theoretically, all persons are allowed to express themselves and to call attention to the impact of possible policies on their particular business activities or interests. The administrative agency's staff then compiles and analyzes the presentations and data and prepares its own report before the agency actually implements its proposed rules.[13] The procedure has been touted as "one of the greatest inventions of modern government;" superior in many ways to adjudicative procedure; fair and efficient; and an exeellent means for the "development of understanding and for the reflection of democratic desires."[14]

Indeed, along with judicial decision-making, administrative rulemaking serves as a vitally important instrument for social and political change. There are, however, some crucial differences between the two processes. For example, the administrative decision in a rulemaking proceeding is embodied in a general ruling that inevitably affects the interests of many groups or individuals, but the decision of a court of law may affect only the party or parties immediately before the court. If a judicial decision has application to classes of persons not directly before the court, usually the judicial policy has been adopted without the court's knowing or having the means to discover what the impact of its decision will be on unrepresented parties.[15] The rulemaking authority of an administrative agency, on the other hand, contemplates all interested parties participating in the formulation and promulgation of rules and the development of policies designed to affect classes of individuals rather than a single individual.[16]

Implied in any federal and state rulemaking authority is the requirement that all relevant interests and viewpoints be considered prior to the formulation of any rule.[17] It would seem reasonable that only after such a comprehensive and inclusive examination could responsible

11. *Id.*

12. *See* K. DAVIS, DISCRETIONARY JUSTICE 65 (1969) (describing the rulemaking process as a virtual duplicate of the legislative committee procedure).

13. *Id.*

14. *Id.*

15. *Id.* at 66.

16. *See* Mikva, *supra* note 8, at 654.

17. *See* Bonfield, *Representation for the Poor in Federal Rulemaking*, 67 MICH. L. REV. 511 (1969).

officials have confidence in the soundness of the rules they establish.[18] The nature of the proceeding can be so important and the material so complex that an individual or corporation seeking a favorable administrative ruling has as much need for the advice and assistance of a "knowledgeable attorney" as he does when he confronts a judicial tribunal.[19] It should come as no surprise, then, to learn that persons and organizations with sufficient financial resources usually assure their particular interests adequate representation in both state and federal rulemaking. These individuals and their organizations monitor directly or indirectly all agency activities that concern their particular interests, and they attempt to protect their interests through formal or informal participation in rulemaking affecting them.[20]

Rulemaking frequently affects the poor, but the poor usually are unable, individually or as a class, to apprise themselves of the numerous actual or proposed rules affecting their interests. The poor also may be at a disadvantage because they frequently cannot communicate their views effectively to the appropriate agency, or petition in their own interest for the passage of new rules or for the amendment or repeal of old rules.[21]

There is a growing body of evidence to support the conclusion that not all segments of society are represented before administrative agencies, thus detracting from one of the principal attributes of the administrative process. The poor, in particular, seem to be inadequately represented both in federal rulemaking[22] and, as this article suggests, in state rulemaking. The poor, as a class, are of special concern in the rulemaking process because they, more than any other segment of our society, lack an articulate voice or lobby before legislative and administrative bodies.[23]

No agency promulgating rules affecting the poor can assume that it knows what is best for them. Rules affecting the poor should not simply reflect the middle-class values and experiences of the agency personnel engaged in the rulemaking process or the interests of parties who have the resources to make their views known. The proper administration of government demands that all persons be afforded an opportunity to

18. *Id.*
19. *See* Mikva, *supra* note 8, at 654.
20. *See* Bonfield, *supra* note 17, at 511.
21. *Id.*
22. *Id.* at 512-20. *See also* notes 29-30 *infra* and accompanying text.
23. *See* Ashman, *Justice For the Poor—Whither Next?*, 27 LEGAL AID BRIEFCASE 135, 136 (1969).

participate in the rulemaking process by making their views known. Undoubtedly, respect for government suffers from the inability of the poor to represent affirmatively their own interests in rulemaking.[24]

C. *Recent Interest in Federal Rulemaking*

At all levels of government, administrative agencies serve as valuable instruments for carrying out social policy. It has been argued that the fact-finding and rulemaking powers of administrative agencies, in addition to their adjudicatory functions, "enable [them] to respond more imaginatively and creatively than can courts to the new demands and conditions which are constantly emerging in our society."[25]

In part, it is concern for the poor in their relationship to administrative agencies that has motivated people to begin thinking about ways in which the administrative process, particularly in the area of federal rulemaking, can affirmatively advance the interests of the poor and be made more responsive to their needs. Representatives Michael Feighan (D-Ohio)[26] and Abner J. Mikva (D-Ill.)[27] and Senators Philip Hart (D-Mich.)[28] and Edward M. Kennedy (D-Mass.)[29] have introduced bills in Congress that seek to insure full participation by and on behalf of unrepresented citizens in federal administrative rulemaking proceedings. Senator Kennedy's bill, which is identical to representative Mikva's bill, acknowledges that "there is substantial evidence that large segments of the American public are not adequately represented in the Federal rulemaking process, and that . . . the views of those directly affected by administrative agencies are frequently not heard in the formulation of rules."[30] To correct this condition, Senator Kennedy recommends the creation of a "Public Counsel Corporation" to represent the interests of the poor before federal regulatory agencies and to participate in rulemaking on their behalf.[31] This proposal closely parallels the

24. *See* Bonfield, *supra* note 17, at 512.

25. Jones, *The Role of Administrative Agencies as Instruments of Social Reform*, 19 AD. L. REV. 279, 299 (1967).

26. H.R. 1776, 91st Cong., 1st Sess. (1969); H.R. 17974, 90th Cong., 2d Sess. (1968).

27. H.R. 16174, 91st Cong., 2d Sess. (1970).

28. S. 2544, 91st Cong., 1st Sess. (1969) (co-sponsored by Senator Kennedy); S. 3703, 90th Cong., 2d Sess. (1968).

29. S. 3434, 91st Cong., 2d Sess. (1970).

30. *Id.*

31. The relevant portions of S. 3434, 91st Cong., 2d Sess. (1970), read as follows:

SUBCHAPTER IV—PUBLIC COUNSEL CORPORATION

§ 581. Findings.

The Congress hereby finds and declares—

(1) that there is substantial evidence that large segments of the American public are not

recommendation of the Administrative Conference of the United States that a "People's Counsel Corporation" be established to represent the poor in all federal administrative rulemaking.[32]

D. State Rulemaking

The problem of representation of the poor is not limited to the rulemaking process at the federal level. In fact, the reasons advanced for involving the poor in rulemaking before federal agencies are just as valid and compelling for state and local agencies. State and local rulemaking often carries more impact upon the daily lives of the poor than rulemaking at the federal level. The need, therefore, is to involve the poor directly in the rulemaking process in those states that have either adopted the Model Administrative Procedure Act or modeled their legislation after it. At the same time, states that have not yet adopted

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adequately represented in the Federal rulemaking process, and that thus the views of those directly affected by administrative agencies are frequently not heard in the formulation of rules;

(2) that the sound operation of the administrative rulemaking process demands that all relevant interests and viewpoints be considered prior to the formulation and promulgation of an administrative rule or regulation; and

(3) that to assure the interests of the public are considered, means should be established to provide the unrepresented public with competent, consistent, and aggressive advocates in Federal rulemaking.

. . . .

§ 588. Activities and powers of the corporation

(a) In order to carry out the objectives of this subchapter, the corporation is authorized to—

(1) represent, either directly or by contract with appropriate individuals or private organizations, the interests of the unrepresented public and, where appropriate, separate interests of distinct groups within the unrepresented public, in proceedings before regulatory agencies of the United States, either upon the request of any such agency, or on its own initiative; provided that in carrying out its contracting authority under this section, the corporation shall give preference to nonprofit organizations with experience in representing the public interest before Federal agencies;

(2) initiate rulemaking proceedings in any regulatory agency when otherwise authorized, upon the vote of two-thirds of the members of the board;

(3) collect and disseminate to all interested organizations and to the general public information concerning rulemaking with particular emphasis upon rulemaking and the interests of the unrepresented public;

(4) represent, upon request, individuals or private organizations who seek judicial review of Federal administrative actions whenever the executive director determines that the issues involved in such review substantially affect the interest of the unrepresented public;

(5) perform such other functions as may be prescribed by law.

32. For recommendations by the Administrative Conference of the United States with respect to representation of the poor in agency rulemaking of direct consequence to them see Comment, *Interim Report of the Administrative Conference of the United States*, 21 AD. L. REV. 491, 504-11 (1969).

such legislation must be encouraged to pass administrative procedure acts requiring notice of proposed rulemaking and permitting participation by interested parties.

Little information is available on state rulemaking, particularly with respect to the extent and impact of participation by the poor in the rulemaking process and the effect of state rulemaking upon them. The remainder of this article will attempt to emphasize and illustrate the importance of state rulemaking and its special impact upon the poor; the nature of existing state administrative procedure legislation, particularly regarding provisions for notice and participation in rulemaking; the extent to which notice and participation actually occur in those states that have administrative procedure legislation; and the effect of notice and participation wherever it does occur.

II. IMPORTANCE OF STATE RULEMAKING

A. Scope of State Rulemaking

In discussing the scope of state rulemaking, one could generalize by characterizing it as being marked by broad federal delegations of authority permitting state and local agencies to define critical substantive matters.[33] The lives of the poor are affected daily by administrative decisions at the state and local level in such areas as welfare, housing, education, consumer protection, and urban renewal. For example, in the areas of public welfare and public housing, always of immediate and overriding concern for the poor, important substantive decisions have been delegated by the federal government to the states. In many instances, the states have further delegated responsibilities to county and municipal authorities.[34] Local welfare agencies administering federally assisted programs for dependent children, the elderly, and the disabled often have wide discretion in fixing eligibility standards. These decisions, both formal and informal, directly affect the poor but rarely involve them. Under the Federal Social Security Act, for example, requirements are imposed on the states as conditions for participation in the Aid to Families with Dependent Children (AFDC) grant-in-aid program. Most of the federal statutory provisions are permissive. The federal statute allows the states to determine the criteria of need, levels of

33. Handler, *Controlling Official Behavior in Welfare Administration*, 54 CALIF. L. REV. 479, 481 (1966).

34. *See, e.g.*, REPORT OF ABA STANDING COMMITTEE ON LAWYER REFERRAL SERVICE, WHAT IS THE BAR DOING? (1965); Friedman, *Public Housing and the Poor: An Overview*, 54 CALIF. L. REV. 642, 656 (1966); Handler, *supra* note 33, at 492-503.

income and resources that will be included in the budget, and the minimum level of income for the recipients, subject, of course, to a federally imposed maximum.[35] Sometimes such discretion is exercised unwisely, as in California where the AFDC housing cost schedules for 1967, 1968, and 1969 recently were invalidated by a state trial court. The trial court found that the schedules were adopted without notice and hearing and did not reflect the minimum amount necessary for AFDC recipients to obtain safe, healthful housing. The California Department of Social Welfare was ordered to promulgate new cost schedules.[36]

In Wisconsin, although a state agency supervises the AFDC program, county welfare agencies actually administer the program. The state agency "assists the counties in [developing] their programs, supervises their activities, and advises the local agencies of federal and state requirements. At both the federal and state levels there [is] a conscious attempt to provide flexibility and a large measure of autonomy and discretion at the county level."[37] For example, Wisconsin regulations set forth extensive criteria to be used by county case workers in deciding whether the AFDC mother should work.[38]

In public housing, tenant eligibility also is determined by a combination of federal legislation and local rule although the only "requirement" of federal law is that poor persons be allowed in public housing. Federal law does require local public housing agencies to adopt admission policies pursuant to their "responsibility" for rehousing displaced families and for determining the status of an applicant. These local policies take into consideration whether an applicant for public housing is a serviceman or veteran, his age, disability, housing conditions, and urgency of housing need. Other than these rather minimal requirements, "federal law is silent on eligibility for public housing" and "offers little guidance" either for administering a project or for terminating a tenancy.[39] Generally, local public housing

35. Handler, *supra* note 33, at 492.

36. Ivy v. Montgomery, CCH Pov. L. Rep. ¶ 11,573 (Cal. Super. Ct. Sept. 11 , 1969). Despite this and other successful instances of judicial review of administrative action, some observers think that it is unwise to depend upon reviewing courts to accomplish significant changes in administrative behavior because (1) "much of the informal administrative process is not susceptible to judicial review" and (2) the courts are concerned almost exclusively with procedural matters and "what the agencies *do* to people and their property is largely beyond judicial scrutiny, as long as procedural steps are properly taken or adequate 'findings' are made." Handler, *supra* note 33, at 491.

37. Handler, *supra* note 33, at 492-93.

38. *Id.* at 493. Many AFDC programs have provisions relating to the "employable mother," requiring that "under certain conditions, the mother of an AFDC family seek or accept employment outside the home." CCH Pov. L. Rep. ¶ 1220, at 2191.

