

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

FY 2011 Congressional Budget Justification

April 2010

I. Overview

For FY 2011 the Administrative Conference of the United States (ACUS) is requesting a total budget authority of \$3,200,000. After a hiatus of almost 15 years during which funding was unavailable, the Chairman of ACUS was confirmed by the Senate in March 2010. ACUS anticipates completing the appointment process for its governing Council, the selection of the government agency and private sector members of the Conference, the acquisition and outfitting of office space, and the hiring of its initial staff within FY 2010. The requested funding for FY 2011 of the full authorized level will enable ACUS to begin pursuing a full program of research projects aimed at developing recommendations in line with the agency's statutory responsibilities, which are:

- “(1) to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;
- “(2) to promote more effective public participation and efficiency in the rulemaking process;
- “(3) to reduce unnecessary litigation in the regulatory process;
- “(4) to improve the use of science in the regulatory process; and
- “(5) to improve the effectiveness of laws applicable to the regulatory process.”
(5 USC sec. 591)

The Conference develops recommendations for improving the fairness and effectiveness of the rulemaking, adjudication, licensing, and investigative functions by which Federal agencies administer Government programs. Conference members include Federal officials from Executive Branch departments and agencies, as well as independent regulatory boards and commissions, private lawyers, university professors, and other experts in administrative law and government. The membership, which reflects a wide diversity of points of view, meets to consider studies of and recommended solutions to selected problems involving administrative law and the regulatory process. As an advisory committee subject to the Federal Advisory Committee Act, ACUS is required to provide public access to Conference meetings and some of its records, including minutes of the matters discussed and conclusions reached at such meetings.

History of the Administrative Conference

Two temporary Administrative Conferences during the Eisenhower and Kennedy Administrations recommended the establishment of a permanent agency to study Federal administrative procedures and develop recommendations for improvement.¹

¹ See *Memorandum Convening the President's Commission on Administrative Procedure*, Pub. Papers 219-22 (Apr. 29, 1953); Exec. Order No. 10934, 26 Fed. Reg. 3233 (Apr. 13, 1961).

These recommendations were consistent with those set forth in a report to President-elect Kennedy by James M. Landis, former Dean of the Harvard Law School and former Chairman of both the Securities and Exchange Commission and the Civil Aeronautics Board.² The Administrative Conference of the United States (ACUS) was established in 1964 for such purposes.³

ACUS began operations with the appointment and confirmation of its first Chairman in 1968. Over the course of the next 27 years, through October 1995, the Conference brought together experts from both public and private sectors to commission and review basic research leading to specific and practical ways to improve regulatory and administrative processes. ACUS adopted approximately 200 such recommendations, based on careful study and the informed deliberations of ACUS members in an open process that encouraged public input. A complete list of these recommendations was published at 60 Fed. Reg. 56312 (1995).

Funding for the Conference was terminated in 1995, but the statutory provisions establishing ACUS were not repealed. The agency was reauthorized twice since then, in 2004 and 2008.⁴ The 2008 legislation expanded the responsibilities of ACUS to include specific attention to achieving more effective public participation and efficiency, reducing unnecessary litigation, and improving the use of science in the rulemaking process.

Prior Accomplishments of the Administrative Conference

As noted above, between 1968 and 1995 the Conference adopted a wide range of recommendations for improving procedures by which Federal agencies administer regulatory, benefit, and other Government programs. In addition, the Conference facilitated the interchange of information among Federal administrative agencies potentially useful in improving their procedures. These activities included a variety of publications, colloquia, training programs, and the establishment of interagency working groups to help achieve the implementation of Conference recommendations. The Conference also collected information and statistics from administrative agencies and published reports evaluating various administrative procedures.

The work of ACUS has received consistent support from a wide range of outside sources. At a hearing in 2007 to reauthorize ACUS, the Congressional Research Service concluded:

“ACUS’ past accomplishments in providing nonpartisan, nonbiased, comprehensive, and practical assessments and guidance with respect to a wide

² James M. Landis, Report on Regulatory Agencies to the President-elect, Dec. 21, 1960.

³ Administrative Conference Act of 1964, Pub. L. No. 88-499, 5 U.S.C.A. sec. 591-96 (2006).

