

Comment from ACUS Government Member Robert F. Stone
August 14, 2020

I see that the draft ACUS recommendations sent out on August 12, 2020 indicate in selective places the opportunity for agencies to take into account whether it has the resources to comply with a recommendation. For example, this is the case with Recommendation 4.a. More broadly, does ACUS recognize that its recommendations impose costs that must be weighed against the presumptive benefits? If so, what is the mechanism for accomplishing this balancing?

As a case in point, consider Recommendation 3 and 3.a. The recommendation states that “an agency should include the notifications described in Paragraph 2 in at least the following places: a. Within the rulemaking document upon which the agency requests comments, such as a notice of proposed rulemaking or an advanced notice of proposed rulemaking” (lines 112-116). I wonder whether the recommendation would allow referencing the notifications by link (or perhaps pop-up) rather than by requiring the notifications to be spelled out in print in the Federal Register notification itself. Otherwise, considering the likelihood that most interested parties would not be concerned with public disclosure of protected materials, requiring all readers to go through the itemized list (a-i, covering one page of text) would constitute an unnecessary waste of resources.