39. *See* Friedman, *supra* note 34, at 656-57.

authorities are given broad rulemaking powers and can "impose rules and regulations upon the tenants—provided only that the rules are not illegal or so scandalous as to arouse rebellion."[40]

The problem for the poor is not that the rules and regulations of state and local agencies are secret. Most state and local agencies publish either formal rules or handbooks and guides that embody their rules and regulations. In the area of public housing, local housing authority rules appear in leases, though it is doubtful whether anyone ever reads them. To be sure, many welfare agencies still make it difficult to obtain copies of their rules and schedules. Yet, when considering the importance of state rulemaking and the involvement of the poor in that process, secret rules usually do not pose a serious problem. As one observer notes, in the context of public housing administration, "management is not insane: It wants its rules to be known and to be followed."[41]

Rather, the problem for the poor, and others similarly affected by state and local rulemaking, "is what the rules say and who decides them."[42] Rules emanating from state and local administrative agencies have not always appeared humane or even rational. Arbitrary and, in some instances, "lawless" actions on the part of some governmental agencies affecting the lives of the poor have been documented frequently.[43] Such aberrations serve not only to dramatize the importance of state and local rulemaking but also to emphasize the need for directly involving the poor in the decision-making process in matters directly affecting their lives.

B. Illustrations of State Rulemaking Directly Affecting the Poor

Certainly one can point to many sound, rational, and humane state and local rules. Indeed, criticizing the substance of a particular state rule or regulation is not necessarily a criticism of the procedure by which the rule was promulgated. But bad rules are, in a real sense, the product of deficiencies in the rulemaking process, and bad rules affecting the poor are in part attributable to the lack of participation of the poor in state

40. *Id.* at 661.

41. *Id.* at 662.

42. *Id.* It has been pointed out that courts do not appear "willing or able to run public housing authorities" (or welfare departments and boards of education for that matter). Courts might require these agencies to comply with certain rulemaking procedures, but they are not likely to be concerned about what the rules actually say.

43. *See, e.g.*, Sparer, *The Poor Man's Lawyer and Governmental Agencies*, in NATIONAL CONFERENCE ON LAW AND POVERTY: PROCEEDINGS 37 (1965); P. WALD LAW AND POVERTY 30-31 (1965).

rulemaking. It is in this context that the following illustrations are offered.

1. *Public Welfare Administration.*—The Alabama "man in the house" rule serves as an excellent illustration of the promulgation of an irrational and insensitive rule later struck down upon judicial review.[44] Approximately 20,000 children had been denied AFDC assistance because of a rule promulgated by the Alabama Department of Pensions and Security, which disqualified otherwise eligible children from receiving AFDC support if their mother cohabited with a man who was not obligated by Alabama law to support the children. The United States Supreme Court held this "substitute father" regulation invalid because it defined "parent" inconsistently with the National Social Security Act. The Court held that the regulation violated Alabama's federally imposed obligation to furnish "aid to families with dependent children . . . with reasonable promptness to all eligible individuals . . . ."[45]

The Supreme Court recently held that Maryland's family maximum regulation does not violate either the Social Security Act or the equal protection clause.[46] Justice Stewart, writing for the majority, rejected the petitioner's contention that the family maximum contravened the command of the Social Security Act that assistance be furnished to all eligible individuals. The Court chose to interpret the Social Security Act as requiring only that "some" assistance be extended to all eligible families. The majority also rejected the contention that the Maryland regulation had the effect of splitting up families in violation of the fundamental purposes of the Act.[47]

In response to a suit challenging the constitutionality of the Mississippi Department of Public Welfare's failure to provide prior hearings in entitlement cases, Mississippi promulgated new regulations designed to continue assistance pending a hearing and decision on any

44. King v. Smith, 392 U.S. 309 (1968).

45. *Id.* at 317, *quoting* 42 U.S.C. § 602(a)(9) (Supp. 11, 1964).

46. Dandridge v. Williams, 397 U.S. 471 (1970). Mr. Justice Douglas dissented in *Dandridge* on grounds that the Maryland regulation was in violation of the Social Security Act. *Id.* at 490. Mr. Justice Marshall, joined by Mr. Justice Brennan, also dissented, asserting that Maryland's family maximum violated both the Social Security Act and the fourteenth amendment's equal protection guarantee. *Id.* at 508.

47. 397 U.S. at 479-80. For an excellent discussion on the "emasculation" of the equal protection clause as a poverty weapon because of the *Dandridge* decision and for a useful exposition on permissible methods for states to compute need in light of *Dandridge* see May, *Supreme Court Approves Maximum Grants; Holds § 402(a)(23) Permits Welfare Cuts*, 3 CLEARINGHOUSE REV. 321, 322 (1970).

proposed termination of benefits.[48] Subsequently, Mississippi substantially diluted the effect of this rather liberal rule by excepting from its coverage actions to suspend or reduce the size of a grant.

The NOLEO (Notice to Law Enforcement Officers) requirement also is an excellent example of local administrative discretion. The requirement varies in its specific content from state to state. For example, a mother applying for or receiving AFDC assistance may be required, "as a condition of initial or continuing eligibility, to identify and give information about the father of her children if he has deserted or abandoned the family."[49] In some jurisdictions a mother, in addition to identifying the father, must file a claim for support against him, or initiate a paternity action if he is not her husband and has not acknowledged his paternity of her children. Evidently the state's rationale for imposing such requirements is "to obtain support payments from the absent father and correspondingly to reduce the family's AFDC grant."[50] Welfare regulations in the District of Columbia require "as a condition of initial or continuing eligibility that when a husband or parent fails to support, an applicant or recipient must take appropriate action in a court of the proper jurisdiction . . . ."[51]

For many years, North Carolina's rural poor found that their AFDC benefits were reduced or terminated at the beginning of each tobacco season by many county welfare departments.[52] The welfare

48. *See* Williams v. Gandy, Civil No. GC 6728 (N.D. Miss., filed June 9, 1967) (one of the earliest prior hearing cases which was dismissed when Mississippi promulgated its new rules).

49. Silver, *Suggested Attacks on the NOLEO Requirement—Part I*, 4 CLEARINGHOUSE REV. 1 (1970). Another example of a rule that works a great hardship on the poor and permits wide latitude in local administration is a "don't work" rule enforced in many parts of California. The state statutes permit full welfare and medical assistance to all needy children whose fathers *do not* work or work only part-time, whose fathers desert them, and to all illegitimate needy children. The rule specifically singles out and penalizes one classification—all children whose fathers are employed full-time but earn less than would be received from welfare. *See* 1969 CAL. RURAL LEGAL ASSISTANCE ANN. REP., pt. 12, Exhibit 111.

50. Silver, *supra* note 49.

51. *See* 2 DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WELFARE, HANDBOOK OF PUBLIC POLICY AND PROCEDURE, RS 6, Public Assistance, RS 6.4, 1. A. For examples of state regulations "typical of the NOLEO regulations and practices of the state welfare agencies" see the Florida, Illinois, and D. C. regulations in Silver, *supra* note 49 at 1, 13.

52. *See Project—The Legal Problems of the Rural Poor*, 1969 DUKE L.J. 495, 545 [hereinafter cited as Project]. The practice of cutting off welfare assistance to farm workers when work "is available" is also a problem in Kern County, California, where the County Welfare Department has been charged with arbitrarily cutting off aid to welfare recipients when farm labor is available. In one instance the welfare department discontinued benefits to a migrant farm worker on the grounds that he had secured work. The facts actually appear to be that the worker had only

departments' actions followed alleged investigations of the income of families receiving AFDC. The "investigations" actually consisted of landlords or farm operators informing the local welfare department of the families that would be working during the tobacco season.[53] The wages that all the members of a family could earn by working were then computed, and the family's benefits were reduced by that amount or terminated if the maximum level was exceeded. The family was then placed in the situation of either choosing to work for the employer or reapplying for benefits. The welfare departments' criteria for reducing or terminating benefits were based not upon what families actually were working or their actual earnings, but upon what families could be working and what a family could earn by working. On the contrary North Carolina regulations stipulated that benefits were to be affected only when the earnings of family members actually employed caused the income of the family to rise above maximum levels.[54] The practice of allowing employers to notify the welfare department as to who would be working and to have benefits cut off on the basis of that information permitted the employer to select his work force from welfare recipients and "to insure that they would be willing to work since their other means of support would be unavailable."[55] Interestingly all the welfare recipients reporting these tobacco season cuts "did nothing about it, accepting the explanation of the welfare department that when work was available their benefits would be cut."[56]

2. *Public Housing Administration.*—Local housing auuthorities generally have broad discretion in promulgating rules and regulations governing both tenant selection and tenure and eviction. A regulation passed by the Chicago Housing Authority, for example, is typically broad; its effectiveness hinges upon the interpretation of the term "undesirable."[57] The regulation defines an undesirable tenant as one who "imperils the health, safety or morals of his neighbors, or is the source of danger to the property or to the peaceful occupation of the tenant, or is remiss in his normal obligations as a tenant."[58] Obviously,

temporary employment and no further assurance of any more farm work. Letter from John R. Ortega, Associate Attorney with California Rural Legal Assistance of McFarland, California, to Allan Ashman, Aug. 20, 1970.

53. *Project, supra* note 52, at 545.

54. N.C. Pub. Assistance Reg. § 321(3)(a).

55. *Project, supra* note 52, at 545.

56. *Id.* at 544.

57. For a reprint and discussion of Chicago Housing Authority Resolution 55-CHA-275, F see K. DAVIS, *supra* note 12, at 77-78.

58. K. DAVIS, *supra* note 12 at 78.

the concept of "undesirable," which remains undefined for the most part, "confers enormous discretionary power [on administrators] to control many aspects of the lives of the tenants who are . . . unable to fight . . . official arbitrariness."[59]

The power that resides in an official to interpret "undesirable" as he chooses and to enforce his determination against individual families by ousting them from their established homes is indeed an arbitrary power and one that is totally inconsistent with sound or rational government.[60] Rather than confer such unbridled discretion, the regulations should specify whether a family becomes "undesirable" because of specific changes in their circumstances—the separation of a husband and wife, divorce, imprisonment for a misdemeanor, imprisonment for a felony, and suspended sentence for a felony.[61]

The federal statute offers little guidance as to the administration of housing projects or the termination of tenancy; state laws offer little more. Generally, the states have adopted the income limits prescribed by federal law.[62] Some states specifically provide for the problem of the over-income tenant. In New Jersey, for example, the over-income tenant may be permitted to continue his residence until his income exceeds the maximum for entry by 25 percent.[63] There are many variations among states. Some states spell out their preferences—veterans often are placed in a preferential class—but, in the main, tenant selection is left to the local housing authorities.[64]

There are many dramatic and poignant examples of rule-bound local authorities, unwilling to temper principle with common sense.[65] There are numerous rules and regulations, for example, prohibiting the keeping of dogs in high-rise housing units. As one observer notes, "Half a million people in New York City must choose between subsidy and pets."[66] Although the wisdom and practicality of these rules remain doubtful, the housing authority has been successful in overcoming legislative attempts to change this practice. Similarly, the New Orleans Housing Authority ruled that blind tenants could kcep their seeing-eye dogs only after public indignation and outrage over the prohibition

59. *Id.*
60. *See id.* at 78-80.
61. *Id.*
62. *See* Friedman, *supra* note 34, at 656-57.
63. N.J. STAT. ANN. § 55: 14-20 (1964).
64. *See* Friedman, *supra* note 34, at 657.
65. *Id.* at 658. *See also* Sparer, *supra* note 43, at 42-43.
66. Friedman, *supra* note 34, at 661.

forced the change. In addition, there have been several recent cases challenging the constitutionality of the imposition of quotas on the number of blacks who may occupy public housing in predominantly white areas and the selection of sites for public housing on the basis of the racial composition of the neighborhood.[67]

As in welfare administration, then, the broad discretion afforded local housing authorities to adopt rules and regulations and "manage" their respective programs often slips too easily into arbitrary fiat and callous mishandling.

3. *Consumer Protection.*—In California, the Spanish-speaking telephone subscribers from San Francisco, Sonoma, and Imperial Counties recently filed a complaint before the California Public Utilities Commission seeking a reduction in telephone rates for Spanish-speaking subscribers and protesting a proposed Pacific Telephone and Telegraph (PT&T) application for a rate increase.[68] The essence of the complaint of the Spanish-speaking telephone subscribers is that they have been, and are being, denied effective use of the phones solely and exclusively because of PT&T's unlawful and discriminatory refusal to provide or hire bilingual operators to assist Spanish-speaking persons in using information services, and most important, in using PT&T's emergency fire, police, and hospital connection services. The complaint describes a demonstration where it is alleged that high level PT&T officials agreed that anyone suffering a heart attack who could not speak English would literally risk death; nevertheless, the complaint alleges that these officials reiterated their basic position that, in effect, they had no responsibility to promote or protect the "safety and health" of their subscribers.[69]

The Spanish-speaking complainants, on behalf of approximately 300,000 Spanish-speaking telephone subscribers in California, allege not only that no rate increase can legally be granted as to Spanish-speaking subscribers, but also that the basic phone rate for all Spanish-speaking, non-English-speaking subscribers should be reduced by 50 percent, retroactive to January 1, 1970.[70] In conjunction with their petition for a

67. *See, e.g.*, Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969).

