

# More than 22,000 agency public notices annually

Along with the few dozen presidential memoranda and other proclamations are the thousands that issue from departments and agencies. Through various species of guidance documents, notices, memoranda, letters, bulletins, action plans, and policy statements, government can signal expectations for, specify parameters for, and influence policy for health care, retirement, education, energy production, finance, land and resource management, science and research, and manufacturing.

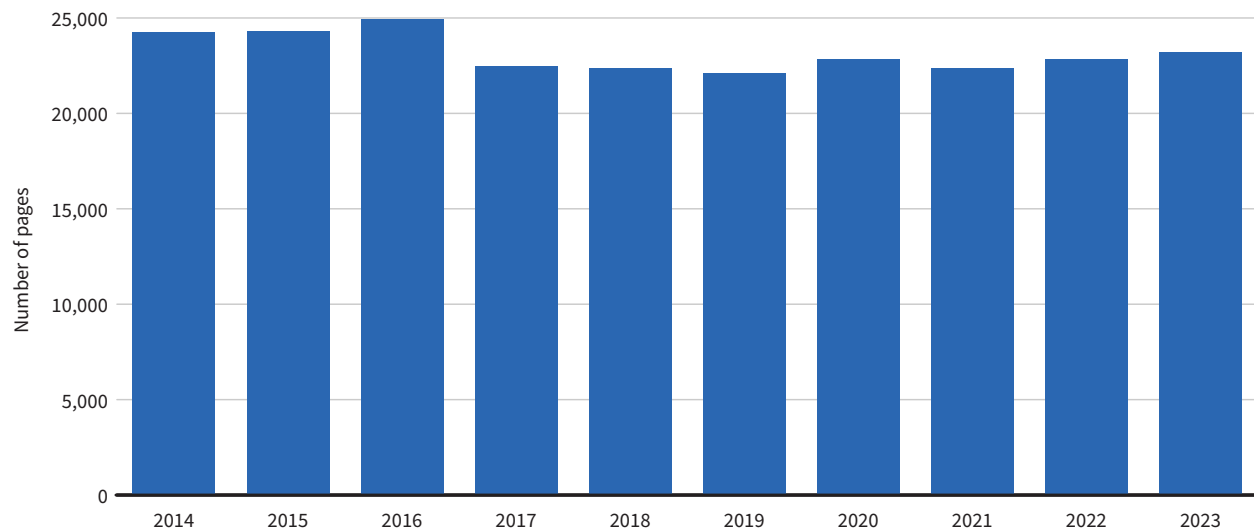
Prominent examples in recent years have included post-CARES Act eviction moratorium extensions by both the Trump and the Biden administrations; Biden's student loan forgiveness and the Department of Education's changing of eligibility rules on a website;<sup>88</sup> Federal Trade Commission guidance on disclosures for social media influencers<sup>89</sup> and its "Policy Statement Regarding the Scope of Unfair Methods of Competition under Section 5 of the Federal Trade Commission Act";<sup>90</sup> and similar "Guidance Regarding Interpretation of Unfair

and Deceptive Practices" from the Department of Transportation.<sup>91</sup>

This past year brought a joint Dear Colleague and Q and A from the Departments of Justice and Education addressing college admissions criteria and navigating "lived experience with race" in the wake of the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina et al.*, in a manner leveraging investigations into universities' legacy admissions.<sup>92</sup> Another ominous example was the Securities and Exchange Commission's plan revealed in a *Federal Register* notice to allow exchange listing of Natural Asset Companies at the behest of the New York Stock Exchange, that for the moment has been withdrawn.<sup>93</sup>

Some overarching "meta" guidance operates across agency and amplifies Biden's whole-of-government progressive pursuits. Examples in 2023 include the Office of Management and

**Figure 16. Notices in the *Federal Register***



Source: National Archives and Records Administration, Office of the Federal Register.

Budget’s (OMB’s) recent reworking of Circular A-4 and supporting materials, OMB’s proposed guidance on ecosystem services,<sup>94</sup> the joint Federal Trade Commission and Department of Justice *Merger Guidelines*,<sup>95</sup> emergent artificial intelligence policy,<sup>96</sup> and the social engineering of equity action plans<sup>97</sup> transformed into an annual requirement on the part of federal agencies.

Even though rooted in public laws, new initiatives like federally directed electric vehicle charging networks and drone airspace management will likely be significantly governed by guidance. Written guidance increasingly may not even be necessary. Emergent automobile passive monitoring and disengagement, a central bank digital currency, and government-run payment systems are likely to be administered by less formal means as the Internet of Things enables click-and-swipe regulation from a distance.