⁴ Pub. L. 108-401, sec. 2(a), Oct. 30, 2004, 118 Stat. 2255; and Pub. L. 110-290, sec. 2, July 30, 2008, 122 Stat. 2914.

range of agency processes, procedures, and practices are well documented. . . . ACUS evolved a structure to develop objective, nonpartisan analyses and advice, and a meticulous vetting process, which gave its recommendations credence.”⁵

At similar hearings in 2004, both Justice Breyer and Justice Scalia (a former Chairman of ACUS) provided strong support for restoring ACUS. Justice Scalia viewed the agency as “a unique combination of talents from the academic world, from within the executive branch . . . and . . . from the private bar, especially lawyers particularly familiar with administrative law.”⁶ He further observed: “I did not know another organization that so effectively combined the best talent from each of those areas.”⁷

Justice Breyer described ACUS as “a unique organization, carrying out work that is important and beneficial to the average American, at low cost.” He noted that: “in practice [ACUS recommendations] can make it easier for citizens to understand what government agencies are doing to prevent arbitrary government actions that could cause harm.”⁸

Among its “most influential government-wide recommendations” were the Conference's proposals facilitating judicial review of agency decisions and eliminating various technical impediments to such review.⁹ ACUS recommended a model administrative civil penalty statute that has served as the basis for “dozens of pieces of legislation.”¹⁰

The Conference also adopted a series of recommendations that set forth procedures and criteria for utilizing a variety of “alternative dispute resolution” (ADR) techniques and approaches for eliminating excessive litigation costs and long delays in Federal agency programs. These activities led to enactment of the Administrative Dispute Resolution Act in 1990, which established a framework for agencies to resolve administrative litigation through alternative dispute resolution.¹¹ ACUS applied a similar approach for

⁵ *Regulatory Improvement Act: Hearing on H.R. 3564 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 110th Cong. (2007) (prepared statement of Mort Rosenberg, Specialist in American Public Law, Congressional Research Service).

⁶ *Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 108th Cong. 10 (2004).

⁷ *Id.* at 21.

⁸ *Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 108th Cong. ___ (2004).

⁹ Gary J. Edles, *Lessons from the Administrative Conference of the United States*, 2 EUR. PUB. L. 571, 584 (1996).

¹⁰ *Id.* at 588.

¹¹ Pub. L. 101-552, 104 Stat. 2736 (1990).

consensual resolution of disputes in rulemaking, and its recommendation on negotiating regulations in appropriate situations led to enactment of the Negotiated Rulemaking Act.¹² As required by these statutes, the Conference provided extensive assistance to agencies throughout the Federal Government in implementing both of these approaches. These activities included training programs, interagency working groups to enable agencies to address specific implementation issues through study and sharing of information about best practices, and the publication of two voluminous Sourcebooks for agency reference.

Organization

By statute, the Conference has no fewer than 75 and no more than 101 members, a majority of whom are Government officials. The Chairman is appointed by the President with the advice and consent of the Senate for a 5-year term. The other ten members of the Council, which acts as an executive board, are appointed by the President for 3-year terms. Federal officials named to the Council may constitute no more than one-half of the total Council membership. Members of the Conference representing the private sector are appointed by the Chairman, with the approval of the Council, for 2-year terms. The Chairman is the only full-time compensated member.

The entire membership is divided into committees, each assigned a broad area of interest. When ACUS was defunded in 1995, these included the following standing committees:

- Adjudication (agency adjudicatory processes)
- Administration (alternative dispute resolution and other procedures utilized by Federal agencies to implement assistance, procurement, and other administrative programs)
- Government Process (techniques used by Federal agencies to implement Federal programs)
- Regulation (administrative procedures applicable to oversight of private economic activities)
- Rulemaking (processes used by Federal agencies to issue rules and regulations)
- Judicial Review (aspects of administrative law or practice relating to the availability and effectiveness of judicial review of agency decisions)

The entire ACUS membership (the “Assembly”) meets in plenary session at least once each year to consider adoption of recommendations that have been approved through the committee process and to take such other actions as may further the mission of the Conference. The deliberations of the committees and the plenary sessions are all public.

