

COMMUNITY & COOPERATION

ACTION STEPS TOWARD UNLOCKING LEGAL REGULATION



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



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DENVER





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of the AMERICAN LEGAL SYSTEM



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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative and practical solutions to problems within the American legal system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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BACKGROUND

Through its *Unlocking Legal Regulation* work, IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, is deeply involved in regulatory innovation happening across the United States.

In April 2019, IAALS hosted a groundbreaking convening dedicated to creating a model for an independent risk-based regulatory system for legal services. From this convening and using this model as inspiration, leaders in Utah established the first regulatory sandbox in the nation to permit measured regulatory experimentation. Today, IAALS supports pilot projects for risk-based regulation in Utah and other states, including identifying metrics and conducting empirical research to evaluate outcomes. IAALS also continues to provide information and research to lawyers, judges, and the public on regulatory issues.

As a growing number of states pursue the regulatory sandbox model or consider regulatory innovation in other ways, IAALS is focusing on creating synergies between and among these efforts. In June 2022, IAALS hosted a two-day convening, *Unlocking Legal Regulation: Community & Cooperation*. The event brought together a group of leaders from states considering or implementing regulatory innovations in order to discuss models of collaboration.

This report distills the various conversations that occurred over the course of the two-day *Community & Cooperation* convening into key themes and, in some instances, ideas for follow-up.

DESIGN FRAMEWORK FOR LEGAL REGULATION

The *Community & Cooperation* convening launched with a foundational discussion of “A Framework for Designing and Implementing Legal Regulation,” developed by Dr. Thomas Clarke and Lucy Ricca and published by the Deborah L. Rhode Center on the Legal Profession at Stanford Law School. The framework provides a conceptually neutral process map for designing legal

regulatory reform approaches. How regulators frame and design regulatory structures dictates the types of legal solutions that will emerge and the communities that will be most affected. Having a specific objective is also important in assessing whether a regulatory scheme is effective.



NATIONAL & INTERNATIONAL EFFORTS TO UNLOCK LEGAL REGULATION

With this framework in mind, attendees from England and two Canadian provinces spoke on the structure and functioning of professional regulation in their respective jurisdictions. While there are key differences between the regulatory approaches in these other countries, it is helpful to understand international experiences. Additionally, valuable data has been collected in some of these jurisdictions that can inform program design, implementation, and evaluation in U.S. efforts.

Convening attendees also heard from several innovators currently operating in the Utah regulatory sandbox:

- Rasa Legal (a public benefit corporation) is deploying software that helps legal consumers access their rights under the Utah Clean Slate Act. For individuals who are eligible for expungement, Rasa's trained allied legal professional team navigates consumers through the process, with lawyer involvement.
- ZAF Legal, a venture-backed company, is automating personal injury services through a self-help app. The app uses video tutorials,

fillable forms, case manager functions, and attorney hotline features, and is designed to help personal injury claimants who do not have a lawyer.

- The Innovation for Justice (i4J) Program is a social justice innovation lab operating at both the University of Arizona James E. Rogers College of Law and the University of Utah David Eccles School of Business. In the Utah sandbox, i4J operates two medical debt pilot projects, which empower community healthcare workers at Holy Cross Ministries and financial coaches at AAA Fair Credit to give limited-scope legal advice to medical debt defendants.

While the Utah sandbox program garners substantial national attention, little detail is known about the actual business models active in this new regulatory environment. This in-depth review of the ways in which these legal service innovators are operating provided important context to the broader discussion on regulatory reforms.

EXISTING MODELS OF COLLABORATION: EXPERT COMMUNITIES & KNOWLEDGE SHARING

As part of the discussion on models and pathways for collaboration, attendees highlighted the ways in which this is already occurring across state and foreign regulatory innovation efforts.

The most visible and high-traffic paths of collaboration are among expert communities that include regulators, researchers, academics, judges, lawyers, court administrators, and others engaged in these issues. Some of these communities are self-organized, with national experts coming together to support specific state efforts or national momentum more broadly. IAALS, for example, has convened leaders on legal regulatory issues numerous times and through different modalities as part of its *Unlocking Legal Regulation* work. Other organizations—often academic institutions—have done the same.

Other expert communities are more formalized, such as state-level working groups operating at the request of courts or bar associations. Many of these formal expert groups overlap in membership, and to date there has been a substantial degree of interplay between these formalized groups and self-organized expert communities. For example, experts instrumental to the development of the Utah Office of Legal Services Innovation served on and consulted with other state groups exploring regulatory innovation.

As more states launch regulatory innovation programs, knowledge sharing is being formalized in new ways, like program staffing. Individuals instrumental to the Utah

sandbox and the Washington Limited License Legal Technician (LLLT) program serve as members of efforts in other states. Additionally, the former director of data of the Utah Office of Legal Services Innovation also served as the data analyst for the Law Society of Ontario's Access to Innovation program. The knowledge and data sharing that this synergy facilitates benefits both programs.

