

A guidance document is *not* a regulation

One mechanism of institutional communication — the legal difference between guidance, an interpretive rule, and a binding regulation, and why the three get treated alike.

BEFORE YOU BEGIN

How This Guide Works

This is part of **Incognati Civics**, applying the field-guide format to the way institutions communicate — press releases, official statements, guidance documents, corrections, embargoes — the packaging between a record and the public, examined the same way regardless of which institution or which side it favors. Each specimen goes deep on one mechanism, with primary documents, regulations, and nonpartisan scholarship listed in full on the references page.

INCOGNATI CIVICS — INSTITUTIONAL COMMUNICATIONS

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Guidance Read as Binding Law

Consilium Non Lex

Governing precedent / case Perez v. Mortgage Bankers Assn., 575 U.S. 92 (2015) **Status** Recurring in regulatory disputes

OBSERVED SPECIMEN

AGENCY GUIDANCE, FAQs, AND 'DEAR COLLEAGUE' LETTERS

*Agencies issue binding regulations only through a formal notice-and-comment process under the Administrative Procedure Act. They also issue **guidance** — FAQs, bulletins, “Dear Colleague” letters — that explains their views but does not carry the force of law. The Supreme Court confirmed in Perez v. Mortgage Bankers that interpretive rules can be issued and changed without notice-and-comment, precisely because they are not binding. Guidance is routinely reported as a new “rule” or “mandate,” and treated as if it were enforceable law.*

THE HOOK

Guidance looks official — agency letterhead, directive tone — so it reads as binding even when it is not.

THE MECHANISM

Only legislative rules made through notice-and-comment bind the public. Guidance and interpretive rules state an agency's position but lack the force and effect of law.

Field mark: when an agency ‘announces’ a requirement, check whether it is a regulation made through notice-and-comment or merely guidance — guidance states a view, but only a rule binds.

See the full references page for complete citations.

References

every source checkable at the link provided; DOIs given where the source has one

PRIMARY SOURCE · SUPREME COURT

Perez v. Mortgage Bankers Ass'n, 575 U.S. 92 (2015).

<https://supreme.justia.com/cases/federal/us/575/92/>

Holds that interpretive rules (guidance) can be issued and revised without notice-and-comment because they do not bind.

PRIMARY SOURCE · STATUTE

Administrative Procedure Act, 5 U.S.C. §553 (rulemaking).

<https://www.law.cornell.edu/uscode/text/5/553>

The statute distinguishing binding legislative rules from exempt interpretive rules and guidance.

Reading an Agency Announcement: A Gut Check

four questions before ‘the agency just banned X’ becomes settled law in your mind

1 Rule or guidance?

Binding rules go through notice-and-comment; guidance does not.

2 Look for the citation

A real regulation cites the CFR; guidance usually cannot.

3 Weigh the force

Guidance states an agency view; it is not enforceable as law by itself.

4 Watch the verb

‘Mandate’ and ‘requires’ may overstate a document that only advises.

INCOGNATI CIVICS

The Series Continues

This is Specimen No. 3 of the Institutional Communications section within Incognati Civics. The full queue of twelve specimens is listed on the cover. This section joins Elections, Federal Laws, and Official Data Reporting within Civics, with local government planned beyond it. The Incognati Atlas catalogs the underlying patterns across all of it.