Federal agencies increasingly automate the provision of legal guidance to the public through online tools and other technologies (which, together, constitute “automated legal guidance”). The Internal Revenue Service, for example, encourages taxpayers to seek answers to questions regarding various tax credits and deductions through its online “Interactive Tax Assistant,” and the United States Citizenship and Immigration Services suggests that potential green card holders and citizens with questions about their immigration rights communicate with its interactive chatbot, “Emma.” Almost a dozen federal agencies have either implemented or piloted automated legal guidance tools in just the past three years.¹ This Recommendation defines “guidance” broadly to include interpretive rules, general statements of policy, and other materials that provide information about an administrative program.

Automated legal guidance tools can take several forms. The most common are chatbots and virtual assistants.² The simplest chatbots provide standardized responses based on keywords included in a user’s question. Although the terms can overlap, virtual assistants tend to be more versatile than chatbots and can often perform additional tasks such as making an appointment or

¹ They include the Internal Revenue Service, United States Customs and Immigration Services, the Department of Education, the Social Security Administration, the Patent and Trademark Office, the Army, the General Services Administration, the Veterans Benefits Administration, the Food and Drug Administration, the National Institutes of Health, and the Environmental Protection Agency.

filling out a form in response to a conversation. More robust tools rely on natural language processing, a form of technology that can interpret natural human speech, or artificial intelligence to interpret natural language and generate an individualized response.

Agencies use automated legal guidance tools for a number of reasons. These reasons include efficiently allocating limited staff resources, improving customer experience and service delivery, and enhancing the quality, consistency, speed, and predictability of guidance provided to the public. Because they are always available from any location and can efficiently and effectively provide answers to common questions, automated legal guidance tools have the potential to revolutionize the provision of agency guidance to the public.

Critics argue, however, that automated legal guidance tools can oversimplify the law, leading members of the public to sometimes rely to their detriment on guidance that is imprecise or misleading. Although the same can be said for other explanatory materials, such as brochures and fact sheets, automated legal guidance tools pose unique concerns because they can appear to be human. Users may perceive the kind of instantaneous and seemingly personalized responses provided by an automated legal guidance tool to be more powerful or persuasive than a guidance document.

The Administrative Conference has previously adopted several recommendations on the development, use, and public availability of agency guidance documents. This Recommendation builds on those recommendations by identifying best practices for agencies to consider when

3 Id.
they develop, use, and manage automated legal guidance tools. The Conference recognizes that
the use of automated legal guidance tools may not be suitable for all agencies and administrative
programs. The Conference also recognizes that, even when automated legal guidance tools are
used, agencies may wish to supplement those tools by, for example, hiring and training customer
service representatives. This Recommendation provides best practices to guide agencies when
considering using automated legal guidance tools.

RECOMMENDATION

Design and Management

1. Agencies, especially those that have a high volume of individual interactions with
members of the public who may not be familiar with legal requirements, should explore
the possible benefits of offering automated legal guidance tools, including enhancing
administrative efficiency and helping the public understand complex laws in plain
language.

2. Agencies should also weigh the potential downsides of automated legal guidance tools,
including oversimplifying the law, letting guidance appear more personalized than it
actually is, and not adequately disclosing that users cannot rely on the guidance to bind
the agency.

3. Agencies using automated legal guidance tools should design and manage them in ways
that promote fairness, accuracy, clarity, efficiency, accessibility, and transparency.
Agencies should also ensure that automated legal guidance tools do not displace other
agency mechanisms for increasing access to the underlying law.

4. Agencies should adopt clear procedures for designing, maintaining, and reviewing the
substance embedded in automated legal guidance tools and should publish these
procedures on their websites. These procedures should incorporate periodic user testing
in order to ensure accessibility and effectiveness.
5. The General Services Administration should regularly evaluate the relative costs and benefits of using outside vendors for the introduction of automated legal guidance tools and share such information with agencies.

**Accessibility**

6. Agencies should utilize human-centered design methodologies, empirical customer research, and user testing, as described and defined in Executive Order 14,058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*.

7. Agencies should, consistent with applicable laws and policies, design automated legal guidance tools to ensure they meet the needs of the particular populations that are intended to utilize the automated legal guidance tools.

8. Agencies should periodically review and reconfigure automated legal guidance tools to ensure they meet the needs of the particular populations that are intended to utilize the automated legal guidance tools.

9. Agencies should ensure that information provided by automated legal guidance tools is stated in plain language understandable by the particular populations that are intended to utilize the automated legal guidance tools, consistent with the Plain Writing Act of 2010; Recommendation 2017-3, *Plain Language in Regulatory Drafting*; and other applicable laws and policies.

10. Agencies should design automated legal guidance tools to provide contact information for a human customer service representative to whom users can address questions not answered by the automated legal guidance tools, or if they are having difficulty using an automated legal guidance tool.

**Transparency**

11. When the underlying law is unclear or unsettled, or where the legal guidance depends upon disparate factual situations, agencies should be transparent about the limitations of
the advice the user is receiving. To the extent practicable, agencies should also provide
access through automated legal guidance tools to the legal materials underlying the
automated legal guidance tool, including relevant statutes, rules, and judicial or
adjudicative decisions.

12. Agencies should disclose how an automated legal guidance tool stores personal data and
how that data is utilized by the agency.

13. Agencies should update the substance of the automated legal guidance tools to reflect
legal developments or correct errors in a timely manner. Agencies should also maintain a
publicly accessible archive that identifies and explains such updates.

14. When automated legal guidance tools do not learn to provide different answers to users’
questions over time, agencies should consider publishing the questions and responses the
agency has programmed in advance to provide an immediate and comprehensive source
of information regarding the automated legal guidance tools. Agencies should post this
information in an appropriate location on their websites and make it accessible through
the automated legal guidance tool to which it pertains.

15. When automated legal guidance tools learn to provide different answers to users’
questions over time, agencies should consider publishing information related to how the
machine learning process was developed and how it is maintained and updated. Agencies
should post this information in an appropriate location on their websites and make it
accessible through the automated legal guidance tool to which it pertains.

16. Agencies that use automated legal guidance tools should provide users an option to
provide feedback or report errors.

17. When applicable, agencies should provide disclaimers that the automated legal guidance
tool is not human.

Reliance
18. Agencies should allow users to obtain a written record of their communication with automated legal guidance tools and should include date and time stamps for the information provided.

19. Agencies should consider whether and under what circumstances a person's good faith reliance on guidance provided by an automated legal guidance tool should serve as a defense against a penalty or other consequences for noncompliance with an applicable legal requirement, and it should prominently announce that decision to users.

20. If an agency takes the position that it can depart from an interpretation or explanation provided by a chatbot or other automated tool in a subsequent investigative or adjudicative proceeding, it should prominently announce that fact to users.