

Comment from Senior Fellow Nina A. Mendelson on *Public Engagement in Agency Rulemaking Under the Good Cause Exemption*

October 7, 2024

I join Senior Fellow Ronald Levin in urging this committee to take up an issue left unresolved in a 2021 ACUS recommendation, *Clarifying Statutory Access to Judicial Review of Agency Action*, Recommendation 2021-5. Footnote 5 bracketed one of the two issues Ron raises, noting that the use of IFRs and DFRs can present “problems of determining the event date for purposes of judicial review,” but declining to address the problem. A commenter might not know by the time a statute of limitations has run whether (or how) the agency might respond to its comment. Preserving the claim might require filing a potentially wasteful petition for review.

This recommendation presents a valuable opportunity to engage this issue, given heavy agency reliance on these rulemaking techniques.