

Comment from Senior Fellow Stephen Williams – December 11, 2017

ACUS Proposed Recommendation on Agency Guidance

I'm concerned that the recommendation on agency guidance makes no mention of persons (neither beneficiaries nor regulatees) who suffer collateral damage as a result of guidance.

There are several opportunities to add language addressing this point.

After the sentence concluding on p. 4, line 61, one might add, "Similarly, in its focus on beneficiaries and regulated parties, an agency policy statement may induce conduct harmful to third parties."

On p. 5, I would propose modifying the sentence running from line 99 to line 100, supplanting the current language after "especially" to read "to regulatory beneficiaries and affected third parties and organizations . . . ," and then in line 101 to replace "beneficiaries" with "such parties."

At p. 9, lines 185-86 I suggest adding "third parties" in line 186 (with appropriate changes in the clause to reflect its expansion).

And on p. 10 I would insert a parenthetical after the reference on line 205 to non-regulated parties, "(beneficiaries and third parties)"