



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

To: The Committee on Rulemaking

From: Cary Coglianesse, Committee Chair

Re: Proposed change to the sunseting recommendation

Date: November 5, 2017

The version of the preamble and recommendation that was circulated to the committee on Friday, November 3, 2017 contains the following recommendation:

Structuring Sunset Provisions

4. If an agency chooses to establish and learn from a temporary rule, the sunset period provided in such a rule should afford the agency enough time for evaluation and enough time to engage in notice and comment rulemaking in the event it chooses to adopt the rule on a permanent basis.

During the last rulemaking committee meeting, there appeared to be broad agreement to drop this recommendation, but the committee did not have the time to discuss specific language to replace it. I would therefore propose striking this recommendation from the draft that Todd Rubin circulated on Friday and replacing it with the following for your discussion and consideration:

Soliciting Public Feedback

4. Agencies should consider soliciting input from the public when conducting analysis of policy alternatives and seeking to learn from experience. In addition to the public input required under 5 U.S.C. § 553(c), agencies should consider, as time and resources permit, the use of supplemental requests for public comment, peer review, advisory committee deliberation, or public hearings or meetings.

This replacement reflects one benefit of sunseting, which is to afford the public an opportunity for input as to the continuation of a rule. The proposed alternative recommendation certainly does not preclude sunseting, but importantly it does not recommend it either. Following the recommendation would not demand agencies to commit to any particular procedural form or mode of solicitation of public input.

We look forward to discussing this proposed change with the committee, in addition to other suggestions the committee has on the preamble and the recommendation as a whole.