68. *See* Petitioner's Brief, 144 Spanish-Speaking Tel. Subscribers v. Pacific Tel. & Tel. Co., No. 9042, (Cal. Pub. Util. Comm'n, filed Apr. 2, 1970). In the area of consumer protection, generally, it would be worthwhile to look at the final draft of the UNIFORM CONSUMER SALES PRACTICES ACT § 6, wherein an "administrator" is authorized to enact substantive rules saying what is a deceptive act or practice in connection with a consumer transaction.

69. *See* Petitioner's Brief, 144 Spanish-Speaking Tel. Subscribers v. Pacific Tel. & Tel. Co., No. 9042 (Cal. Pub. Util. Comm'n, filed Apr. 2, 1970).

70. *Id.* The complainant's petition notes that the California Public Utilities code specifically prohibits any rate increase to any group denied services "necessary to promote [their] safety, health, comfort and convenience . . . ." CAL. PUB. UTIL. CODE § 451 (West 1956).

rate reduction, the complainants also petitioned the Public Utilities Commission for review of a hearing examiner's final decision denying their "Consumer's Fair Hearing Plan."[71] The plan was a proposal to allow and encourage adequate and equal consumer representation at public utility rate hearings. The plan provided that adversely affected low-income consumers and their representatives be allocated a sum by the Publie Utilities Commission equal to one-fiftieth or two percent of the total to be expended by a public utility in its efforts to secure a rate increase. This sum would then be used for witness fees, transportation, and costs related to preparation for a hearing.

The complainants point out that the anti-eonsumer effect of the hearing examiner's decision is best illustrated by his April 1, 1970 ruling. At that time, the hearing examiner ruled that no written material could be submitted to the examiner without copies being provided to the approximately 100 interested groups that had entered appearances before the Commission. Obviously, the eost of providing 100 copies would be prohibitive for the low-income groups involved. The complaint argues that the effect of such a ruling is to chill adequate representation because no group representing the poor could afford to submit any written material in opposition. The Consumer's Fair Hearing Plan was designed to counter the effect of this ruling by providing these low-income groups with sufficient funds to make copies available to all interested parties pursuant to the ruling of the hearing examiner.

The foregoing examples drawn from public welfare, public housing, and public utility administration are meant to be illustrative of the range and impact of state and local administrative rulemaking upon the poor, but these areas are not the only areas of public administration where some form of representation for the poor is needed before state and local agencies. Public edueation[72] and urban renewal[73] administrations, for example, have not always actively involved the poor in the decision-

71. California Rural Legal Assistance Petition for Review of Hearing Examiner's Final Decision Denying Consumer's Fair Hearing Plan (Pub. Util. Comm'n of Cal. 1970).

72. *See, e.g.*, Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967) (attacking the practice of "ability grouping"). *See also* Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964) (requiring a student who married to withdraw from school for a full year, with only the possibility of thereafter being admitted as a special student); State *ex rel.* Idle v. Chamberlain, 39 Ohio Op. 2d 262, 175 N.E.2d 539 (C.P. Ct. Butler County 1961) (requiring immediate withdrawal from school upon knowledge of the pregnancy of a student); Alvin Independent School Dist. v. Cooper, 404 S.W.2d 76 (Tex. Civ. App. 1966) (denying a married mother admission to a public high school); Sparer, *supra* note 44 at 40-41 (attacking "suspension" of students without a hearing or opportunity to defend themselves).

73. *See, e.g.*, Frieden, *The Legal Role in Urban Development*, 12 U.C.L.A. L. REV. 856, 869-70 (1965).

making and rulemaking process and have, in fact, frequently heightened the problems of the poor in these respective areas. Countless other illustrations could be cited to reflect the inadequate representation of the poor and of minority interests before state and local agencies. As in federal rulemaking, there is a growing body of evidence to document not only the importance of state and local rulemaking, particularly as it affects the poor, but also to support the fact that large segments of the American public are not adequately represented in the state rulemaking process.

III. Notice and Participation Under State Administrative Procedure Acts

The adoption of administrative procedure legislation by the states providing for notice and participation is an important first step toward involving the poor in state rulemaking. Realistically, such legislation is essential to guarantee that citizens are given an opportunity to participate in the rulemaking process. Without this legislative vehicle, there may be no legal compulsion for guaranteeing citizens notice of proposed rulemaking or authorization to participate in rulemaking. In states with no administrative procedure act, interested parties have no formal procedure by which to voice their substantive wishes.

What about those states that have administrative procedure acts? Thirty-six states have enacted a basic administrative procedure vehicle providing for notice and participation.[74] Nine of the states have patterned their provisions after the Revised Model Administrative Procedure Act promulgated in 1961 by the National Conferenee of Commissioners on Uniform State Laws.[75] Even in these 36 states, the legislation may be rendered inoperative either by provisions that

74. For a composite of the statutes of the 50 states see Appendix I. The information contained in this Appendix is based, insofar as it is possible, upon statutes and legislation cited in the most current state codes and supplemental pocket parts.

75. The 9 states are Alaska, Hawaii, Idaho, Louisiana, Nebraska, Oklahoma, Vermont, Washington, and Georgia. With regard to notice and participation, the Revised Model Act provides:

"(a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1) give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and shall be published in [here insert the medium of publication appropriate for the adopting state];

(2) afford all interested persons reasonable opportunity to submit data, views, or

effectively exclude a group from active involvement in rulemaking or by the lack of provisions affirmatively including interested parties in the process. Has the legislative vehicle, in fact, proved operative? Have the poor actually been able to benefit from the opportunity to participate in the rulemaking process? By looking at provisions of representative state administrative procedure acts, one can document, to some extent, how citizens, and particularly the poor, are excluded at the threshold of the administrative process from participating in rulemaking.

A. Notice of Proposed Rulemaking

One of the most important features of the Revised Model Act is the requirement that an agency give notice of proposed rulemaking. Practically, such notice is a prerequisite to participation in rulemaking by interested persons. The Revised Model Act requires that notice be published and mailed directly to persons who have requested it. The notice must contain a statement of the proposed rule or the subjects involved and the time, place, and manner for views of interested persons to be made known.[76]

Direct notice is particularly important to the poor because they lack exposure to the sources of information, such as newspapers, in which notice of proposed rulemaking may be printed. Yet, of the 36 states with statutes covering notice of proposed rulemaking, fourteen do not require that notice be mailed directly to interested persons who have requested

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arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(b) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period of no longer than 120 days [renewable once for a period not exceeding ____ days], but the adoption of an identical rule under subsections (a)(1) and (a)(2) of this Section is not precluded.

(c) No rule hereafter adopted is valid unless adopted in substantial compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of this rule."

REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT §§ 3(a)-(c) (1961).

76. *Id.*

it.[77] In Arizona, for example, notice of proposed rulemaking is to be filed only with the Secretary of State.[78] Interested persons in Arizona would, therefore, have to maintain a constant check with the Secretary's office. In Kansas, interested persons may request notice, but whether they receive it is subject to the discretion of the Attorney General.[79] Whether this kind of approval requirement actually is prejudicial to the interests of a group is difficult to determine and not really at issue. What is significant is that it adds to the appearance of government arbitrariness and fuels charges of "playing politics."

Some states require notice to be issued only "so far as practicable."[80] Such ambiguous statutory language can easily lead to frequent and unsubstantiated findings of impracticability, by an agency thus sacrificing participation by justifiably interested persons on the altar of administrative efficiency and economy.

In states where interested persons are not notified directly of proposed rulemaking, the notice function may be impaired to such a degree that interested parties may never become aware of a rule until it is too late, and the only recourse for change is through administrative or judicial review proceedings. Meanwhile, the citizen has lost the opportunity to be heard initially and the agency promulgating a rule has lost the benefit of a citizen's views.

B. Manner of Participation by Interested Persons in Proposed Rulemaking

In states that provide for participation in rulemaking, interested persons, after receiving notice, may submit data, views, or arguments to the rulemaking body. These presentations take the form of oral testimony at a public hearing, written testimony, or both. The written testimony form of argument is employed most often. It is favored because it is an economical method since the decision-making process is not materially slowed by the actual appearance of interested parties.

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77. The 14 states are Arizona, Connecticut, Indiana, Kentucky, Maine, Maryland, Nebraska, Ohio, Oregon, Pennsylvania, Texas, Virginia, Vermont, and Wisconsin. For relevant statutory sections see Appendix I.

78. ARIZ. REV. STAT. ANN. § 41-1002 (1956).

79. KAN. STAT. ANN. § 77-421 (1969).

80. This qualification was part of § 2(3) of the original Model State Administrative Procedure Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1946. It survives in a few state acts that are based on the 1946 Model Act: Maine, Michigan, Oregon, and Texas. For statutory sections see Appendix I. The Maryland Administrative Procedure Act, MD. ANN. CODE art. 41, §§ 244-56 (1965), which is also based on the 1946 Model Act, does not have this qualification. *See also* note 98 *infra*.

The oral hearing[81] is mandatory in only ten states and then only if it is requested by a specified number of individuals or an association with a specified number of members.[82] In the other 26 states with statutory provisions for participation in rulemaking, the availability of an oral hearing is at the discretion of the agency.[83] Oral argument may often be more effective than a written submission to convey to the agency the views and information of interested parties. Interested parties, and in particular the poor, may be unskilled and unsophisticated in developing and preparing a written argument. For them an oral presentation may prove more beneficial from the standpoint of an informative and productive meeting.[84] An oral confrontation also may have a more dramatic impact on the rulemaker, enhancing the possibility of greater receptivity to the views presented.

Whether a presentation is oral or written, the most important consideration is that the poor be able to have their views heard in a dignified and receptive atmosphere. In the final analysis, the individual and collective attitudes of the rulemakers is of paramount importance. If the rulemaking authority is receptive to the views of the poor, a competent, written submission may prove to be sufficient communication with an agency; however, if an agency is hostile or not receptive to the views of the persons affected by the proposed rules, an oral presentation with all its potential for dramatic impact on the consciousness of the rulemakers may still prove futile.

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81. It should be emphasized that an "oral hearing" or "oral presentation of views, data, and argument" should not, normally, take the form of what Professor Kenneth Culp Davis terms a "trial-type" of hearing with all its trappings such as confrontation and cross-examination of witnesses, discovery, impartial tribunal, and right to counsel. *See* K. DAVIS, *supra* note 12, at 228. The reason for this distinction lies in the fundamental nature and objectives of a trial and agency rulemaking. Because the facts serve different functions in the overall purpose of the 2 proceedings, the most efficient manner for presenting facts differs. For example, in the trial the object is to settle disputed facts, and the submission of evidence, the cross-examination of witnesses, and the presence of counsel all serve to narrow the range of possible and alleged facts to the actual facts. In rulemaking, however, the general objective is to make law or policy and the formal narrowing of facts does not serve the general goal of informing the rulemakers as to the overall situation that is in need of remedy or the persons most affected by the proposed rule or regulation. Also, the imposition of the trial method on the rulemaking process can be counter-productive. An important attribute of the oral argument in the rulemaking proceeding is informality and flexibility. Thus it is asserted that the proper type of hearing is the argument or "speechmaking" hearing, which generally is more conducive to the exposition of views by interested parties and the exploration of those views by the rulemakers. *See* 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE §§ 6.06, 7.07 (1958); 2 *id.* § 15.03.

82. These 10 states are Georgia, Idaho, Louisiana, Nevada, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, and Wyoming. For relevant statutory sections see Appendix I.

83. *See, e.g.*, ARK. STAT. ANN. § 5-703 (Supp. 1969) (agency shall "afford all interested persons reasonable opportunity to submit written data, views, or arguments, and, if the agency in its discretion shall so direct, oral testimony or argument").

84. *See* Goldberg v. Kelly, 397 U.S. 254, 268-69 (1970).

C. *"Escape Clauses" and Exclusions*

Several state administrative procedure acts contain "escape clauses" and exclusionary definitions that weaken the rulemaking mechanism. These clauses and definitions either exempt certain agencies and types of rules from the operation of the acts or allow all the requirements for rulemaking to be waived. For example, under the Nebraska statute covering adoption of rules by state agencies, "[t]he Governor, in writing prior to the adoption, amendment, or repeal of any rule, may waive, for good cause shown, the provisions of this section."[85] The effect of such a provision may be to eliminate completely the requirement of a public hearing and to allow an agency to adopt a rule without any participation by interested persons.

