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 speak 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

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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

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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 aims to ensure that, when agencies choose to offer automated legal guidance tools, they design and manage them in ways that promote fairness, accuracy, efficiency, accessibility, and transparency.

RECOMMENDATION

Accessibility

1. Agencies should, consistent with applicable laws and policies, design and periodically review automated legal guidance tools to ensure they meet the needs of the members of the public they are meant to serve. Agencies should utilize human-centered design methodologies, empirical customer research, and user testing.

2. Agencies should ensure that information provided by automated legal guidance tools is, consistent with the Plain Writing Act of 2010; Recommendation 2017-3, Plain Language in Regulatory Drafting; and other applicable laws and policies, stated in plain language understandable by members of the public most likely to use the tools.

3. Agencies should design automated legal guidance tools to provide contact information for a human customer service representative to whom users can address additional questions if they are having difficulty using an automated legal guidance tool or understanding the information provided by an automated legal guidance tool.

Transparency

4. Agencies should clearly indicate in automated legal guidance tools that the information provided may not be applicable in all cases, especially in those involving uncertainty in the underlying law. 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.

5. Agencies should ensure that updates to automated legal guidance tools are made in a timely manner. Agencies should also maintain a publicly accessible archive that identifies and explains such updates to automated legal guidance tools, including those made to reflect legal developments or correct errors.

6. When automated legal guidance tools provide standardized answers to users’ inquiries, agencies should publish all possible questions and responses to provide an immediate and comprehensive source of guidance to users. 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.

7. When automated legal guidance tools learn to provide different answers to users’ questions over time, agencies should publish 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.

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

9. When automated legal guidance uses natural language processing or other technology that makes users believe they may be engaging with a human, agencies should provide disclaimers that the speaker is not human.

Reliance

10. Agencies should allow users to retain a written record of their communication with automated legal guidance tools and should include date and time stamps for the information provided.
11. 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 for noncompliance with an applicable legal requirement.

12. 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.

13. If an agency takes the position that a user cannot point to advice received by a chatbot or other automated tool in defending against consequences for noncompliance, it should prominently announce that fact to users.

**Design and Management**

14. Agencies should adopt clear procedures for designing, maintaining, and reviewing automated legal guidance tools and should publish them on their websites.

15. 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.