

Comment from Government Member Stephanie J. Tatham on *Public Availability of Inoperative Agency Guidance Documents*
November 8, 2021

Hi Todd and all,

Thank you so much for sharing this draft language. I chatted with Joe Nye, our lead on guidance issues, and we concur with the Noe comment that suggests striking the “had been submitted to the Office of Information and Regulatory Affairs” language for the reasons Paul shared. In addition, as a practical matter, the volume of guidance submitted to OMB during the pandemic has increased to a point where this requirement may be an administrative burden on agencies without substantial benefit, given that many such guidance documents included disclaimers about lack of legal effect and materials were frequently updated to reflect our evolving understanding of COVID-19. Agencies also “submit” a variety of guidance materials to OMB that are not necessarily reviewed under EO 12866 or other authorities, such as for significance designations.

If the Committee were to proceed, we would encourage an adjustment to this language to instead focus on “significant guidance document[s]” as defined in OMB’s “Final Bulletin for Agency Good Guidance Practices” (<https://www.federalregister.gov/d/E7-1066/p-106>).

I regret that Joe and I are unable to join you tomorrow, best wishes for the Committee’s deliberations. If we can offer any further assistance please let us know.

Steph