In Massachusetts, an agency may dispense with requirements of notice and opportunity to present views if the agency finds that such requirements are "unnecessary, impracticable, or contrary to the public interest."[86] This discretionary power is limited when the adoption of regulations requires a hearing by any other law, or when the violation of the regulation is punishable by fine or imprisonment.[87] Sound public policy underlies the requirement for a hearing before adoption of these two types of regulations. Requiring a hearing where another law so dictates permits continuity and consistency in the interpretation of state law. In addition, when a fine or imprisonment will be imposed for the violation of a proposed regulation, a required hearing permits added assurance that the fundamental interests at issue—in this instance a citizen's freedom from incarceration and fine—are protected. The Massachusetts exclusionary statute is too restricted and short sighted. Freedom from fines and incarceration are two important interests, but they are not the only interests that merit protection, nor are they necessarily the most important. Yet, where other substantial interests are affected—such as the amount of welfare allotments—a hearing is not required. Whether interested parties may appear to testify on such matters is left to the discretion of the particular agency, which may simply rely upon the language of the statute and hold that a hearing is "unnecessary, impracticable, or contrary to the public interest."

Other states also have provisions in their administrative procedure

85. NEB. REV. STAT. § 84-907 (1966).

86. MASS. ANN. LAWS ch. 30A, § 3(3) (1966). *See also* Harris v. Board of Registration in Chiropody, 343 Mass. 536, 179 N.E.2d 910 (1962) (even though it would have been appropriate to allow the plaintiff to present suggestions on a proposed rule, the Board was not required to allow such suggestions).

87. MASS. ANN. LAWS ch. 30A, § 2 (1966).

laws that nullify for all practical purposes the statutory requirements for participation in rulemaking. For instance, the Colorado Administrative Code, after setting out a complete procedure for rulemaking, limits its application by providing that "[w]here a specific statutory provision applies to a specific agency, such specific statutory provision shall control as to such agency."[88] The statutory provision applying to a specific agency may not provide for notice and participation.

Exclusions also are created by the insertion of an "emergency" clause, which provides that if the public good requires the immediate adoption of a rule, notice and participation are not necessary. The duration of such a rule usually is limited to 60, 90, or 120 days, depending on the state.[89] The Revised Model Act recognizes that public safety may require that agencies be able to promulgate emergency rules, but limits the effectiveness of the rule to 120 days.[90]

In Texas, the exclusion is accomplished by definition. The statute providing for notice and participation defines "rule" to include procedural but not substantive rules.[91] The requirements of notice and participation, therefore, do not apply to substantive rules that may seriously affect the rights of individuals. Thus, in Texas there would be no requirement of notice or an opportunity to participate in hearings on a proposed decrease in welfare allotments.

The escape clauses and exclusions noted herein do not discriminate solely against the poor. Any citizen can be excluded from participating in state rulemaking under these provisions. A few states, however, have definitional exclusions that specifically prevent the poor from participating in rulemaking. An example can be found in the Oklahoma statutes. The State's Public Welfare Commission is excepted from the definition of "agency."[92] As a result of this restrictive definition, the requirements of notice of proposed rulemaking and an opportunity to be heard do not apply to the welfare commission. The Louisiana Department of Public Welfare also is excepted from the operation of its state's administrative procedure act by a similar restrictive definition.[93]

Narrowly defining "rule" to exclude those rules that relate to grants or benefits by a state or agency is another kind of restrictive

88. COLO. REV. STAT. ANN. § 3-16-6 (1963).

89. *See, e.g.*, MINN. STAT. ANN. § 15.0412(5) (1964) (60 day limit); COLO. REV. STAT. ANN. § 3-16-2 (1963) (90 day limit); S.D. COMPILED LAWS ANN. § 1-26-5 (1967) (120 day limit).

90. REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT § 3(b).

91. TEX. REV. CIV. STAT. ANN. art. 6252-13, § 1(b) (1962).

92. OKLA. STAT. ANN. tit. 75, § 301 (Supp. 1969-70).

93. LA. REV. STAT. ANN. § 49.951 (Supp. 1970).

definition that limits the ability of the poor to participate in welfare rulemaking. The effect of such a definition is that the rules or regulations promulgated by a state welfare department concerning the eligibility for assistance or the amount of assistance may be adopted without notice to, and participation by, interested persons. The administrative procedure statutes of Georgia[94] and Pennsylvania[95] contain this restrictive definition of "rule."

Although many states have adopted administrative procedure legislation providing for notice of proposed rulemaking and an opportunity for interested parties to participate in the rulemaking process, other provisions in the same acts may render the notice and participation provisions useless. Despite administrative procedure acts, poor citizens residing in these states have, in effect, no formal vehicle for making their views known to the rulemakers. The Revised Model State Administrative Procedure Act does give the poor a practical and effective vehicle to present their views on proposed rules. The first concern of the states, then, must be to adopt the Model Act, or some variant thereof that requires notice of proposed rulemaking and ensures participation without tacking on emasculating escape clauses and definitional exclusions.

IV. ACTUAL PARTICIPATION BY THE POOR IN STATE RULEMAKING

A. General Information on Nature and Extent of Surveys Conducted

Given the proliferation of state and local administrative agencies in recent years, it would be a Herculean task to survey every state administrative agency to determine the degree of participation by the poor in the rulemaking process and to assess the impact of such participation. Such a task might well be the subject of a future study, but it is beyond the scope of this article. The previous section affords some opportunity to speculate on the extent to which notice and participation might occur in given states; however, it is not an accurate gauge for determining the extent to which notice and participation *actually* occur. Nor does it reflect the effectiveness of notice to, and participation by, the poor in state agency rulemaking.

In an attempt to formulate some preliminary judgments about actual participation of the poor in state agency rulemaking and to determine whether such participation has proved effective,

94. GA. CODE ANN. § 3A-102(f)(9) (Supp. 1969).
95. PA. STAT. ANN. tit. 45, § 1204 (Supp. 1970).

questionnaires were sent to all state welfare departments[96] and selected legal services programs.[97] By contacting all 50 state welfare departments the hope was that, at least with respect to those particular departments, some preliminary judgments could be made about the degree of actual participation by the poor in state administrative rulemaking. It was also hoped that some indication could be obtained of whether there is a difference between those states without statutory provisions for notice and participation by interested parties and those having some form of administrative procedure legislation—whether or not based on the original[98] or Revised Model State Administrative Procedure Act.[99]

State welfare departments were selected for the survey because they, perhaps more than any other state agency, deal with the poor. Their responses[100] offer a limited but nevertheless revealing glimpse into state administrative procedure and the role of the poor in this procedure. In order to gain a slightly different perspective on the participation of the poor in the state rulemaking process, particularly before state and local welfare departments, certain legal services programs were asked to comment on their experiences with state agency rulemaking.[101] The legal services programs selected were located in states that have an administrative procedure act and whose welfare departments had already indicated that there was a high level of participation by the poor in rulemaking.[102]

B. Summary of Responses of State Welfare Departments

1. *States with No Statutory Provisions for Participation in Rulemaking.*—Questionnaires were sent to welfare departments in the fourteen states with no statutory provisions for participation of

96. For questions directed to the state welfare departments see Appendix II, A-D.

97. For questions asked of legal services programs see Appendix III.

98. The section of the original model act pertaining to notice and participation reads: "Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall so far as practicable, publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views orally or in writing." MODEL STATE ADMINISTRATIVE PROCEDURE ACT § 2(2).

99. *See* note 75 *supra*.

100. *See* Appendix II. Surveys of this nature must be viewed in perspective. With regard to this survey not all 50 state welfare departments responded to the questionnaire, even after a follow-up letter. These states may be notable exceptions to the trends cited in the survey. Also, in many instances, replies to the questionnaire probably reflect the personal, subjective views of the respondent and not necessarily an unbiased view of the department's role in the rulemaking process. For these reasons alone, this survey cannot be interpreted as being either inclusive or conclusive.

101. *See* Appendix III.

102. *See* Appendix II.

interested persons in state agency rulemaking.[103] Twelve state welfare departments replied to the questionnaires.[104] In these states evidence of actual participation by the poor in rulemaking before state welfare departments is, as might be expected, practically nonexistent. Only two state welfare departments, Delaware and North Carolina, reported sending any form of notice of proposed rule changes. Delaware's welfare department notifies only individuals or groups considered interested or affected by proposed rules; however, the department does not indicate how it determines who is interested or affected. In North Carolina, the mass media carry notices of public hearings.

Where the welfare departments do indicate that there is some participation in rulemaking, the actual form of participation varies. Advisory committees and public hearings are the most formal means of participation. For example, advisory committees that include poor persons make recommendations to the board or staff of state welfare departments in Alabama, Iowa, North Carolina, Tennessee, and Utah. The Utah Department of Social Services reports that it also meets with interested parties to learn their views. In North Carolina, despite the absence of an administrative procedure act, the Department of Social Services holds public hearings to provide a forum in which the poor may make their views known prior to the promulgation and implementation of a rule or regulation.[105]

In the other states where there is no statutory provision for the participation of interested parties in state agency rulemaking, the customary method of ascertaining the views of the poor seems to be through correspondence from the poor or through the regular administrative process, including fair hearings, complaints, and reports of field staff. Almost always this occurs *after* the actual promulgation and implementation of a rule. Only welfare departments in Utah and North Dakota report actual changes in rules as a result of communication with interested low-income persons. The Utah department reports that meetings with the State Welfare Rights Organization led directly to changes in the rules of the Division of Family Services. In North Dakota, a group of AFDC mothers organized to express their views regarding public welfare rules, and the Public Welfare Board notes that the mothers have successfully promoted several rule changes.[106]

103. *See* Appendix I.
104. *See* Appendix II, A.
105. *Id.*
106. *Id.*

It would seem fair to conclude that in those states without any formal procedure for participation of interested persons in state agency rulemaking, the power to determine whether there is to be participation, how it shall occur, and who is to participate rests primarily with individual state welfare departments. In a sense, such discretionary power in the hands of an individual state agency rests upon a false assumption. It assumes that an agency usually is capable, on its own, of understanding the purposes and implications of its rules and the needs and values of those persons most likely to be affected by them. It assumes that, prior to the promulgation of a rule, it is the agency that can best determine whether more information is needed and who might be the appropriate persons to provide this information. Such assumptions are both presumptuous and dangerous, particularly for agencies dealing primarily with the poor. It is presumptuous because it assumes, without foundation, a cultural and ideological rapport between the rulemakers, who for the most part sustain middle-class values on middle-class incomes, and the poor. It is dangerous because it severely restricts participation by interested citizens in the decision-making process and often makes government appear indifferent and inaccessible.

2. *States with Administrative Procedure Acts Not Based on Original or Revised Model Act.*—Questionnaires also were sent to the state welfare departments in 22 states with administrative procedure acts *not* based on either the original or Revised Model State Administrative Procedure Act. Sixteen welfare departments replied to the questionnaire.[107] They indicated, generally, more participation by the poor in rulemaking than did the welfare departments in states with no administrative procedure act. All of the state agencies that replied indicated that they either have advisory committees that include welfare recipients or they authorize public hearings.

Even though there may be provision for public hearings or advisory committees, the lack of required notice can deter actual participation.[108] In Florida, there are no public hearings, but any person can attend meetings of the Advisory Council.[109] Yet, lack of notice in Florida rulemaking reduces the possibility that the poor actually will participate in the process. In addition, several state welfare departments indicate little or no participation by the poor in the rulemaking process even though notice is given and public hearings are held. The Rhode Island

107. *See* Appendix II, B.
108. *See* text accompanying notes 74-75 *supra.*
109. *See* Appendix II, B.

Department of Social and Rehabilitative Services, for example, cites no instances of actual participation by the poor in agency rulemaking, despite the fact that public hearings are held and notice is published in a newspaper. The Connecticut State Welfare Department also indicates that the poor generally have failed to inform the department of their views on proposed rules even after the department published notice of intent to promulgate a rule.

3. *States with Administrative Procedure Acts Based on Original or Revised Model Act.*—Questionnaires were sent to welfare departments in fourteen states with administrative procedure acts based on either the original or Revised Model State Administrative Procedure Act. Eleven departments replied to the questionnaire.[110] Only two state welfare departments—Idaho and Washington—offer little evidence of participation by the poor in rulemaking. The other departments cite instances of participation by the poor.[111] The Maryland Department of Social Services offers perhaps the most impressive evidence of participation by the poor in state agency rulemaking. Welfare recipients participate in meetings of the State Welfare Board, and committees that include the poor help formulate policy. Notice is sent to numerous groups and individuals. The Department also reports that a special task force recently sent questionnaires to low-income persons in order to learn their views on proposed rules on services to single parents.[112]

C. *Summary of Responses from Selected Legal Services Programs*

The responses of the legal services programs solicited do not indicate significant participation by the poor in state agency rulemaking. On the contrary, the responses provide little evidence to support assertions by state administrative agencies that the poor, or their representatives, actually participate in agency rulemaking.[113] The central theme of the responding programs seems to be that even in states where there is a statutory vehicle for participation of the poor in state agency rulemaking, the actual level of participation by the poor often is quite low.