Given the fairly nascent state of legal regulatory innovation in the U.S., the core function of these expert communities to date has been knowledge and data sharing for the purpose of program development (and, in a few states, implementation). This collaboration across states is manifesting in a degree of imitation across programs. The Utah sandbox provides an apt example: structurally, Utah's approach informed the blueprint for a legal regulatory sandbox proposal in Washington as well as for the Access to Innovation sandbox pilot program in Ontario. The sharing of program data and lessons learned is also facilitating iteration across similar types of programs, as we see in the number of states building on the model first developed in the now-sunset Washington LLLT program.

As the number of state regulatory reform efforts increases, issues of reciprocity and/or comity will necessitate formal, structural systems of interstate cooperation. Attendees at the IAALS convening touched on these issues, but the conversation highlighted that regulatory innovation in the U.S. is still emerging. The models and pathways of collaboration needed at this stage are of a more foundational sort.

ENGAGING NEW PERSPECTIVES: WITHIN THE LEGAL COMMUNITY

While there are many legal system insiders engaged in conversations on regulatory innovation, convening attendees discussed the need to include new perspectives.

Law Students, Young Lawyers & Law Schools

Law students and young lawyers are largely missing from existing expert communities. These young leaders will shape and define tomorrow's models of legal services delivery, and they should be involved in today's regulatory innovation discussions. Relatedly, legal educators and law schools are important voices—both in keeping law students abreast of developments in legal services delivery and in training the next generation of lawyers on how to thrive in new law practice environments.

Convening attendees discussed ways in which existing expert communities can engage these stakeholders. Education on these efforts and the issues driving them is a first step; also important is information on where and how these stakeholders can get involved. At the institutional level, an increasing number of law schools are launching innovation labs in order to provide students, legal educators, and others with opportunities to research and apply new business models. These labs are a promising environment through which regulatory innovations could be explored.

Lawyers & Professional Associations

While some subset of the lawyer population is following regulatory innovation efforts closely, many are unaware of the programs under consideration or being implemented in states. Many lawyers are also unfamiliar with the increasing body of research and data that is informing these efforts. Through widespread education on all facets of regulatory issues, we can include more of the profession in regulatory reform. There are also opportunities to leverage new attorney groups and professional

associations (the International Bar Association, for example) to join in these important conversations.

While lawyer-opponents to regulatory reform are active in states across the country, Community & Cooperation convening attendees discussed the importance of building new pathways for collaboration between those who oppose and those who advocate for regulatory reform. This issue can be polarizing, but data-informed decision-making on rules reform will benefit from all perspectives working together. Exploring new ways of facilitating communication and collaboration between individuals and institutions that have differing perspectives on these reforms is the preferred way forward.

Justices & Judges

State supreme courts possess the authority to regulate the practice of law, but not all high court justices are abreast of the regulatory reform efforts of their peers. Especially when regulatory authority has been delegated to state bar associations, state supreme courts are often (and understandably) focused on their core activities of administering justice. As is the case with other legal stakeholders, judges and justices need access to information on current efforts, applicable research, and the value of legal regulatory innovation. Deliberately including trial judges, too, is important. These judges are on the frontlines, directly experiencing the effects of the shifting user base in our state courts.

Federal Agencies

The U.S. Department of Justice's reestablishment of the Office for Access to Justice holds promise for increased federal engagement on issues related to regulatory innovation. The office is guided by three principles: increasing efficiency, ensuring fairness, and promoting accessibility. The latter principle includes eliminating

barriers that prevent people from understanding their rights. There are, of course, numerous focus areas within this broad principle, but regulatory innovation is certainly part of the conversation. And, because there are authorized, nontraditional models of legal services

delivery operating at the federal level (for example, the use of nonlawyer advocates in immigration and other agency proceedings), there is an opportunity to leverage this expansive administrative legal system to learn from and collect new data on these models.

ENGAGING NEW PERSPECTIVES: OUTSIDE THE LEGAL COMMUNITY

A substantial topic of conversation throughout the convening focused on how to broaden existing expert communities on regulatory innovation to include new voices and perspectives. Attendees identified a non-exhaustive list of potential new collaborators:

- Community-based organizations
- Trusted intermediaries
- Consumers
- Consumer advocates
- Younger generations
- Law schools and legal educators
- Members of the business community
- Entrepreneurs
- Faith-based institutions
- People who serve Black and Latino communities, and other communities of color
- Legal tech and justice tech innovators
- Bar presidents and bar leaders
- State legislators and legislative staff
- Technology companies
- Attorneys general
- Communications and messaging experts

The convening discussion on increased collaboration with communications and messaging experts bears special mention. At this nascent stage of regulatory innovation

in the U.S., a common function of existing expert communities is to disseminate information on the issues, including relevant research and data, to diverse audiences. But as many change management experts know, data alone does not often drive change. Effective advocacy—and communication more generally—requires more.

