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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States adopted three recommendations at its hybrid (virtual and in-person) Eighty-second Plenary Session: Using Algorithmic Tools in Regulatory Enforcement, Public Engagement in Agency Rulemaking Under the Good Cause Exemption, and Nonlawyer Assistance and Representation in Agency Adjudications.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2024–5, Kazia Nowacki; Recommendation 2024–6, Benjamin Birkhill; and Recommendation 2024–7, Lea Robbins. For each of these recommendations the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.*

The Assembly of the Conference met during its Eighty-second Plenary Session on December 12, 2024, to consider three proposed recommendations and conduct other business. All three recommendations were adopted.

Recommendation 2024–5, *Using Algorithmic Tools in Regulatory Enforcement.* This recommendation provides best practices for using artificial intelligence, predictive analytics, and other algorithmic tools to support agencies' regulatory enforcement efforts. It addresses the potential benefits and risks of using algorithmic tools to detect, investigate, and prosecute noncompliance with the law and identifies policies, practices, and organizational structures that agencies can put in place to ensure they enforce the law fairly, accurately, and efficiently.

Recommendation 2024–6, *Public Engagement in Agency Rulemaking Under the Good Cause Exemption.* This recommendation provides best practices for public engagement when agencies find good cause to forgo notice-and-comment rulemaking procedures under the Administrative Procedure Act. It encourages agencies to use direct final rulemaking, interim final rulemaking, and alternative methods of public engagement to ensure robust public participation even when they rely properly on the good cause exemption.

Recommendation 2024–7, *Nonlawyer Assistance and Representation in Agency Adjudications.* This recommendation provides best practices for agencies to increase the availability of nonlawyer representation and assistance to participants in their adjudicative systems. It provides guidance on the establishment of rules authorizing qualification or, as appropriate, accreditation of nonlawyer representatives; ways to make such processes accessible and transparent; and strategies for coordinating with other government agencies and nongovernmental organizations to increase the availability of representation and assistance.

The Conference based its recommendations on research reports and prior history that are posted at: *https://www.acus.gov/event/82nd-plenary-session.*

Authority: 5 U.S.C. 595.

Dated: December 23, 2024.

Shawne C. McGibbon,

General Counsel.

Appendix—Recommendations of the Administrative Conference of the United States

Administrative Conference Recommendation 2024–5

Using Algorithmic Tools in Regulatory Enforcement

Adopted December 12, 2024

The use of artificial intelligence (AI) and other algorithmic tools is changing how government agencies do their work. As the Administrative Conference has recognized, these tools ''hold out the promise of lowering the cost of completing government tasks and improving the quality, consistency, and predictability of agencies' decisions.'' At the same time, these tools ''raise concerns about the full or partial displacement of human decision making and discretion.'' [1] The Conference adopted Statement #20, *Agency Use of Artificial Intelligence,* in 2020 to help agencies consider when and how to use algorithmic tools appropriately.[2] More recently, it adopted specific recommendations addressing the use of algorithmic tools to review regulations,[3] manage public comments,[4] and provide guidance to the public.[5]

In this Recommendation, the Conference turns to the use of algorithmic tools in regulatory enforcement. An algorithmic tool is a computer-based process that ''uses a series of rules or inferences drawn from data to transform specified inputs into outputs to make decisions or support decision making.'' [6] Many agencies engage in regulatory enforcement—that is, detecting, investigating, and prosecuting potential violations of the laws they administer. These agencies are often ''faced with assuring the compliance of an increasing number of entities and products without a corresponding growth in agency resources.'' [7]

[1] Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence,* 86 FR 6616 (Jan. 22, 2021).

[2] *Id.*

[3] Admin. Conf. of the U.S., Recommendation 2023–3, *Using Algorithmic Tools in Retrospective Review of Agency Rules,* 88 FR 42,681 (July 3, 2023).

[4] Admin. Conf. of the U.S., Recommendation 2021–1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments,* 86 FR 36,075 (July 8, 2021).

[5] Admin. Conf. of the U.S., Recommendation 2022–3, *Automated Legal Guidance at Federal Agencies,* 87 FR 39,798 (July 5, 2022).

[6] Recommendation 2023–3, *supra* note 3. For purposes of this Recommendation, ''algorithmic tools'' includes AI technologies but not basic scientific or computing tools.

[7] *See* Admin. Conf. of the U.S., Recommendation 2012–7, *Agency Use of Third-Party Programs to*

As agencies seek ways to make regulatory compliance ''more effective and less costly,'' [8] many are considering how they can use algorithmic tools to perform regulatory enforcement tasks such as monitoring compliance; detecting potential noncompliance; identifying potential subjects for investigation, inspection, or audit; and gathering evidence to determine whether corrective action against a regulated person is warranted. Indeed, a report to the Conference analyzing the use of AI in federal administrative agencies found that ''AI has made some of its most substantial inroads in the context of agency enforcement activities.'' [9]

The use of algorithmic tools in regulatory enforcement presents special opportunities for agencies. When used appropriately, such tools may enable agencies to perform enforcement tasks even more efficiently, accurately, and consistently. Algorithmic tools may be particularly useful in performing many of the most time- and resource-intensive tasks associated with regulatory enforcement, such as synthesizing voluminous records, determining patterns in complex filings, and identifying activities that might require additional review by a human being.