The legal services program in Ramsey County, Minnesota reports that "the poor do not participate in the rulemaking proceedings of state agencies. This is particularly true of the State Department of Public

110. *See* Appendix II, C-D.

111. Oklahoma does not cite a high level of participation, but Oklahoma's Public Welfare Commission is excepted from the Administrative Procedure Act. *See* Appendix I.

112. *See* Appendix II, C.

113. *See* Appendix III.

Welfare. . . . The State Welfare Department not only does not encourage the poor to participate in the rulemaking process, but actually discourages said participation."[114] Similarly, the Legal Aid Foundation of Long Beach, California, and the Laramie County Legal Services, Inc., of Cheyenne, Wyoming, replied that their respective state welfare departments discourage participation by the poor in the rulemaking process. In response to a reply by the Vermont Department of Social Welfare to the questionnaire, the Vermont Legal Aid, Inc., of Burlington, Vermont, charged that contrary to the image of cooperation and participation conveyed by the Department, the Department has consistently violated state law and denied participation.[115]

The Legal Aid Society of Metropolitan Denver, Colorado, reports that even though its attorneys comment at monthly meetings of the State Board of Public Welfare, and even though the Department of Social Services now accepts participation as a matter of principle, actual participation by the poor still has little impact on the substance of a particular rule or on the decision to implement it.[116] Thus, Colorado has a statutory vehicle permitting participation by the poor in the rulemaking process and the vehicle actually is utilized; however, the end product of such participation generally does not reflect the input of the Legal Aid Society on behalf of the poor.

Discrepancies between the responses of welfare departments and legal services programs in the same state probably indicate that although a state may have procedures permitting participation by interested parties in the rulemaking process, these procedures are, in fact, not utilized fully or effectively. Where existing state statutes provide interested persons with the means to participate in the rulemaking process and the poor still do not participate, the blame for such inaction probably can be apportioned equally among the poor, their representatives, and the state agency involved. The poor, and those who are acting on their behalf, often are either oblivious to the possibilities for participation in the rulemaking process or simply negligent in not pursuing existing avenues for participation. State welfare departments do not promote participation when they deny, arbitrarily and sometimes unlawfully, interested persons the opportunity to participate in rulemaking proceedings or are hostile and unreceptive to the views of the poor when they do participate.

At the same time, two legal services programs cite productive

114. *Id.*
115. *Id.*
116. *Id.*

instances of participation. The Greater Lansing Legal Aid Bureau of Lansing, Michigan, states that the Department of Social Services encourages participation and that "interested persons participate to a considerable degree in the rulemaking process."[117] Both legal services programs contacted in New Mexico report that their participation in state agency rulemaking was productive. They cite as an important factor the receptivity of the director of the Department of Health and Social Serviees.[118]

V. INVOLVING THE POOR IN STATE RULEMAKING—SOME CONCLUDING THOUGHTS

The economic, social, and political problems of the poor cannot all be solved through litigation. In a real sense the problems of the poor stem from a lack of bargaining power—"power to demand a fair share of the resourees of this society."[119] Clearly, the law is an effective vehicle for equalizing the balance of power in our society and for making city and state governments more responsive to the poor, but it is only one vehicle. If the poor are to secure such power, and if government is to increase its responsiveness, it is vital that the poor be given some voice, some sense of control, over their economic and social destiny as it is affected by their government.

Participation by the poor in state and local agency rulemaking is a modest but nevertheless practical step toward achieving this objective. The rulemaking authority of an administrative agency contemplates that all relevant interests and viewpoints be considered prior to the formulation and promulgation of any rule. Policy decisions made by state and local public welfare, public housing, education, and health officials are manifested daily in rules and regulations affecting all citizens, particularly the poor. It is crucial, therefore, that states have procedures for participation and that the poor, traditionally less outspoken on these matters, not only make their views known, but have skilled assistance to insure that their message is presented effectively and persuasively. In addition, the poor must see that their activities have had some effect.[120]

Realistically, before the poor can participate effectively in state and local rulemaking, states that have not yet done so must first enact administrative procedure legislation requiring notice of proposed

117. *Id.*
118. *Id.*
119. *See* 1969 CAL. RURAL LEGAL ASSISTANCE ANNUAL REP. 50.
120. *See* Sparer, *supra* note 43, at 45.

rulemaking and authorizing participation by interested parties. Such legislation must be free of "escape clauses" and exclusionary definitions that serve only to weaken the rulemaking mechanism. In those states that *have* adopted administrative procedure acts, it is necessary that the poor, either directly or through their representatives, utilize the statutory vehicle provided them. There are, for example, many means by which the poor, individually or as a class, can make their views known to state agencies prior to the promulgation and implementation of rules and regulations. Local legal services programs, welfare rights organizations, tenant unions, and consumer organizations should be called upon to monitor state administrative agencies on behalf of the poor and to serve as spokesmen for the poor in agency rulemaking. If additional funding is required either to coordinate efforts or to carry out this task, each legal services program or poor people's organization should seek funds to secure the staff needed to carry out this function.

Another possibility for giving the poor a voice in state rulemaking is to create a "People's Counsel" in each state, modeled after the recommendations of the Administrative Conference of the United States for a Federal People's Counsel.[121] The state people's counsel could consist of an individual or organization whose prime responsibility would be to represent the collective interests of the poor as a class in all state and local administrative rulemaking substantially affecting the poor. The state people's counsel would also be charged with assuring that the views of "significant separable minority interests" among the poor are represented in state rulemaking and with disseminating to all poor people's organizations pertinent information concerning rulemaking.[122] The people's counsel could be created by the state as a quasi-public, private corporation modeled after the Corporation for Public Broadcasting,[123] or funded independently as a pilot project by a university through its law school or school of public administration or a private foundation, or all three.

Each approach—whether it entails working through existing legal services programs or poor people's organizations, or experimenting with the concept of a state people's counsel—represents a new avenue for participation by the poor in the rulemaking process. In addition, each approach should assure that state administrative decision-makers are better apprised of the interests of the poor and permit more important affirmative contributions and input by the poor to the entire rulemaking process.[124]

121. *See* note 32 *supra*.
122. *Id.*
123. 47 U.S.C. § 396 (Supp. IV, 1969).
124. *See* Bonfield, *supra* note 17, at 554-55.

APPENDIX I

STATUTORY PROVISIONS FOR PARTICIPATION IN STATE AGENCY RULEMAKING

States	Rulemaking Authority	Notice	Participation	Statutory Sections	Escape Clauses, Exclusions and Other Comments	Patterned After Original or Revised Model Administrative Procedure Act (Model Act)
Alabama	State Board of Pensions and Security	None	None			
Alaska	Department of Health and Welfare	30 days prior to a rule change, notice is published in a newspaper and mailed to those requesting notice.	Written argument, with or without oral presentation	ALASKA STAT. § 44.62.190 (Supp. 1969); *id.* § 44.62.210 (1967)		Essentially like Revised Model Act
Arizona	State Board of Public Welfare	20 days prior to a rule change, notice is filed with the Secretary of State.	Written argument, with or without oral presentation	ARIZ. REV. STAT. ANN. § 41-1002 (1956)		
Arkansas	State Board of the Department of Public Welfare	20 days prior to a rule change, notice is published and sent to persons requesting notice.	Written argument; oral presentation at discretion of agency	ARK. STAT. ANN. § 5-703 (Supp. 1969)		
California	Director of the Department of Social Welfare	30 days prior to a rule change, notice is published in a newspaper and sent to persons requesting notice.	Written argument, with or without oral presentation	CAL. GOV'T CODE §§ 11423, 11425 (West 1966)		
Colorado	State Board of Public Welfare	20 days prior to a rule change, notice shall he mailed to those on the mailing list.	Written and oral presentation, unless the agency deems the oral presentation unnecessary	COLO. REV. STAT. ANN. § 3-16-2 (1963)		
Connecticut	State Welfare Department	30 days prior to a rule change, notice is published in the *Connecticut Law Journal.*	Written argument, with or without oral presentation	CONN. GEN. STAT. ANN. §§ 4-42 to -43 (1966)		
Delaware	Secretary of Health and Social Services	None	None			
Florida	Family Services Advisory Council	10 to 30 days prior to a rule change, notice is published in newspapers and sent directly to those requesting it.	Public hearing discretionary	FLA. STAT. ANN. § 120.041 (Supp. 1970)	If there is no notice and hearing, the rule becomes effective 45 days after publication in the administrative register.	

Georgia	Department of Family and Children Services	20 days prior to a rule change, notice is sent to those requesting it.	Written or oral presentation; oral mandatory if 25 affected persons request it	GA. CODE ANN. § 3A-104 (Supp. 1969)	Many agencies are excepted; rules relating to grants and benefits also are expected.	Revised Model Act with exceptions
Hawaii	Department of Social Services	20 days prior to a rule change, notice shall be published in a newspaper and sent to those requesting it.	Written or oral presentation	HAWAII REV. STAT. § 91-3 (1968)	Rules are subject to the approval of the Governor.	Revised Model Act
Idaho	Department of Public Assistance	20 days prior to a rule change, notice is published in a newspaper and mailed to those persons requesting notice.	Written or oral presentation; oral mandatory if requested by 25 persons	IDAHO CODE ANN. § 67-5203 (Supp. 1969)		Revised Model Act
Illinois	Department of Public Aid	None	None			
Indiana	State Department of Public Welfare	10 days prior to a rule change, notice is published in a newspaper. A copy of the rule is on file at the agency.	Written or oral presentation	IND. ANN. STAT. § 60-1504 (1961)		
Iowa	Council of Social Services (upon recommendation of Commissioner)	None	None			
Kansas	State Board of Social Welfare	15 days prior to a rule change, notice is sent to interested parties known to the agency and to those requesting notice.	Written or oral presentation	KAN. STAT. ANN. § 77-421 (1969)	The parties to be notified are subject to the approval of the attorney general.	
Kentucky	Commissioner of the Department of Economic Security	Agencies are encouraged to give notice where practicable.	Hearings where practicable	KY. REV. STAT. ANN. § 13.125 (1969)		
Louisiana	Department of Public Welfare	10 days prior to a rule change, the agency shall publish notice in the official Louisiana journal and mail notice to those who have requested it.	Oral or written presentation; oral mandatory in the case of substantive rules if requested by 25 persons	LA. REV. STAT. § 49:953 (Supp. 1970)	The Department of Public Welfare is excepted from the notice and participation requirements.	Rulemaking section similar to Revised Model Act
Maine	Department of Health and Welfare	Prior to a rule change, the agency shall, so far as practicable, publish or otherwise circulate notice.	Oral or written presentation; opportunity afforded so far as practicable	ME. REV. STAT. ANN. tit. 5, § 2301 (Supp. 1970); *id.* § 2351(3) (1964)	Rules apply to Department of Health and Welfare, but only as to licensing.	Original Model Act

Maryland	State Board of Social Services	Prior to rule change, the agency shall publish or otherwise circulate notice	Oral or written presentation	MD ANN CODE art. 41, § 245(c) (1965)		Original Model Act
Massachusetts	Commissioner of the Department of Public Welfare (with approval of the Advisory Council)	21 days prior to a rule change, notice is published as required by other law, or in a newspaper, and sent to persons requesting it.	Oral or written presentation (if regulation is not one where a hearing is required by any other law or where the violation of the regulation is punishable by fine or imprisonment; the agency may require that the presensation be in writing)	MASS ANN LAWS ch 30A, §§ 2-3 (Supp 1969)		
Michigan	State Board of Public Welfare	10 days prior to a hearing and 20 days prior to a rule change, notice is published and sent to officials and to persons requesting notice.	Presentation of data, views and argument at a public hearing	MICH. STAT. ANN. § 3.560 (141) (Supp. 1970)		Original Model Act
Minnesota	Commissioner of the Department of Public Welfare	30 days prior to the rule change, notice is sent to those requesting it.	Oral or written presentation	MINN. STAT. ANN. § 15.0412 (1967)		
Mississippi	State Board of the Department of Public Welfare	None	None			
Missouri	Division of Welfare of the Department of Public Health and Welfare	None	None			
Montana	State Board of Public Welfare	None	None			
Nebraska	Director of the Department of Public Welfare	10 days prior to a rule change, notice is published in a newspaper.	Public hearing required	NEB. REV. STAT. § 84-907 (1966)	Requirements of notice and hearing can be waived by the Governor.	Revised Model Act with exceptions
Nevada	State Welfare Board	20 days prior to a rule change, notice 'shall be mailed to those on the mailing list.	Oral or written presentation (if the party is directly affected by a rule change, his request for an oral presenstation must be granted)	NEV. REV. STAT. § 233B. 060 (1967)		

