



Request for Proposals—August 4, 2023

Choice of Forum for Judicial Review of Agency Rules

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals interested in serving as a consultant(s) to produce a report on the issue of choice of forum for judicial review of agency rules.

Project Description and Consultant Responsibilities

ACUS adopted several recommendations in the 1970s through 1990s that identified principles to guide Congress in choosing the appropriate forum and venue for judicial review of agency rules.¹ ACUS is undertaking a new project on the subject given continuing questions and subsequent developments, including the increasing prevalence of and debate over nationwide injunctions.

This project would study and, as appropriate, make recommendations to guide Congress in determining the appropriate forum and venue for judicial review of agency rules—with respect to both existing programs and programs established in the future. The project will address, among other possible topics:

- Contexts in which agency rules should be subject to direct review by the courts of appeals rather than the district courts;
- Contexts in which Congress should consider limiting the venue for judicial review of rules beyond what the ordinary rules of venue would permit;
- Contexts in which the courts should consolidate multiple challenges to a single rule in a single case in a single court, and the processes for doing so; and
- Common ambiguities and other drafting problems in the statutes governing the choice of forum for judicial review of agency rules.

The draft report will be completed by February 2024, and the consultant(s) will thereafter be expected to work with Conference staff and committees as the Conference develops

¹ Admin. Conf. of the U.S., Recommendation 75-3, *The Choice of Forum for Judicial Review of Administrative Action*, 40 Fed. Reg. 27,926 (July 2, 1975); see also Admin. Conf. of the U.S., 91-9, *Specialized Review of Administrative Action*, 56 Fed. Reg. 67,143 (Dec. 30, 1991); Admin. Conf. of the U.S., Recommendation 91-5, *Facilitating the Use of Rulemaking by the National Labor Relations Board*, 56 Fed. Reg. 33,851 (July 24, 1991); Admin. Conf. of the U.S., Recommendation 82-3, *Federal Venue Provisions Applicable to Suits Against the Government*, 47 Fed. Reg. 30,706 (July 15, 1982); Admin. Conf. of the U.S., Recommendation 80-5, *Eliminating or Simplifying the “Race to the Courthouse” in Appeals from Agency Action*, 45 Fed. Reg. 84,954 (Dec. 24, 1980); Admin. Conf. of the U.S., Recommendation 76-4, *Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act*, 41 Fed. Reg. 56,767 (Dec. 30, 1976).

recommendations from the report in time for the Conference’s June 2024 plenary session.² The Conference may select a single consultant or assemble a team of consultants depending on the proposals it receives. Consultants will receive between \$8,000 and \$25,000, plus a budget for related expenses, depending on the number of consultants and allocation of responsibilities. The total value of consulting fees for this project will not exceed \$25,000, to be apportioned in accordance with the number of consultants and division of responsibilities.

Submitting a Proposal and Evaluation Criteria

If you are interested in serving as a consultant for the report, send an email to Kazia Nowacki (knowacki@acus.gov) with the phrase “ACUS Project Proposal” in the subject line. Attach your curriculum vitae to the email, along with a short (ideally no more than one page) statement identifying what you see as the primary issues that the report should address. **All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on September 4, 2023, in order to be guaranteed consideration by the agency.**

Proposals will be evaluated based on quality, clarity, and the proposer’s qualifications. The Conference has a strong preference for consultants who have previously authored scholarly work on administrative law and federal courts.

² Both the report due date and the date of the plenary session are subject to change.