Subjects for inquiry are developed by the Chairman and approved by the Council. The committees, with the aid of expert consultants who prepare supporting reports, conduct thorough studies of these subjects and propose recommendations. Recommendations

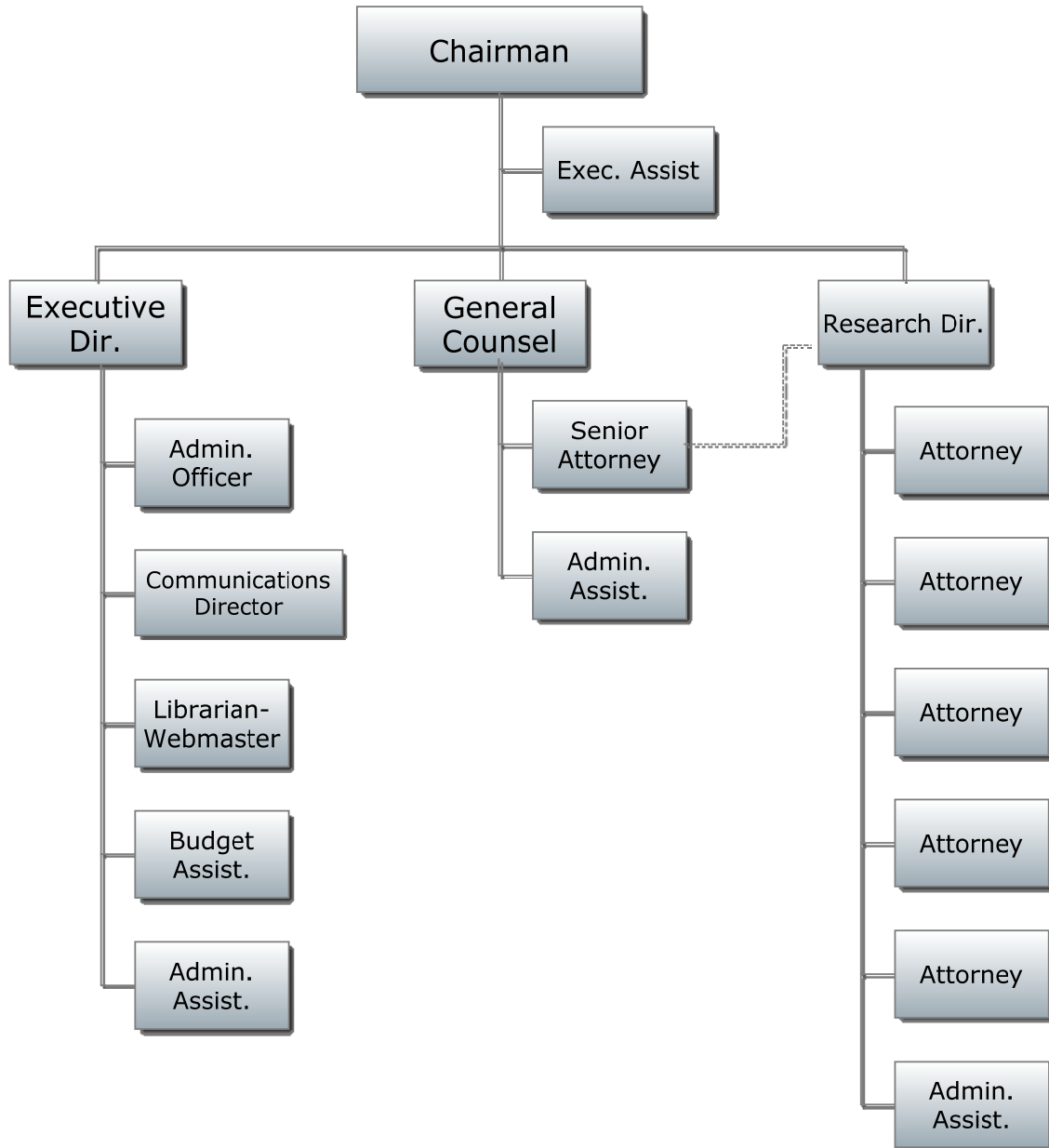
¹² Pub. L. 101-648, 104 Stat. 4970 (1990).

are evaluated by the Council and, if ready for Assembly consideration following committee review, are distributed to the membership with the supporting reports and placed on the agenda of the next plenary session.

The Chairman is authorized to encourage the departments and agencies to adopt the recommendations of the Conference and is required to transmit to the President and to Congress an annual report and such interim reports as he considers desirable concerning the activities of the Conference, including reports on the implementation of its recommendations.

