



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

June 30, 2020

SENT VIA REGULATIONS.GOV

Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

Re: Docket No. CFPB-2020-0019, Advisory Opinions Proposal

To Whom It May Concern:

On behalf of the Office of the Chairman of the Administrative Conference of the United States (ACUS), I offer the following comments in response to the above-referenced proposed rulemaking.

ACUS is an independent agency in the executive branch charged by statute with, among other things, making recommendations to the President, federal agencies, Congress, and the Judicial Conference of the United States to improve rulemaking, adjudication, and other administrative procedures. Its official recommendations are issued by its Assembly, more than half of whose members are government officials appointed by federal agencies. *See* 5 U.S.C. § 591 *et seq.* Recommendations and their accompanying reports appear at [www.acus.gov](http://www.acus.gov).

As the Bureau considers whether and how best to create a permanent advisory opinion program issuing interpretive rules, it may find ACUS Recommendation 2019-1, *Agency Guidance Through Interpretive Rules*, particularly useful. Recommendation 2019-1 contains 15 specific recommendations for agencies to consider when developing and issuing interpretive rules. Although the Office of the Chairman encourages the Bureau to consider all 15 recommendations, several may be of particular importance to the Bureau:

Recommendation 2019-1 states that agencies “should not use an interpretive rule to create a standard independent of the statute or legislative rule it interprets.” To that end, the Recommendation encourages agencies to “prominently state, in the text of an interpretive rule or elsewhere, that the rule expresses the agency’s current interpretation of the law but that a member of the public will, upon proper request, be accorded a fair opportunity to seek modification, rescission, or waiver of the rule” and to “afford members of the public a fair opportunity to argue for lawful approaches or analyses other than those set forth in an interpretive rule... .”

The Recommendation also urges agencies to consider soliciting public participation before or after the adoption or modification of an interpretive rule, such as through a meeting or webinar with stakeholders or a request for written input.

Similarly, the Recommendation encourages agencies to “afford members of the public a fair opportunity to argue for modification, rescission, or waiver of an interpretive rule,” as well as to create policies to ensure agency staff do not interfere with this opportunity. As the Recommendation states, “an interpretive rule could require officials at one level of the agency hierarchy to follow the interpretive rule, with the caveat that officials at a higher level can authorize a modification, rescission, or waiver of that rule.”

ACUS’s Office of the Chairman thanks the Bureau for this opportunity to comment on its advisory opinion program. Please contact me at [tphillips@acus.gov](mailto:tphillips@acus.gov) or 202-480-2080 if you have questions or would like further information.

Sincerely,  
Todd Phillips  
Attorney Advisor and Counsel for  
Intergovernmental Affairs

Attachment: Recommendation 2019-1, *Agency Guidance Through Interpretive Rules*

cc: Ms. Mary McLeod  
ACUS Government Member from the CFPB