At the same time, significant challenges and concerns arise in agencies' use of algorithmic tools in regulatory enforcement.[10] The Conference has previously identified possible risks associated with agencies' use of algorithmic tools, including insufficient transparency, internal and external oversight, and explainability; [11] the potential to unintentionally create or exacerbate ''harmful biases'' by encoding and deploying them at scale; [12] and the possibility that agency personnel will devolve too much decisional authority to AI systems.[13] Such risks are heightened when, as in the regulatory enforcement context, agencies use algorithmic tools to make decisions or take actions that affect a person's rights, civil liberties, privacy, safety, equal opportunities, or access to government resources or services.[14]

Since the Conference issued Statement #20, Congress enacted the AI in Government Act, which directs the Director of the Office of Management and Budget (OMB) to provide agencies with guidance on removing barriers to agency AI use ''while protecting civil liberties, civil rights, and economic and national security'' and on best practices for identifying, assessing, and mitigating harmful bias.[15] Executive Order 13,960, *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government,* identifies principles for agencies when designing, developing, acquiring, and using AI and directs agencies to inventory their uses of AI and make those inventories publicly available.[16] Executive Order 14,110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,* requires agencies to designate Chief AI Officers, who have primary responsibility for overseeing their agencies' AI use and coordinating with other agencies, and establishes the Chief AI Officer Council to coordinate the development and use of AI across agencies.[17] OMB Memorandum M–24–10, *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence,* which implements the AI in Government Act and Executive Order 14,110, provides guidance to agencies on strengthening the effective and appropriate use of AI, advancing innovation, and managing risks, particularly those related to rights-impacting uses of AI.[18] Memorandum M–24–10 further provides risk-management practices for agency uses of AI that affect people's rights, which are derived from the Office of Science and Technology Policy's Blueprint for an AI Bill of Rights and the National Institute of Standards and Technology's AI Risk Management Framework.[19] Those practices include ''conducting public consultation; assessing data quality; assessing and mitigating disparate impacts and algorithmic discrimination; providing notice of the use of AI; continuously monitoring and evaluating deployed AI; and granting human consideration and remedies for adverse decisions made using AI.'' [20] Additionally, OMB issued Memorandum M–24–18, *Advancing the Responsible Acquisition of Artificial Intelligence in Government,* which ''integrat[es] these considerations for AI risk management into agency acquisition planning.'' [21]

Consistent with these authorities, this Recommendation provides a framework for using algorithmic tools in regulatory enforcement in ways that promote the efficient, accurate, and consistent administration of the law while also safeguarding rights, civil liberties, privacy, safety, equal opportunities, and access to government resources and services.

RECOMMENDATION

1. When considering possible uses of algorithmic tools to perform regulatory enforcement tasks, agencies should consider whether and to what extent such tools will:

a. Promote efficiency, accuracy, and consistency;

b. Create or exacerbate unlawful or harmful biases;

c. Produce an output that agency decisionmakers can understand and explain;

d. Devolve decisional authority to automated systems;

e. Adversely affect rights, civil liberties, privacy, safety, equal opportunities, and access to government resources or services;

f. Use inappropriately or reveal publicly, directly or indirectly, confidential business information or trade secrets; and

g. Affect the public's perception of the agency and how fairly it administers regulatory programs.

2. When agencies use algorithmic tools to perform regulatory enforcement tasks, they should assess the risks associated with using such tools, including those in Paragraph 1, and put in place oversight mechanisms and data quality assurance practices to mitigate such risks. During a risk assessment process, agencies should consider, among other things, the:

a. Ability to customize tools and systems to the agency's ongoing needs and to specific use cases;

b. Tendency of such tools to produce unexpected outcomes that could go beyond their intended uses or have the potential for biased or harmful outcomes;

c. Training and testing methodologies used in developing and maintaining such tools;

d. Quality assurance practices available for data collection and use, including the dependency of such tools on the completeness and veracity of the underlying data on which they rely; and

e. Oversight procedures available to the agency and the public to ensure responsible use of such tools.

3. When agencies use algorithmic tools to perform regulatory enforcement tasks, agencies should ensure that any agency personnel who use such tools or rely on their outputs to make enforcement decisions receive adequate training on the capabilities,

Assess Regulatory Compliance, 78 FR 2941, 2941 (Jan. 15, 2013).

[8] *Id.* In Recommendation 2012–7, the Conference noted that agencies ''may leverage private resources and expertise in ways that make regulation more effective and less costly.'' *Id.*

[9] David Freeman Engstrom, Daniel E. Ho, Catherine M. Sharkey & Mariano-Florentino Cuéllar, Government by Algorithm in Federal Administrative Agencies 22 (Feb. 2020) (report to the Admin. Conf. of the U.S.); *accord* Cary Coglianese, A Framework for Governmental Use of Machine Learning 31 (Dec. 8, 2020) (report to the Admin. Conf. of the U.S.).

[10] Michael Karanicolas, Artificial Intelligence and Regulatory Enforcement (Dec. 9, 2024) (report to the Admin. Conf. of the U.S.); *cf.* Recommendation 2023–3, *supra* note 3; Admin. Conf. of the U.S., Recommendation 2021–10, *Quality Assurance Systems in Agency Adjudication,* 87 FR 1722 (Jan. 12, 2022); Recommendation 2021–1, *supra* note 4; Statement #20, *supra* note 1; Admin. Conf. of the U.S., Recommendation 2018–3, *Electronic Case Management in Federal Administrative Adjudication,* 83 FR 30,686 (June 29, 2018).