Tens of thousands of public notices appear in the *Federal Register* every year in addition to annual

final and proposed rules. These typically consist of non-rulemaking documents, such as meeting and hearing announcements and agency organizational material. But they can also include memoranda, bulletins, guidance documents, alerts, and other proclamations that may be more consequential to the public like some of the big-ticket items noted previously. Figure 16 depicts notices published annually between 2014 and 2023. Standing at 23,197 in 2023, notices peaked at over 26,000 in 2010 and 2011 (tallies of notices and the related “other” also appear in Appendixes E and M). Although many notices may rightly be regarded as trivial, there have been 714,563 since 1994 and well over a million since the 1970s.

Isolating substantive guidance amid this bulk remains a challenge. A 2018 House Oversight Committee report titled “Shining Light on Regulatory Dark Matter” found that agencies had issued at least 13,000 guidance documents since 2008, of which at least 536 were significant.<sup>98</sup> Recognizing such concerns, Donald Trump’s 2019’s Executive

Order 13891, “Promoting the Rule of Law through Improved Agency Guidance Documents,” established online portals and inventories at agency websites and required formal rulemakings on public-fairness procedures. Biden reversed these, such that at this point **most of the 32 departments and agencies that adopted formal guidance document public-fairness and transparency procedures before Trump’s departure wrote new rules to affirmatively disavow and eliminate the nascent disclosures**, as shown in Table 5. The haste of repudiation and boilerplate

language conforms well with the vision of the Circular A-4 rewrite.<sup>99</sup>

Surveying what one might regard as remnants of the EO 13891 portals, this author’s 2023 compilation of guidance documents topped 103,000 across departments, agencies, subagencies, and commissions. Although down from 107,000 the year before,<sup>100</sup> the revelations were only possible because of EO 13891, which points to the power of increasing disclosure and shining more such sunlight across the entire administrative state apparatus.

**Table 5. Trump-era final rules on guidance document procedures and Biden revocations**

	<b>32 Final Rules on Guidance (FROGs)</b>	<b>Biden FROG stompings (22 to date)</b>
Department of Agriculture	<a href="https://www.govinfo.gov/content/pkg/FR-2020-06-03/pdf/2020-09886.pdf">https://www.govinfo.gov/content/pkg/FR-2020-06-03/pdf/2020-09886.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09531.pdf">https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09531.pdf</a>
Department of Commerce	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-18604.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-18604.pdf</a>	
Department of Defense	<a href="https://www.govinfo.gov/content/pkg/FR-2020-05-29/pdf/2020-11551.pdf">https://www.govinfo.gov/content/pkg/FR-2020-05-29/pdf/2020-11551.pdf</a>	
Department of Education	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-05/pdf/2020-20799.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-05/pdf/2020-20799.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-09-29/pdf/2021-20992.pdf">https://www.govinfo.gov/content/pkg/FR-2021-09-29/pdf/2021-20992.pdf</a>
Department of Energy	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-06/pdf/2020-27875.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-06/pdf/2020-27875.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-06-04/pdf/2021-11753.pdf">https://www.govinfo.gov/content/pkg/FR-2021-06-04/pdf/2021-11753.pdf</a>
Department of Health and Human Services	<a href="https://www.govinfo.gov/content/pkg/FR-2020-12-07/pdf/2020-26832.pdf">https://www.govinfo.gov/content/pkg/FR-2020-12-07/pdf/2020-26832.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2022-07-25/pdf/2022-15567.pdf">https://www.govinfo.gov/content/pkg/FR-2022-07-25/pdf/2022-15567.pdf</a>
Department of Housing and Urban Development	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-10/pdf/2020-23982.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-10/pdf/2020-23982.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-07-06/pdf/2021-14019.pdf">https://www.govinfo.gov/content/pkg/FR-2021-07-06/pdf/2021-14019.pdf</a>
Department of the Interior	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-26/pdf/2020-22238.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-26/pdf/2020-22238.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-15/pdf/2021-07685.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-15/pdf/2021-07685.pdf</a>
Department of Justice	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-07/pdf/2020-19030.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-07/pdf/2020-19030.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-07-16/pdf/2021-14480.pdf">https://www.govinfo.gov/content/pkg/FR-2021-07-16/pdf/2021-14480.pdf</a>
Department of Labor	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18500.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18500.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01746.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01746.pdf</a>
Department of Transportation	<a href="https://www.govinfo.gov/content/pkg/FR-2019-12-27/pdf/2019-26672.pdf">https://www.govinfo.gov/content/pkg/FR-2019-12-27/pdf/2019-26672.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-02/pdf/2021-06416.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-02/pdf/2021-06416.pdf</a>
Department of Veterans Affairs	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-25121.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-25121.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-06-07/pdf/2021-11835.pdf">https://www.govinfo.gov/content/pkg/FR-2021-06-07/pdf/2021-11835.pdf</a>
Environmental Protection Agency	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-20519.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-20519.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-05-18/pdf/2021-10269.pdf">https://www.govinfo.gov/content/pkg/FR-2021-05-18/pdf/2021-10269.pdf</a>

