

October 17, 2017 Comment from Gene Scalia

1. I thought there was consensus to exclude interpretative rules; perhaps I missed it, but didn't see that here, and continue to think it is importance. Under the law, "guidance" is not a clear, precise, or recognized form of agency action—we should be clear what we're talking about, and ACUS should use terminology that is consistent with the APA.
2. In recommendation 4, the beginning of the sentence referring to parties' freedom "to take a lawful approach" is a bit confusing; the sentence would benefit from re-arranging so the phrase refers in full to "a lawful approach different than the one suggested in the guidance document."
3. I found recommendations 8(b) and (c ) a bit hard to follow also.