New Hampshire	Director of the Division of the Department of Health and Welfare (with approval of the Commissioner)	None	None			
New Jersey	Commissioner of the Division of Public Welfare of the Department of Institutions and Agencies	20 days prior to a rule change, notice shall be published in the *New Jersey Register* and mailed to those requesting it.	Oral or written presentation	N.J. STAT. ANN. § 52:14B-4 (1970)		
New Mexico	Health and Social Services Board	30 days prior to a rule change, notice is published in a newspaper and sent to those requesting notice.	Oral or written presentation (agency may require that the presentation be written if the oral is unnecessary or impracticable)	N.M. STAT. ANN. § 4-32-4 (Supp. 1969)	*If the agency finds that* notice and a public hearing would be contrary to the public interest, the agency may dispense with the requirements. Rulemaking requirements of N.M. STAT. ANN. § 4-32-4 (Supp. 1969) do not apply to the Department of Health and Social Services. N.M. STAT. ANN. § 12-1-9 (1953) provides rulemaking requirements for that Department.	
New York	State Board of Social Services	None	None			
North Carolina	State Board of Social Services (on the Commissioner's recommendation)	None	None			
North Dakota	Public Welfare Board	None	None			
Ohio	Department of Public Welfare	30 days prior to a rule change, the agency shall give public notice in the form determined by the agency.	Written or oral presentation at public hearing with cross-examination of witnesses	OHIO REV. CODE ANN. §§ 119.03(A), (C) (Baldwin 1964)		
Oklahoma	Director of the Department of Public Welfare (subject to the approval of the Oklahoma Public Welfare Commission)	20 days prior to a rule change, notice is published and sent directly to those requesting it.	Oral or written presentation; oral mandatory if requested by 25 persons	OKLA. STAT. ANN. tit. 75, § 303 (1965)	OKLA. STAT. ANN. tit. 75, § 301 (Supp. 1969-70) excepts the Public Welfare Commission.	Revised Model Act with exceptions

Oregon	Public Welfare Division of the Human Relations Agency	Prior to a rule change the agency shall, so far as practicable, publish in the bulletin or otherwise circulate notice.	Oral or written presentation	ORE REV. STAT § 183.330 (1969)		Original Model Act
Pennsylvania	Department of Public Welfare	Notice is published in the bulletin.	Written comments with public hearings where appropriate	PA STAT ANN. tit. 45, §§ 1201-02, 1204 (Supp. 1970)	The agency can omit the procedures if its action relates to grants or benefits.	
Rhode Island	Director of the Department of Social Welfare	20 days prior to a rule change, notice is published in a newspaper and mailed to persons requesting notice.	Oral or written presentation; oral mandatory if requested by 25 persons	R.I. GEN. LAWS ANN. § 42-35-3 (1969)		
South Carolina	State Department of Public Welfare	None	None			
South Dakota	State Public Welfare Commission	20 days prior to a rule change, notice is filed with the Secretary of State and mailed to those persons requesting it.	Oral or written presentation; oral mandatory if requested by 25 persons	S.D. COMPILED LAWS ANN. § 1-26-4 (1967)		
Tennessee	Department of Public Welfare	None	None			
Texas	State Board of Public Welfare	Prior to a rule change, notice is, as far as is practical, published or circulated.	Oral or written presentation	TEX. REV. CIV. STAT. art. 6252-13 (1962)	Rules relating to the performance of the agency are exempt.	Original Model Act
Utah	Division of Family Services	None	None			
Vermont	Commissioner of Social Welfare	2 weeks prior to the adoption of a rule, notice is published in newspapers.	Oral or written presentation; oral mandatory if requested by 25 persons	VT. STAT. ANN. tit. 3, § 803 (Supp. 1970)		Revised Model Act
Virginia	State Board of Welfare and Institutions	15 to 30 days prior to a rule change, notice is published in a newspaper.	Public hearing affording the opportunity to be heard and submit objections, amendments, evidence, and arguments	VA. CODE ANN. §§ 9-6.4, -6.6 (1964)	VA. CODE ANN. § 9-6.2(d) (1964) excepts rules concerning the receipt of public assistance.	
Washington	Department of Public Assistance	20 days prior to a rule change, notice is filed with the code reviser and sent to those persons requesting notice.	Oral or written presentation; oral presentation mandatory if requested by 25 persons	WASH. REV. CODE ANN. § 34.04.025 (Supp. 1969)		Revised Model Act

West Virginia	Commissioner of the State Department of Welfare	30 to 60 days prior to a rule change, notice is sent to those requesting it. The agency may, in its discretion, publish notice in a newspaper.	Oral or written presentation	W. VA. CODE ANN. §§ 29A-3-2 to -3 (Supp. 1970)		
Wisconsin	State Health and Social Services Board (on recommendation by Division of Family Services)	10 days prior to a rule change, notice is published in the administrative register sent to legislators so requesting, and circulated in whatever manner the agency deems necessary.	Written presentation and oral presentation as limited by the presiding officer	WIS. STAT. ANN. §§ 227.021-.022 (1957)	WIS. STAT. ANN. § 227.02 (1)(e) (1957) provides that a rule may be published with the statement that it will be adopted unless 25 persons call for a hearing.	
Wyoming	Department of Health and Social Services	20 days prior to a rule change, notice is mailed to the Attorney General and to those persons so requesting.	Presentation oral or written; oral mandatory if requested by 25 persons	WYO. STAT. ANN. § 9-276.21 (Supp. 1969)		

APPENDIX II

STATE WELFARE DEPARTMENT REPLIES TO QUESTIONNAIRES CONCERNING PARTICIPATION OF THE POOR IN AGENCY RULEMAKING

A States Having No Statutory Provisions for Participation of Interested Persons in Agency Rulemaking

State Agencies*	Question I—*To what extent is participation in the rulemaking process, especially by the poor or their representatives, utilized by the State Board?*	Question II—*What individuals or groups have participated in rulemaking by the State Board, if such participation is allowed? Have any of them been specifically representative of the poor?*	Question III—*If participation is allowed, how are interested persons notified that rulemaking is going to take place? Does the Board or the Department keep a list of interested persons or is notice given by publication?*	Question IV—*If formal participation in rulemaking by interested persons is not allowed, does the Department make any informal attempts to discover the views of interested persons?*	Question V—*Can you cite any specific examples of participation by interested persons which have proven constructive and influential in rulemaking by the State Board?*
Alabama Department of Pensions & Security[1]	The poor at times voice their views to county boards of pensions and security. An advisory committee—one-third of its membership being welfare recipients—advises regarding policy.				
Delaware Division of Social Services of the Department of Health & Social Services[2]	Participation by applicants or recipients is primarily through hearings and complaints or suggestions by individuals to their caseworkers.		Individuals directly affected by changes in policy and procedure are routinely notified by mail.		
Illinois Department of Public Aid[3]	Applicants and recipients express their views in letters.				
Iowa Department of Social Services[4]	There is an advisory committee—one-third of its membership being recipients — to the Bureau of Family and Children's Services. More advisory committees are being established.				

Montana Department of Public Welfare[6]	The poor do not directly participate, but their representatives do; lawyers for legal services have been involved in conferences and meetings with the Department. Occasional suits have been brought against the Department by legal aid attorneys.	See reply to question I.	No notice is given. The Department meets with the attorney who has brought the matter to the attention of the Department; the lawyer is then notified of the proposed rule change.	Informal attempts are made through representatives of the Montana Legal Services.	After a case where welfare payments were delayed pending court determination of residence of the recipient, the State Administrator issued a regulation requiring the immediate payment of welfare benefits even though a court case was pending. This regulation was issued even though the court had found that the time taken by the welfare department to determine residence was not unreasonable.
New Hampshire Division of Welfare of the Department of Health and Welfare[8]	The New Hampshire Division of Welfare is favorably disposed toward involving low-income persons in program and policy development. However, procedures for such involvement have not yet been established. Such procedures will be established.				
New York Department of Social Services[7]	The Board has undertaken to obtain the views of interested persons prior to the adoption of new rules. The views of the poor are often sought through welfare rights organizations. Public hearings have been held.	Welfare rights organizations.			When new rules were being considered by the Board with respect to fair hearings for public assistance, the State Board held public hearings. Public hearings were also recently held to learn the views on present rules and regulations.
North Carolina Department of Social Services[8]	Meetings of the board are open to the public. One-third of the members of the advisory committees on social services and day care are recipients.		Notice is carried by mass media.		

B States Having Administrative Procedure Act, But Not Based on Original or Revised Model Administrative Procedure Act.

State Agencies*	Question I—*To what extent is participation in the rule-making process by interested persons, especially the poor or their representatives, utilized by the Department?*	Question II—*What individual groups representing the poor have participated in the rulemaking process?*	Question III—*Does the Department actively encourage participation by interested persons? Does it attempt to discover the views of interested persons even though they do not take the initiative in presenting their views?*	Question IV—*What form does notice take? What groups or individuals representing the poor have requested notice?*	Question V—*Can you cite any specific examples of participation by low-income interested persons that have proven constructive and influential in rulemaking?*	General Comments
Arkansas Department of Public Welfare[1]	When there is a major change in policy, the department holds public hearings and invites the comment of all interested persons.	See reply to question IV.	Yes. State Board of Public Welfare meetings are publicized.	Notice of proposed rulemaking is sent to individuals or groups requesting notice, *e.g.*, legal and bureaus, urban leagues, social welfare groups.	When policies relative to raising AFDC grants were discussed, all organizations were urged to contact their legislators in order to assist in obtaining legislation authorizing larger grants.	
California Department of Social Welfare[2]	Individuals and groups testify to agenda items; this testimony is then evaluated before regulations are adopted.		All persons on the mailing list receive notice of proposed rule changes. The Department does not solicit other persons to attend.	Notice and the agenda are sent to whomever requests them. There is an extensive mailing list with many representatives of the poor included.	Proposed regulations which effect a cash settlement for California Indians with the federal government are in the process of being examined in light of the testimony received from Indians and their representatives at a public hearing.	
Colorado Department of Social Services[3]	Advisory committees recommend policy changes. Meetings of the Board are open to the public and are regularly attended by representatives of the poor. Individual conferences are held with representatives concerning rules in force.	See reply to question V.	Parties are encouraged to voice their views in the public meetings and in the informal conferences.	Direct notice is sent to Welfare Rights Association, OEO, Colorado Rural Legal Services, and anyone else requesting notice.	Representatives of the poor participated in modifying budgeting allowances for some persons in the Aid to Needy Disabled program, and in modifying rules regarding utility allowances for recipients in public housing in Denver.	
Connecticut State Welfare Department[4]	The Department has received general comments on the rulemaking process but has never received specific views after the notice of intent has been published. Advisory committees recommend rule changes.	The interchange is constant. Advisory committees advise regarding rule changes.	Staff of the Department speak before groups throughout the state. There is a frequent interchange of ideas with laymen and people of the government.	Communications media and staff members in attendance at hearings inform the public of the plans and policies of the Department.	The Commission to Study the Problem of Revision of Laws Pertaining to the State Welfare Department (comprised of legislators and laymen) submitted recommendations in the field of welfare, almost all of which have been enacted.	

North Dakota Public Welfare Board[9]	The agency has contact with the poor via correspondence and face-to-face contact.	AFDC mothers have formed groups and express their views regarding policy.		See reply to question 1.	
South Carolina Department of Public Welfare[10]				The regular administrative procedure is used to obtain information on how policies affect the poor, *e.g.*, testimony at fair hearings, complaints, reports and conferences, and county department board meeting minutes.	
Tennessee Department of Public Welfare[11]	Advisory committees, which include representatives of the poor, make recommendations to the Commissioner.				
Utah Division of Family Services of the Department of Social Services[12]	There is an advisory committee to a manpower utilization project. The agency has had meetings with interested groups to learn their recommendations.	The advisory committee mentioned in question 1. It is planned that recipients will have membership on the Division's Advisory Committee for Family Services.	There is no formal participation in rulemaking. The Division does not have a list of interested persons.		Meetings with the Welfare Rights Organizations have resulted in changes in the rules of the Division.

FOOTNOTES TO APPENDIX II-A

* Questionnaires were sent to all the state welfare departments. The questions varied somewhat, but they were essentially the same as recorded herein. The replies sent by the respective state agencies have been abridged. The welfare departments of Mississippi and Missouri failed to reply to the questionnaire. Additionally, all of the agencies replying failed to respond to a sixtb question directed at the form participation by interested persons has taken—whether the submission of data, views, and arguments was oral or written.

