



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

FY 2024 CONGRESSIONAL BUDGET JUSTIFICATION

March 9, 2023

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I. EXECUTIVE SUMMARY

The President's budget for FY 2024 requests \$3.523 million for the Administrative Conference of the United States (ACUS). ACUS submits this justification in support of the administration's request. \$3.523 million will enable ACUS to undertake a full slate of projects aimed at improving, in the words of the agency's enabling statute, "the efficiency, adequacy, and fairness of administrative procedure" (5 U.S.C. § 594) and will enable ACUS to continue working with the Congress, President, agencies, and the judiciary to implement its recommendations.

ACUS is a unique executive-branch agency whose principal mission is to recommend improvements in agency rulemaking, adjudication, and other administrative processes to the president, federal agencies, Congress, and the Judicial Conference of the United States. Congress has enacted a number of ACUS recommendations into law, and agencies and courts have adopted or relied upon many others.

ACUS also provides for the exchange of information among agencies, publishes sourcebooks of enormous value to both the government and the public, produces reports designed to improve agency regulatory programs, and provides nonpartisan advice to agencies and Congress. As the former Chair and Ranking Member of the House Judiciary Committee emphasized, "there is no other independent, non-partisan agency" on which "Congress can call . . . to evaluate ways to improve the regulatory process."

ACUS has a demonstrated record, as no other agencies do, of improving the efficiency, adequacy, and fairness of federal administrative programs for the benefit of the American public. As the former Ranking Member of the House Judiciary Committee noted, the agency's "excellent work" has ensured that "our Nation's federal administrative procedures are not only looked to as a standard around the world, but constantly in the course of additional improvement."

ACUS has a demonstrated record, as no other agency does, of improving the fairness and efficiency of administrative programs for the benefit of the American public. The agency took substantial steps in FY 2022 and the first quarter of FY 2023 to study and improve the fairness, accuracy, and efficiency of the procedures that agencies use to carry out federal programs. ACUS adopted eleven recommendations to improve federal administrative processes:

- Recommendation 2021-6, *Public Access to Agency Adjudicative Proceedings*
- Recommendation 2021-7, *Public Availability of Inoperative Agency Guidance Documents*
- Recommendation 2021-8, *Technical Reform of the Congressional Review Act*
- Recommendation 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*
- Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*
- Recommendation 2022-1, *Contractors in Rulemaking*
- Recommendation 2022-2, *Improving Notice of Regulatory Changes*
- Recommendation 2022-3, *Automated Legal Guidance at Federal Agencies*

- Recommendation 2022-4, *Precedential Decision Making in Agency Adjudication*
- Recommendation 2022-5, *Regulatory Enforcement Manuals*
- Recommendation 2022-6, *Public Availability of Settlement Agreements in Agency Enforcement Proceedings*

More broadly, ACUS helped:

- Explore fair and effective uses of technology in administrative processes;
- Support agency adjudication during the COVID-19 pandemic;
- Provide vital information to Congress about agency programs;
- Encourage the public availability of significant agency materials;
- Promote public participation in the rulemaking process;
- Improve the fairness and accuracy of agency adjudication; and
- Ensure the integrity and effectiveness of federal programs.

The requested budget of \$3.523 million will enable ACUS to undertake an active research and outreach program aimed at further improving federal administrative procedures and encouraging participation, collaboration, and innovation in the operation of federal programs.

II. ABOUT THE ADMINISTRATIVE CONFERENCE

A. HISTORY AND PURPOSE

Following bipartisan endorsement of the work of two temporary administrative conferences during the Eisenhower and Kennedy administrations, Congress enacted the Administrative Conference Act in 1964. The Act codified the structure of these conferences, which emphasized collaboration among a wide array of federal agencies, reliance on administrative law and regulatory experts from the private sector (including prominent academics), and the participation of public members representing diverse views. This collaborative effort is designed to produce consensus-based, nonpartisan recommendations for improving federal administrative processes, which affect every sector of our national economy and the lives of American citizens.

Since its establishment in 1968, ACUS has adopted hundreds of recommendations, each of them based on careful study and the informed deliberations of its members in an open process that encourages public input. Congress has enacted a number of ACUS recommendations into law, and agencies and courts have adopted or relied upon many others.

Recommendations are designed, in the words of the Administrative Conference Act, to help federal agencies “protect private rights,” carry out regulatory activities “expeditiously in the public interest,” “promote more effective participation and efficiency in the rulemaking process,” “reduce unnecessary litigation in the regulatory process,” “improve the use of science” in the regulatory process, and “improve the effectiveness of laws applicable” to that process (5 U.S.C. § 591). All recommendations are published in the *Federal Register* and online at www.acus.gov.

ACUS also provides for the exchange of information among agencies, publishes sourcebooks of enormous value to both the government and public, provides nonpartisan advice to agencies and Congress, and issues reports designed to improve agency regulatory programs. Agencies frequently consult and rely on these materials to improve their administrative processes.

ACUS's oversight committees in Congress have expressed strong bipartisan support for its work. Members of Congress have characterized ACUS as "a highly respected nonpartisan agency" and noted the key role it "has historically played in helping Congress identify inefficiencies among the Federal agencies."

Congress calls upon ACUS to conduct research on issues of great importance. The John D. Dingell, Jr. Conservation, Management, and Recreation Act, for example, requires ACUS to maintain an online database of attorney's fees awarded in litigation against the federal government and submit an annual report to Congress on the amount of fees awarded during the preceding fiscal year. ACUS released its first report and data for FY 2019 in March 2020 and has continued to release new data and reports annually.

The Strengthening Protections for Social Security Beneficiaries Act of 2018 required ACUS to prepare a report for the Social Security Administration with recommendations to improve the program under which SSA appoints legal representatives for beneficiaries who cannot manage their own finances. ACUS submitted its report to SSA in June 2020.

Recognizing the value of ACUS's work, a bipartisan group of six senators on the Senate Judiciary Committee recently requested that the U.S. Patent and Trademark Office engage and fund ACUS to study whether and how to establish a small claims tribunal for patent cases. Working with USPTO, ACUS will complete and deliver its report in FY 2023.

Members of the federal judiciary from diverse perspectives, too, have expressed strong support for ACUS. Both Justice Breyer and the late Justice Scalia testified before a congressional committee in 2010 in support of ACUS's authorization. During his testimony, Justice Scalia called ACUS one of the federal government's "best bargains for the buck."

B. STRATEGIC PRIORITIES AND GOALS

Mission

ACUS brings together experts from the public and private sectors to advise the President, Congress, federal agencies, and the federal judiciary. These experts collaborate to design recommendations seeking to maximize fairness and efficiency in the administration of government programs.

Strategic Goals

Participation	ACUS will expand citizen participation in the regulatory process through increased use of interactive communications technologies and creative means of outreach, to provide essential information to government officials and to inform the public.
Collaboration	ACUS will study and promote the most responsive and efficient means of sharing authority and responsibility among the federal government, state and local governments, contractors, grantees, and citizens. This will include exploration of new models of collaborative governance as well as a more effective division of responsibility between government and the private sector.
Innovation	ACUS will seek new ideas that advance the core values of fairness and efficiency and will study existing government programs to identify what works, what doesn't, and what's promising. Research will address the use of science, ensuring data quality, and performance evaluation.
Education	ACUS will bring together senior federal officials and outside experts to identify best practices and will advise agencies on revising their rulemaking and hearing processes, technology, and management systems to deliver better results. The Conference will be a central resource for agencies by compiling and publishing data and guidance on solving mutual problems.

Vision and Values

Under its statutory authorization, ACUS is responsible for studying “the efficiency, adequacy, and fairness of administrative procedure” (5 U.S.C. § 594). These three procedural values, which reflect legal and social science performance measures, guide ACUS’s work.

Efficiency	This value derives from economics and looks at how procedures employed by agencies achieve the public purposes the regulations are intended to serve. The question is whether the agency procedures and management techniques reflect optimum resource allocations, not whether the benefits of the underlying substantive regulations exceed their costs.
Adequacy	This value borrows from the disciplines of psychology and political science and looks at the effectiveness of regulatory techniques from the public’s perspective, including such factors as trust, transparency, and participation.
Fairness	This value derives from law and employs principles embedded in the Administrative Procedure Act and the Due Process Clause of the Constitution’s Fifth Amendment.

C. ORGANIZATION

ACUS carries out its mission through two components: (1) the *Assembly*, and (2) the *Office of the Chair*.

The Assembly

As defined in the Administrative Conference Act, the membership of ACUS meeting in plenary session make up the Assembly (5 U.S.C. § 595). Its membership includes the Chair, appointed for a five-year term by the President, by and with the advice and consent of the Senate; 10 Council Members appointed for three-year terms by the President; 50 Government Members; and no more than 40 Public Members. Government Members are agency heads or their designees drawn from a wide array of federal agencies. Public Members are academics, practicing lawyers, and other experts in administrative procedure drawn from the private sector (5 U.S.C. § 593).

The Assembly meets semi-annually in plenary session to debate, amend, and formally adopt recommendations appropriate for improving administrative procedure. Sitting with the “Voting Members” of the Assembly in plenary session are three classes of “Non-Voting Members”: (1) *Senior Fellows*, who are mostly former Voting Members; (2) *Special Counsels*, who are lawyers who advise the membership in their areas of expertise; and (3) *Liaison Representatives*, who represent entities with which ACUS has entered into a liaison arrangement to enhance its deliberations, such as federal courts, agencies unrepresented in the Assembly, and professional associations. Non-Voting Members have the privilege of debate but may not vote at plenary sessions.

In addition, all of the Voting Members and most of the Non-Voting Members of the Conference serve on one of five committees that develop the recommendations. Committees hold two to three meetings in both the spring and the fall to debate and approve recommendations. Once approved by a committee, the Council then decides whether to place a recommendation on the agenda for a plenary session. At the plenary session, the full Assembly debates the recommendation and votes on whether to adopt it.

A full list of all Voting and Non-Voting Members is available at www.acus.gov/members.

Office of the Chair

The Office of the Chair consists of the ACUS Chair and a small professional staff. A roster of the current ACUS staff is available at <https://www.acus.gov/directory/staff>.

In addition to supporting all activities of the Assembly and its committees, the Office of the Chair collects information and statistics from agencies for analysis and dissemination; publishes reports, sourcebooks, and other materials useful for evaluating and improving administrative processes; prepares reports for Congress; provides technical advice to members

of Congress, their staffs, and federal agencies, whether informally or through formal reports; facilitates interchange of information among departments and agencies on matters of administrative procedure, through roundtables and publications; conducts training sessions for federal agencies; and holds public forums, sometimes with other entities, to address matters of public interest. These resources are of enormous value to both government officials and the public and often lead to the implementation of best practices at federal agencies.

III. RECENT ACCOMPLISHMENTS

A. HIGHLIGHTS

Exploring Fair and Effective Uses of Technology in Administrative Processes

ACUS remains dedicated to studying how federal agencies are using and might use machine learning to make rules, adjudicate cases, and perform other regulatory activities. As the ACUS Assembly observed in Statement #20, *Agency Use of Artificial Intelligence*, “artificial intelligence (AI) techniques are changing how government agencies do their work. Advances in AI hold out the promise of lowering the cost of completing government tasks and improving the quality, consistency, and predictability of agencies’ decisions. But agencies’ uses of AI also raise concerns about the full or partial displacement of human decision making and discretion.”

In recent years, ACUS has issued reports by leading scholars analyzing how agencies are using AI to enforce federal law, adjudicate cases, make rules, and perform regulatory tasks. To help navigate the legal, practical, and ethical issues associated with AI use, the ACUS Assembly adopted a statement, *Agency Use of Artificial Intelligence*, that identifies issues agencies should consider when adopting, revamping, establishing policies and practices governing, and regularly monitoring AI systems. Among the topics it addresses are transparency, harmful biases, technical capacity, procurement, privacy, security, decisional authority, and oversight.

In FY 2022, the ACUS Assembly adopted Recommendation 2022-3, *Automated Legal Guidance at Federal Agencies*, to address agencies’ increasing use of chatbots and virtual assistance to provide legal guidance to members of the public. The Recommendation offered agencies that choose to deploy such tools best practices for developing, using, and managing them. Another project, *Artificial Intelligence in Retrospective Review of Agency Rules*, is expected to result in recommendations to agencies in FY 2023. It considers how agencies can use AI tools to identify rules that are outdated or redundant, contain typographical errors or inaccurate cross-references, or that might benefit from elaboration or clarification.

Recognizing the continuing need for guidance and coordination, ACUS launched the Roundtable on Artificial Intelligence in Federal Agencies. The Roundtable provides a forum for officials representing agencies from across the government to exchange information and best practices related to the use of AI in rulemaking, adjudication, enforcement, and other administrative processes. Its members are supported by a consultative group of leading scholars and other AI experts.

In addition to its work on AI, ACUS has undertaken several projects that help agencies leverage new technologies to promote accuracy, efficiency, transparency, and public participation in agency decision-making processes. One ongoing project, *Virtual Public Engagement in Agency Rulemaking*, which is expected to result in recommendations to agencies in FY 2023, will study agencies' efforts to promote enhanced transparency, accessibility, and accountability by using virtual tools to engage the public in connection with agency rulemaking activities. Another ongoing project, *Online Processes in Agency Adjudication*, is expected to identify best practices for developing online processes by which private parties, their representatives, and other interested persons can file forms, evidence, and briefs; view case materials and status information; receive notices and orders; and perform other tasks necessary for full and effective participation in agency adjudications.

Supporting Agency Adjudication During the COVID-19 Pandemic and Beyond

Agency adjudication offices have faced new operational challenges throughout the COVID-19 pandemic, including a switch to primarily remote operations and the need for secure, electronic tools to communicate with parties, process cases, and conduct hearings. As adjudicators and staff return to their offices and resume in-person proceedings, ACUS continues to monitor developments in how agencies use technology in adjudication, share information with agencies, and identify new operational best practices based on lessons learned during the pandemic.

To help agencies continue serving the American public throughout the pandemic, ACUS maintained an online clearinghouse of agency policies and other statements that described relevant developments in agency adjudicative processes. ACUS also convened an Interagency Roundtable that month—at which more than 100 officials from across the federal government exchanged best practices on operating remotely, developing electronic processes, and conducting video and telephone hearings—and released a report to help agencies understand legal issues surrounding the use of remote hearings in agency adjudications. ACUS also organized a panel at the American Bar Association's Administrative Law Conference in November 2020 on responding to challenges in adjudication during the pandemic.

