Federal agencies increasingly automate the provision of legal guidance to the public through online tools and other technologies.¹ 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 such automated legal guidance tools in just the past three years.²

Automated legal guidance tools can take several forms. The most common are chatbots and virtual assistants. 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 filling out a form in response to a conversation.³ More robust tools rely on natural language

¹ This Recommendation defines “guidance” broadly to include interpretive rules, general statements of policy, and other materials considered to be guidance documents under other, separate definitions adopted by government agencies. See Admin. Conf. of the U.S., Recommendation 2019-3, Public Availability of Agency Guidance Documents, 84 Fed. Reg. 38,931 (Aug. 8, 2019).
² They include the Internal Revenue Service, United States Citizenship 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.
processing, 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 user 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.

As with other forms of guidance, there also is an issue regarding the extent to which users
are able to rely upon automated legal guidance. Agencies generally take the position that users
cannot rely upon automated legal guidance, and that automated legal guidance does not bind the
agency. Critics argue, however, that automated legal guidance tools can oversimplify or misstate
the law or offer users guidance that does not apply well to their factual circumstances. Although
the same can be said for other explanatory materials, such as brochures and fact sheets,
avtomated 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 authoritative or persuasive than a guidance
document.

The Administrative Conference has adopted several recommendations on the
development, use, and public availability of agency guidance documents. This Recommendation

4 See Admin. Conf. of the U.S., Statement #20, Agency Use of Artificial Intelligence, 86 Fed. Reg. 6616 (Jan. 22,
2021); Blank & Ososky, supra note 3.

5 See Admin. Conf. of the U.S., Recommendation 2021-7, Public Availability of Inoperative Agency Guidance
Availability of Agency Guidance Documents, 84 Fed. Reg. 38,931 (Aug. 8, 2019); Admin. Conf. of the U.S.,
Recommendation 2019-1, Agency Guidance Through Interpretive Rules, 84 Fed. Reg. 38,927 (Aug. 8, 2019);
61,734 (Dec. 29, 2017); Admin. Conf. of the U.S., Recommendation 2014-3, Guidance in the Rulemaking Process,
builds on those recommendations by identifying best practices for agencies to consider when they develop, use, and manage automated legal guidance tools. The use of these tools may not be suitable for all agencies and administrative programs. Moreover, even when automated legal guidance tools are used, agencies should expect that they will need to provide additional guidance through other channels, including live person-to-person support. This Recommendation provides best practices to guide agencies when considering using automated legal guidance tools.

RECOMMENDATION

Design and Management

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

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.

4. Agencies should ensure that automated legal guidance tools do not displace other agency mechanisms for increasing access to the underlying law.

5. 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 and other forms of evaluation by internal and external researchers to ensure accessibility and effectiveness.
6. 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**


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

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

10. 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* (82 Fed. Reg. 61,728, Dec. 14, 2017); and other applicable laws and policies.

11. Agencies should design automated legal guidance tools to put users in contact with a human customer service representative to whom users can address questions in the event that a question is not answered by the automated legal guidance tools or if the users are having difficulty using an automated legal guidance tool.

**Transparency**
12. When the underlying law is unclear or unsettled, or when the legal guidance depends upon the facts of the particular situation, 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 tools, including relevant statutes, rules, and judicial or adjudicative decisions.

13. Agencies should disclose how they store and use the data obtained through automated legal guidance tools.

14. Agencies should update the content of automated legal guidance tools to reflect legal developments or correct errors in a timely manner. Agencies should also maintain an electronic, publicly accessible, searchable archive that identifies and explains such updates. Agencies should ensure that the date on which the tool was last updated.

15. When automated legal guidance tools provide programmed responses to users’ questions, agencies should publish the questions and responses 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.

16. 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.

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

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

Reliance
19. 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.

20. Agencies should consider whether, or 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.

21. If an agency takes the position that it can depart from an interpretation or explanation provided by an automated legal guidance tool in a subsequent investigative or adjudicative proceeding, including in the application of penalties for noncompliance, it should prominently announce its position to users.