1. Letter received from Frank House, Commissioner of the Department of Pensions & Security, May 13, 1970.
2. Letter received from Mary Lee Berry, Medical Social Work Consultant Chief of the Division of Social Services, May 5, 1970.
3. Letter received from Gershom Hurwitz, Deputy Director of the Department of Public Aid, April 10, 1970.
4. Letter received from D. V. Donnelly, Supervisor, Metbods & Procedures Unit of the Office of the Deputy Commissioner of the Department of Social Services, July 9, 1970.
5. Letter received from Thomas H. Mahan, Special Assistant Attorney General, Attorney for the State Department of Public Welfare, July 27, 1970.
6. Letter received from Thomas L. Hooker, Assistant Director of Social & Rehabilitation Services of the Division of Welfare, July 28, 1970.
7. Letter received from Felix Infausto, Counsel for the Department of Social Services, July 27, 1970.
8. Letter received from Clifton M. Craig, Commissioner of the Department of Social Services, May 12, 1970.
9. Letter received from Leslie O. Ovre, Executive Director of the Public Welfare Board, July 10, 1970.
10. Letter received from Arthur B. Rivers, State Director of the State Department of Public Welfare, June 30, 1970.
11. Letter received from Herman L. Yeatman, Commissioner of the Department of Public Welfare, May 5, 1970.
12. Letter received from ElMoine Kirkham, Assistant Director of the Division of Family Services, May 22, 1970.

Florida Division of Family Services of the Department of Health and Rehabilitative Services[5]	An advisory council assists in the promulgation of rules and regulations. There are no public hearings. The public can attend the meetings of the advisory council.	See reply to question V.		No notice is sent.	Four AFDC mothers attended the meeting of the Division of Family Services with the district administrators and state office bureau chiefs. As a result, the Division will soon put into practice a system whereby the social worker and client work together to develop a public assistance budget at the time the case is reviewed.	Client participation is important.
Kansas Department of Social Welfare[6]	Recipient organizations and other groups concerned with problems of the poor have periodically met with the state welfare department personnel in discussing policy matters. Public hearings are held.	Representatives of the poor have been invited to sit in on workshops and similar type sessions and have participated in public meetings.	The Department invites representatives of the poor to sit in on workshops. In addition, the Department compiled a list of persons to notify of a public hearing.	Notice is published in the official state paper and direct notice is sent to a list compiled by the agency; no other parties requested notice.	The participation of the poor has been almost exclusively in the public hearings.	
Minnesota Department of Public Welfare[7]	The hearings are public. Advisory committees help establish policies and procedures.	Welfare Rights Organization. AFDC Mothers League and the Legal Aid Society have participated.	The Department sends notice of public hearings to people not registered.	The Department sends direct notice to those who request it and to groups not registered.	The AFDC advisory committee, composed entirely of recipients, advises the staff on AFDC policy; it has helped change procedures.	
Nevada Welfare Division of the Department of Health, Welfare & Rehabitation[8]	Meetings of the Welfare Board are open. Comments by interested persons are made a part of the record.	See reply to question IV.		Groups representing the poor listed on the Department's mailing list include Welfare Rights Organization. AFDC Mothers., and Legal Aid Societies.	A proposed policy change in the budgeting system for the AFDC program has been discussed with all of the groups cited in the reply to question IV.	
New Jersey Division of Public Welfare of the Department of Institutions & Agencies[9]	(The Administrative Procedure Act did not become effective until Sept. 1, 1969, thus its effectiveness is more a matter of speculation than of facts.)			Only one of the legal services offices has requested direct notice.		The Administrative Procedure Act may prove to be too inflexible and actually lead to less participation by the poor.
New Mexico Health & Social Services Department[10]	Advisory committees help formulate policy. Meetings of the Board are public.			There are no formal procedures for giving notice other than publication in a newspaper.		

Ohio Department of Public Welfare[11]	The Administrative Procedure Act applies only to licensing. There is no direct participation in rule-making by individual interested persons.					
Pennsylvania Department of Public Welfare[12]	Advisory committees make recommendations to the Department.	The poor are specifically represented on the Public Assistance Advisory Committee, the Day Care Committee, and the Advisory Committee to the County Boards of Assistance.		Publishing advance notices of changes in regulations will be effective January 4, 1971.	An attorney for the Welfare Rights Organization was effective in changing a rule concerning the use of social security payments in behalf of a child in computing the total family budget.	
Rhode Island Department of Social and Rehabilitative Services[13]	Hearings are public.			Notice of proposed rule changes is published in all major newspapers. The Department has no mailing list of organizations.		
Virginia Department of Welfare and Institutions[14]	Advisory committees recommend policy changes. Representatives of welfare organizations may appear before the State Board. The Division of General Welfare meets monthly with representatives of the Welfare Rights Organization.	The Department makes use of committees consisting of local superintendents of welfare, supervisors, and case workers in developing recommendations for program and policy changes. The participation has been oral.		See reply to question I as an indication of encouragement.	Prior to the publication in a Richmond newspaper, proposed changes are sent to all agencies affected.	See reply to question IV.
Wisconsin Department of Health and Social Services[15]	Public hearings are held on all rules that affect the poor. The Department consults informally with representatives of the poor.	In the adoption of standards of aid, representatives of the poor appeared before the Board.		Notice of public hearings is printed in the regular notice of the Revisor of Statutes monthly release. This is sent to individuals who request it. When the proposed rule change affects a specific group of people, they are so advised.		
Wyoming Division of Public Assistance and Social Services of the Department of Health and Social Services[16]	Recipients of public assistance are included on the advisory committee.					

FOOTNOTES TO APPENDIX II-B

• The welfare departments of Arizona, Indiana, Massachusetts, New Hampshire, South Dakota, and West Virginia failed to reply.

1. Letter received from Len E. Blaylock, Commissioner of the Department of Public Welfare, April 17, 1970.

2. Letter received from Robert S. Cacic, Regulations Coordinator of the Department of Social Welfare, January 15, 1970.

3. Letter received from Charline J. Birkins, Director of the Division of Public Welfare, May 12, 1970.

4. Letter received from John F. Harder, Acting Commissioner of the State Welfare Department, December 5, 1969.

5. Letter received from Emmett S. Roberts, State Director of the Division of Family Services, May 20, 1970.

6 Letter received from Robert C. Harder, State Director of Social Welfare, April 27, 1970.

7 Letter received from Morris Hursh, Commissioner of the Department of Public Welfare, January 8, 1970

8. Letter received from John R. Duarte, Acting State Welfare Administrator, July 14, 1970.

9. Letter received from Irving J. Engelman, Director of the Division of Public Welfare, January 30, 1970.

10. Letter received from John G. Jasper, Executive Director of the Health & Social Services Department, June 17, 1970.

11. Letter received from Denver L. White, Director of the Department of Public Welfare, May 4, 1970.

12. Letter received from Norman V. Lourie, Deputy Secretary of the Department of Public Welfare, June 25, 1970.

13. Letter received from Ira L. Schreiber, Assistant Legal Counsel for the Department of Social & Rehabilitative Services, July 13, 1970.

14. Letter received from Otis L. Brown, Director of the Department of Welfare and Institutions, May 13, 1970.

15. Letter received from Wilbur J. Schmidt, Secretary of the Department of Health & Social Services, May 12, 1970.

16. Letter received from John H. Marros, Administrator of the Division of Public Assistance & Social Services, May 14, 1970.

*C. States Having Administrative Procedure Act Based on Original 1946 Model Administrative Procedure Act**

State Agencies**	Question I—*To what extent is participation in rulemaking by interested persons, especially the poor or their representatives, utilized by the Department?*	Question II—*Does the Department encourage such participation? If so, how?*	Question III—*What form does notice of proposal rulemaking take?*	Question IV—*What individuals or groups have participated in rulemaking by the Department?*	Question V—*Can you cite specific examples of participation by interested persons which have proven constructive and influential?*	General Comments
Maine Bureau of Social Welfare of the Department of Health and Welfare[1]	The advisory committee to the Bureau of Social Welfare is composed of at least one-third recipients.	The advisory committee to the Bureau of Social Welfare is composed of at least one-third recipients. Particular groups have been called upon to advise regarding rule changes. See reply to question V.	The Bureau encourages participation within the advisory committee meetings.	If the rule change is general, notice is by newspaper, radio, or TV. If the rule change affects an individual, the notice is sent directly to the individual.	In implementing a new payment structure, the Bureau worked closely with a formally organized group of recipients to select the best of 3 possible alternatives.	
Maryland Department of Social Services[2]	Increasingly in the last 4 or 5 years, interested persons, including recipients, have participated in the meetings of the State Board. Committees which have low-income members help formulate policy.	Committees which have low-income members participate in policy formulation. Notice is sent to many groups and individuals.	All local departments of social services, those on the Agenda and Minutes List, and individuals or groups so requesting are notified of proposed rule changes.	Private attorneys and attorneys from the Law Reform Unit, as representatives of the poor, have proposed rule changes. Low-income people participate on committees and at public hearings.	A representative committee was used to develop a Rule on Services to Single Parents. A Task Force on Delivery of Services Contacted 16 client groups and sent questionnaires to 500 recipients.	
Michigan Department of Social Services[3]		Yes.	Direct notice is sent to persons who request it.	All directors of legal aid offices, welfare rights organizations, Michigan Civil Liberties Union, law school faculty and faculty of schools of social work, National Association of Social Workers' chapters, Michigan Welfare League, and other individuals interested in a particular area participate	In 1969, at a public hearing to present amended fair hearing rules and general assistance rules, oral testimony was heard and time was given the interested persons to forward written objections and substitutions. As much of the suggested material as was possible under the statutes was incorporated in the rules.	

Oregon Public Welfare Division[4]	Proposed rule changes are discussed with the Public Welfare Advisory Committee, one-third of whose members are representatives of low-income groups.	Yes. See reply to question 1.	Agendas of meetings are mailed to the press and to individuals who request notice. The agenda lists only the subject matter and does not identify subjects on the agenda as proposed rule changes.	ADC Associations, Low-Income Betterment and Rights Association and a Mexican - American representative have participated.	Client groups helped formulate the clients' rights handbook. The advisory committee requested and was granted the opportunity to participate in consideration of proposals by a task force assigned to the Public Welfare Division.	The ADC association has lobbied in the Oregon legislature.

* The comparison between the 1946 Model APA and the individual state administrative procedure act is based upon the notice and participation provisions.

** The welfare department of Texas failed to reply.

1. Letter received from Robert O. Wyllie, Director of the Bureau of Social Welfare, May 18, 1970.

2. Letter received from Raleigh C. Hobson, Director of the State Department of Social Services, April 29, 1970.

3. Letter received from Adelaide B. Layman, Director of the Legal Liaison Unit of the Department of Social Services, January 28, 1970.

4. Letter received from Andrew F. Juras, Administrator of the Public Welfare Division, May 25, 1970.

D. States Having Administrative Procedure Act Based on the 1961 Revised Model Administrative Procedure Act

State Agencies**	Question I—*To what extent is participation in the rulemaking process by interested persons, especially the poor or their representatives utilized by the Department?*	Question II—*What individuals or groups have participated in rulemaking by the Department? Which are specifically representative of the poor?*	Question III—*Does the Department actively encourage participation by interested persons? Does it attempt to discover the views of interested persons, i.e., those whom rules and regulations made by the Board affect, even though the interested persons do not take initiative in representing their views?*	Question IV—*What persons or organizations have requested advance notice of rulemaking proceedings? Are any of these persons or organizations specifically representative of the poor?*	Question V—*Can you cite any specific examples of participation by interested persons which have proven constructive and influential in rulemaking by the Board?*	General Comments
Alaska Division of Public Welfare[1]	The poor have not been formally utilized in the rulemaking process.					
Georgia Department of Public Health[2]	During the hearing any member of the audience can present his views. The transcript of the hearing is reduced to a succinct report which is then given to each member of the Board.	Anybody can present his views at the meeting.	Yes. The Department encourages participation through the meetings where anyone can express his views.	There are over 100 names on the mailing list. Several are representative of the poor. The Department has put several on the list of the Department's own violation.	The hearing examiner feels there are many such instances of effective participation of the poor.	
Idaho Department of Public Assistance[3]	All testimony elicited at rulemaking hearings is considered by the rulemaking authority prior to implementing any change in rules, unless there is an emergency situation.	Representatives of Idaho Legal Aid, Inc., attended public hearings on a rule change which affected ADC mothers.	Notice is given by publication in a newspaper of general circulation. Individual notice is sent to those who request it.		Participation has been very limited. The Assistant Attorney General can cite no instances when the participation has been constructive.	
Nebraska Department of Public Welfare[4]	Every person and every organization is free to present views regarding public welfare rules and regulations at public hearings. These views are considered in connection with rulemaking activities.	Most persons making recommendations regarding rules represent the poor.	Public hearings are held. Recommendations are considered in connection with rulemaking activities regardless of whether they are presented at a public hearing or at any other time.	Public hearings are advertised in a newspaper of general circulation. On consideration of far-reaching rule changes, special written notices have been sent to county divisions of public welfare.	Recommendations and suggestions are always considered and evaluated.	