[11] ''Explainability'' allows those using or overseeing AI systems to ''gain deeper insights into the functionality and trustworthiness of the system, including its outputs,'' and helps users understand the potential effects and purposes of an AI system. Nat'l Inst. Of Standards & Tech., Artificial Intelligence Risk Management Framework (AI RMF 1.0) 16 (2023) [hereinafter AI RMF 1.0].

[12] Statement #20, *supra* note 1, at 6617.

[13] *See id.* at 6618.

[14] *See* Off. Of Mgmt. & Budget, Exec. Off. Of The President, M—24—10, Advancing Governance, Innovation, And Risk Management For Agency Use Of Artificial Intelligence 29 (2024) (providing a comprehensive definition of ''rights-impacting'' uses of AI).

[15] Pub. L. 116–260, div. U, title 1, § 104 (2020) (codified at 40 U.S.C. 11301 note).

[16] *See* Exec. Order No. 13,960, *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government,* 85 FR 78,939 (Dec. 3, 2020).

[17] Exec. Order No. 14,110 § 10.1(b), *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,* 88 FR 75,191, 75,218 (Oct. 30, 2023); OMB Memorandum M–24–10, supra note 14.

[18] *See* OMB Memorandum M–24–10, supra note 14, at 29.

[19] *Id.; see also* Off. of Sci. & Tech. Pol'y, Exec. Off. of the President, Blueprint for an AI Bill of Rights (2022); AI RMF 1.0, *supra* note 11.

[20] Exec. Order No. 14,110, *supra* note 17.

[21] Off. of Mgmt. & Budget, Exec. Off. of the President, M–24–18, Advancing the Responsible Acquisition of Artificial Intelligence in Government (2024), at 1.

risks, and limits of such tools and understand how to appropriately assess their outputs before relying on them.

4. When agencies provide notice to regulated persons of an action taken during an investigation, inspection, audit, or prosecution, they should specify if an algorithmic tool provided a meaningful basis for taking that action, consistent with existing legal requirements.

5. Consistent with legal requirements, agencies should notify the public on their websites of algorithmic tools they meaningfully use to investigate, inspect, audit, or gather evidence to discover non-compliance by regulated entities, along with information about the sources and nature of the data used by such tools.

6. Agencies that meaningfully use or are considering using algorithmic tools in regulatory enforcement should engage with persons interested in or affected by the use of such tools to identify possible benefits and harms associated with their use.

7. Agencies that use algorithmic tools to perform regulatory enforcement tasks should provide effective processes whereby persons can voice concerns or file complaints regarding the use or outcome resulting from the use of such tools so that agencies may respond or take corrective action.

8. The Chief AI Officer Council should facilitate collaboration and the exchange of information among agencies that use or are considering using algorithmic tools in regulatory enforcement.

Administrative Conference Recommendation 2024–6

Public Engagement in Agency Rulemaking Under the Good Cause Exemption

Adopted December 12, 2024

Public participation plays an essential role in agency rulemaking. Agencies facilitate such participation through public engagement activities designed to elicit input from the public, including efforts to enhance public understanding of the rulemaking process and foster meaningful public participation in it. As the Administrative Conference has recognized, ''[b]y providing opportunities for public input and dialogue, agencies can obtain more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for their rules.'' [1] The Administrative Procedure Act (APA) recognizes the value of public participation in rulemaking by generally requiring agencies to publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons an opportunity to submit written comments on rulemaking proposals.[2]

However, notice-and-comment procedures can be time-consuming and resource-intensive, and there are circumstances in which the costs of those procedures may outweigh their benefits in terms of public participation. For this reason, the APA permits agencies to forgo notice-and-comment procedures when, among other reasons, they find for ''good cause'' that such procedures would be ''impracticable, unnecessary, or contrary to the public interest'' and they incorporate this finding and ''a brief statement of reasons'' for it in their rules.[3] Notice and comment may be ''impracticable'' when an agency ''finds that due and timely execution of its functions would be impeded by the notice otherwise required [by the APA].'' [4] Notice and comment may be ''unnecessary'' when a rule is ''a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public'' [5] or when the agency lacks discretion regarding the substance of the rule.[6] And notice and comment may be ''contrary to the public interest'' in ''the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest.'' [7]

The Conference has long encouraged robust public participation in agency rulemaking and has identified effective methods for engaging with the public outside of, and to supplement, the notice-and-comment process.[8] The fact that *notice and comment* is unnecessary, impracticable, or contrary to the public interest does not mean that *no* public engagement is appropriate. Indeed, such engagement may be especially important precisely because standard notice and comment is not occurring. And such engagement can also help agencies determine whether the good cause exemption is applicable.

Of course, the same factors that make a comment period inappropriate may weigh equally against other types of public engagement as well. Neither the agency nor the public is well served by needless or counterproductive efforts to engage the public. Such circumstances are rare, however. The goal of this Recommendation is to identify ways in which agencies can meaningfully and usefully engage the public even when relying on the good cause exemption.

Agencies engage with the public in a variety of ways when invoking the good cause exemption. The two primary rulemaking mechanisms are usually referred to as direct final rulemaking and interim final rulemaking.[9] When notice and comment is unnecessary, agencies sometimes use direct final rulemaking, in which the agency simultaneously publishes a final rule and solicits comments on it, with the rule going into effect only if no significant adverse comments are received. When notice and comment is impracticable or contrary to the public interest, agencies sometimes use interim final rulemaking, in which, at the same time the rule is published, they request public comment on a final rule for the purpose of deciding whether to reaffirm, modify, or replace the published rule in light of those comments. Agencies sometimes also use other, more informal procedures—including publishing requests for information, engaging in targeted outreach, and convening listening sessions with interested persons—when they invoke the good cause exemption.

