

Frequently Asked Questions on Public Access to Materials Underlying Impact Analyses

Q: What does this new policy do?

A: This policy requires that all assumptions, working papers, models, and other information used as part of any impact analysis (e.g., economic, actuarial) associated with a rule (including the setting of payment rates) or demonstration project (hereinafter, “analyses”) are posted on the Department’s website at the time the results of the analysis are publicly disclosed, subject to certain limitations.

Q: Why is HHS issuing this policy?

A: The Department recognizes that its policy decisions have a significant impact on Americans. HHS relies on sophisticated analyses performed by technical experts across the department to inform its decisions. Because of the magnitude of these decisions, we believe it is important to share the methodologies and assumptions that underlie these proposals and decisions with the public. It is important that this information be made public *at the same time as* proposals are made so they can be evaluated by the public and potentially improved upon at the same time through comments and other feedback on policy decisions.

Q: What documents does this policy apply to?

A: It applies to all assumptions, working papers, models, and other information used as part of any impact analysis (e.g., economic, actuarial) associated with a rule (including the setting of payment rates) or demonstration project.

Q: Why is HHS publishing this policy now?

A: Transparency has been a core priority of HHS under the Trump Administration. As part of efforts to ensure that our policymaking is accountable to the American people, the Department is always looking for methods to make our actions more transparent.

Q: Will this action detract from the Department’s work to combat COVID-19?

A: No. Combating COVID-19 remains the Department’s top priority and many HHS employees are focusing on the COVID-19 response full- or part-time. At the same time, the Department has also been able to move forward on a range of issues, including good-government efforts to reduce duplicative regulations and [institutionalize statutorily required retrospective analyses of regulations](#). The Department’s experience with COVID-19 has further highlighted the need for fully transparent processes.



Q: Will taking this action affect the independence of HHS technical experts as they perform their work?

A: No. Technical experts will not be influenced by public comment prior to the completion of analyses that inform a given policy proposal. These analyses will be released at the same time a proposal is released to the public. We do not believe the independence of our experts' work will be compromised. The Department believes that transparency will increase the quality of Departmental policies by providing opportunities for outside experts to provide more informed comments on department analyses.

Q: When does this policy take effect?

A: This policy only applies to rulemakings and demonstration projects that are proposed after November 30, 2020.

Q: Will requiring this disclosure create burdens on HHS agencies?

A: No. The policy does not require any additional work—it simply requires that analyses and underlying assumptions be made public after they are completed. This does not require that additional work be performed and will not increase divisions' workloads.

Q: Does this policy require rulemaking?

A: No. Directives concerning “agency management” are authorized by 5 U.S.C. 301 and expressly exempt by the APA from the normal rulemaking requirements. *See* 5 U.S.C. 553(a)(2).

Q: Will this policy be applied retroactively to previous analyses?

A: No.

Q: Which HHS divisions will the policy apply to?

A: This policy applies equally to all divisions at HHS and will be applied uniformly across. HHS believes in transparent government, consistent with recent Department announcements.

Q: Where will the analyses be posted?

A: The exact online location will be determined by each HHS division.

Q: What is the Department's legal authority for this policy?

A: 5 U.S.C. 301 gives the Secretary the authority to “prescribe regulations for the governance of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.”

Q: Will this policy affect the current administration?

A: Yes. This will affect any rulemaking starting November 30, 2020.

Q: Will the Department release information on rulemakings prior to November 30th?

A: The Department will consider any requests for prior analyses on a case-by-case basis.