Upon the request of the head of a department or agency, the Chairman is authorized to furnish advice and assistance on matters of administrative procedure. The Conference may collect information and statistics from departments and agencies and publish such reports as it considers useful for evaluating and improving administrative processes. As noted above, the Conference also serves as a forum for the interchange among departments and agencies of information that may be useful in improving administrative practices and procedures.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



II. Appropriations Language and Analysis of Appropriations Language

Administrative Conference of the United States

Salaries and Expenses

For necessary expenses of the Administrative Conference of the United States, authorized by 5 U.S.C. 591 et seq., \$3,200,000, of which, not to exceed \$1,000 is for official reception and representation expenses. **(Financial Services and General Government Appropriations Act, 2010.)**

Analysis of Appropriations Language

The language has been changed from specifying two-year funding to specifying one-year funding

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

Salaries and Expenses

	FY 2010 Enacted	FY 2011 Requested
Budget Authority	\$1,500,000	\$3,200,000
FTE	18	18
Positions FTP	18	18

Available for Obligation

	FY 2010 Enacted	FY 2011 President's Budget	Net Change
Budget Authority	\$1,500,000	\$3,200,000	\$1,700,000
Carry Forward	\$750,000		
Outlays	\$2,210,060	\$3,200,000	\$1,700,000

Note: ACUS was not actually able to start its operations until March 2010, when the Senate confirmed the Chairman of ACUS. Thus funding of ACUS for FY 2010 included start-up costs for less than a full year, which were substantially below the authorized sum of \$3,200,000. (5 USC sec. 596) Full funding of amounts authorized to be appropriated for FY 2011 will enable the agency to undertake a full research program directed toward carrying out the Conference's statutory mission as described above.

**ACUS FY 2009 THRU FY 2011
FINANCIAL SUMMARY**

	FY 2009 ACTUAL	FY 2010 BUDGET	FY 2010 OBLIGATIONS YTD	FY 2011 PROPOSED BUDGET
Appropriation	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 3,200,000
FY 2009 Carry Forward	\$ -	\$ 750,000	\$ 750,000	\$ -
Net Appropriation	\$ 1,500,000	\$ 2,250,000	\$ 2,250,000	\$ 3,200,000
Obligations/Expenses				
Salaries, Full Time	\$ -	\$ 549,748	\$ -	\$ 1,539,969
Incentive Awards	\$ -	\$ 54,975	\$ -	\$ 153,997
Benefits	\$ -	\$ 164,924	\$ -	\$ 461,991
Subtotal, Salaries and Benefits	\$ -	\$ 769,647	\$ -	\$ 2,155,957
Travel	\$ -	\$ 25,000	\$ -	\$ 25,500
Rent	\$ -	\$ 78,066	\$ 2,333	\$ 294,248
Communications	\$ -	\$ 32,750	\$ -	\$ 33,405
Printing/Reproduction	\$ -	\$ 26,000	\$ -	\$ 26,520
Contracts	\$ -			\$ -
Program Contracts	\$ -	\$ 100,000	\$ -	\$ 286,170
Administrative Contracts	\$ -	\$ 656,866	\$ 331,040	\$ 357,800
Supplies	\$ -	\$ 20,000	\$ -	\$ 20,400
Equipment	\$ -	\$ 501,731	\$ -	\$ -
Total Obligation/Expenses	\$ -	\$ 2,210,060	\$ 333,373	\$ 3,200,000
Unobligated Balances	\$ 1,500,000	\$ 39,940	\$ 1,916,627	\$ 0

NARRATIVE JUSTIFICATION

The Administrative Conference of the United States (ACUS) Appropriation Request for FY 2011 is \$3,200,000. A detailed breakdown and justification for this request follows:

OBJECT CLASS 11: PERSONNEL

A. FTE's

For FY 2011, ACUS requests 18.0 FTEs (see Organizational Chart). This request includes 17 full-time employees (permanent) and the Chairman.

The Executive Director provides executive leadership, planning, direction, and coordination for all ACUS operations and administrative activities, including recruiting and managing the ACUS staff and administering the daily operations of ACUS. The Executive Director provides managerial expertise and staff support to the ACUS Chairman and Council in developing the agency's strategic direction and implementing activities essential to ensuring that ACUS continues to meet its statutory mission. The Executive Director develops performance, financial and organizational staffing plans, in accordance with applicable legislation and regulations. The Executive Director provides managerial oversight for ACUS publications and products, including the ACUS website, and administers Congressional, public and media communications and strategies for ACUS. The Executive Director assesses the overall effectiveness, efficiency and productivity of ACUS operations and provides general supervision to a staff of 15 - 20 permanent employees.