The Conference has addressed direct final rulemaking and interim final rulemaking in prior recommendations. In Recommendation 83–2, *The ''Good Cause'' Exemption from APA Rulemaking Requirements,* the Conference encouraged agencies to ''provide a post-promulgation comment opportunity for rules they adopt under the good cause exemption.'' [10] In Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking,* the Conference recommended that agencies ''use direct final rulemaking in all cases where the 'unnecessary' prong of the good cause exemption is available, unless the agency determines that the process would not expedite issuance of such rules,'' and provided best practices for doing so.[11] In Recommendation 95–4, the Conference recommended that agencies use interim final rulemaking when they conclude that using notice-and-comment procedures would be ''impracticable'' or ''contrary to the public interest,'' and provided best practices for doing so.[12]

The Conference is revisiting the topic of public engagement in rulemaking under the good cause exemption for two reasons. First, best practices for public engagement have become increasingly important as agencies rely more frequently on the good cause exemption.[13] Second, there have been legal developments since 1995, particularly a 2020 decision by the Supreme Court on interim final rulemaking.[14]

Based on a reexamination of agency rulemaking practices under the good cause exemption,[15] this Recommendation identifies best practices for enhancing public

[1] *See* Admin. Conf. of the U.S., Recommendation 2018–7, *Public Engagement in Rulemakin*g, 84 FR 2146 (Feb. 6, 2019).

[2] 5 U.S.C. 553(b)–(c).

[3] *Id.* § 553(b)(B).

[4] Util. Solid Waste Activities Grp. v. EPA, 236 F.3d 749, 754 (D.C. Cir. 2001); *see also Attorney General's Manual on the Administrative Procedure Act* 30–31 (1947).

[5] Mack Trucks, Inc. v. EPA, 682 F.3d 87, 94 (D.C. Cir. 2012) (quoting *Util. Solid Waste Activities Grp.,* 236 F.3d at 755).

[6] Metzenbaum v. Fed. Energy Regul. Comm'n, 675 F.2d 1282, 1291 (D.C. Cir. 1982).

[7] *Mack Trucks, Inc.,* 682 F.3d at 95.

[8] *See* Recommendation 2018–7, *supra* note 1; *see also* Admin. Conf. of the U.S., Office of the Chair, Statement of Principles for Public Engagement in Agency Rulemaking (rev. Sept. 1, 2023).

[9] The APA does not define direct final rulemaking or interim final rulemaking. Agencies developed these terms to describe commonly used processes for engaging with the public when they invoke the good cause exemption.

[10] Admin. Conf. of the U.S., Recommendation 83–2, *The ''Good Cause'' Exemption from APA Rulemaking Requirements,* 48 FR 31180 (July 7, 1983).

[11] Admin. Conf. of the U.S., Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking,* 60 FR 43110 (Aug. 18, 1995).

[12] *Id.*

[13] *See, e.g.,* U.S. Gov't Accountability Off., GAO–13–21, Agencies Could Take Additional Steps to Respond to Public Comments (2012); *see also* Cong. Rsch. Serv., R44356, The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action (2016).

[14] *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 591 U.S. 657, 683 (2020).

[15] *See* Mark Squillace, Best Practices for Agency Use of the Good Cause Exemption for Rulemaking (Dec. 4, 2024) (report to the Admin. Conf. of the U.S.).

engagement in rulemaking under the good cause exemption, particularly when agencies use direct final rulemaking and interim final rulemaking. It also encourages agencies to use alternative methods—such as publishing requests for information, engaging in targeted outreach, convening listening sessions with interested persons, and soliciting post-adoption comments—to reap the benefits of robust public participation even when they rely properly on the good cause exemption. Recommendations 83–2 and 95–4 are superseded to the extent that they recommend public engagement practices that are inconsistent with this Recommendation.

Recommendation

Direct Final Rulemaking

1. Except in the rare instance that an agency determines that direct final rulemaking would not expedite issuance of a rule, an agency should use direct final rulemaking when it:

a. For good cause finds that it is ''unnecessary'' to undertake notice-and-comment rulemaking; and

b. Concludes that the rule is unlikely to elicit any significant adverse comments.

2. When an agency uses direct final rulemaking, it should publish in the **Federal Register** a rule that:

a. Identifies the rule as a ''direct final rule'';

b. Provides a brief statement explaining the basis for the agency's finding that it is unnecessary to undertake notice-and-comment rulemaking;

c. Provides a statement of the rule's basis and purpose and explains the issues the agency considered in developing the rule;

d. Provides a period of at least 30 days during which interested persons may submit comments regarding the substance of the rule;

e. Explains that the agency will withdraw the direct final rule if it receives any significant adverse comments and specifies any additional actions that the agency may take if it withdraws the direct final rule;

f. Specifies when the rule will take effect if the agency receives no significant adverse comments (see Paragraph 5);

g. If applicable, specifies whether the agency will issue a subsequent notice in the **Federal Register** confirming that the agency received no significant adverse comments (see Paragraph 5); and

h. Identifies any companion proposed rule, as described in Paragraph 3.

3. When an agency issues a direct final rule, it may consider publishing in the same issue of the **Federal Register** a companion proposed rule that will serve as a notice of proposed rulemaking if the agency later withdraws the direct final rule upon receiving any significant adverse comments. In the event the agency receives significant adverse comments, the agency should consider providing an additional period for public comment on the companion proposed rule.