Those conversations led ACUS to launch a new roundtable, the Council on Federal Agency Adjudication. The Council continues to provide a forum for the heads of more than 40 adjudication programs across the federal government to exchange information about procedural innovations, best management practices, and other subjects of mutual interest. The Council has provided an effective space for agency leaders to discuss operational challenges during the pandemic, virtual hearings, electronic case management, and other topics such as access to justice, customer experience, and judicial ethics.

Building on agencies' experiences during the pandemic, ACUS launched a project to study how agencies are using virtual hearings in agency adjudicative proceedings. That project resulted in Recommendation 2021-4, *Virtual Hearings in Agency Adjudication*, which identifies best practices for improving existing virtual-hearing programs and establishing new ones in accord

with principles of fairness and efficiency and with due regard for participant satisfaction. The recommendation was highlighted in the White House Legal Aid Interagency Roundtable’s October 2021 report to the President. In conjunction with the project, ACUS released reports on agencies’ use of virtual hearings and legal considerations for remote hearings in agency adjudications. A follow-up project, Recommendation 2021-6, *Public Access to Agency Adjudicative Proceedings*, addressed, among other things, how agencies can use virtual technologies in appropriate circumstances to promote transparency in agency adjudication.

An ongoing project, *Online Processes in Agency Adjudication*, will assess the improvements to digital service delivery that many adjudicative agencies have made in response to pandemic-related operational challenges. Another recently launched project, *Improving Timeliness in Agency Adjudication*, will survey strategies—including procedural, technological, personnel, and other reforms—that agencies can use to address backlogs and delays in administrative adjudication. Both projects are expected to result in recommendations to agencies in FY 2023.

Providing Vital Information to Congress About Agency Programs

Congress often calls upon ACUS to conduct research on issues of enormous importance, to ensure that federal programs continue to work effectively for those they are meant to help. In response to congressional mandates, ACUS submitted the third annual report of awards of attorney’s fees to individuals and small businesses who prevail against the federal government under the Equal Access to Justice Act (EAJA) and updated the accompanying searchable database to include FY 2021 awards. The fourth report and data for FY 2022 will be released in March 2023.

Recognizing the value of ACUS’s work, a bipartisan group of six senators on the Senate Judiciary Committee, Subcommittee on Intellectual Property requested that the U.S. Patent and Trademark Office (USPTO) engage ACUS to study whether and how a small claims patent court could be established. ACUS is currently engaging with a wide range of stakeholders to study the feasibility and potential structure of such a court and the relevant, legal, policy, and practical considerations in establishing one. ACUS will submit its report to USPTO in FY 2023, and USPTO will submit the report to the senators who requested it.

In recent years, Congress has also relied on ACUS to study how SSA can better prevent the fraudulent or inappropriate use of the approximately \$70 billion annually in benefit payments made to the more than 7.7 million beneficiaries who are assigned a representative payee. ACUS staff also continue to provide technical advice in response to requests from House and Senate staff.

Additionally, ACUS has carried out projects to help Congress establish and oversee federal programs. ACUS published the *Sourcebook of Federal Judicial Review Statutes* in FY 2022, which provides a comprehensive analysis of the more than 650 statutory provisions that

govern how federal courts review agency rules and orders. It also includes a checklist to help Congress draft new or amend existing judicial review statutes.

Based on research for the *Sourcebook*, ACUS adopted Recommendation 2021-5, *Clarifying Statutory Access to Judicial Review of Agency Action*, which identifies procedures that present barriers or unnecessarily complicate judicial review of agency action. A working group of ACUS members developed a proposed statute to implement the recommendation and, in so doing, promote efficiency and fairness and reduce unnecessary litigation.

ACUS also recently launched a project, *Congressional Constituent Service Inquiries*, to examine how agencies receive, process, and respond to congressional inquiries made on behalf of constituents who need assistance accessing federal programs or navigating administrative processes. The project is expected to result in recommendations to agencies in FY 2023.

B. PROGRAMMATIC IMPACT

ACUS's work has consistently informed the actions of federal agencies, the President, Congress, and federal courts.

Encouraged the Public Availability of Significant Agency Materials

ACUS has encouraged agencies to make guidance documents, adjudication materials, and important descriptions of agency policies accessible to members of the public. In FY 2022 and the first quarter of FY 2023 alone, ACUS adopted recommendations to improve public access to, among other materials, settlement agreements, regulatory enforcement manuals, and precedential adjudicative decisions. Congress and agencies have consulted or relied on ACUS's recommendations to improve public access to significant agency materials. For example:

- The PLUM Act, which became law as part of the James M. Inhofe National Defense Authorization Act for FY 2023, requires the Office of Personnel Management to establish and regularly update a public website containing data on government policy and supporting positions. As Chairwoman Carolyn Maloney noted in her opening remarks introducing the legislation, the PLUM Act implements Recommendation 2019-8, *Public Identification of Agency Officials*.
- Consistent with Recommendation 2019-3, *Public Availability of Agency Guidance Documents*, agencies across the federal government have made many important guidance documents available on their websites.
- Relying on Recommendation 2011-5, *Incorporation by Reference*, the Office of the Federal Register and the U.S. Government Accountability Office (GAO) have taken steps to ensure that regulated parties and the public can access copyrighted private standards incorporated into federal regulations.

- The Unified Agenda of Regulatory and Deregulatory Actions now includes regulations that have been dormant for long periods, consistent with Recommendation 2015-1, *Promoting Accuracy and Transparency in the Unified Agenda*.
- SSA pledged to consult Recommendation 2017-1, *Adjudication Materials on Agency Websites*, when it determines how it will make precedential decisions regarding the conduct of representatives available to the public.

Promoted Public Participation in the Rulemaking Process

An integral part of ACUS's statutory mission is to promote more effective public participation in the rulemaking process. ACUS has issued several recommendations urging agencies to adopt best practices that encourage the public's involvement in agency rulemaking. ACUS is currently undertaking a study examining how agencies can promote enhanced transparency, accessibility, and accountability by using virtual tools to engage the public in connection with agency rulemaking activities. ACUS also hosted two public forums in FY 2022 exploring the important role of public input in federal agency regulatory policymaking.

Many agencies have consulted or relied on those recommendations to promote public participation in the rulemaking process. For example:

- GAO relied on Recommendation 2013-4, *Administrative Record in Informal Rulemaking*, to urge agencies to publicly disclose their policies regarding the treatment of materials submitted for consideration in the rulemaking process.
- The Commodity Futures Trading Commission implemented Recommendation 2014-6, *Petitions for Rulemaking*, by permitting members of the public to file petitions for rulemakings on the agency's websites.

Improved the Fairness and Accuracy of Agency Adjudication

ACUS has consistently encouraged agencies to adopt procedures that promote fair, accurate, and efficient adjudication by federal agencies. Many agencies have consulted or relied on ACUS resources to make their adjudicative procedures fairer, more accurate, and more efficient. For example:

- The U.S. Supreme Court adopted amendments to the Federal Rules of Civil Procedure establishing Supplemental Rules for Social Security Review Actions. In developing the supplemental rules, the Judicial Conference of the United States relied on Recommendation 2016-3, *Special Procedural Rules for Social Security Litigation in District Court*. The new rules will improve federal-court review of the nearly 18,000 decisions appealed from SSA each year. The Supplemental Rules, which were submitted to Congress, went into effect in December 2022.

- Several agencies, including the Occupational Safety and Health Review Commission and the Office of the Comptroller of the Currency, have relied on ACUS’s *Model Adjudication Rules*, updated in 2018, and ACUS’s *Model Rules for Implementation of the Equal Access to Justice Act*, updated in 2019, to comprehensively revise their procedural rules.
- The Federal Aviation Administration (FAA) relied on Recommendation 2018-4, *Recusal Rules for Administrative Adjudicators*, in amending its procedural rules governing FAA investigations and enforcement actions to address motions for disqualification of an administrative law judge or hearing officer.
- SSA implemented Recommendation 2013-1, *Improving Consistency in Social Security Disability Adjudication*, to improve the accuracy of decisions that evaluate medical evidence in SSA’s multi-billion dollar per year disability benefits program. SSA also used an Office of the Chair report, *SSA Disability Benefits Program: The Duty of Candor and Submission of All Evidence*, as a blueprint for a 2015 regulation requiring claimants to disclose all relevant evidence—not just, as under the previous rule, favorable evidence.

Ensured the Integrity and Effectiveness of Federal Programs

Consistent with its statutory mission to help ensure that private rights are fully protected and federal regulatory activities are carried out expeditiously in the public interest, ACUS has repeatedly recommended improvements to ensure that agency processes promote the effective administration of federal programs. In response, Congress and agencies have done the following:

- The Bipartisan Budget Act of 2015 implemented Recommendation 2012-8, *Inflation Adjustment Act*, by adjusting civil penalties for regulatory violations. Revenues to the federal government will increase tens of millions of dollars annually as a result. The Government Accountability Office recently found that nearly all agencies have now complied with the Act’s requirements.
- The Social Security Advisory Board relied on an Office of the Chair report, *The SSA Representative Payee Program*, in its January 2018 recommendations to eliminate abuse and fraud by representatives of elderly and disabled recipients of federal benefits. In April 2018, Congress passed the Strengthening Protections for Social Security Beneficiaries Act into law, which required ACUS to study the issue further. ACUS submitted its recommendations to the Social Security Administration in March 2020.
- The U.S. Senate Homeland Security and Governmental Affairs Committee relied on Recommendation 2014-5, *Retrospective Review of Agency Rules*, when it favorably reported legislation (S. 1420, 116th Cong.) that would require agencies to retrospectively review major regulations.

C. RECENT ACUS RECOMMENDATIONS

ACUS's principal mission is to recommend improvements in agency rulemaking, adjudication, and other regulatory processes to the President, federal agencies, Congress, and the federal judiciary. The Assembly adopted eight recommendations during FY 2022 to improve the fairness and efficiency of agency rulemaking, adjudication, and other regulatory processes:

- **Recommendation 2022-1: *Contractors in Rulemaking*.** This recommendation identifies best practices for managing contractors that assist agencies in the rulemaking process. It recommends that agencies clearly delineate responsibility between contractors and agency staff, provide proper oversight of contractors, and ensure transparency in connection with the agency's contractual activities.
- **Recommendation 2022-2: *Improving Notice of Regulatory Changes*.** This recommendation offers best practices for agencies to ensure that members of the public receive effective notice of regulatory changes, focusing especially on the needs of parties with limited resources to monitor agency actions. It recommends that agencies consider a variety of possible strategies for improving notice of regulatory changes, including designing agency websites to provide clear notice of regulatory changes, publicizing regulatory changes through social media and email lists, and providing direct notice of regulatory changes to those affected by them.
- **Recommendation 2022-3: *Automated Legal Guidance at Federal Agencies*.** This recommendation identifies best practices for agencies to use when designing and updating automated tools, such as interactive chatbots and virtual assistants, to provide legal guidance to the public. It addresses factors agencies should consider in deciding whether to utilize automated legal guidance tools, how agencies that utilize those tools can ensure that the information they provide is accurate and current, and how agencies can ensure that recipients of such guidance understand its limitations and do not rely on it to their detriment.
- **Recommendation 2021-6: *Public Access to Agency Adjudicative Proceedings*.** This recommendation identifies best practices regarding when and how federal agencies provide public access to adjudicative proceedings. Within the legal framework established by federal law, it identifies factors agencies should consider when determining whether to open or close particular proceedings. It also offers best practices to promote public access to proceedings that agencies open to the public and recommends that agencies make the policies governing public access readily available.
- **Recommendation 2021-7: *Public Availability of Inoperative Agency Guidance Documents*.** This recommendation identifies for agencies best practices for maintaining public access to agency guidance documents that are no longer in effect—that is, inoperative guidance documents. It addresses factors agencies should consider in deciding whether to include certain types of inoperative guidance documents on their

websites; steps agencies can take to make it easier for members of the public to find the inoperative guidance documents in which they are interested; and what labels and explanations agencies should use to ensure that the public can readily understand the context and significance of particular inoperative guidance documents.

- **Recommendation 2021-8: Technical Reform of the Congressional Review Act.** This recommendation offers technical reforms of the Congressional Review Act (CRA) that clarify certain procedural aspects of the CRA while reducing administrative burdens on executive-branch agencies and congressional offices. Specifically, the recommendation suggests phasing out the requirement that agencies submit paper copies of certain rulemaking materials to Congress in favor of an electronic process; making it easier to ascertain key dates and time periods relevant to review of agency rules under the CRA; and formalizing a procedure by which members of Congress can initiate congressional review of rules that agencies conclude are not covered by the CRA.
- **Recommendation 2021-9: Regulation of Representatives in Agency Adjudicative Proceedings.** This recommendation encourages agencies to consider adopting rules governing attorney and non-attorney representatives in adjudicative proceedings in order to promote the accessibility, fairness, integrity, and efficiency of those proceedings. It provides guidance on the topics that rules might cover and recommends that agencies consider whether greater harmonization of different bodies of rules is desirable and ensure that their rules are readily accessible to representatives and the public.
- **Recommendation 2021-10: Quality Assurance Systems in Agency Adjudication.** This recommendation identifies best practices for agencies when devising and implementing systems to assess and improve the quality of decisions in adjudicative programs. It emphasizes cutting-edge techniques (including AI) to structure the capture and analysis of data; the selection, role, and institutional placement of personnel; the use of performance metrics; efforts to ensure fairness, impartiality, efficiency, and other important institutional objectives; and the relationship between quality-assurance review and conventional appellate review.

ACUS has already adopted a further 3 recommendations in the first quarter of FY 2023, with additional recommendations anticipated this fiscal year. The following 3 recommendations were adopted by the ACUS Assembly at its December 2022 plenary session:

- **Recommendation 2022-4: Precedential Decision Making in Agency Adjudication.** This recommendation identifies best practices on the use of precedential decisions in agency adjudication. It addresses whether agencies should issue precedential decisions and, if so, according to what criteria; what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions; and how agencies should communicate precedential decisions internally and publicly. It also recommends that

agencies codify their procedures for precedential decision making in their rules of practice.