The General Counsel serves as the chief legal officer for ACUS and provides legal advice and counsel to the agency and its staff on a wide variety of legal matters. The General Counsel is responsible for ensuring that ACUS meets all Federal legal and regulatory requirements. This includes providing guidance to staff and reviewing contracts and cooperative agreements to ensure compliance and to protect the interests of the agency. The General Counsel reviews and comments on proposed legislation and responds to Congressional inquiries and requests to ACUS. The General Counsel is a member of ACUS's management team and assists with strategic planning.

The Research Director is responsible for running ACUS's research program. This includes keeping abreast of issues and developments in administrative law and practice, identifying and prioritizing issues to be studied, obtaining consultants to carry out the research, and reviewing research reports to ensure that the work is accurate, thorough, and meets the highest quality standards. The Research Director manages the work of ACUS staff attorneys and has general oversight of the work carried out by ACUS committees to develop recommendations based on consultants' reports. The Research Director presents recommendations and plans for research topics and reports to the ACUS Chairman and Council, and works with them to identify areas for potential study. In coordination with the Executive Director and the Communications Director, the Research Director develops background and briefing materials that serve as

resources for ACUS communications with all three branches of the Federal Government, the media, and other ACUS stakeholders.

The Senior Attorney is the Conference's principal legal expert on significant areas of Federal administrative procedure related to one or more ACUS committees or areas of research. In addition to the committee management responsibilities of other staff attorneys, the Senior Attorney may provide advice and assistance on matters of administrative law and process to general counsels or other senior officials of Federal agencies, to senior Government members of ACUS, and to Congressional staff. The Senior Attorney writes or reviews ACUS reports, opinions, or other publications and assists the Research Director in developing research projects. The Senior Attorney may participate actively, representing the interests of ACUS, in meetings of bar associations and other organizations engaged in activities that will enhance ACUS research and implementation programs.

Five Attorney positions comprise the majority of ACUS's professional staff. Staff attorneys are responsible for managing the work of committees composed of ACUS members, in the process of developing recommendations for consideration by the full membership of ACUS. This includes reviewing research studies for projects assigned to the committees, assisting the committee chairmen and the ACUS Research Director in drafting proposed recommendations, responding to requests for information about committee activities, reviewing and summarizing public comments and, in general, providing procedural and legal oversight for the work of the committees. Staff attorneys may also participate substantially in helping to achieve implementation of ACUS recommendations.

The Operational Support staff members include an Executive Assistant supporting the Chairman, three Administrative Assistants supporting the Executive Director, Research Director and General Counsel. The responsibilities of ACUS support staff include processing member and staff travel expense claims, travel and hotel reservations, typing, filing, editing reports, mail services, answering telephones and directing callers to the appropriate staff, as well as record-keeping and administrative support across all areas of ACUS.

B. FULL-TIME POSITIONS

For FY 2011, ACUS requests a budget of **\$1,540,000** for salary expenses associated with full-time employees. This amount represents the projected cost for a total of 15 full-time positions including annual civil service cost-of-living salary increases and step increases.

C. SALARY OVERTIME/AWARDS

A total of **\$154,000** is budgeted for overtime and awards for staff.

D. OTHER PERSONNEL COMPENSATION AND BENEFITS

A total of **\$462,000** is budgeted for personnel benefits during FY 2011. Personnel benefits are a direct function of the amount of budgeted salary/wages and inclusive of transit subsidy.

OBJECT CLASS 21: TRAVEL

Staff travel is budgeted at **\$25,500** for FY 2011. Some staff members will travel to meetings and/or to conduct research. Additionally, staff members will need to participate in various professional meetings and conferences.

OBJECT CLASS 23: RENTAL PAYMENTS TO GSA

ACUS is negotiating a lease to occupy office space at 1120 20th Street, NW, room 725 in Washington, D.C. Leasing arrangements are coordinated for ACUS through the Building Services division of the General Services Administration. During FY 2011 ACUS will be responsible for **\$294,000** in rental payments through its lease, inclusive of any unexpected increases due to tax adjustments.

OBJECT CLASS 23: COMMUNICATIONS, UTILITIES, AND MISCELLANEOUS CHARGES

A. TELEPHONES

ACUS's budget includes an estimated **\$33,000** for electronic communications expenses, including telephone service, postage and delivery service during FY 2011. This estimate is based on historical data from similar size micro agencies as well as costs associated with ACUS's need to maintain responsibility for its total telephone expenditures. This amount also includes the cost of conference calls for Council and committee meetings, which is a much more cost-effective method for conducting interim business than bringing various committee members together for face-to-face meetings.