4. An agency should consider any comment received during direct final rulemaking to be a significant adverse comment if the comment explains why:

a. The rule would be inappropriate, including challenges to the rule's underlying premise or approach; or

b. The rule would be ineffective or unacceptable without a change.

5. Absent exceptional circumstances for providing a different effective date, the agency should provide that a direct final rule will take effect at least 30 days after the close of the comment period if the agency receives no significant adverse comments or at least 30 days after publication of a subsequent notice in the **Federal Register** confirming that the agency received no significant adverse comments. An agency that does not publish a confirmation notice should consider providing an effective date greater than 30 days after the close of the comment period if the agency believes it is necessary to ensure that it has adequate time to withdraw the rule in the event it receives significant adverse comments.

6. If the agency receives any significant adverse comments or otherwise decides to withdraw the direct final rule before it takes effect, the agency should publish a notice in the **Federal Register** that states that the agency is withdrawing the direct final rule and describes any further rulemaking the agency will conduct on the matter. If the agency previously requested comments in a companion proposed rule as described in Paragraph 3, the agency may proceed with notice-and-comment rulemaking consistent with the proposed rule.

Interim Final Rulemaking

7. An agency is encouraged to use interim final rulemaking when it for good cause finds that it is ''impracticable'' or ''contrary to the public interest'' to undertake notice-and-comment rulemaking.

8. When an agency uses interim final rulemaking, it should publish in the **Federal Register** a rule that:

a. Identifies the rule as an ''interim final rule'';

b. Provides a brief statement explaining the basis for the agency's finding that is ''impracticable'' or ''contrary to the public interest'' to undertake notice-and-comment rulemaking;

c. Provides a statement of the rule's basis and purpose and explains the issues the agency considered in developing the rule;

d. Provides a period of at least 30 days (or in most cases at least 60 days, in particular for ''major rules'' as defined in the Congressional Review Act) during which interested persons may submit comments regarding the substance of the rule or the agency's finding that notice-and-comment rulemaking is impracticable or contrary to the public interest;

e. Explains that the agency will consider any comments that it receives in response to the interim final rule;

f. As applicable, sets forth the agency's plans for supplemental public engagement (see Paragraph 11) and solicits public input on those public engagement plans;

g. Explains that the rule is being adopted without prior notice and comment, specifies the date upon which the rule will take effect, and identifies the rule's expiration date if applicable; and

h. Specifies that the agency will consider the comments and complete the rulemaking by reaffirming, modifying, or withdrawing the interim final rule (see Paragraph 9).

9. An agency should conclude the interim final rulemaking by publishing a new final rule in the **Federal Register** that responds to all significant comments and reaffirms, modifies, or withdraws the interim final rule as appropriate. Consistent with agency resources and priorities, an agency should publish the new final rule as expeditiously as possible and should prioritize ''major rules'' as defined in the Congressional Review Act.

Additional Public Engagement

10. When appropriate, an agency should use additional forms of public engagement, including those identified in Recommendation 2018–7, *Public Engagement in Rulemaking,* before considering whether to invoke the good cause exemption when such engagement would help the agency (a) determine if notice-and-comment rulemaking is unnecessary, impracticable, or contrary to the public interest or (b) develop the rule. The agency should explain in the direct or interim final rule what additional public engagement the agency undertook.

11. An agency should consider using supplemental forms of public engagement after issuing an interim final rule. Consistent with Executive Order 13,563 and Recommendation 2021–2, *Periodic Retrospective Review,* an agency should prioritize for retrospective review interim final rules that are ''major rules'' as defined in the Congressional Review Act. An agency should explain in any subsequent final rule what supplemental public engagement the agency undertook.

12. Consistent with Recommendation 2014–4, ''*Ex Parte*'' *Communications in Informal Rulemaking,* an agency should disclose ex parte communications that occur during supplemental public engagement. For purposes of applying Recommendation 2014–4, an interim final rule should be considered the equivalent of a notice of proposed rulemaking.

Administrative Conference Recommendation 2024–7

Nonlawyer Assistance and Representation in Agency Adjudications

Adopted December 12, 2024

Millions of people each year participate in administrative adjudicative proceedings to access federal programs and resolve legal issues. Some adjudicative proceedings are simple enough—or could be made simple enough—for people to navigate on their own, and the Administrative Conference has identified best practices for reducing administrative burdens and assisting self-represented parties.[1] But many adjudicative

[1] *See* Admin. Conf. of the U.S., Recommendation 2023–6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings,* 89 FR 1511 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2016–6, *Self-Represented Parties in Administrative Proceedings,* 81 FR 94319 (Dec. 23, 2016).

proceedings are so complex, or involve such significant stakes, that people engaging with them benefit from representation by individuals with expertise in those programs or assistance from individuals who can help them navigate the proceedings.

It is helpful to distinguish between ''representation'' and ''assistance.'' Representation is used to denote that the individual is ''standing in the shoes'' of the participant and can speak for that individual even when they are not present. Other activities that likely indicate representation include counseling on eligibility for an agency program or signing official records.[2] ''Assistance'' is broader and used to indicate many other forms of help that may be beneficial to a person in dealing with an agency; this may include educating someone on process, counseling someone about rights and remedies generally, and, in some cases, helping someone navigate a form or benefits application. In most cases, representation will include various forms of assistance, but assistance does not include representation.