- **Recommendation 2022-5: Regulatory Enforcement Manuals.** This recommendation identifies best practices for agencies regarding the use and availability of enforcement manuals—that is, documents that provide agency personnel with a single, authoritative resource for enforcement-related statutes, rules, and policies. It recommends that agencies present enforcement manuals in a clear, logical, and comprehensive fashion; periodically review and update them as needed; ensure enforcement personnel can easily access them; and consider making manuals, or portions of manuals, publicly available.
- **Recommendation 2022-6: Public Availability of Settlement Agreements in Agency Enforcement Proceedings.** This recommendation identifies best practices for providing public access to settlement agreements reached during administrative enforcement proceedings. It recommends that agencies develop policies addressing when to post such agreements on their websites; provides factors for agencies to consider in determining which agreements to post on their websites; and identifies best practices for presenting settlement agreements in a clear, logical, and accessible manner without disclosing sensitive or otherwise protected information.

A full listing of adopted ACUS recommendations and statements is included as Appendix E. All ACUS recommendations and statements, along with reports and other supporting materials, are available at www.acus.gov/recommendations.

D. ASSISTANCE TO CONGRESS

Congress calls on ACUS to conduct research, collect information, and publish reports of its findings or recommendations. ACUS has published two such reports in recent years:

- **Open Book on Equal Access to Justice.** Pursuant to Section 4201 of the bipartisan John D. Dingell, Jr. Conservation, Management, and Recreation Act, in March 2020, ACUS submitted to Congress its first annual report on attorneys' fees awards under the Equal Access to Justice Act (EAJA). ACUS has released its report annually and will release its fourth annual report in March 2023. Under EAJA, federal agencies must reimburse private litigants for their attorneys' fees when they prevail against the federal government in judicial proceedings and certain adversarial adjudications when the government's position is not substantially justified. ACUS will continue to work with agencies to collect EAJA award information for subsequent years, submit annual reports to Congress, and update its online database of awards as additional information comes available. The report and database are available at www.acus.gov/eaja.
- **Social Security Administration's Representative Payee Program: Information Sharing with States.** Pursuant to the unanimously passed Strengthening Protections for Social Security Beneficiaries Act of 2018, ACUS submitted a report in June 2020 on information

sharing between SSA and state courts regarding individuals who receive and manage benefits on behalf of beneficiaries. The representative payee program protects some of the most vulnerable members of society by having SSA appoint representative payees to help manage their benefits. State courts often appoint guardians or conservators to help manage assets for the same group of people. Information sharing between SSA and the state courts about the individuals involved in both programs could improve outcomes for beneficiaries, but there are certain legal and practical barriers to doing so. This project examined the potential opportunities, barriers, and risks of sharing representative payees' information.

- **U.S. Patent Small Claims Court.** A bipartisan group of six senators on the Senate Judiciary Committee, Subcommittee on Intellectual Property requested that the USPTO engage ACUS to study whether and how a small claims patent court could be established. ACUS is currently engaging with a wide range of stakeholders to study whether there is a need for a small claims patent court, the feasibility and potential structure of such a court, and the relevant, legal, policy, and practical considerations in establishing one. ACUS will submit its report to USPTO in 2023, and USPTO will submit the report to the senators who requested it.

ACUS also provides assistance to members of Congress and their staffs in other ways, including:

- **Congressional Trainings.** ACUS has offered trainings to congressional staff on topics ranging from best practices recommended by the ACUS Assembly to legislative drafting involving delegation of power to administrative agencies.
- **Individualized Advice.** Congressional staff of both chambers of Congress and of both political parties often request technical assistance from ACUS. The Office of the Chair frequently provides background information, technical legislative drafting assistance, and other non-partisan, technical advice to Hill staff.

More information about ACUS resources for Congress is available online at www.acus.gov/resources-congress.

E. MODEL RULES

ACUS periodically convenes committees or working groups to develop model rules that agencies can use to design new procedures or update their existing procedures. Recent model rule initiatives include:

- **Revised Model Rules for Implementation of the Equal Access to Justice Act.** ACUS published the *Revised Model Rules for Implementation of the Equal Access to Justice Act* on its website and provided notice of their availability in the *Federal Register* (84 Fed. Reg. 38,934 (Aug. 8, 2019)). The updated *Rules* implement ACUS's statutory charge to advise

agencies in establishing “uniform procedures for the submission and consideration of applications for an award of fees and other expenses” under the Equal Access to Justice Act (EAJA) in light of amendments to EAJA made since 1986 and evolving adjudicative practices since that time. Acting on research by Office of the Chair staff, an Ad Hoc Committee of agency and administrative law experts developed the revised *Rules*, which were formally recommended for agencies’ consideration as Recommendation 2019-4, *Revised Model Rules for Implementation of the Equal Access to Justice Act*.

- **Model Adjudication Rules.** In 2018, ACUS published the revised *Model Adjudication Rules* on its website and noticed them in the *Federal Register* (83 Fed. Reg. 49,530 (Oct. 2, 2018)). The *Rules* are intended for use by all federal agencies when designing new, and revising existing, procedural rules governing agency adjudications that involve a trial-type hearing that offers an opportunity for fact-finding before an adjudicator. A working group of esteemed experts from inside and outside the government revised an earlier version of the *Model Adjudication Rules*, which were first published in 1993, to reflect significant changes in adjudicative practices and procedures. The working group relied on ACUS’s extensive empirical research of adjudicative practices reflected in the *Federal Administrative Adjudication Database* and input from agency officials, academics, practitioners, and other stakeholders.

Many agencies have consulted or relied on these resources to improve their procedural rules, including, in recent years, the Consumer Financial Protection Bureau, Occupational Safety and Health Review Commission, and the Office of the Comptroller of the Currency.

F. SOURCEBOOKS

ACUS publishes sourcebooks of enormous value to executive-branch officials, members of Congress and their staffs, the federal courts, and the public. Recent sourcebooks include:

- **Sourcebook of Federal Judicial Review Statutes.** Based on a survey of the entire U.S. Code, this *Sourcebook*, published in June 2022, comprehensively analyzes more than 650 statutory provisions that govern how federal courts review agency rules and orders. It addresses topics including who can seek judicial review of agency actions, when and in which courts individuals can seek judicial review, what standards and evidence courts use to evaluate agency actions, and what remedies courts can provide when they find agency actions to be unlawful. The *Sourcebook* also includes a checklist to help Congress draft new or amend existing judicial review statutes.
- **Federal Administrative Adjudication Outside the Administrative Procedure Act.** This *Sourcebook* examines federal administrative adjudication that is not subject to the adjudicatory provisions of the APA. It provides a comprehensive overview and cross-cutting analysis of non-APA adjudication, and examines, among other things, the structure of the initial adjudication and any appeals; pre-hearing, hearing, and post-

hearing procedures; the types of adjudicators used; and the caseloads at individual agencies. It relies in part on case studies to flesh out the overarching findings.

- ***Federal Administrative Procedure Sourcebook.*** Since February 2019, ACUS has maintained a regularly updated, electronic edition of the *Federal Administrative Procedure Sourcebook*. A joint initiative with the Section of Administrative Law and Regulatory Practice of the American Bar Association, the Sourcebook provides an annotated compilation of the key legal sources—including the APA, the Freedom of Information Act (FOIA), the Congressional Review Act (CRA), and executive orders—governing nearly every aspect of administrative procedure. The electronic edition provides ready access to many of the valuable sources highlighted in the *Sourcebook* and is updated with significant developments, including statutory amendments and executive orders, and additional government documents, articles, and other sources as they become available.
- ***Sourcebook of United States Executive Agencies.*** This *Sourcebook* examines the diverse characteristics of the departments, agencies, and other organizational entities that comprise the federal executive establishment and catalogs a comprehensive set of characteristics for each entity, including structure (e.g., commission or single-head agency, internal organization), personnel (e.g., number and types of appointed positions, limitations on removal), decision-making processes and requirements, political oversight, and sources of funding. Congress, federal agencies, and the federal courts have relied extensively on the *Sourcebook*.

G. REPORTS

Along with its longer sourcebooks, ACUS publishes reports on specific aspects of administrative procedure. Recent reports cover a range of topics, from agencies' use of AI in the administrative process to administrative recusal rules to remote hearings, which agencies have increasingly used during the COVID-19 pandemic. Recent reports include:

- ***Greenlighting Administrative Prosecution: Checks and Balances on Charging Decisions.*** This study examines the legal questions and practical benefits and risks associated with agency heads' involvement in decisions to investigate and charge enforcement targets at five independent regulatory agencies at which agency heads also serve as final adjudicatory decision makers.
- ***Alternative Dispute Resolution in Agency Administrative Programs.*** This report examines the use of alternative dispute resolution (ADR) in public-facing administrative programs such as those involving regulatory enforcement and claims adjudication. It addresses different ADR modalities, the selection and training of ADR personnel, ethics and confidentiality requirements, case management, and interagency cooperation.

- ***Legal Considerations for Remote Hearings in Agency Adjudications.*** Many adjudication offices have relied on remote hearings to continue to serve the public during the COVID-19 pandemic, with federal agencies experimenting with a variety of remote hearing types, including video and virtual hearings, telephone hearings, and written-only hearings. This June 2020 report provides an overview of the legal considerations that federal agencies may encounter as they develop and implement processes for remote hearings. It addresses potential due process and other constitutional questions, the requirements of generally applicable statutes including the APA and Rehabilitation Act, and concerns arising under agency-specific statutes and regulations.
- ***Administrative Recusal Rules: A Taxonomy and Study of Existing Recusal Standards for Agency Adjudicators.*** This May 2020 report follows, and helps agencies implement, Recommendation 2018-4, *Recusal Rules for Administrative Adjudicators*. The report collects and analyzes a wide-ranging set of recusal standards and practices employed by more than 60 agencies across the federal government, highlighting their strengths and weaknesses and identifying features of adjudication programs that may affect agencies' approaches to recusal. Recusal, the voluntary or involuntary withdrawal of an adjudicator from a particular proceeding, is an important tool for maintaining the integrity of adjudication, and the report finds that a large majority of the agencies surveyed do not have rules that instruct adjudicators to explain their recusal decisions on the record even though there may be numerous benefits to be gained from such a requirement.
- ***Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies.*** This first-of-its-kind report, commissioned by ACUS and authored by leading AI researchers and administrative law scholars at Stanford and New York University, examines the growing role that machine learning and other AI technologies are playing in federal agency adjudication, enforcement, and other regulatory activities. Based on a wide-ranging survey of federal agency activities and interviews with federal officials, the report maps current uses of AI technologies in federal agencies, highlights promising uses, and addresses challenges in assuring accountability, transparency, and non-discrimination in agency programs.
- ***A Framework for Governmental Use of Machine Learning.*** This report, authored by a leading administrative law scholar at the University of Pennsylvania, explores the contexts in which agencies might use machine learning and other forms of AI to carry out regulatory functions. It examines the comparative strengths and weakness of human decision making and AI, seeking to identify areas in which agencies should explore using AI, and considers legal and practical hurdles to deploying AI in the regulatory process.

The Office of the Chair also publishes research reports for most recommendation projects that ACUS's committees and Assembly undertake. All reports are available on ACUS's website.

H. OTHER RESOURCES

In addition to research-focused sourcebooks and reports, ACUS has made available a variety of other resources to help agency officials understand applicable legal requirements and implement best practices recommended by the Assembly. Recent materials include:

- ***Information Interchange Bulletins.*** ACUS regularly issues short, one-page Information Interchange Bulletins on discrete topics of administrative procedure. These Bulletins provide useful information for agency officials on legal issues they are likely to encounter as they carry out their work. The topics are often drawn from ACUS reports and recommendations, but they are intended solely to provide valuable information and do not recommend reforms to agency practices. These Bulletins further ACUS’s statutory mission of arranging for the exchange of information among agencies to help improve administrative procedure (5 U.S.C. § 594).
- ***Updates in Federal Agency Adjudication.*** ACUS issues monthly updates to share adjudication-related developments from the executive branch, Congress, and the courts with agencies, Congress, and the public. These updates further ACUS’s statutory mission of arranging for the exchange of information among agencies to help improve administrative procedure (5 U.S.C. § 594).
- ***Statement of Principles for the Disclosure of Federal Administrative Materials.*** ACUS has issued dozens of recommendations pertaining to agencies’ proactive disclosure—or disclosure without having received a request—of administrative materials. Administrative materials are records that agencies generate or receive while engaged in rulemaking, adjudication, licensing, and investigation, or that they generate during judicial review of agency rules and orders. This *Statement* sets forth common principles and best practices derived from these recommendations to help guide agencies’ proactive disclosure of administrative materials in the most equitable, effective, and efficient way possible for both the public and agencies. It will be continuously updated as ACUS adopts new disclosure-focused recommendations.
- ***Handbook on Compiling Administrative Records for Informal Rulemaking.*** ACUS convened a working group of public- and private-sector representatives to prepare a handbook to help agencies develop guidance for rulemaking personnel that would implement best practices on administrative recordkeeping identified in several ACUS recommendations. The Handbook addresses a wide range of legal, policy, technological, organizational, and personnel matters related to preserving, compiling, and certifying rulemaking records.
- ***Guide to Legal Issues Encountered in Public-Private Partnerships.*** ACUS convened senior federal officials from 21 agencies who actively work on public-private partnerships (P3s). The *Guide*, drafted collaboratively by the working group, centers on the major legal issues that agencies encounter as they participate in P3s. It also defines P3s; discusses a previous

interagency effort on P3s; highlights activities that agencies often undertake as part of P3s; discusses issues that arise when agencies vet potential private partners; and provides examples of specific P3s. The State Department circulated the *Guide* to its Interagency Working Group on Public Private Partnerships in 2019.

- ***Handbook on Best Practices for Using Video Teleconferencing in Adjudicatory Hearings.*** Building on ACUS’s recommendations on best practices in video hearings, the *Handbook* provides guidance and advice through concrete and practical recommendations detailing how agencies may implement or improve their use of video teleconferencing in adjudicatory hearings.

I. DATABASES AND INFORMATION COLLECTIONS

ACUS compiles information on a variety of important subjects from agency and congressional source and makes them available on its website. Current databases and information collections include:

- ***Open Book on Equal Access to Justice.*** As noted under “Congressionally Mandated Reports” above, ACUS submitted to Congress its first annual report on attorneys’ fees awards under the EAJA in March 2020 and has continued to submit its annual report each subsequent year. The reports and database are available at www.acus.gov/eaja.
- ***Recent Administrative Law Legislative Developments.*** Members of Congress have introduced a number of bills designed to amend or overhaul certain aspects of the federal administrative process. The Office of the Chair maintains a publicly available resource that catalogs these legislative developments.
- ***Judicial Developments.*** In FY 2023, ACUS will begin compiling a resource that catalogs, on an ongoing basis, opinions issued by federal appeals courts related to administrative law topics. This resource, organized by topic, will serve as a resource for members of Congress, agency officials, and the public.

