

SubPro ODP: Policy Question Set #6 - Implementation Guidance

Policy Question | On “Implementation Guidance”

Page 3 in the [Final Report](#) describes the types of New gTLD Subsequent Procedures Working Group outputs contained in the report, including a description of how outputs labeled as Implementation Guidance are to be treated. This description notes, for instance, that “Implementation guidance commonly refers to how a recommendation should be implemented” and “typically uses the term ‘should.’” In [Question Set 1](#), the ODP team asked a question about Implementation Guidance 3.4, which response included the following:

One of the reasons these were classified as “Implementation Guidance” as opposed to a “Recommendation” by the Working Group was to give flexibility to ICANN Org in the implementation of this concept in order to best achieve the purpose behind the recommended action.

Additionally, in [Question Set 4](#), the ODP asked a question about Implementation Guidance 27.20, which response included the following:

...Thus, it understood that like all “implementation guidance” the precise wording of the financial requirements could change from that presented in the Implementation Guidance described in this 27.20....

The ODP team has been working with the general principle that implementation guidance is a strongly recommended action and that if in some circumstances there may be valid reasons not to take such guidance exactly as described, this would remain consistent with the Final Report. However, we wanted to confirm that this assumption remains accurate where the wording of a policy recommendation suggests that implementation must be carried out in a certain way, in order to properly fulfill the recommendation.

Some examples (emphases added) include:

- [Recommendation 17.12](#): ICANN org **must develop a plan for funding the Applicant Support Program, as detailed in the Implementation Guidelines** below.
- [Recommendation 27.9](#): The technical and operational evaluation **must be done in an efficient manner as described in the implementation guidance** below.

- Recommendation 32.2: In support of transparency, clear procedures and rules **must be established for challenge/appeal processes as described in the implementation guidance** below.
- Recommendation 32.10: The limited challenge/appeal process **must be designed in a manner that does not cause excessive, unnecessary costs or delays in the application process, as described in the implementation guidance below.**

Question:

- A. Is our understanding correct that the description of Implementation Guidance in the Final Report and in response to Question Sets 1 and 4 applies in such cases as mentioned above, meaning that implementation guidance remains a strong recommendation, rather than a requirement, in *all* cases?

For context, we recognize that the Final Report anticipates making all efforts to achieve the recommended action, and that if something cannot be implemented exactly as specified in Implementation Guidance, the org would be expected to describe its efforts and rationale for such cases, and to work with the IRT to implement an alternative in line with the purpose behind the recommended action.