Collaborations with communications experts—particularly those outside of the legal industry—could provide a fresh perspective on the issues and how to talk about them. Community & Cooperation attendees identified various ways in which such collaborations could generate more effective messaging on regulatory issues:

- Engaging the general public in the need for legal services innovation
- Communicating the urgency of certain changes to legal regulations
- Creating a common language for talking about legal regulatory reform—for example, replacing the amorphous term “access to justice” with “access to legal solutions”—conveys more clarity about regulatory reform goals, potential harms, and metrics for success
- Developing new strategies for talking about regulatory reform issues
- Tailoring communications to different audiences, based on the specific issues and experiences that are important to each of them

- Building storytelling techniques into our messaging and communications efforts, including leveraging the unique stories of Utah sandbox entities and Arizona alternative business structure licensees
- Shaping public opinion polls to inform state regulatory innovation efforts
- Reframing the narrative to recognize a) the importance of innovation in increasing access to justice and b) that “access to justice” is not just a low-income issue

DEPLOYING EXPERT COMMUNITY EFFORTS

While the expert communities currently collaborating across U.S. regulatory innovation efforts are active and dedicated, they do not have unlimited time, energy, and resources. Convening attendees considered whether these communities should prioritize their efforts—and, if so, how. The following two priorities rose to the top of the list.

Supporting Utah’s Regulatory Sandbox

Utah is a leader in U.S. regulatory innovation. The regulatory sandbox governed by the Office of Legal Services Innovation (and the Utah Supreme Court) is both creating opportunities for new providers, services, and business models as well as generating critical data needed to make informed decisions on longer-term regulatory changes. It is also serving as a blueprint for other states looking into regulatory sandboxes.

It is very important, then, that the Utah sandbox concept is successful—with success here being defined as ensuring consumer protection while facilitating robust data collection over the pilot’s scheduled seven years in operation. To this end, attendees discussed the role of expert communities in:

- Setting realistic expectations regarding the number of entities coming to the sandbox
- Attracting new entities and helping interested innovators navigate the application process
- Communicating the challenges of creating new markets in the short term
- Disseminating data from the Office of Legal Services Innovation to facilitate dialogue on, understanding of, and advocacy for this mechanism of regulatory experimentation
- Generating additional funding for the sandbox to ensure sustainability

Learning from Unsuccessful Efforts

Each state that has considered regulatory innovation is unique in terms of its legal services ecosystem, stakeholder buy-in to change, goals of reform, regulatory structure, etc. Not all state efforts have been successful, and these experiences provide valuable opportunities for learning. Assessing the various factors that may have contributed to the failure (or success) of an effort in a state can both inform future efforts and help expert communities prioritize engagement.

RECOMMENDATIONS

The following recommendations for next steps with respect to regulatory innovation are driven by the discussions that took place at the Community & Cooperation convening.



Recommendation 1:

Continue to research and evaluate the Utah regulatory sandbox.

The Utah regulatory sandbox is currently the only entity of its kind in the United States. Roughly three years in, we can now see the positive effects it can have on the delivery of legal solutions to people of all income levels. In order to fully realize its potential, though, it needs to run its full seven-year course as set by the Utah Supreme Court. Doing so will allow IAALS and others to continue collecting, evaluating, and disseminating data that will help regulatory innovation advocates make a stronger case for risk-based regulatory reform in their respective states. It will also provide an opportunity to monitor and research consumer harm and make improvements to the sandbox where needed, thereby furthering the sandbox goal of providing legal solutions and associated data without consumer harm.

We recommend that the regulatory reform community prioritize advocating for the continuation of the Utah regulatory sandbox as set by the Utah Supreme Court and that IAALS continue its related research and evaluation efforts.



Recommendation 2:

Work with communication experts to develop clear messaging for each stakeholder community and state effort.

Despite being well over a decade in, the regulatory reform movement in the U.S. is still fairly nascent. Most states have still not engaged in the conversation at all, and those who are engaged are mostly still in the exploratory phase. How do we persuade more states to engage in the regulatory innovation conversation, and

how do we then help states move from the exploratory phase to the implementation phase? At the Community & Cooperation convening, attendees discussed the importance of effective communication in advancing regulatory innovation advocacy efforts.

To date, the regulatory reform movement has basically led with one message—regulatory reform will increase access to justice and innovation in the delivery of legal services, so get on board or be left behind. While this message has resonated with some audiences, it has been less effective with others. Targeted messaging for each audience that speaks to the audience’s needs, challenges, and concerns could go a long way in kickstarting or reframing conversations in many states.

