
WilmerHale Lawyers Spotlight Federal Record-Keeping Problems in Law360 Article

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The US Supreme Court's decision that stopped, for the time being, the Trump Administration from adding a citizenship question to the 2020 census spotlighted the importance of the administrative record. But it also highlighted a major problem—the lack of uniform, government-wide standards for such records.

As WilmerHale lawyers [Kelly Dunbar](#), [James Barton](#) and Megan Yan write in an article published by *Law360*, that lack of uniformity creates problems for government agencies defending their decisions against challenges.

The difficulties go beyond the federal agency that was challenged on the basis of its administrative record being deficient, as happened to the Commerce Department in the census case. Those who stand to be affected by the agency's challenged action can face great uncertainty.

“Disputes over the administrative record, then, can turn a presumptively run-of-the-mill challenge to an agency action into a sprawling discovery battle between an agency and a challenging party,” the authors explain. “And, with this fight, comes regulatory uncertainty as beneficiaries of a proposed action or industries in line to be regulated wait to see what may become of an agency action, particularly when accompanied with a preliminary injunction or in a pre-enforcement challenge.”

The authors detail the “disarray” when it comes to the inconsistent guidance across the government when it comes to how agencies should manage their administrative record. They also offer potential solutions, such as a centralized body, the Office of Management and Budget perhaps, issuing centralized, government-wide guidance.

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