J. FORUMS AND SYMPOSIUMS

ACUS regularly holds public forums and symposiums, often with other institutions, to address matters of public interest. These events are of enormous value to both government officials and the public and often lead to the implementation of best practices at federal agencies. Recent forums and symposiums include:

- ***Assisting Parties in Federal Administrative Adjudication (December 2022–Present).*** With the Legal Services Corporation, ACUS is co-hosting a forum that will feature multiple panel presentations examining ways to improve support for parties in agency adjudication processes in which they are frequently self-represented. The first presentation, in December 2022, focused on strategies for expanding access to

representation. Future presentations will address ways to promote effective representation of parties by lawyers and nonlawyers and to expand services for self-represented parties.

- ***Advice and Consent: Problems and Reform in the Senate Confirmation of Executive-Branch Appointees (March 2022)***. This joint panel from ACUS and the National Academy of Public Administration examined the causes and effects of delays in the current process for nominating and confirming agency officials and explored potential reforms.
- ***Forum on Enhancing Public Input in Agency Rulemaking (December 2021)***. This forum explored the important role of public input in federal agency rulemaking. Through two panels and remarks, it considered what types of public input are most valuable to agencies and how agencies can structure the rulemaking process to receive that input. Two virtual panels examined best practices under the current notice-and-comment process and possible reforms that would enhance public participation in the rulemaking process.
- ***Forum on Underserved Communities and the Regulatory Process (November 2021)***. This virtual, six-part forum addressed participation by underserved communities and their members in the administrative processes by which agencies make regulatory policies (including rulemaking and adjudication). It addressed EO 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, which requires that federal agencies “pursue a comprehensive approach to advancing equity for all,” including communities “that have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”
- ***Making FOIA Work (November 2021)***. ACUS sponsored this panel at the American Bar Association’s annual Administrative Law Conference. The panel explored different potential solutions for improving dispute resolution under FOIA, including alternative conflict management systems, technological solutions, alternative disclosure systems, and affirmative disclosure requirements.
- ***Nationwide Injunctions and Federal Rulemaking (November 2021)***. ACUS sponsored this panel at the American Bar Association’s annual Administrative Law Conference. The panel examined the effects of nationwide injunctions and similar equitable relief on the regulatory activities of federal agencies.
- ***Artificial Intelligence in Agency Rulemaking (November 2021)***. ACUS sponsored this panel at the American Bar Association’s annual Administrative Law Conference. The panel explored how agencies can best navigate the challenges and exploit the opportunities associated with the use of AI in rulemaking. It drew upon several recent ACUS recommendations and statements, including those relating to AI, mass comments, and retrospective review.

- ***Agency Adjudication During the COVID Pandemic and Beyond (November 2020)***. ACUS sponsored this panel at the American Bar Association’s annual Administrative Law Conference. The panel examined how adjudicative agencies have responded to operational challenges during the COVID-19 pandemic and how measures adopted in response to the pandemic may impact future practice.
- ***Mass, Bot, and Fake Comments (November 2020)***. ACUS sponsored this panel at the American Bar Association’s annual Administrative Law Conference. The panel examined legal and practical issues related to the receipt of mass, bot, and fake comments during agency rulemaking proceedings.
- ***Symposium on Federal Agency Adjudication (August 2020)***. ACUS cosponsored this forum with George Mason University’s C. Boyden Gray Center for the Study of the Administrative State and the Center for Progressive Reform. Through four virtual panels, leading scholars, practitioners, and agency officials examined issues related to the personnel, management, procedures, and design of federal administrative adjudication.
- ***Symposium on Artificial Intelligence in Federal Agencies (July – August 2020)***. Cosponsored with the Institute for Technology Law and Policy at Georgetown University Law Center, this symposium’s four virtual panels explored current and future agency uses of AI and their interplay with administrative and constitutional law doctrines.
- ***Forum on Nationwide Injunctions and Federal Regulatory Programs (February 2020)***. ACUS cosponsored this forum with the George Washington University Law School and American Bar Association’s Section of Administrative Law and Regulatory Practice. Deputy Attorney General Jeffrey Rosen provided the keynote address, and panelists—including a circuit court judge and assistant attorney general—discussed the arguments for and against nationwide injunctions, special issues that arise in challenges to federal regulations, and possible judicial and statutory reforms. ACUS recently launched a new study of *Nationwide Injunctions and Federal Regulatory Programs*.
- ***Artificial Intelligence in Regulatory Enforcement and Artificial Intelligence in Administrative Adjudication (November 2019)***. ACUS sponsored two companion panels at the American Bar Association’s annual Administrative Law Conference that examined a wide array of legal and practical issues associated with agencies’ use of AI in regulatory enforcement and administrative adjudication. The panels largely drew upon an extensive report that a team of researchers at Stanford and New York University Law Schools prepared for ACUS. Panelists included several of the professors who prepared the report as well as agency officials whom they interviewed.
- ***Forum on Mass and Fake Comments in Agency Rulemaking (October 2018)***. ACUS cosponsored this forum with the *Administrative Law Review*. Dominic J. Mancini, Deputy Administrator of the Office of Information and Regulatory Affairs (OIRA), provided the

keynote address. The forum also included several panels consisting of leading academics and agency officials discussing how agencies address mass comments and how the rise of “fake” comments affects the rulemaking process. Recognizing the continued importance of this issue, ACUS recently issued Recommendation 2021-1, *Mass, Computer-Generated, and Falsely Attributed Comments*.

- **Forum on Federal Administrative Adjudication (September 2017).** ACUS cosponsored a forum on federal administrative adjudication. The forum took place on Capitol Hill with many congressional staffers in attendance. Topics included technological innovations in adjudication and balancing fairness and efficiency in high-volume adjudication programs.
- **Symposium on New Developments in Regulatory Benefit-Cost Analysis (September 2017).** ACUS cosponsored a symposium on regulatory benefit-cost analysis with the George Washington University Regulatory Studies Center and the Society for Benefit-Cost Analysis. Former OIRA Administrators Susan Dudley and Sally Katzen appeared as featured speakers. The event included discussions of tools for evaluating regulatory and deregulatory impacts and on using regulatory analysis to implement new Presidential directives on regulatory review.

K. ASSISTANCE TO FEDERAL AGENCIES AND ROUNDTABLES

ACUS regularly facilitates conversations among agencies, as well as between agency officials and outside experts, on matters of mutual interest. These programs are of enormous value to government officials and often lead to the implementation of best practices at federal agencies. The ACUS Office of the Chair convenes six roundtables on an ongoing basis where agency leaders can discuss matters of mutual interest:

- **Alternative Dispute Resolution (ADR) Advisory Group.** The ADR Advisory Group, made up of government officials, advises ACUS on potential new initiatives to improve—through potential ACUS-recommended administrative and legislative reforms—the design and administration of ADR programs throughout the federal government. The ADR Advisory Group builds on ACUS’s longstanding study and implementation of ADR in federal administrative processes.
- **Council on Federal Agency Adjudication.** The Council provides an ongoing forum for the heads of agency adjudication programs to exchange information—about procedural innovations, best management practices, and other subjects—that may be “useful in improving administrative procedure.”
- **Council of Independent Regulatory Agencies.** The Council provides an ongoing forum for leaders in independent regulatory agencies to discuss issues common to these agencies.
- **Interagency Roundtable.** The Roundtable provides an ongoing forum for representatives from all federal agencies to discuss legal and policy issues with government-wide effect.

- **Roundtable on Artificial Intelligence (AI) in Federal Agencies.** The Roundtable on AI in Federal Agencies will help agencies develop and improve protocols and practices for using AI tools in their administrative processes. It will provide a forum for officials representing agencies across the federal government to exchange information and best practices related to uses of AI in rulemaking, adjudication, enforcement, and other administrative processes.
- **Roundtable on State Administrative Procedural Practices.** The administrative procedural practices of state and local governments might provide helpful lessons for federal agencies. Through this program, the ACUS Office of the Chair is interested in learning more about state and local practices related to rulemaking, enforcement, adjudication, and other aspects of administrative procedure. The Office of the Chair will, on an ongoing basis, identify and share relevant practices with federal agencies and periodically convene meetings on specific topics of interest to federal officials.

In addition to these ACUS-convened groups, ACUS participates as a member of the White House Legal Aid Interagency Roundtable. The Office of the Chair also provides background information and other non-partisan, technical advice to agency officials on matters of administrative procedure.

IV. PROJECTS UNDERWAY

ACUS issues about six to eight recommendations each year and at any one time has around 12 ongoing research projects. A listing and summary of projects actively under study and expected to lead to recommendations, reports, or publications in FY 2023 or FY 2024 follows. A full listing of active projects and related documents is available at www.acus.gov/current-projects.

A. PROJECTS ANTICIPATED TO RESULT IN RECOMMENDATIONS

- **Artificial Intelligence in Retrospective Review of Agency Rules.** This project considers how AI tools can be used to identify rules that are outdated, inaccurate, or redundant; that contain typographical errors; or that might benefit from elaboration or clarification. It also considers how agencies can design and use AI tools in a way that accords with requirements of the APA and other laws and promotes transparency, public participation, and accountability.
- **Congressional Constituent Service Inquiries.** This project will examine how agencies receive, process, and respond to congressional inquiries made on behalf of constituents who need assistance accessing federal programs or navigating adjudicative and other similar administrative processes. Based on that study, the project will identify best practices to promote quality, efficiency, and timeliness in agency practices for responding to such inquiries. Among other topics, the project will address legal requirements governing agency responses to congressional constituent service inquiries; the extent to

which agencies have developed procedures for receiving, processing, and responding to congressional constituent service inquiries; the scope, content, and internal dissemination of agency procedures; and the public availability of such procedures.

- ***Disclosure of Agency Legal Materials.*** This project considers whether the main statutes governing disclosure of agencies' legislative rules, guidance documents, adjudicative decisions, and other important legal materials should be amended to consolidate and harmonize their overlapping requirements, account for technological developments, correct certain statutory ambiguities and drafting errors, and address other potential problems that may be identified. If warranted, the project will recommend statutory reforms to provide clear standards as to what legal materials agencies must publish and where they must publish them (whether in the *Federal Register*, on their websites, or elsewhere). The objective of any such amendments will be to ensure that agencies provide ready public access to important legal materials in the most efficient way possible.
- ***Identifying and Reducing Burdens in Administrative Processes.*** This project will recommend best practices, such as public engagement and data analysis, that agencies can use to identify unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes. It will also recommend strategies agencies can use to reduce unnecessary burdens, such as streamlining processes and digitizing services.
- ***Improving Timeliness in Agency Adjudication.*** This project will survey strategies—including procedural, technological, personnel, and other reforms—that agencies have used or might use to address backlogs or delays in administrative adjudication. Based on this survey, it will identify best practices to help agencies devise plans to promote timeliness in administrative adjudication, in accord with principles of fairness, accuracy, and efficiency. The project will also consider potential legislative reforms, if warranted.
- ***Online Processes in Agency Adjudication.*** This project will recommend best practices for developing online processes by which private parties, representatives, and other participants in agency adjudications can file forms, evidence, and briefs; view case materials and status information; receive notices and orders; and perform other common adjudicative tasks.
- ***User Fees.*** This project will recommend best practices for agencies—and Congress, if warranted—to consider in designing and implementing user fees in administrative programs. It will examine, among other topics, how Congress and agencies determine when user fees are appropriate; how agencies determine fair and reasonable user fees for specific programs; how they engage with the public in determining user fees; and how often they review their user fee programs.

- ***Virtual Public Engagement in Agency Rulemaking.*** This project studies and offers recommendations on agencies' efforts to promote enhanced transparency, accessibility, and accountability by using virtual tools to engage the public in connection with agency rulemaking activities. It explores a variety of practical issues, including when agencies should offer either fully or partially virtual meetings and how to structure those meetings in a way that meets public expectations and promotes valuable input for the agency. It also examines the legal constraints under which agencies operate.

B. FORTHCOMING STUDIES AND SOURCEBOOKS

- ***Classification of Agency Guidance.*** This project is developing a classification system to catalog the wide array of guidance agencies issue, which can range from the relatively formal (e.g., policy manuals) to the very informal (e.g., phone calls). It identifies considerations and circumstances that lead agencies to use one type of guidance instead of another. The project is producing a guide that sets forth a classification scheme and examines how agencies use the many different forms of guidance available to them. The guide will help agencies, Congress, the courts, and the public better understand the role of agency guidance in the interpretation and administration of statutes and regulations.
- ***Timing of Judicial Review of Agency Action.*** This project studies several issues identified but not addressed in Recommendation 2021-5, *Clarifying Statutory Access to Judicial Review of Agency Action*. First, it considers various questions related to the event that begins the period during which a litigant can challenge an agency action in federal court. Second, it considers various questions related to the circumstances under which a party should be precluded from seeking judicial review of agency action because it failed to seek review within a specified time limit. In both cases, the project will consider both what existing law requires and whether Congress should amend existing law in order to provide greater clarity and particularity regarding the timing of judicial review.
- ***U.S. Patent Small Claims Court.*** The USPTO has engaged ACUS to conduct an independent study of issues associated with and options for designing a small claims patent court. The resulting report, which was requested by a bipartisan group of U.S. Senators, will address, among other topics, whether there is need for a small claims patent court, the feasibility and potential structure of such a court, and the relevant legal, policy, and practical considerations in establishing a small claims court.

C. WORKING GROUPS

- ***Model Materials for Alternative Dispute Resolution.*** This Working Group, co-led by ACUS and the Federal Mediation and Conciliation Service, brings together federal agency officials to develop model agreements, standards, position descriptions, training and educational resources, and other materials that agencies can adapt as needed for use in their own ADR programs. Materials developed by the Working Group are disseminated to agencies and made available on the ACUS webpage.

- ***Model Representative Conduct Rules.*** The Office of the Chair has convened a Working Group of public- and private-sector representatives to develop model rules of representative conduct intended to help federal agencies amend or develop their rules governing representatives in adjudicative proceedings consistent with the best practices identified in Recommendation 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*.