Representation and assistance, whether by lawyers or nonlawyers, are particularly valuable, even in seemingly straightforward adjudicatory proceedings, when they help people access relevant and accurate information about agency programs, program eligibility, and information on how to complete forms correctly and submit required information.[3] For example, although the use of digital technologies, such as online forms and virtual hearings, is an effective strategy for increasing accessibility, it can also act as a barrier for people who lack access to digital tools or lack the skills to navigate these systems. Such challenges can be present for anyone, but those lacking representation or assistance may become so overwhelmed that they forgo rights and benefits to which they are entitled.[4] More generally, a lack of representation or assistance often can lead to incorrect or unfair outcomes.

Representation and assistance not only help participants in adjudicatory proceedings but also benefit agencies. Without representation or assistance, an individual may be less likely to properly and timely complete adjudicative requirements, which can delay proceedings. Additionally, those without representation or assistance may require more support from the agency, including the adjudicator, which can strain resources and reduce efficiency.[5]

Many people, however, particularly low-income people and members of historically underserved communities, are unable to access representation or assistance.[6] One barrier is the shortage of affordable legal services. This concern is particularly acute in remote and rural areas, where not only are lawyers relatively scarce and may not have relevant expertise, but they may not be accessible to people who need them due to the long distances required to visit in person, inability to consult virtually, and other barriers.

Federal agencies have long innovated various ways to widen the pool of available representatives and expand assistance. For example, many agencies currently permit participants in agency adjudications to be represented by qualified or accredited nonlawyers.[7] In many instances, the decision maker (whether or not an administrative law judge) makes an informal determination whether a representative is ''qualified,'' but some adjudicative systems provide for a formal accreditation system to determine which nonlawyer representatives are qualified to practice in those systems.[8]

Increasing availability of nonlawyer representation and assistance can be particularly beneficial in meeting the needs of communities of special populations, including veterans and servicemembers, members of tribal communities, people with disabilities, people with criminal records, immigrants, and disaster survivors.[9] Members of such communities often benefit from representation and assistance provided by nongovernmental organizations, advocacy groups, and others already operating to meet the needs and face the challenges within such communities. These community ties function as a way to build trust among participants and serve as a deep source of knowledge and expertise that can bear on representation and assistance. That trust can in turn inspire public confidence in agency adjudication. Agencies can engage with such groups to help increase availability and awareness of nonlawyer representation and assistance in these communities.

There are barriers to increasing availability of nonlawyer representation and assistance, including barriers that agencies may be able to address through their rules regarding representation and assistance. Agencies vary in their requirements, oversight, and encouragement of such representation and assistance. While reasonable requirements for qualification or accreditation, as well as continuing education, help ensure the quality and competence of representation, overly burdensome requirements can unnecessarily reduce the availability of nonlawyer representation. When agencies do not affirmatively inform participants of the availability of such representation or assistance, participants may not be aware of these resources.

The issue of nonlawyer representation and assistance has been a long-standing concern of the Conference. As early as 1986, the Conference recommended that agencies permit and encourage nonlawyer representation and assistance because of the substantial number of individuals needing or desiring representation and assistance in filling out forms, filing claims, and appearing in agency proceedings who were unable to afford or otherwise obtain such representation or assistance by lawyers.[10] In 2023, the Conference adopted two recommendations addressing agency adjudicatory processes that encourage agencies to allow participants in many adjudications ''to be represented by a lawyer or a lay person with relevant expertise'' [11] and to establish ''rules authorizing accredited or qualified nonlawyer representatives to practice before the agency.'' [12] And in 2024, the Conference's Chair released *Model Rules of Representative Conduct,* that, among other topics, address the qualifications and conduct of nonlawyer representatives.[13]

This Recommendation expands on the Conference's previous recommendations by identifying best practices for incorporating and increasing representation and assistance by permitting broader practice by nonlawyers in different types of adjudicative systems and providing guidance to make processes governing nonlawyer representation and assistance more accessible and transparent.

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[2] Admin. Conf. of the U.S., Recommendation 86–1, *Nonlawyer Assistance and Representation,* 51 FR 25641, 25642 n.2 (July 16, 1986).

[3] White House Legal Aid Interagency Roundtable, Access to Justice in Federal Administrative Proceedings: Nonlawyer Assistance and Other Strategies 1 (2023) [hereinafter WH–LAIR Report].

[4] Pamela Herd, Donald Moynihan, & Amy Widman, Identifying and Reducing Burdens in Administrative Processes 41 (Dec. 5, 2023) (report to the Admin. Conf. of the U.S.).

[5] Recommendation 2016–6, *supra* note 1, at 94,320; *see also,* Recommendation 86–1, *supra* note 2, at 25,642; WH–LAIR Report, *supra* note 3, at 19 (''Studies show that legal assistance improves legal outcomes.'').

[6] *See* Amy Widman, Nonlawyer Assistance and Representation (Dec. 9, 2024) (report to the Admin. Conf. of the U.S.).

[7] *See* 5 U.S.C. 555(b) (''A person compelled to appear in person before an agency . . . is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative.''). Examples of nonlawyers who represent or assist parties in agency proceedings include other licensed professionals such as accountants, social workers, and paralegals; law students; union representatives; human resources professionals; corporate officers; tribal advocates; agency employees; community members; and family members. The Conference recognizes that there is an ongoing discussion about the best way to describe representatives who do not hold an active law license. For the purposes of this Recommendation, the Conference refers to this group as ''nonlawyer representatives'' because it is consistent with two prior recommendations of the Conference, the *Model Rules of Representative Conduct,* and the 2023 report of the White House Legal Aid Interagency Roundtable. Use of the term ''nonlawyer'' is not meant to suggest any deficiencies in representation offered by such individuals, nor should it deter any individual agency from adopting a different term. The Conference encourages agencies to remain attentive to the ongoing discussion within the legal community about terminology in this area and to consider updating their usage accordingly.