Community & Cooperation attendees identified an opportunity to work with communication experts to rethink the movement’s messaging. We recommend that the regulatory reform community works with these experts to develop a new top-line message and narrative that is appealing to all key stakeholders, as well as companion talking points that are specific to each audience and state. Additionally, we recommend combing through, synthesizing, and sharing existing research and data supporting regulatory reform and making it available to community members. Finally, we recommend regulatory reform community members consider layering on storytelling to frame the issues and put a human face to the need for regulatory innovation to increase the efficacy of the communication.



Recommendation 3:

Make relevant research, data, and other resources more accessible.

The regulatory reform community and new stakeholder communities seeking to join it have ample research, data, and other resources to advance change, but the information and resources are scattered across numerous websites and databases, making them hard to find and time-consuming to read and digest. Community & Cooperation attendees expressed a strong desire for a

central, easily accessible, and digestible repository of research, data, literature summaries, and talking points.

To this end, we recommend that regulatory reform community members who host databases, knowledge centers, or even more simple webpages containing regulatory innovation resources rethink and reorganize the dissemination of these resources to better align with the community's needs. Having information synthesized and organized in a more digestible and deployable manner will encourage more stakeholder communities to explore regulatory reform and will help states who are still in the exploration phase obtain the information and resources they need to move to the implementation phase.



Recommendation 4:
*Engage new stakeholders
and perspectives in regulatory
reform efforts.*

The regulatory reform community consists of a small but mighty group of passionate and dedicated advocates who have a clear vision for how the delivery of legal services should be regulated moving forward, and they have developed a robust movement around it. The movement inspired the launch of the Utah sandbox and the Arizona Supreme Court's elimination of Rule of Professional Conduct 5.4—both giant steps forward. But since then, the movement has lost some steam. Efforts in other states such as California and Illinois have either been blocked or have stalled. It's unclear where the movement will go from here.

At the Community & Cooperation convening, attendees expressed strong interest in engaging new stakeholders and perspectives as a path forward. Doing so will bring in new ideas on how to message to and persuade key stakeholders about the need for regulatory innovation.

The list of potential new stakeholders and collaborators is long, and each group provides a unique opportunity to increase diversity of thought and engagement. A few initial target groups identified at the Community &

Cooperation convening include:

- **Law students, legal educators, and young lawyers.** This group will shape and define tomorrow's models of legal services delivery. They are vital to the future of this movement, and the more we can engage this group now, the greater chance of long-term success.
- **Lawyers and professional associations.** This group presents several opportunities for engagement. First, there are a few groups of lawyers who have strongly opposed regulatory reform in various states: state bar association leaders, plaintiff's bar members, and legal aid attorneys. Engaging each group in conversation to learn more about the root causes of their concerns could lead to new pathways for collaboration and opportunities for refining regulatory reform efforts. Second, most other lawyers are completely unaware of the regulatory reform movement altogether and the opportunities it can offer them. Finding ways to engage more of them in conversation would inform our messaging to lawyers and strategy for engaging bar association leaders, as well as provide more input from a broad range of perspectives.
- **Justices and judges.** Justices and judges might be the most important stakeholder audience given their regulatory authority. Many of them want to learn more about regulatory reform and engage in the conversation, but they oftentimes don't have the time needed to immerse themselves in the topic. The regulatory reform community should consider how best to deliver data-driven education as succinctly as possible so we can increase engagement with this audience.

- **Federal agencies.** The U.S. Department of Justice’s reestablishment of the Office of Access to Justice holds promise for increased federal engagement on issues related to regulatory innovation. The regulatory reform community should consider how to engage this office in its work so that regulatory innovation is a potential pathway for the office to pursue.



Recommendation 5:

Maintain and create new opportunities for community and cooperation.

Gathering in some form on a regular basis over the years is one way the regulatory reform community has

remained strong and connected. Gatherings, whether in-person or virtual, allow for consistent opportunities for knowledge sharing, problem solving, troubleshooting, relationship building, and the camaraderie needed to propel a movement. We recommend that the regulatory reform community continues to gather on a regular basis and that IAALS continues to play a lead role in these efforts.

Additionally, attendees at the Community & Cooperation convening recognized the need to create spaces for dialogue with stakeholders who have concerns with regulatory innovation. These conversations could provide deeper understanding for all involved and potentially create pathways to collaboration in the regulatory innovation space.

CONCLUSION

The recommendations in this report should be viewed as a call to action for current members of the regulatory reform community and an invitation for new voices to join the conversation. New momentum is needed to forge a path forward in most states. These recommendations

should serve as action steps toward bolstering existing regulatory innovation efforts and kickstarting new ones, and as an opportunity to engage new people and perspectives in the movement.



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