V. BUDGET STATUS & REQUEST

A. PROPOSED APPROPRIATIONS LANGUAGE FOR FY 2024

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., \$3,523,000 to remain available until September 30, 2025, of which not to exceed \$1,000 is for official reception and representation expenses.

B. BUDGET AUTHORITY AND STAFFING BY ACTIVITY

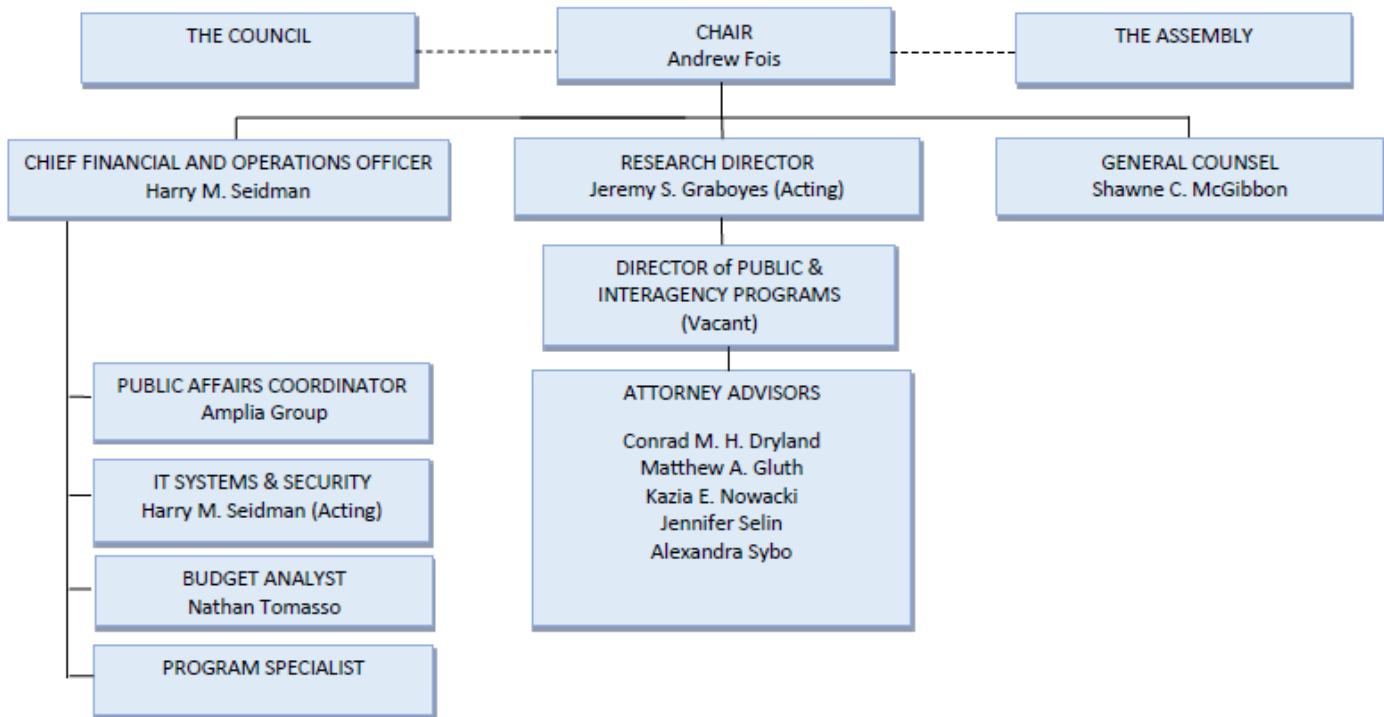
Salaries and Expenses

	FY 2020 Enacted	FY 2021 Enacted	FY 2022 Enacted	FY 2023 Enacted	FY 2024 Requested
Appropriation	\$3,250,000	\$3,400,000	\$3,400,000	\$3,465,000	\$3,523,000
Authorized FTE	18	18	18	18	18

C. ACUS ORGANIZATION CHART
Current as of January 2023



**ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
(ACUS)**



UPDATED January 2023

D. FINANCIAL SUMMARY

	FY 2022 OBLIGATIONS ACTUAL	FY 2023 CURRENT BUDGET	FY 2024 PROPOSED BUDGET
Appropriation	\$3,400,000	\$3,465,000	\$3,523,000
Carry Forward	\$439,200	\$175,099	\$0
Net Appropriation	\$3,839,200	\$3,640,099	\$3,523,000
<i>Obligations/Expenses</i>			
Salaries, Full Time	\$1,843,848	\$2,029,240	\$1,960,000
<u>Benefits</u>	<u>\$573,740</u>	<u>\$518,000</u>	<u>\$510,000</u>
<i>Subtotal, Salaries and Benefits</i>	\$2,417,588	\$2,547,240	\$2,490,000
Member/ Staff Travel	\$8,287	\$15,000	\$15,000
Rent & Utilities	\$403,573	\$415,000	\$420,000
Communications/ IT	\$96,091	\$20,000	\$15,000
Printing/Reproduction	\$37,514	\$20,000	\$14,000
Contract Office Personnel	\$142,103	\$97,000	\$80,000
Consultant Contracts (Research & Projects)	\$304,250	\$350,000	\$300,000
Administrative Contracts	\$135,345	\$120,000	\$154,000
Supplies	\$9,220	\$5,859	\$5,000
EAJA Database (Congressional Mandate)	\$102,089	\$50,000	\$50,000
	\$0	\$0	
Equipment	\$0	\$0	\$0
<i>Subtotal, Operating expenses</i>	\$1,238,472	\$1,092,859	\$1,033,000
Total Obligation/Expenses	\$3,656,060	\$3,640,099	\$3,523,000
Unexpended Prior Year Funds	\$8,041		
Unobligated Balance Brought Forward	\$175,099	\$0	\$0

E. RECENT APPROPRIATIONS HISTORY

<u>Salaries and Expense Account</u> (Amounts in thousands of dollars)	
<u>Fiscal Year</u>	<u>Budget Authority</u>
2020	3,250
2021	3,400
2022	3,400
2023	3,465
2024	3,523 (Request)

ACUS requests \$3.523 million, including two-year spending authority, to support a full year of agency operations during FY 2024. The FY 2024 request assumes flat staffing and programming levels. Tight control of agency expenditures and effective use of two-year spending authority permitted ACUS to operate on the same baseline budget from FY 2010 through FY 2020. However, organic growth in overhead expenses necessitated a small increase in appropriation. These include administrative support contracts, annual cost-of-living (COLA) increases for federal employees, added costs for IT and communications systems to comply with the Federal Information Security Management Act (FISMA), and additional agency mandates assigned by Congress, such as the recently enacted Equal Access to Justice Act (EAJA). The request of \$3.523 million in FY 2024 would permit ACUS to carry out its statutorily mandated work and to fulfill the agency’s mission.

Two-year spending authority remains crucial for efficiently sustaining agency operations, and Congress has consistently given ACUS two-year funding authority. Tight control of agency expenditures has allowed ACUS to utilize its two-year funding authority to carryover small balances from one fiscal year to the next. This authority is necessary to maintain optimal spending efficiency given the nature of ACUS’s work and the agency’s small size.

ACUS’s recent budgetary history is as follows:

For FY 2019, the President’s budget requested \$3.1 million to support a full year of agency operations. The Consolidated Appropriations Act of 2019 (Public Law 116-6) funded ACUS at \$3.1 million and provided two-year spending authority.

For FY 2020, the President’s budget requested \$3.1 million to support a full year of agency operations. The Consolidated Appropriations Act of 2020 (Public Law 116-93) funded ACUS at \$3.25 million and provided two-year spending authority.

For FY 2021, the President’s budget requested \$3.5 million to support a full year of agency operations. The Consolidated Appropriations Act of 2021 (Public Law 116-260) funded ACUS at \$3.4 million and provided two-year spending authority.

For FY 2022, the President’s budget requested \$3.4 million to support a full year of agency operations and to remain available through September 30, 2023. The Consolidated Appropriations Act of 2022 (Public Law 117-103) funded ACUS at \$3.4 million and provided two-year spending authority.

For FY 2023, the President’s budget requested \$3.465 million to support a full year of agency operations and to remain available through September 30, 2024. The Consolidated Appropriations Act of 2023 (Public Law 117-328) funded ACUS at \$3.465 million and provided two-year spending authority.

ACUS ended FY 2022, the most recently closed fiscal year, with a carryover balance of \$175,099. At approximately 5% of appropriation, the FY 2022 carryover amount is consistent with ACUS’s two-year budgeting methodology whereby small amounts are carried between fiscal years to maintain staffing and project levels. Being so small, the addition or departure of even a single high-salaried employee has an outsized effect on agency finances. As mentioned earlier in this document, Chair Andrew Fois (PAS) joined ACUS in May 2022. Shortly after, both the Executive Director and Research Director departed ACUS; thus, resulting in a small carryover amount. The FY 2022 appropriation would not have sustained all three of the positions for the remainder of that fiscal year. An appropriation of \$3.523 million would fund ACUS at the level required to cover operating and personnel costs at the current reduced staffing level and support an agency Chair.

F. FY 2024 REQUEST

A \$3.523 million FY 2024 appropriation will fund ACUS at the level required to cover operating and personnel costs.

<u>Program</u>	<u>OC</u>	<u>Amt</u>
Personnel Salaries	11	\$1,960,000
Personnel Benefits	12	\$510,000
Travel	21	\$15,000
Rent, Comm. & Utilities	23	\$420,000
Printing	24	\$14,000
Contractual Services	25	\$534,000
EAJA (Congressional Mandate)	25	\$50,000
Supplies	26	\$5,000
		\$3,523,000

AGENCY PERSONNEL (Object Classes 11 and 12)

Personnel costs are by far the largest agency expenditure. While this is the case for many federal agencies, ACUS personnel costs also reflect the agency's need to employ highly credentialed, specialized, and experienced lawyers to fulfill its mission and mandate. All but two of the agency's filled FTE positions are lawyers (classified as *Attorney Advisors* by OPM). Therefore, ACUS personnel tend to have higher GS grades—and related salary and benefits costs—relative to other federal agencies where the aggregate distribution of personnel is more evenly distributed on the pay scale.

For FY 2024, ACUS anticipates a staff of 14 filled FTEs, one filled contract FTE, and three vacant but authorized FTEs. This includes the Chair and 13 permanent employees included under Object Class 11. In some prior years, ACUS has filled 1-2 of its allotted FTE positions under the Intergovernmental Personnel Act (IPA) or other reimbursable arrangements. ACUS may opt to use these hiring mechanisms for personnel in FY24, contingent upon agency needs and the availability of funding. Both IPA and contract FTE costs are included as part of the projected OC 11 expense, however, those funds would be repurposed to OC 25 (contractual services) if utilized for contractors.

The ACUS staff, among its many functions, supports the 101 voting ACUS members as well as the approximately 150 other ACUS members who serve in a non-voting capacity.

Agency Management

The ACUS Chair is appointed for a five-year term by the President with the advice and consent of the Senate (PAS). Among his or her duties, the Chair appoints Public Members (with the consent of the Council), initiates and oversees research studies designed to result in ACUS recommendations, and presides at meetings of the Council and plenary sessions. The Chair also oversees the staff of ACUS and, together with the staff, constitutes the Office of the Chair. During a vacancy in the office, the Vice Chair exercises the Chair's powers. Currently, Mr. Andrew Fois serves as ACUS Chair. Mr. Fois was confirmed by the United States Senate on May 26, 2022.

The Chief Financial and Operations Officer (CFOO) is responsible for oversight of the agency's budget as well as management of daily operations and management of the agency's administrative and support staff. The CFOO also oversees contracts for external administrative and operational support services such as payroll, human resources, financial reporting, and accounts payable. The CFOO develops performance standards and financial and organizational staffing plans and is responsible for the preparation of annual budgetary and administrative reports to Congress and OMB in accordance with applicable legislation and regulations. Finally, the CFOO, among other things, reviews and comments on proposed legislation, responds to congressional inquiries and requests to ACUS, and oversees the agency's public relations and press activities.

The Research Director is a Senior Attorney responsible for directing the activities of attorney advisors in developing new research projects and managing existing projects. This includes working in conjunction with agency leadership in developing the agency's policy recommendations, keeping abreast of issues and developments in administrative law and practice, and identifying and prioritizing issues to be studied.

The General Counsel serves as the chief legal, ethics, and EEO 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, including compliance with the Administrative Conference Act as well as all other federal statutes governing the operation of executive branch agencies. The General Counsel also oversees the agency's records management program.

The Executive Director (vacant since July 2022) provides leadership, planning, direction, and coordination for all ACUS operations, including recruiting and managing the ACUS legal staff. The Executive Director provides managerial expertise and staff support to the ACUS Chair and Council in developing the agency's strategic planning and direction and implementing activities essential to ensuring that ACUS continues to meet its statutory mission. The Executive Director assesses the overall effectiveness, efficiency, and productivity of ACUS operations.

Legal Staff

Attorney Advisors comprise the bulk of the agency's professional staff. Among other things, they are responsible for managing the work of committees in their development of recommendations for consideration by the full membership of ACUS. This includes reviewing research studies for projects assigned to the committees, assisting the committees in drafting proposed recommendations, responding to requests for information about committee activities, reviewing and summarizing public comments, and generally providing procedural and legal oversight for the work of the committees. Staff attorneys also serve as in-house researchers on select projects in lieu of outside consultants, research and draft reports of the Office of the Chair, and participate in the implementation of ACUS recommendations.

Confidential Assistant / Counsel (Schedule C)

The ACUS Chair may elect to fill up to one FTE position with a Schedule C confidential assistant or counsel. This Schedule C position is allotted by OMB and is directly tied to the Presidentially-appointment Chair position. In 2022, the Chair elected to fill this position with an Attorney Advisor. This position is reallocated from the agency's existing FTE allotment and does not result in a net increase in the number of agency personnel.

Administrative and Support Staff

The ACUS staff includes an Information Technology Specialist to support both internal and external communications, including technical support, website development and maintenance,

network management, and cybersecurity. This position is also responsible for preparation and submission of IT-related reporting requirements, such as FISMA compliance. This FTE has remained vacant for the past several fiscal years due to constrained personnel funding. IT services are instead delivered by Dataprise via a mix of 24/7 remote support and scheduled on-site visits for network maintenance and security patching. In response to both operating needs and a marked rise in cybersecurity threats directed at federal agencies, ACUS would like to fill this position in FY 2023 or 2024, contingent on identifying funding.

