

Press Release



Explaining the Trump Administration's Executive Orders on Guidance

ALLISON EDWARDS | OCTOBER 10, 2019

Yesterday President Trump signed two executive orders (EOs) aimed at curtailing agency abuses of “guidance” documents, which have been used to justify enforcement action against regulated entities — despite not being legally binding. These EOs will make guidance more transparent and easier to access, and give regulated entities more opportunities to challenge potential violations, writes AAF’s Director of Regulatory Policy Dan Bosch. While the EOs are a good start to correct guidance misuse, their ultimate success will depend on a forthcoming memo that details the new requirements, he notes.

An excerpt:

Some agencies have used guidance...to assert more authority than is written in their regulations. Agencies often use these supplementary guidance communications because an agency can simply draft and issue guidance, rather than go through the deliberative rulemaking process.

The problem is that agencies have enforced this expanded authority, and courts have upheld those enforcements in some cases. In addition, the mere fact that an agency has issued the guidance — which is effectively the agency’s interpretation of its own regulations — gives the guidance an air of enforceability.

[Read the analysis.](#)