

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

December 8, 2017

The Honorable Kirstjen M. Nielsen  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Madam Secretary:

Agencies issue a wide variety of policy documents for different purposes. Generally, when a policy is intended to be binding, agencies issue a regulation.<sup>1</sup> Other times, agencies issue statements of policy, interpretive rules, and other guidance regarding how the agency plans to interpret laws and legislative rules.<sup>2</sup>

These various forms of guidance are not legally binding, but, according to the Government Accountability Office (GAO), the documents have wide-ranging effects on public and private sector behavior. In a 2015 report, GAO stated: “guidance documents can have a significant effect on regulated entities and the public, both because of agencies’ reliance on large volumes of guidance documents and the fact that the guidance can prompt changes in the behavior of regulated parties and the general public.”<sup>3</sup>

The GAO also found agencies’ use of guidance varied significantly, ranging from as few as ten at some agencies to more than one hundred guidance documents each year at others.<sup>4</sup> The reason for this discrepancy is unclear. It is also unclear whether there are uniform practices or strategies throughout the executive branch for developing and issuing guidance documents.

To help the Committee better understand how and when federal agencies issue guidance documents, please provide a list of all guidance documents issued by your agency since January 1, 2008, including the following for each guidance document listed:

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<sup>1</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-17-404T, REGULATORY GUIDANCE PROCESSES: SELECTED DEPARTMENTS COULD STRENGTHEN INTERNAL CONTROL AND DISSEMINATION PRACTICES 14 (April 2015), *available at* <http://www.gao.gov/assets/670/669688.pdf>.

<sup>2</sup> Agencies use a variety of names to refer to guidance documents, such as memoranda, policy statements, manuals, circulars, bulletins, advisories, or guidance. The Office of Management and Budget defines a guidance document as an agency statement of general applicability and future effect that sets forth a policy or interprets a statutory or regulatory issue. *Id.* at 7.

<sup>3</sup> *Id.* at 8.




<sup>4</sup> *Id.* at 13.

1. The title;
2. The name of the form of guidance, such as circular, guidance, frequently asked questions, bulletin, memoranda, or statement;
3. A brief description of the subject;
4. The date of issuance;
5. The issuing agency, component, office, or program;
6. An indication of whether:
  - a. The guidance was considered significant;
  - b. The agency submitted the guidance for review by the Office of Information and Regulatory Affairs, and if it was:
    - i. The title of the guidance used in the submission; and
    - ii. The date submitted;
  - c. The agency submitted the guidance to Congress and GAO, and if it was:
    - i. The title of the guidance used in the submission; and
    - ii. The date submitted; and
  - d. The Regulatory Reform Task Force has reviewed or has plans to review the guidance document, and any results of such review; and
7. To the extent applicable:
  - a. The Federal Record citation;
  - b. A hyperlink to a copy of the document;
  - c. The Regulation Identification Number; and
  - d. Any other identification number for the document.

Provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on December 22, 2017. An attachment to this letter provides additional instructions for responding to the Committee's request.

Please contact Katy Rother of the majority staff at (202) 225-5074 or Katy.Rother@mail.house.gov with any questions about this request. Thank you for your attention to this matter.

Sincerely,

  
\_\_\_\_\_  
Trey Gowdy  
Chairman  
\_\_\_\_\_  
Mark Meadows  
Chairman  
Subcommittee on Government Operations  
\_\_\_\_\_  
Jim Jordan  
Chairman  
Subcommittee on Healthcare, Benefits,  
and Administrative Rules  
\_\_\_\_\_  
Gary J. Palmer  
Chairman  
Subcommittee on Intergovernmental Affairs  
\_\_\_\_\_  
Blake Farenthold  
Chairman  
Subcommittee on the Interior, Energy,  
and Environment

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member  
Committee on Oversight and Government Reform

The Honorable Gerald E. Connolly, Ranking Member  
Subcommittee on Government Operations

The Honorable Raja Krishnamoorthi, Ranking Member  
Subcommittee on Healthcare, Benefits, and Administrative Rules

The Honorable Val Butler Demings, Ranking Member  
Subcommittee on Intergovernmental Affairs

The Honorable Stacey E. Plaskett, Ranking Member  
Subcommittee on the Interior, Energy, and Environment

## **Responding to Committee Document Requests**

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES  
115<sup>TH</sup> CONGRESS**

**NOTICE OF APPEARANCE OF COUNSEL**

**Counsel submitting:** \_\_\_\_\_

**Bar number:** \_\_\_\_\_ **State/District of admission:** \_\_\_\_\_

**Attorney for:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

**Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for \_\_\_\_\_ in (select one):**

**All matters before the Committee**

**The following matters (describe the scope of representation):**

\_\_\_\_\_  
\_\_\_\_\_

**All further notice and copies of papers and other material relevant to this action should be directed to and served upon:**

**Attorney's name:** \_\_\_\_\_

**Attorney's email address:** \_\_\_\_\_

**Firm name (where applicable):** \_\_\_\_\_

**Complete Mailing Address:** \_\_\_\_\_

\_\_\_\_\_

**I agree to notify the Committee within 1 business day of any change in representation.**

\_\_\_\_\_  
**Signature of Attorney**

\_\_\_\_\_  
**Date**