The Communications Director is responsible for developing and managing the agency's strategic communications program, which includes media relations, digital outreach, marketing, and special events. In recent years, ACUS has experimented with this functional area to determine if communications-related objectives can be delivered at lower cost to the agency. Results were encouraging, and, at present, the agency has opted to leave this FTE vacant. The duties of this position are now vested with the Chief Financial and Operations Officer with discrete portions, such as social media management, contracted out to a third-party vendor.

Finally, a Program Specialist and a Budget Analyst provide administrative support for the ACUS staff and membership.

ACUS's FY 2024 budget request leaves vacant three allotted FTEs for additional legal, administrative, and IT support. As in previous budget requests, these vacancies reduce the agency's total FTE count below the allotted 18. During FY 2024, ACUS anticipates 15 filled FTE equivalents. Of note, this is the first budget request since 2015 to include a full-time Chair's salary and benefits. Projected personnel costs assume a 4% aggregate increase for civilian GS employees, for FY 2024.

For FY 2024, ACUS requests a budget of **\$1,960,000** for salary expenses associated with full-time employees (Object Class 11). This amount represents the projected cost for a total of 15 full-time positions, including 4% annual civil service cost-of-living salary increases and grade/step increases.

A total of **\$510,000** is budgeted for personnel benefits during FY 2024 (Object Class 12). Personnel benefits are a direct function of budgeted salary/wages and inclusive of transit subsidy.

RESEARCH, CONSULTING, AND PROFESSIONAL SERVICES (Object Class 25)

As discussed in the introductory section above, the research and policy work of ACUS is most frequently pursued through contracts with academics in law, public administration, or other related fields. 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. ACUS uses acquisition procedures that provide high value and low risk to the government. ACUS research contracts are generally competitive, fixed-price contracts with recognized experts in their respective fields.

The typical research contract awarded by ACUS, including expenses for research assistance and consultant travel, is approximately \$25,000. These modest contracts allow the federal government to enlist the expertise of scholars in academia and the private bar, many of whom would receive research grants or bill private clients at several multiples of the effective hourly rates the government is paying.

In FY 2024, ACUS is requesting **\$300,000** in funding for research contracts (Object Class 25). This funding will allow ACUS to maintain a research program of new projects directed toward ACUS's statutory mission to study and cooperatively seek solutions to issues and problems arising in the administration of federal agency programs. The number of projects is dependent on the funding level, which enables ACUS to pursue the projects described in the performance section above, including projects undertaken at the request of Congress.

To minimize contracting costs, ACUS staff attorneys sometimes conduct in-house research in addition to serving as legal counsel for ACUS committee projects and staffing the numerous projects undertaken by the Office of the Chair described in this justification. In-house research initiatives have resulted in several ACUS recommendations and significant Office of the Chair projects for agencies such as SSA, EEOC, CMS, and DHHS. In-house staff research projects and other outreach initiatives, including inter-agency workshops, are included within ACUS's salary and administrative overhead expenses.

In addition to funding for research contracts, ACUS requests **\$154,000** for administrative support contracts and the mandated annual financial audit. As a small agency, ACUS is required by law and policy to contract with multiple agencies or private vendors for many of the administrative functions typically performed in-house at larger agencies. These contracts cover items such as human resources (GSA), payroll (GSA), accounting (USDA), website hosting (GSA), security credentialing (GSA/ DHS), and mandated financial auditing. ACUS is also required to pay the Federal Protective Service (FPS) a monthly fee for security services due to its leased office space in a non-government owned building.

As discussed above in the section on personnel, ACUS has utilized contract positions in past years instead of full-time permanent employees to give the agency flexibility to match expertise with current projects and to rotate experts from academia, nonprofits, or other federal agencies to provide fresh and innovative thinking to ACUS. In FY 2024, ACUS anticipates filling one FTE position with contract personnel. Any contract positions would utilize resources that would otherwise be expended from other sections of the agency budget, principally object classes 11 and 12. ACUS estimates contract personnel costs of **\$80,000** in FY 2024.

SUPPORT AND INFRASTRUCTURE (Object Classes 21, 23, 24 and 26)

Travel by ACUS members and staff is budgeted at **\$15,000** for FY 2024 (Object Class 21). This is a reduction from previous budget requests, and reflects the agency's tight control of

travel-related costs as well as uncertainty about future agency travel during the Covid-19 public health crisis. Through FY 2021, over 90% of agency travel expenses involved the travel of out-of-town ACUS members to Council, committee, and plenary session meetings. ACUS members, other than the Chair, serve without pay and are only reimbursed for travel and per diem, pursuant to 5 U.S.C § 593(c) and 5 U.S.C § 5703. To the extent practicable, ACUS uses videoconferencing and other virtual hosting technologies to minimize travel expenses at the committee meetings. During the Covid-19 crisis, ACUS has transitioned to an entirely virtual meeting process to ensure the agency could continue to fulfill its mission. However, in-person biennial plenary sessions are desirable for ensuring robust debate and effective exchange of ideas. Therefore, ACUS returned to hosting some in-person events during FY 2022, including “hybrid” plenary sessions in June and December 2022 that also allowed members the option of participating virtually. In addition, some staff members will travel to conduct research or, as required, participate in various professional meetings and conferences.

ACUS has negotiated a lease to occupy office space at 1120 20th Street, NW, Suite 706 South, Washington, D.C. 20036. Leasing arrangements are coordinated for ACUS through the Public Building Services Division of the General Services Administration (GSA). During FY 2024 ACUS will be responsible for **\$420,000** in rental payments and related fees to GSA, as estimated in the Occupancy Agreement with GSA (Object Class 23). ACUS successfully re-negotiated a new 15-year lease of its existing office space, effective August 2020. The requested amount for rent expense is, therefore, lower than some fiscal years prior to 2020.

ACUS’s budget includes an estimated **\$15,000** for electronic communications expenses, including telephone service and website hosting during FY 2024 (Object Class 23). This estimate is based on ACUS’s historical usage as well as compliance costs related to mandated security and accessibility requirements for federal government-owned websites, such as Section 508 compliance, and other government-wide IT security mandates such as FISMA compliance. This estimate also accounts for the natural growth in ACUS’s electronic records and online presence that will require incremental scaling-up of data storage and processing capacity. ACUS is able to take on these additional costs without a significant increase in this section of our budget due to the agency’s successful migration to the Enterprise Infrastructure Solutions (EIS) in 2022, resulting in an 80% reduction in telephone service expenses.

ACUS has budgeted **\$14,000** in FY 2024 for printing costs (Object Class 24). Most of this expense is the cost of printing notices in the *Federal Register* as mandated by the Federal Advisory Committee Act (FACA). The remaining balance funds annual and interim reports to Congress and the President, inter-agency reporting requirements, outreach to ACUS members and key stakeholders, and other mandated reports and publications.

ACUS’s budget includes **\$5,000** for the purchase of supplies, materials, and legal publications during FY 2024 (Object Class 26). The amount includes supplies for mailing, copying, and ordinary office supplies such as paper, pens, and printer cartridges. Also budgeted are funds for the purchase of computer software, mandated anti-virus protection for the agency’s IT

network, library materials, and for subscriptions to relevant technical, and policy-oriented publications and online services such as Lexis Nexis.

**NEW STATUTORY MANDATE
(Object Classes 11, 12, 25)**

S. 47, the Natural Resources Management Act, was signed into law on March 12, 2019. The act assigned to ACUS a new statutory responsibility to report and maintain a database on attorneys' fees awards paid out government-wide under the Equal Access to Justice Act (EAJA). The Congressional Budget Office (CBO) scored the cost of new personnel and IT infrastructure necessary to comply with the new mandate at \$500,000 to \$1 million in the initial start-up fiscal year and \$500,000 or less annually thereafter. However, ACUS intends to fully comply with the new mandate at a much lower cost of approximately \$150,000 per annum now that initial database design and setup is complete. ACUS will apportion \$100,000 in salary and benefits (from OC 11 and 12) to support a portion of a GS-13 grade Attorney Advisor necessary to carry out this mandate.

ACUS further requests **\$50,000** (OC 25) to operate and maintain the database and public-facing website for disseminating EAJA award data, as mandated by S. 47. Again, CBO's estimate for building out and maintaining the required IT infrastructure is significantly higher than this request as ACUS estimates that annual costs of \$150,000 are achievable in FY 2024.

VI. CONCLUSION

For FY 2024, ACUS submits a budget request of \$3.523 million. This level of funding will allow ACUS to pursue a full program of research projects and other programs aimed at discharging the agency's mission and statutory responsibilities. This level of funding will also allow ACUS to pursue a robust research program that will help improve and reform government procedures. Such reforms will be designed to enhance fairness, efficiency, expedition, and public participation in the work of federal executive branch agencies, given their substantial impact on all sectors of the national economy and on the lives of all citizens.

Appendix A: Council Members

Current as of January 2023

Funmi Olorunnipa Badejo

Funmi Olorunnipa Badejo is the Head of Compliance at Palantir Technologies, inc., a global software company. She previously served as Special Assistant to the President and Associate Counsel in the White House Counsel's Office. Her prior government service includes General Counsel of the U.S. House of Representatives Select Subcommittee on the Coronavirus Crisis, Counsel for Policy to the Assistant Attorney General in the Civil Division at the U.S. Department of Justice, Ethics Counsel at the White House Counsel's Office and Attorney Advisor at the Administrative Conference of the United States. Olorunnipa Badejo began her legal career as an associate with the law firm of Manatt, Phelps & Phillips, LLP and was Legal Counsel at Palantir Technologies Inc. She is a graduate of the University of California, Berkeley, School of Law, Harvard University's John F. Kennedy School of Government, and the University of Florida

Ronald A. Cass

Ronald A. Cass has been the President of Cass & Associates since 2004. He is also Dean Emeritus of Boston University School of Law where he served as Dean from 1990-2004. Cass was a law professor at the University of Virginia School of Law from 1976-1981 and at Boston University from 1981-2004. Outside of his professional activities, he has also served as Vice Chair of the U.S. International Trade Commission (1988-1990), U.S. Representative to the World Bank Panel of Conciliators (2009-Present), advisor to the American Law Institute, Chair of the Federalist Society Practice Group on Administrative Law, Past Chair of the American Bar Association Administrative Law Section, and President of the American Law Deans Association.

Kristen Clarke

Kristen Clarke is the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. In this role, she leads the Justice Department's broad federal civil rights enforcement efforts and works to uphold the civil and constitutional rights of all who live in America. Assistant Attorney General Clarke began her career as a trial attorney in the Civil Rights Division through the Department of Justice's Honors Program. In 2006, she joined the NAACP Legal Defense Fund, where she helped lead the organization's work in the areas of voting rights and election law across the country. In 2011, she was named the head of the Civil Rights Bureau for the New York State Attorney General's Office, where she led broad civil rights enforcement actions. In 2015, Ms. Clarke became the president and executive director of the Lawyers' Committee for Civil Rights Under Law, leading the organization's legal work in courts across the country addressing some of the nation's most complex racial justice and civil rights challenges. Assistant Attorney General Clarke received her A.B. from Harvard University and her J.D. from Columbia Law School.

Andrew Fois (Chair)

Andrew Fois is Chair of ACUS. Before his Senate confirmation in May 2022 he served as Attorney Advisor in the Office of Legislative Affairs in the Administrative Office of U.S. Courts. Prior to that position, he was the Deputy Attorney General for Public Safety in the Office of the Attorney General for Washington, D.C. He has worked for the National Crime Prevention Council, as a solo practitioner and as a partner in the Venable law firm. He has served in the Department of Justice on three occasions in five positions including as the Assistant Attorney General for Legislative Affairs and as an Assistant United States Attorney for the District of Columbia. His experience on Capitol Hill includes service as the Chief Counsel of the House Judiciary Committee's Subcommittee on Crime. In 2020, Mr. Fois was appointed by the Mayor to the D.C. Clemency Board. Mr. Fois earned his J.D. from the Georgetown University Law Center and his B.A. from Georgetown University. He also holds a master's degree in American government from the University of Essex in the U.K.

Leslie B. Kiernan

Leslie B. Kiernan was sworn in on June 15, 2021, as the General Counsel at the Department of Commerce. She serves as the Chief Legal Officer of the Department and as legal advisor to the Secretary, Secretarial Officers and the Department's operating units. During the Obama-Biden Administration, Ms. Kiernan served in the White House as Deputy Counsel to the President from 2011-14, where she advised on a wide range of compliance, risk-management, policy, and oversight issues. She also worked with the White House Council on Women and Girls, and later served as a senior advisor to the U.S. Mission to the United Nations.

Fernando Laguarda

Fernando Laguarda is General Counsel at AmeriCorps. Prior to his current role, he was Faculty Director of the Program on Law and Government and a Professor at American University Washington College of Law, where he taught and developed courses in administrative law, legislation, and antitrust, launched the law school's LLM in Legislation, and founded the nation's first student-centered initiative to study the work of government oversight. Fernando worked previously for nearly ten years in the telecommunications industry and for fifteen years as a partner at two different Washington, DC law firms focusing on technology and competition law. He was also a founder, and served as General Counsel and then Board Chair, of the National Network to End Domestic Violence, as well as a member of numerous non-profit, civil rights, academic, and advisory boards. Fernando has received numerous national and local awards for his nonprofit advocacy work. He received his J.D. cum laude from Georgetown University Law Center and his A.B. cum laude in government from Harvard College.

Matthew E. Morgan

Matthew E. Morgan is a Partner at Elections, LLC where he counsels clients on all aspects of law related to the political process and elections. He advises candidates, political committees,

corporations, and nonprofits on regulatory and political law issues, including federal and state campaign finance and election administration laws, ethics and gift rules, pay-to-play laws, and lobbying laws. Previously, Mr. Morgan served as the Deputy Chief of Staff and Chief Counsel to the Vice President of the United States where he provided advice to the Vice President and his staff on constitutional, regulatory, national security and related policy issues, led the Office's response to congressional oversight and litigation, and represented the Office in the inter-agency process with respect to federal regulations.