[8] Federal law may specify criteria or processes that an agency must use in determining whether a nonlawyer representative is qualified to represent participants in proceedings before it. *See, e.g.,* 5 U.S.C. 500(c) (providing that individuals duly qualified to practice as a certified public accountant in a state may represent participants in Internal Revenue Service proceedings upon filing with the agency a written declaration as specified by law).

[9] *See* WH–LAIR Report, *supra* note 3, at vii.

[10] Recommendation 86–1, *supra* note 2, at 25,642.

[11] Admin. Conf. of the U.S., Recommendation 2023–5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing,* 89 FR 1509 (Jan. 10, 2024).

[12] Recommendation 2023–6, *supra* note 1, at 1513.

[13] Admin. Conf. of the U.S., Model Rules of Representative Conduct (2024). The Model Rules were developed by a working group of public- and private-sector representatives.

Recommendation

Availability of Nonlawyer Assistance

1. Agencies should permit nonlawyers—including friends, family members, and other individuals—to assist participants throughout the adjudicative process. For example, agencies should freely allow nonlawyers to help participants navigate and complete forms, obtain necessary documents and records, and accompany participants to interviews and hearings for moral support, unless there is reason to exclude such individuals (*e.g.,* allowing participation in an interview or hearing could cause a disruption or adversely affect testimony).

2. Agencies should encourage and expand opportunities for nonlawyer assistance through programs that authorize, educate, and/or certify individuals to provide participants with information, support, and dedicated assistance, either by staffing and operating such programs directly or providing guidance and/or grant funding to nonprofit organizations to perform those functions.

Availability of Nonlawyer Representation

3. To increase the availability of representation for participants in their adjudications, agencies should establish rules authorizing qualified (see paragraphs 4–5) and, as appropriate, accredited (see paragraphs 6–9) nonlawyer representatives to practice before them.

Qualifications of Nonlawyer Representatives

4. Agencies should establish reasonable qualifications required for nonlawyer representatives to practice before them, without adding unnecessary burdens. When determining whether a nonlawyer is qualified to represent a participant in an agency proceeding, agencies should consider the factors listed in the *Model Rules of Representative Conduct,* such as the representative's relationship to the participant; their knowledge, expertise, experience, or skill; and their fitness to serve.

5. Agencies should have a process for determining whether an individual who has been disbarred should thereby be disqualified from serving as a nonlawyer representative in a particular case.

Accreditation of Nonlawyer Representatives

6. In addition to establishing qualifications for nonlawyer representatives, the following types of agencies should consider developing and implementing accreditation programs for nonlawyer representatives to help ensure the quality and competency of representation in their adjudicative proceedings:

a. Agencies conducting adversarial adjudications with evidentiary hearings;

b. Agencies that adjudicate a high volume of cases involving historically underserved communities; and

c. Agencies with adjudications that involve specialized or technical subject matter.

7. Agencies with accreditation programs should consider implementing reasonable initial and continuing education requirements for nonlawyer representatives, either by providing such education directly or by working with organizations that employ, educate, or mentor nonlawyer representatives. In doing so, agencies should avoid imposing education requirements that unnecessarily burden representatives.

8. Agencies regularly should review the requirements of their accreditation programs to ensure they are reasonable and beneficial without adding unnecessary burdens.

9. Agencies with programs for accrediting, educating, and regulating nonlawyer representatives who practice before them should have funding to ensure availability of representation and reduce wait times for accreditation.

Oversight and Enforcement

10. Agencies should establish rules to govern the conduct and ethical obligations of nonlawyer representatives.

11. Agencies should establish procedures for reviewing allegations or evidence of noncompliance by nonlawyer representatives with their rules of conduct; adjudicating allegations that nonlawyer representatives have violated those rules; and imposing sanctions on nonlawyer representatives found to have violated the rules of conduct. Agencies should also ensure they have procedures for enforcing such sanctions.

12. Agencies should provide for administrative review of any sanctions imposed on nonlawyer representatives for violation of relevant conduct rules.

13. Agencies may consider using the *Model Rules of Representative Conduct* as a resource in establishing the rules and procedures outlined in paragraphs 10–12.

Transparency With Regard to Representation and Assistance

14. To improve participants' awareness of options for representation and assistance, including by qualified or accredited nonlawyers, agencies should inform participants about such options early and throughout adjudications, including at levels of decision making prior to an opportunity for a hearing and by posting relevant information on their websites.

15. Agencies should publish the following in the *Code of Federal Regulations* and on their websites:

a. Rules prescribing the qualifications required for nonlawyer representatives;

b. Rules for accrediting, educating, and regulating nonlawyer representatives, for agencies with formal accreditation programs; and

c. Rules governing the conduct and ethical obligations of nonlawyer representatives, as well as procedures for adjudicating alleged violations of these rules and imposing sanctions.

16. To inform and protect participants, agencies should publish on their websites the names of nonlawyer representatives who have been sanctioned, the nature of the sanction, and, as relevant, the specified period of the sanction. Agencies may omit certain information regarding the nature of the violation or sanction as necessary to preserve recognized privacy interests. Agencies should consider establishing, when appropriate, procedures for removing information about sanctioned representatives from their websites after a certain period of time has elapsed or a sanction is no longer in effect.

