



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ACUS is an independent federal agency that develops recommendations to improve administrative process and procedure. ACUS also arranges for the interchange of useful information to carry out its mission. ACUS Information Interchange Bulletins are intended to help agencies and the public understand the administrative process. They should not be relied upon as legal documents.

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Guidance Documents

What are guidance documents?

“Guidance documents” is generally used to refer to two types of rules that agencies issue without undertaking the notice-and-comment rulemaking process ([IIB-014](#)):

- **Interpretive Rules**, in which agencies advise the public of how they construe statutes or rules they administer.
- **Policy Statements**, in which agencies advise the public of how they propose to exercise discretionary powers.

What is the legal effect of guidance?

Rules made through notice-and-comment rulemaking and certain other kinds of rules, such as procedural rules, have the “force and effect of law.” This means that these rules are legally binding on members of the public.

Guidance documents, on the other hand, do not have the force and effect of law. *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199 (2015). That is, they do not establish a standard with which noncompliance may form an independent basis for action in matters that determine the rights and obligations of any member of the public (see ACUS Rec. [2017-5](#)).

Why do agencies issue guidance documents?

Guidance documents are important tools for administration and can be of great value to agencies and the public. Although agencies may not use guidance documents to create standards legally binding on the public, agencies can use them to quickly and efficiently advise the public of how they intend to administer federal programs.

How do agencies manage guidance documents?

ACUS recommends that agencies develop written procedures for managing guidance documents. Procedures should address how they develop guidance documents, including any policies relating to public comment, publication, and periodic review of existing guidance documents.

“Significant” guidance documents are subject to additional procedures under the Office of Management and Budget’s [Good Guidance Bulletin](#). Significant guidance documents include those expected to have an annual economic effect of at least \$100 million and those that raise novel legal or policy issues.

When do agencies solicit public input on guidance documents?

OMB requires agencies (other than independent agencies) to solicit and respond to public comments on “economically significant” guidance documents. More broadly, ACUS recommends that agencies consider whether to solicit public input before adopting or modifying guidance documents. In doing so, agencies should consider factors such as the impact of the document in question, the practicability of participation, the likely increase in useful information available to the agency from broadening participation, and the likely increase in policy acceptance from broadening participation.

How do agencies make guidance documents publicly available?

Agencies must make guidance documents publicly available on their websites, and they must publish “statements of general policy” and “interpretations of general applicability” in the *Federal Register* ([5 U.S.C. § 552\(a\)](#); [44 U.S.C. § 3501 note](#)).

ACUS recommends that agencies organize and label guidance documents on their websites so that the public can easily find them and understand their legal effect. Useful techniques include creating a dedicated webpage for guidance documents, indexing and tagging guidance documents, and clearly marking rescinded or superseded guidance documents. ACUS also recommends that agencies undertake affirmative measures to alert the public to new and revised guidance documents, such as by using public email distribution lists or social media.

How do agencies avoid binding the public through guidance?

ACUS recommends that agencies take steps to ensure guidance documents are not treated as having the force and effect of law. Agencies should, for example, state prominently that guidance documents are not binding on the public and avoid stating that members of the public “shall” or “must” do something unless required by a statute or regulation. Agencies should also offer the public a fair opportunity to argue for the modification, rescission, or waiver of guidance documents and prominently state in guidance documents that such an opportunity exists.

Additional Resources

OMB, [Final Bulletin for Agency Good Guidance Practices](#)
ACUS Rec. [2021-7](#), Public Availability of Inoperative Agency Guidance Documents
ACUS Rec. [2019-3](#), Public Availability of Agency Guidance Documents
ACUS Rec. [2019-1](#), Agency Guidance Through Interpretive Rules
ACUS Rec. [2017-5](#), Agency Guidance Through Policy Statements
ACUS Rec. [2014-3](#), Guidance in the Rulemaking Process
ACUS Rec. [92-2](#), Agency Policy Statements
ACUS Rec. [76-5](#), Interpretive Rules of General Applicability and Statements of General Policy