Anne Joseph O'Connell

Anne Joseph O'Connell, a lawyer and social scientist, is the Adelbert H. Sweet Professor of Law at Stanford Law School. She served as an ACUS consultant, public member, and senior fellow before joining the Council. She is a three-time recipient of the American Bar Association's Scholarship Award in Administrative Law for the best article or book published in the preceding year and a two-time winner of the Richard D. Cudahy Writing Competition on Regulatory and Administrative Law from the American Constitution Society. Before entering the legal academy, O'Connell clerked for Judge Stephen F. Williams and Justice Ruth Bader Ginsburg and worked as a trial attorney in the Department of Justice's Federal Programs Branch. She is an elected fellow of the American Academy of Arts and Sciences and the National Academy of Public Administration.

Nitin Shah (Vice Chair)

Nitin Shah currently serves as General Counsel of the U.S. General Services Administration. He oversees all legal matters arising before the agency, is GSA's Designated Agency Ethics Official and Chief FOIA Officer, and manages a nationwide office of approximately 170 attorneys and staff. During his career, Mr. Shah has focused on administrative law issues from various perspectives. He previously served in the Department of Justice in several capacities, including as Chief of Staff of the Civil Division and as an attorney in the Office of Legal Counsel. He also served as senior counsel at a nonprofit organization focused on administrative litigation and was a legal director for the Biden-Harris Transition Team.

Jonathan Su

Jonathan C. Su is a partner in the White Collar Defense & Investigations Practice of the law firm of Latham & Watkins LLP. Mr. Su most recently served in government as Deputy Counsel to President Joseph R. Biden, Jr., where he had principal responsibility for congressional oversight and controversy matters at the White House and across the Executive Branch. Among other high-profile matters, Mr. Su advised on unprecedented executive privilege issues that implicated substantial litigation ultimately addressed by the US Supreme Court. During the Obama-Biden Administration, Mr. Su served as Special Counsel to President Barack Obama, where he advised on a wide range of controversy matters. Mr. Su was also a federal prosecutor at the United States Attorney's Office for the District of Maryland. He served as a law clerk to U.S. Circuit Judge Ronald

M. Gould and U.S. District Judge Julian Abele Cook, Jr. Mr. Su is a graduate of the University of California at Berkeley and Georgetown University Law Center.

Adrian Vermeule

Adrian Vermeule is the Ralph S. Tyler, Jr. Professor of Constitutional Law at Harvard Law School. He is the author or co-author of ten books, most recently Law and Leviathan: Redeeming the Administrative State (2020) (with Cass R. Sunstein), and Law's Abnegation: From Law's Empire to the Administrative State (2017). He was elected to the American Academy of Arts and Sciences in 2012. His research focuses on administrative law, the administrative state, the design of institutions, and constitutional theory.

Appendix B: Government Members

The following were government members as of February 23, 2023:

James L. Anderson	Federal Deposit Insurance Corporation
David J. Apol	U.S. Office of Government Ethics
Samuel R. Bagenstos	U.S. Department of Health & Human Services
Gregory R. Baker	Federal Election Commission
Eric S. Benderson	U.S. Small Business Administration
Krystal J. Brumfield	U.S. General Services Administration
Daniel Cohen	U.S. Department of Transportation
Michael J. Cole	Federal Mine Safety and Health Review Commission
Peter J. Constantine	U.S. Department of Labor
Anika S. Cooper	Surface Transportation Board
Scott A. de la Vega	U.S. Department of the Interior
Hampton Y. Dellinger	U.S. Department of Justice
Seth R. Frotman	Consumer Financial Protection Bureau
Ami M. Grace-Tardy	U.S. Department of Energy
David Grahn	U.S. Department of Agriculture
Gina K. Grippando	U.S. International Trade Commission
Richard J. Hipolit	U.S. Department of Veterans Affairs
Janice L. Hoffman	Centers for Medicare & Medicaid Services
Erica Sigmund Hough	Federal Energy Regulatory Commission
Phillip C. Hughey	Federal Maritime Commission
Burke W. Kappler	Federal Trade Commission
Paul S. Koffsky	U.S. Department of Defense
Alice M. Kottmyer	U.S. Department of State
Jeremy Licht	U.S. Department of Commerce
Raymond A. Limon	U.S. Merit Systems Protection Board
Phillip J. Lindenmuth	Internal Revenue Service

Hilary Malawer	U.S. Department of Education
Nadine N. Mancini	Occupational Safety and Health Review Commission
Christina E. McDonald	U.S. Department of Homeland Security
Patrick R. Nagle	Social Security Administration
Raymond Peeler	U.S. Equal Employment Opportunity Commission
Mitchell E. Plave	Office of the Comptroller of the Currency
Roxanne L. Rothschild	National Labor Relations Board
Jay R. Schwarz	Board of Governors of the Federal Reserve System
Helen Serassio	U.S. Environmental Protection Agency
Miriam Smolen	Federal Housing Finance Agency
Robert F. Stone	Occupational Safety and Health Administration
Stephanie J. Tatham	U.S. Office of Management and Budget
David A. Trissell	U.S. Postal Regulatory Commission
Daniel Vice	U.S. Consumer Product Safety Commission
Miriam E. Vincent	The U.S. National Archives and Records Administration
Chin Yoo	Federal Communications Commission
Marian L. Zobler	U.S. Nuclear Regulatory Commission

Appendix C: Public Members

The following were public members as of February 23, 2023:

Katherine Twomey Allen	<i>Formerly</i> , U.S. Department of Justice
Kent H. Barnett	University of Georgia School of Law
Jack M. Beermann	Boston University School of Law
Bernard W. Bell	Rutgers Law School
Maggie Blackhawk	New York University School of Law
Susan G. Braden	George Mason University Antonin Scalia Law School
Emily S. Bremer	University of Notre Dame Law School
Ilona R. Cohen	HackerOne
Kirti Datla	Earthjustice
Jennifer B. Dickey	U.S. Chamber Litigation Center
John F. Duffy	University of Virginia School of Law
David Freeman Engstrom	Stanford Law School
Claire J. Evans	Wiley Rein LLP
Chai R. Feldblum	<i>Formerly</i> , Morgan Lewis & Bockius LLP
Abbe R. Gluck	Yale Law School and Yale Medical School
Deepak Gupta	Gupta Wessler PLLC
Kristin E. Hickman	University of Minnesota Law School
Allyson N. Ho	Gibson Dunn & Crutcher LLP
Daniel E. Ho	Stanford Law School
Thomas M. Johnson, Jr.	Wiley Rein LLP

David E. Lewis	Vanderbilt University
Erika Lietzan	University of Missouri School of Law
Elbert Lin	Hunton Andrews Kurth LLP
Michael A. Livermore	University of Virginia School of Law
Jennifer L. Mascott	George Mason University Antonin Scalia Law School
Aaron L. Nielson	Brigham Young University J. Reuben Clark Law School
Victoria F. Nourse	Georgetown University Law Center
Jesse Panuccio	Boies Schiller Flexner LLP
Elizabeth P. Papez	Gibson Dunn & Crutcher LLP
Eloise Pasachoff	Georgetown University Law Center
Jeffrey A. Rosen	American Enterprise Institute
Bertrall L. Ross	University of Virginia School of Law
Kate A. Shaw	Yeshiva University Benjamin N. Cardozo School of Law
Ganesh Sitaraman	Vanderbilt University Law School
Mila Sohoni	University of San Diego School of Law
Kevin M. Stack	Vanderbilt University Law School
Kate Todd	Ellis George Cipollone O'Brien Annaguey LLP
Melissa Feeney Wasserman	The University of Texas School of Law
Adam J. White	American Enterprise Institute
Jonathan B. Wiener	Duke University School of Law

Appendix D: Liaison Representatives, Senior Fellows, and Special Counsel

The following were liaison representatives as of February 23, 2023:

Thomas H. Armstrong	Government Accountability Office
Eleanor Barrett	The American Law Institute
Casey Q. Blaine	National Transportation Safety Board
Emily Burns	U.S. House of Representatives Committee on Oversight and Reform
Lena C. Chang	U.S. Senate Committee on Homeland Security & Governmental Affairs
Tobias A. Dorsey	Executive Office of the President, Office of Administration
Daniel M. Flores	U.S. House of Representatives Committee on Oversight and Reform
William Funk	ABA Section of Administrative Law & Regulatory Practice
Douglas C. Geho	U.S. House of Representatives Committee on the Judiciary
Ryan Giles	U.S. Senate Committee on Homeland Security & Governmental Affairs
Claire Green	Social Security Advisory Board
Will A. Gunn	Legal Services Corporation
Kristen L. Gustafson	National Oceanic & Atmospheric Administration
Eileen Barkas Hoffman	Federal Mediation & Conciliation Service

Nathan Kaczmarek	The Federalist Society
Allison Lerner	Council of the Inspectors General on Integrity and Efficiency
Daniel S. Liebman	Pension Benefit Guaranty Corporation
Mary C. McQueen	National Center for State Courts
Mohammad H. Mesbahi	Office of the National Taxpayer Advocate Service
William S. Meyers	Administrative Office of the U.S. Courts
Danette L. Mincey	ABA National Conference of the Administrative Law Judiciary
Randolph D. Moss	U.S. District Court for the District of Columbia
Alayna R. Ness	U.S. Coast Guard
Cornelia T.L. Pillard	U.S. Court of Appeals for the District of Columbia Circuit
Lauren Alder Reid	Executive Office for Immigration Review
David Rostker	U.S. Small Business Administration Office of Advocacy
Eleni M. Roumel	U.S. Court of Federal Claims
Max Stier	Partnership for Public Service
Channing Strother	Federal Administrative Law Judges Conference
Elliot Tomlinson	U.S. Senate Committee on the Judiciary
Ethan V. Torrey	Judicial Conference of the U.S.
Susan K. Ullman	U.S. Office of Special Counsel
David L. Welch	U.S. Federal Labor Relations Authority
Christopher Wright Durocher	American Constitution Society

The following were senior fellows as of February 23, 2023:

Gary D. Bass	GDB Consulting
Warren Belmar	Capitol Counsel Group LLC
Jodie Z. Bernstein	<i>Formerly, Kelley Drye & Warren LLP</i>
Boris Bershteyn	Skadden Arps Slate Meagher & Flom LLP
Marshall J. Breger	The Catholic University Columbus School of Law
Stephen G. Breyer	Harvard Law School
Amy P. Bunk	U.S. Department of Homeland Security
James Ming Chen	Michigan State University College of Law
Betty Jo Christian	<i>Formerly, Steptoe & Johnson LLP</i>
Cary Coglianese	University of Pennsylvania Carey Law School
H. Clayton Cook	Cook Maritime Finance
John F. Cooney	<i>Formerly, Venable LLP</i>
Steven P. Croley	Ford Motor Company
Bridget C.E. Dooling	The Ohio State University Moritz College of Law
Susan E. Dudley	The George Washington University Regulatory Studies Center
Neil R. Eisner	<i>Formerly, U.S. Department of Transportation</i>
E. Donald Elliott	George Mason University Antonin Scalia Law School
Cynthia R. Farina	Cornell Law School

Fred F. Fielding	Ellis George Cipollone O'Brien Annaguey LLP
Michael A. Fitzpatrick	Brunswick Group
David C. Frederick	Kellogg Hansen Todd Figel & Frederick PLLC
H. Russell Frisby Jr.	The HRF Group, LLC
Brian C. Griffin	Clean Energy Systems, Inc.
Susan Tsui Grundmann	Federal Labor Relations Authority
Michael E. Herz	Yeshiva University Benjamin N. Cardozo School of Law
Elena Kagan	Supreme Court of the U.S.
Paul D. Kamenar	<i>Formerly</i> , Washington Legal Fund
John M. Kamensky	IBM Center for the Business of Government
Sally Katzen	New York University School of Law
Renée M. Landers	Suffolk University Law School
Richard J. Leighton	<i>Formerly</i> , Keller & Heckman LLP
Robert J. Lesnick	<i>Formerly</i> , Federal Mine Safety and Health Review Commission
Ronald M. Levin	Washington University in St. Louis School of Law
Daniel R. Levinson	<i>Formerly</i> , U.S. Department of Health & Human Services
Jerry L. Mashaw	Yale Law School
Randolph J. May	The Free State Foundation
Nina A. Mendelson	University of Michigan Law School
David M. Michaels	The George Washington University Milkin Institute School of Public Health
James C. Miller III	King & Spalding LLP
Alan B. Morrison	The George Washington University Law School
Jennifer Nou	The University of Chicago Law School
David W. Ogden	Wilmer Cutler Pickering Hale & Dorr LLP
Nina E. Olson	Center for Taxpayer Rights
Theodore B. Olson	Gibson Dunn Crutcher LLP
Lee Liberman Otis	The Federalist Society
Nicholas R. Parrillo	Yale Law School
Sallyanne Payton	University of Michigan Law School
Richard J. Pierce Jr.	The George Washington University Law School
S. Jay Plager	U.S. Court of Appeals for the Federal Circuit
Edith Ramirez	Hogan Lovells LLP
Neomi Rao	U.S. Court of Appeals for the District of Columbia Circuit
Carrie F. Ricci	U.S. Army
Jonathan Rose	Arizona State University Sandra Day O'Connor College of Law
Teresa Wynn Roseborough	The Home Depot
Eugene Scalia	Gibson Dunn & Crutcher LLP
Robert F. Schiff	<i>Formerly</i> , National Labor Relations Board
Sidney A. Shapiro	Wake Forest University School of Law
Catherine M. Sharkey	New York University School of Law

Jane C. Sherburne	Sherburne PLLC
David C. Shonka	Redgrave LLP
Carol Ann Siciliano	<i>Formerly</i> , U.S. Environmental Protection Agency
Jonathan R. Siegel	The George Washington University Law School
Lon B. Smith	<i>Formerly</i> , Internal Revenue Service
Loren A. Smith	U.S. Court of Federal Claims
Peter L. Strauss	Columbia Law School
Thomas M. Susman	American Bar Association
James J. Tozzi	The Center for Regulatory Effectiveness
Paul R. Verkuil	National Academy of Public Administration
John M. Vittone	<i>Formerly</i> , U.S. Department of Labor
David C. Vladeck	Georgetown University Law Center
Christopher J. Walker	University of Michigan Law School
John M. Walker Jr.	U.S. Court of Appeals for the Second Circuit
Geovette E. Washington	University of Pittsburgh
William H. Webster	Center for Strategic & International Studies
Russell R. Wheeler	The Brookings Institution
Richard E. Wiley	Wiley Rein LLP
Allison M. Zieve	Public Citizen Litigation Group

The following were special counsel as of February 23, 2023:

Blake Emerson	UCLA School of Law
Andrew Emery	The Regulatory Group
Jeffrey S. Lubbers	American University Washington College of Law
David M. Pritzker	<i>Formerly</i> , Administrative Conference of the U.S.
Matthew L. Wiener	<i>Formerly</i> , Administrative Conference of the U.S.