	<b>32 Final Rules on Guidance (FROGs)</b>	<b>Biden FROG stompings (22 to date)</b>
Agency for International Development	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-05/pdf/2020-26352.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-05/pdf/2020-26352.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2021-07314.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2021-07314.pdf</a>
Compliance Board (Access Board)	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-21/pdf/2020-18411.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-21/pdf/2020-18411.pdf</a>	
Corporation for National and Community Service	<a href="https://www.govinfo.gov/content/pkg/FR-2020-07-23/pdf/2020-13940.pdf">https://www.govinfo.gov/content/pkg/FR-2020-07-23/pdf/2020-13940.pdf</a>	
Council on Environmental Quality	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-08/pdf/2020-28881.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-08/pdf/2020-28881.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-13/pdf/2021-07398.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-13/pdf/2021-07398.pdf</a>
Court Sevices/Offender Supervision, DC	<a href="https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-09152.pdf">https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-09152.pdf</a>	
Equal Employment Opportunity Commission	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-02/pdf/2020-22542.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-02/pdf/2020-22542.pdf</a>	
Federal Deposit Insurance Corporation	<a href="https://www.govinfo.gov/content/pkg/FR-2021-03-02/pdf/2021-01537.pdf">https://www.govinfo.gov/content/pkg/FR-2021-03-02/pdf/2021-01537.pdf</a>	
Federal Mediation and Conciliation Service	<a href="https://www.govinfo.gov/content/pkg/FR-2020-04-20/pdf/2020-07523.pdf">https://www.govinfo.gov/content/pkg/FR-2020-04-20/pdf/2020-07523.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-06-01/pdf/2021-11204.pdf">https://www.govinfo.gov/content/pkg/FR-2021-06-01/pdf/2021-11204.pdf</a>
National Aeronautics and Space Administration	<a href="https://www.govinfo.gov/content/pkg/FR-2020-03-24/pdf/2020-05675.pdf">https://www.govinfo.gov/content/pkg/FR-2020-03-24/pdf/2020-05675.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-08-09/pdf/2021-16772.pdf">https://www.govinfo.gov/content/pkg/FR-2021-08-09/pdf/2021-16772.pdf</a>
National Archives and Records Administration	<a href="https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-09353.pdf">https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-09353.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-07580.pdf">https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-07580.pdf</a>
National Endowment for the Arts	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18459.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18459.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-10-25/pdf/2021-23135.pdf">https://www.govinfo.gov/content/pkg/FR-2021-10-25/pdf/2021-23135.pdf</a>
National Endowment for the Humanities	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-18481.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-18481.pdf</a>	
Office of Government Ethics	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-16474.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-16474.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-05-11/pdf/2021-09954.pdf">https://www.govinfo.gov/content/pkg/FR-2021-05-11/pdf/2021-09954.pdf</a>
Office of Personnel Management	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-21393.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-21393.pdf</a>	
Peace Corps	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-18/pdf/2020-24915.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-18/pdf/2020-24915.pdf</a>	
Pension Benefit Guaranty Corporation	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-26/pdf/2020-17952.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-26/pdf/2020-17952.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-01/pdf/2021-06734.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-01/pdf/2021-06734.pdf</a>
Railroad Retirement Board	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18861.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18861.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-09036.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-09036.pdf</a>
Social Security Administration	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-17878.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-17878.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-21/pdf/2021-08113.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-21/pdf/2021-08113.pdf</a>
Tennessee Valley Authority	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-19546.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-19546.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-05-27/pdf/2021-10059.pdf">https://www.govinfo.gov/content/pkg/FR-2021-05-27/pdf/2021-10059.pdf</a>

Source: Compiled by the author from agency websites and *Federal Register*.