Oklahoma Department of Public Welfare[6]	Advisory committees to the staff assist in formulating policy.	Welfare recipients have served on advisory committees.				
Vermont Department of Social Welfare[4]	On only one occasion have poor people or their representatives requested an opportunity to be heard on a proposed regulation. (Vermont Administrative Procedure Act had been in effect only 10 months as of the date of the letter.)	OEO groups, and Vermont Legal Aid, Inc., have participated.	The attorney for the Department of Social Welfare once requested the Vermont Legal Aid, Inc., to aid in drafting regulations to govern fair hearing procedures.	No requests have been received.	The participation by the Vermont Legal Aid, Inc., (see reply to question III) was "constructive and influential."	1. Administrative personnel are readily accessible. 2. State discretion is being narrowed by HEW regulations and court decisions. 3. The representatives of the poor are ill-informed on budgeting restraints and the law.
Washington Department of Public Assistance[7]	There is no discussion with the poor with respect to promulgation of particular rules.	No groups representing the poor have participated on a regular basis.	The Department is in the process of revising membership on the state welfare advisory committee to include representation of the poor.			A problem in using the public hearing is that the rule proposed is usually much narrower than the concerns of the witnesses.

FOOTNOTES TO APPENDIX II-D

* The comparison between the 1961 Model APA and the individual state administrative procedure act is based upon the notice and participation provisions.

** The welfare departments of Hawaii and Louisiana failed to reply.

1. Letter received from Robert A. Hall, Commissioner of the Department of Health & Welfare, May 17, 1970.
2. Letter received from Robert O. Van Norte, Hearing Examiner of the Department of Public Health, February 4, 1970.
3. Letter received from Richard C. Russell, Assistant Attorney General, May 12, 1970.
4. Letter received from E. D. Warnsholz, General Counsel for the Department of Public Welfare, July 2, 1970.
5. Letter received from L. E. Rader, Director of Public Welfare, June 11, 1970.
6. Letter received from William S. Roby, III, Assistant Attorney General, Attorney for Department of Social Welfare, May 12, 1970.
7. Letter received from Sidney E. Smith, Director of the Department of Public Assistance, May 13, 1970.

APPENDIX III

LEGAL SERVICES PROGRAMS
RESPONSES TO QUESTIONNAIRE

Legal Aid Group Contacted	Question I—*To what extent is participation by interested persons utilized by the State Board? Have you been involved? Do you know of other groups which have?*	Question II—*Does the Department encourage such participation?*	Question III—*Have you found the participation in rulemaking productive? Can you cite specific examples?*	Question IV—*Do you receive notice of meetings of the Department? Did you request notice? Does the Department send notice to those who have not requested it?*	General Comments
California Indian Legal Services of Berkeley, California[1]	California Rural Legal Assistance testified to protect Indian welfare recipients from certain regulations. The Director of the Department of Social Welfare was receptive and helpful.				
Legal Aid Foundation of Long Beach, California[2]	The Department of Social Welfare holds public hearings about 4 times a year on proposed regulations. These meetings are well attended by the poor and their lawyers; however, the testimony never changes "the course plotted long before the hearings by repressive State Government."	The Department of Social Welfare "does not discourage participation. Since it doesn't matter, they have little reason to keep the hearings secret."	No	We requested to be placed on the list of those receiving notice. The request must be renewed yearly.	"Participation without any power will not 'dramatically' accomplish anything. Indeed, the idea that by participating we can change is, in many ways, disastrous to real change. The hearings sap the energy of the organizations, perpetuate the false idea that recipients can influence the welfare program within the law, and generally are unreproductive."
California Rural Legal Assistance, Inc. of San Francisco, California[3]	California Rural Legal Assistance has participated extensively in the rulemaking proceedings of the Department of Social Welfare—requesting the promulgation of rules, attending public meetings, and bringing suit when the proceedings were deficient.	"Yes, at least the Department does not discourage participation of the poor in rulemaking."	"In general, I feel that participation in rulemaking of the Department is productive only when a court decree has forced the Department to change its regulations."	We requested and receive notice.	

Legal services Office of El Paso County in Colorado Springs, Colorado[4]	We haven't been involved, because, until recently, all board meetings were held in Denver.				
Legal Aid Society of Metropolitan Denver in Denver, Colorado[4]	The attorney of the Welfare Rights Organization is permitted to make comments at the monthly meetings of the State Board.	The Department has accepted the participation as a matter of fact.	The participation has been somewhat productive. A revised budget for welfare was approved.	The Legal Aid Society requested notice and pays for the service.	The participation is not satisfactory. "The Welfare Rights Organization has had to fight for every forum they presently have." There is little meaningful participation.
Pine Tree Legal Assistance, Inc. of Portland, Maine[4]	We have participated on the advisory committee to the Bureau of Social Welfare, but the advisory committee has not been consulted with regard to a new rule.	Changes in the Maine Public Assistance Payments Manual have been routinely made from the top. The Department of Health and Welfare does encourage the advisory committee meetings, but they are purely discussion groups, usually generating their own subjects of discussion.			
Legal Services Program of Baltimore, Maryland[7]	We have participated extensively in rulemaking proceedings this past year. Along with our clients (the Maryland Welfare Rights Coalition) we attend all State Board meetings.	"We cannot help feeling that the Department of Social Services would be happier if we did not participate in its meetings, but we cannot say that it has done much in the way of making our participation more difficult. On one occasion, attendance was limited to 90 persons—the first time the fire regulations were enforced. We felt that at that time the room was 'packed' with department personnel, such as secretaries, in an effort to keep recipients from the meeting."	We have submitted written comments about proposed rule changes, and have ourselves proposed rule changes. Several of our proposals have been adopted.	Along with our clients we receive notice of all proposed rule changes. We requested this notice.	

Legal Aid Bureau of Bowie, Maryland[8]	We have had very little contact with the Department of Social Services and have never been involved in public meetings.				
Washtenaw County Legal Aid Society, Inc. of Ann Arbor, Michigan[9]	The participation of this legal services program has been relatively limited. We have drafted statements and have done research for the Welfare Rights Organization. On the local level we have been very active in achieving rule changes through negotiations between the County Board and WRO.			We have never received notice from the Department of Social Services soliciting our views, although we are on their mailing list for manual revisions. We do not receive notice of meetings, but we have not requested that we be notified.	"It strikes me that programs with modest resources, crushing case loads, and little influence on a state level may be wise to concentrade on effecting changes in local welfare policies and rules."
Greater Lansing Legal Aid Bureau of Lansing, Michigan[10]	Interested persons participate to a considerable degree in the rulemaking process. Welfare rights organizations and migrant groups have both participated.	The Department encourages participation by publishing notice of hearings and soliciting comments, and by mailing invitations to attend public hearings to those on the permanent mailing list.	The participation has been productive. An example is when migrants wanted the residency requirement eliminated, the agency complied and eliminated even the requirement of intent to establish residency.	The Department sends notice to the Legal Aid Bureau of its own accord.	
Legal Assistance of Ramsey County, Inc. of St. Paul, Minnesota[11]	"[T]he poor do not participate in the rulemaking proceedings of state agencies. This is particularly true of the State Department of Public Welfare." We have requested to be allowed to participate in the promulgation of specific rules; we received no reply.	"It is my experience that the State Welfare Department not only does not encourage the poor to participate in the rulemaking process, but actually discourages said participation."	The Advisory Commission cannot be said to implement participation of the poor. The majority of the members of the Commission are not poor. Further, the Commission is exactly what its name indicates; that is, an advisory commission.		
Legal Aid Society of Albuquerque, Inc. in Albuquerque, New Mexico[12]	There is a good deal of participation at the Health and Social Services Board meetings by the advisory committees and people who come to the meetings. I would not say that this participation has reached the rulemaking function in a very formal way. We are active at all Board meetings.	The division director is receptive to recipient group participation.	The participation of the poor has helped keep the Board of Health and Social Services firm in the face of great pressure to cut its programs.	We receive the agenda of the Board meetings in advance.	

Sandoval County Legal Services Program, Inc. of Bernalillo, New Mexico[13]	Interested persons can and have appeared before the Board to discuss the Department's policies. At times recommendations from interested parties are solicited by the Department.	Yes. The division director attends all meetings of the advisory committee. At present we are working on converting the advisory committee to an executive decision-making committee. The division director has endorsed this change.	We advise the Social and Rehabilitation Services Advisory Committee on any program relating to that division. Also, we have reviewed programs pertaining to other divisions. The participation has been productive. Our recommendations have been incorporated into policies.		
Marion-Polk County Legal Aid of Salem, Oregon[14]	The administrator of the Public Welfare Division discourages participation.				
Vermont Legal Aid, Inc. of Burlington, Vermont[15]	On one occasion public notice of a proposed regulation was given. The hearing was not held in the proper spirit and, therefore, was ineffective.	The Department of Social Welfare has never complied with the Vermont Administrative Procedures Act. They have enacted regulations without prior public notice and without an opportunity to be heard.		See reply to question 11.	"In this atmosphere of total confrontation, there is no dialogue." The administrator is more concerned with efficiency than with learning the views of the poor.
Legal Aid Bureau of Arlington, Virginia[16]	We have never been involved in the rulemaking process of the Department of Welfare and Institutions.				
Tidewater Legal Aid Society of Norfolk, Virginia[17]	We have not been involved in state agency rulemaking. The State Department does have an advisory committee composed of representatives from the poor. The Norfolk representative has attended meetings in Richmond with the State Department paying full expenses.	Unknown	Unknown	We have not requested notice. It is our understanding that the Division does send notice to those persons possibly interested.	

Laramie County Legal Services, Inc. of Cheyenne, Wyoming[18]	"The rulemaking process does not utilize interested persons, especially the poor, in their rulemaking."			The Legal Services requested and receives notice of meetings.	If 25 or more persons sign a petition for rulemaking, modification, or termination, the administrative agency must grant a hearing. However, this administrative remedy has not been fully pursued, partly due to the lack of organization of groups interested in the rulemaking of various agencies.

FOOTNOTES TO APPENDIX III

1. Letter received from George F. Duke, Director, California Indian Legal Services, July 16, 1970.
2. Letter received from Valerie Vanaman, Attorney at Law, Legal Aid Foundation of Long Beach, July 17, 1970.
3. Letter received from Lucy K. McCabe, Attorney at Law, California Rural Legal Assistance, Inc., August 7, 1970.
4. Letter received from J. Gregory Walta, Staff Attorney, Legal Services Office of El Paso County, July 17, 1970.
5. Letter received from Richard F. Hennessey, Assistant General Attorney, Legal Aid Society of Metropolitan Denver, July 15, 1970.
6. Letter received from Donald F. Fontaine, Chief Attorney, Pine Tree Legal Assistance, Inc., July 29, 1970.
7. Letter received from Jody Raphael, Attorney at Law, Legal Services Program, July 22, 1970.
8. Letter received from R. Ronald Sinclair, Director, Legal Aid Bureau, July 22, 1970.
9. Letter received from George C. Stewart, Director, Washtenaw County Legal Aid Society, July 29, 1970.
10. Letter received from Douglas L. Sweet, Director, Greater Lansing Legal Aid Bureau, July 14, 1970.
11. Letter received from John E. Brauch, First Assistant Director, Legal Assistance of Ramsey County, Inc., July 21, 1970.
12. Letter received from Michael B. Browde, Attorney at Law, Legal Aid Society of Albuquerque, July 24, 1970.
13. Letter received from Kenneth G. Brown, Assistant to the Director, Sandoval County Legal Services Program, Inc., July 21, 1970.
14. Letter received from Merritt J. Willson, Director, Marion-Polk County Legal Aid, July 17, 1970, and telephone conversation with Mr. Willson, July 21, 1970.
15. Letter received from John A. Dooley, III, Assistant Director, Vermont Legal Aid, Inc., May 15, 1970. (Mr. Dooley's letter was in response to the questionnaire sent to the Vermont Department of Social Welfare.)
16. Letter received from Betty Waldow, Legal Aid Secretary, Arlington County Bar Association, July 28, 1970.
17. Letter received from Judith M. Kerr, Legal Aid Coordinator, Tidewater Legal Aid Society, August 3, 1970.
18. Letter received from Franklin D. Baylers, Director, Laramie County Legal Services, Inc., July 15, 1970.