OBJECT CLASS 24: PRINTING AND REPRODUCTION

ACUS has budgeted **\$26,000** in FY 2011 for printing costs. These costs include preparing and printing annual and interim reports to Congress and the President, reports, newsletters and other necessary publications.

OBJECT CLASS 25: OTHER SERVICES

A. ADMINISTRATIVE SUPPORT SERVICE CONTRACTS

As a small agency, ACUS must contract with multiple agencies or private vendors for many of the services typically performed in-house by staff at larger agencies. These contracts cover items such personnel, payroll, finance, accounting, printing, information technology, web hosting, mailing services and auditing. A total of **\$358,000** is budgeted for administrative support contracts.

PROGRAM CONTRACTS:

The **\$286,000** FY 2011 funding for Research Contracts will allow ACUS to undertake a full research program directed toward carrying out the Conference's statutory mission to study and cooperatively seek solutions to issues and problems arising in the administration of Federal programs. ACUS's research activities are at the core of the agency's ability to analyze issues and develop proposed recommendations through the ACUS committee consensus process, with the ultimate aim of improving the fairness and effectiveness of the rulemaking, adjudication, licensing, and investigative functions by which Federal agencies carry out their programs.

OBJECT CLASS 26: SUPPLIES, MATERIALS AND PUBLICATIONS

ACUS's budget includes **\$20,000** for the purchase of supplies, materials and publications for FY 2011. The amount includes supplies for mailing, copying, and ordinary office supplies such as paper, pens, and pencils. Also budgeted are funds for the purchase of computer software, library materials, and for subscriptions to relevant technical, and policy-oriented publications.

III. Program Description and Justification

The principal program activity for the first full year of operations (FY 2011) will be carrying out research projects and formulating recommendations based on these studies, to improve the fairness and effectiveness of procedures by which Federal agencies administer regulatory, benefit, and other Federal Government programs.

The particular areas of study for FY 2011 will be established in consultation with and in light of the diverse views of the members of the Council and the agency and non-Government members of the Conference, none of whom have yet been appointed. However, ACUS has received a large number of suggestions for projects from a variety of sources, including the American Bar Association's Section of Administrative Law and Regulatory Practice and others with relevant expertise.

In addition, the House Judiciary Committee, in an effort to identify issues that a reauthorized and appropriated ACUS could examine, established the Administrative Law, Process and Procedure Project for the 21st Century. The Project was initially approved by the Committee on January 26, 2005 as part of its Oversight Plan for the 109th Congress.¹³ A detailed report with recommendations for legislative proposals and suggested areas for further research and analysis to be considered by ACUS was issued in December 2006.¹⁴

All ACUS recommendations are formulated through a consensus process that utilizes a combination of solid research, informed by the experience and direct participation of the membership of ACUS, and taking into account public participation through a public comment process. The members of ACUS consider proposals for reforms through a committee process. We anticipate that the committee structure in FY 2011 will be similar to the organization used in the past (see Overview section), including the establishment of temporary special committees as needed.

ACUS also anticipates that a number of related advisory and consultative functions that Congress previously assigned to it prior to 1995 may also be resumed. These include specific responsibilities under the Administrative Dispute Resolution Act, the Negotiated Rulemaking Act, the Equal Access to Justice Act, the Sunshine Act, and the Congressional Accountability Act.

¹³ Committee on the Judiciary, Oversight Plan for the 109th Congress, at 5 (Jan. 26, 2005) at <http://judiciary.house.gov/media/pdfs/printers/109th/109th%20Oversight%20Plan.pdf>.

¹⁴ Interim Report on the Administrative Law Process and Procedure Project for the 21st Century, Subcomm. on Commercial and Administrative Law, House Comm. on the Judiciary, 109th Cong. (Committee Print No. 10, December 2006).

IV. Conclusion

For FY 2011 the Administrative Conference of the United States (ACUS) is requesting a total budget authority of \$ 3,200,000. This level of funding will allow ACUS, after a hiatus of almost 13 years during which funding was unavailable, to complete the process of re-establishing its membership, a high-level functioning staff, and a full program of research projects aimed at developing recommendations in line with the agency's statutory responsibility to study administrative processes in order to develop recommendations for improvements, directed to Congress, the agencies, the President and the courts, as appropriate.