Coordination and Collaboration With Regard to Representation and Assistance

17. Agencies with overlapping subject matters, similar adjudication systems, or similar regulatory structures for nonlawyer representation should identify opportunities for interagency coordination of accreditation or education programs for nonlawyer representatives, to save resources and promote consistency.

18. When authorized by law, agencies should expand grant funding opportunities for nonprofit organizations that employ, educate, or mentor nonlawyers who represent or assist participants.

19. Agencies should work with law and other professional school clinics to expand programs that allow students to represent participants under the supervision of lawyers or other accredited professionals or to provide assistance to participants.

20. Agencies should engage with community-based organizations, nongovernmental organizations, advocacy groups, and other organizations that can assist in building trust among participants and improve nonlawyer representation and assistance by bringing knowledge of and expertise in issues facing those communities.

21. Agencies should collaborate with state bar associations and other relevant licensing authorities to reduce the effect that state prohibitions against unauthorized practice of law may have on the ability of nonlawyers to represent parties before them.

Data

22. Agencies should gather and maintain baseline comparative data on representation, including by nonlawyers, to (1) help agencies and others assess whether rules and procedures regarding nonlawyer representation are achieving agency goals in making such representation available and accessible; and (2) identify opportunities for expanding access to representation. Such data should include, at a minimum, the type and number of nonlawyer representatives; the outcomes, in aggregate, of cases in which parties have no representation, lawyer representation, or nonlawyer representation; the number of pending applications for accreditation; and average wait time for applications to be reviewed. Agencies should make data regarding representation publicly available, including on their websites, and regularly update it.

23. To the extent practicable, agencies should gather and maintain data on assistance, including by nonlawyers, to assess participants' experiences with and access to various forms of assistance. Agencies may collect such information by, for example, surveying participants regarding whether they received any assistance, the type of assistance they received, and the effectiveness of such assistance. To help with the assessment of funding opportunities, agencies may also require grantees, as a condition of their grants, to report on the types of assistance they provide, the number of participants they assist, and the outcomes of such assistance (*e.g.,* the individual applied for benefits). Agencies should make data on assistance publicly available,

including on their websites, and regularly update it.

[FR Doc. 2024–31352 Filed 12–27–24; 8:45 am]

BILLING CODE 6110–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Center for Faith-Based and Neighborhood Partnerships (FBNP) Partner Meeting Survey

AGENCY: United States Agency for International Development.

ACTION: Notice of information collection; request for comment.

SUMMARY: The U.S. Agency for International Development/Center for Faith-Based and Neighborhood Partnerships (USAID/IPI/LFT/FBNP), as part of the Agency's continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of the information on the respondents.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: To access and review the electronic Google forms survey tool, please use: *https://forms.gle/4JR8nLLzZmmsPNkv8.*

Interested persons are invited to submit comments regarding the proposed information collection to Amanda Vigneaud, Initiative Lead, USAID/IPI/LFT/FBNP at *cfbnp@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amanda Vigneaud, Initiative Lead, USAID/IPI/LFT/FBNP at *cfbnp@usaid.gov* or 202–712–1815.

SUPPLEMENTARY INFORMATION:

Title of Collection: Center for Faith-Based and Neighborhood Partnerships (FBNP) Partner Meeting Survey 2024.

OMB Number: Not yet known.

Expiration Date: Not yet known.

Type of Request: New collection.

Form Number: Not yet known.

Affected Public: Point of contact from faith-based organizations that have met with USAID/IPI/LFT/FBNP in 2024.

Estimated Number of Respondents: 70.

Estimated Total Annual Burden Hours: 20–25.

Abstract: The Center for Faith-Based and Neighborhood Partnerships (USAID/IPI/LFT/FBNP) met with approximately 70 organizations in 2024. This survey will be sent to the points of contact from the partner meetings to collect information on outcomes following the partner's meeting with the team. If the collection is not conducted, it will affect the ability of USAID/IPI/LFT/FBNP to improve their partner engagement process. Method of collection will be electronic using Google forms survey. The data will be collected and maintained by USAID/IPI/LFT/FBNP on their Google platform.

Amanda Vigneaud,

Initiative Lead, USAID/IPI/LFT/FBNP.

[FR Doc. 2024–31189 Filed 12–27–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, *Public Law 104–13.* Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 29, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Production and Conservation Business Center

Title: Request for Geospatial Products and Services.

OMB Control Number: 0565–NEW.

Summary of Collection: In accordance with the Paperwork Reduction Act, 1995, he Farm Production and Conservation (FPAC) is requesting comments from all interested individuals and organizations on a new information collection request for the. The information collection is needed to enable the Department of Agriculture to effectively administrate the Geospatial and Aerial Photography Programs. GEO has the responsibility for acquiring and conducting coordination of the FPAC's geospatial datasets and the aerial photography flying contracts and remote sensing programs. The geospatial data and digital aerial imagery secured by FPAC BC is public domain and reproductions are available at cost to any customer with a need. All receipts from the sale of geospatial products and services are retained by FPAC BC. This collection will get an FPAC OMB control number. The FPAC–ISD–441, Request for Geospatial Products and Services, is the form FPAC supplies to the customers for placing an order for aerial imagery products and services. The burden hours have decreased because FPAC–ISD–441B Request for Custom Aerial Print and FPAC–ISD441D One Time Credit Card Payment Authorization forms are now obsolete.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses. The information collection request will get new FPAC OMB control number.

Estimate of Burden: Public reporting burden for the information collection is estimated to average 16 minutes per response.

Type of Respondents: Farmers, Ranchers, and other customers who