Appendix E: Recommendations and Statements Adopted 2010 – 2021

The following ACUS projects – both Assembly recommendations and statements – were adopted in FY 2010 through FY 2021. A full listing of ACUS projects is available at <https://www.acus.gov/research-projects>.

- **Recommendation 2021-1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*** offers agencies best practices for managing mass, computer-generated, and falsely attributed comments in agency rulemakings. It provides guidance for agencies on using technology to process such comments in the most efficient way possible while ensuring that the rulemaking process is transparent to prospective commenters and the public more broadly.

- **Recommendation 2021-2, *Periodic Retrospective Review*** offers practical suggestions to agencies about how to establish periodic retrospective review plans. It provides guidance for agencies on identifying regulations for review, determining the optimal frequency of review, soliciting public feedback to enhance their review efforts, identifying staff to participate in review, and coordinating review with other agencies.
- **Recommendation 2021-3, *Early Input on Regulatory Alternatives*** offers guidance about whether, when, and how agencies should solicit input on alternatives to rules under consideration before issuing notices of proposed rulemaking. It identifies specific, targeted measures for obtaining public input on regulatory alternatives from knowledgeable persons in ways that are cost-effective and equitable and that maximize the likelihood of obtaining diverse, useful responses.
- **Recommendation 2021-4, *Virtual Hearings in Agency Adjudication*** addresses the use of virtual hearings—that is, proceedings in which participants attend remotely using a personal computer or mobile device—in agency adjudications. Drawing heavily on agencies’ experiences during the COVID-19 pandemic, the recommendation identifies best practices for improving existing virtual-hearing programs and establishing new ones in accord with principles of fairness and efficiency and with due regard for participant satisfaction.
- **Recommendation 2021-5, *Clarifying Statutory Access to Judicial Review of Agency Action*** urges Congress to enact a cross-cutting statute that addresses certain recurring technical problems in statutory provisions governing judicial review of agency action that may cause unfairness, inefficiency, or unnecessary litigation. It also offers drafting principles for Congress when it writes new or amends existing judicial review statutes.
- **Recommendation 2021-6, *Public Access to Agency Adjudicative Proceedings*** identifies best practices regarding when and how federal agencies provide public access to adjudicative proceedings. Within the legal framework established by federal law, it identifies factors agencies should consider when determining whether to open or close particular proceedings. It also offers best practices to promote public access to proceedings that agencies open to the public and recommends that agencies make the policies governing public access readily available.
- **Recommendation 2021-7, *Public Availability of Inoperative Agency Guidance Documents*** provides best practices for maintaining public access to agency guidance documents that are no longer in effect—that is, inoperative. It identifies factors agencies should consider in deciding whether to include certain types of inoperative guidance documents on their websites, outlines steps agencies can take to make it easier for the public to find inoperative guidance documents, and identifies ways that agencies can label and explain the significance of inoperative guidance documents.

- **Recommendation 2021-8, *Technical Reform of the Congressional Review Act*** offers technical reforms of the Congressional Review Act (CRA) to clarify certain of its procedural aspects and reduce administrative burdens on executive-branch agencies and congressional offices. Specifically, it recommends (1) requiring electronic rather than paper submission of the materials agencies must transmit to Congress, (2) making it easier to ascertain key dates and time periods relevant to review of agency rules under the CRA, and (3) formalizing the procedure by which members of Congress initiate congressional review of rules that agencies conclude are not covered by the CRA.
- **Recommendation 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*** recommends that agencies consider adopting rules governing attorney and non-attorney representatives in order to promote accessibility, fairness, integrity, and efficiency in agency adjudicative proceedings. It provides guidance on the topics that rules might cover and recommends that agencies consider whether greater harmonization of different bodies of rules is desirable and ensure that their rules are readily accessible on their websites.
- **Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*** identifies best practices for promoting fairness, accuracy, timeliness, and consistency in agency adjudications through the use of quality assurance systems. It provides guidance to agencies on the selection, role, and institutional placement of quality-assurance personnel. It also identifies specific considerations for the timing of and process for quality-assurance review; outlines different methodologies for identifying and correcting quality issues; and addresses how agencies might use electronic case management, data analytics, and artificial intelligence for quality-assurance purposes.
- **Recommendation 2020-1, *Rules on Rulemakings*** encourages agencies to consider issuing rules governing their rulemaking procedures. It identifies subjects that agencies should consider addressing in their rules on rulemakings—without prescribing any particular procedures—and it urges agencies to solicit public input on these rules and make them publicly available.
- **Recommendation 2020-2, *Protected Materials in Public Rulemaking Dockets*** offers agencies best practices for protecting sensitive personal and confidential commercial information in public rulemaking dockets. It identifies, in particular, best practices for agencies to use when redacting, summarizing, and aggregating comments that contain such information. It also encourages agencies to provide public notices that discourage commenters from submitting such information in the first place.
- **Recommendation 2020-3, *Agency Appellate Systems*** offers agencies best practices to improve administrative review of hearing-level adjudicative decisions with respect to case selection, decision-making process and procedures, management oversight, and public

disclosure and transparency. In doing so, it encourages agencies to identify the objectives of such review and structure their appellate systems to serve those objectives.

- **Recommendation 2020-4, *Government Contract Bid Protests*** Before Agencies suggests improvements to the procedures governing agency-level procurement contract disputes—commonly called bid protests—under the Federal Acquisition Regulation and agency-specific regulations to make those procedures more simple, transparent, and predictable. It urges agencies to clarify what types of decisions can be the subjects of agency-level bid protests, what processes and deadlines will govern such protests, and who in the agency will decide such protests; make it easier for protesters to get information about the decisions they protest; and publish more data on agency-level protests.
- **Recommendation 2020-5, *Publication of Policies Governing Agency Adjudicators*** encourages agencies to disclose policies governing the appointment and oversight of adjudicators that bear on their impartiality and constitutional status. It offers best practices on how to provide descriptions of, and access to, such policies on agency websites.
- **Recommendation 2020-6, *Agency Litigation Webpages*** offers agencies best practices for making their federal court filings and relevant court opinions available to the public on their websites, with particular emphasis on materials from litigation dealing with agency regulatory programs. It provides guidance on the types of litigation materials that will be of greatest interest to the public and on how agencies can disseminate the materials in a way that makes them easy to find.
- **Statement # 20, *Agency Use of Artificial Intelligence*** identifies issues agencies should consider when adopting, revamping, establishing policies and practices governing, and regularly monitoring artificial intelligence systems. Among the topics it addresses are transparency, harmful biases, technical capacity, procurement, privacy, security, decisional authority, and oversight.
- **Recommendation 2019-1, *Agency Guidance Through Interpretive Rules*** identifies ways agencies can offer the public the opportunity to propose alternative approaches to those presented in an interpretive rule and to encourage, when appropriate, public participation in the adoption or modification of interpretive rules. It largely extends the best practices for statements of policy adopted in Recommendation 2017-5, *Agency Guidance Through Policy Statements*, to interpretive rules, with appropriate modifications to account for differences between interpretive rules and policy statements.
- **Recommendation 2019-2, *Agency Recruitment and Selection of Administrative Law Judges*** addresses the processes and procedures agencies should establish for exercising

their authority under Executive Order 13,843 (2018) to hire administrative law judges (ALJs). It encourages agencies to advertise ALJ positions in order to reach a wide pool of applicants, to publish minimum qualifications and selection criteria for ALJ hiring, and to develop policies for the review of ALJ applications.

- **Recommendation 2019-3, *Public Availability of Agency Guidance Documents*** offers best practices for promoting widespread availability of guidance documents on agency websites. It urges agencies to develop and disseminate internal policies for publishing, tracking, and obtaining input on guidance documents; post guidance documents online in a manner that facilitates public access; and undertake affirmative outreach to notify members of the public of new or updated guidance documents.
- **Recommendation 2019-4, *Revised Model Rules for Implementation of the Equal Access to Justice Act*** revises the Conference’s 1986 model agency procedural rules for addressing claims under the Act, which provides for the award of attorney fees to individuals and small businesses that prevail against the government in certain agency adjudications. The revisions reflect, among other things, changes in law and agency practice since 1986.
- **Recommendation 2019-5, *Agency Economists*** addresses the placement of economists within rule-writing agencies (e.g., centralized versus dispersed throughout the agency) and describes methods for promoting high-quality economic analysis within each of the potential organizational structures. Each potential structure has strengths and weaknesses that can affect the flow of information between economists and decision makers. The recommendation does not endorse any one organizational structure over another, but identifies steps agencies can take to remove structural barriers that can impede the communication of objective, consistent, and high-quality economic analysis to decision-makers during the rulemaking process.
- **Recommendation 2019-6, *Independent Research by Agency Adjudicators in the Internet Age*** addresses agency adjudicators’ increasing reliance on their own factual research—especially internet research—when conducting hearings and deciding cases. Though such independent research can be an efficient means to acquire facts, it can also raise concerns regarding the accuracy of information uncovered and fairness to the litigants. The recommendation encourages agencies to develop publicly available policies on independent research that identify sources of information that are reliable in all cases, set forth standards for adjudicators to apply when assessing the reliability of other sources, and ensure that litigants have ready access to all sources.
- **Recommendation 2019-7, *Acting Agency Officials and Delegations of Authority*** offers agencies best practices for promoting greater transparency and compliance with the Federal Vacancies Reform Act of 1998 when a Senate-confirmed position sits vacant. It also addresses the use of delegations of authority in response to staffing vacancies. It urges agencies to determine whether they are subject to the Vacancies Act and, if so, establish compliance processes; improve transparency by disclosing on their websites

information about acting officials and delegations of authority; and provide additional support and training to agency officials responsible for Vacancies Act compliance.

- **Recommendation 2019-8, *Public Identification of Agency Officials*** promotes the public availability of real-time information about high-level officials leading federal agencies. It encourages agencies to publish on their websites basic information about high-level agency leaders and identify vacant leadership positions and acting officials. It also recommends that the Office of Personnel Management regularly publish on its website a list of high-level agency leaders, as well as an archival list of former Senate-confirmed presidential appointees.
- **Recommendation 2019-9, *Recruiting and Hiring Agency Attorneys*** urges agencies to avail themselves of the flexibilities available to them when hiring attorneys and offers best practices for structuring their hiring processes. First, it suggests that the Office of Personnel Management offer training for agencies on the alternative processes and flexibilities available to them when they hire attorneys. Then, among other suggestions, it advises agencies to post and disseminate vacancy announcements widely when seeking broad applicant pools, draft announcements clearly and concisely, communicate to applicants any limitations on the number of applicants they will consider, and establish policies for reviewing applications and interviewing candidates.
- **Recommendation 2018-1, *Paperwork Reduction Act Efficiencies*** encourages collaboration between the Office of Information and Regulatory Affairs and federal agencies to maximize opportunities for making the information collection clearance process under the Paperwork Reduction Act more efficient, while still maintaining its integrity. The recommendation encourages using generic clearances and common forms more frequently, providing more training to agencies, and improving several other aspects of the information collection clearance process.
- **Recommendation 2018-2: *Severability in Agency Rulemaking*** encourages federal agencies that anticipate litigation over their rules to consider early in the rulemaking process whether a rule is severable—that is, divisible into portions that can and should function independently. It also identifies steps agencies should take if they intend that portions of a rule should continue in effect even though other portions have been held unlawful on judicial review. In addition, it encourages courts reviewing an agency rule to solicit the parties’ views on the issue of severability in appropriate circumstances.
- **Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*** offers guidance for agencies considering whether and how to implement an electronic case management system. It provides factors for agencies to consider in weighing the costs and benefits of an electronic case management system; sets forth measures an agency should take to ensure privacy, transparency, and security; and

describes ways an electronic case management system may improve adjudicatory processes.

- **Recommendation 2018-4, *Recusal Rules for Administrative Adjudicators*** urges agencies to issue procedural regulations governing the recusal of adjudicators to ensure both impartiality and the appearance of impartiality in agency adjudications. It encourages agencies to adopt procedures by which parties can seek the recusal of adjudicators assigned to their cases and to provide written explanations for recusal decisions.
- **Recommendation 2018-5, *Public Availability of Adjudication Rules*** offers best practices to optimize agencies' online presentations of procedural rules governing adjudications. It encourages agencies to make procedural rules for adjudications and related guidance documents available on their websites and to organize those materials in a way that allows both parties appearing before the agencies and members of the public to easily access the documents and understand their legal significance.
- **Recommendation 2018-6, *Improving Access to Regulations.gov's Rulemaking Docket*** offers suggested improvements to Regulations.gov, the website that allows the public to comment on many federal agencies' rulemaking proposals. It provides recommendations to the governing body of Regulations.gov, called the eRulemaking Program, and to agencies that participate in Regulations.gov for ensuring that rulemaking materials on Regulations.gov are easily searchable and categorized consistently and clearly. These recommendations include using one electronic docket per rulemaking, promoting interoperability among key websites (e.g., Federalregister.gov and Reginfo.gov), and making rulemaking materials available to search engines.
- **Recommendation 2018-7, *Public Engagement in Rulemaking*** offers strategies for agencies to enhance public engagement prior to and during informal rulemaking. It encourages agencies to invest resources in a way that maximizes the probability that rulewriters obtain high quality public information as early in the process as possible. It recommends expanding the use of requests for information and advance notices of proposed rulemaking, targeting outreach to individuals who might otherwise be unlikely to participate, and taking advantage of in-person engagement opportunities to solicit stakeholder input and support future informed participation.
- **Recommendation 2018-8, *Public-Private Partnerships*** offers agencies guidance on legal and other considerations for participating in public-private partnerships. It commends to agencies a *Guide to Legal Issues Involved in Public-Private Partnerships at the Federal Level*, which provides guidance on the key legal questions agencies encounter in the operation of public-private partnerships, and proposes mechanisms that would allow agencies to share resources and best practices with one another when creating and administering such partnerships.

- **Recommendation 2017-1, *Adjudication Materials on Agency Websites*** provides guidance regarding the online dissemination of administrative adjudication materials. It offers best practices and factors for agencies to consider as they seek to increase the accessibility of adjudication materials on their websites and maintain comprehensive, representative online collections of adjudication materials, consistent with the transparency objectives and privacy considerations of the Freedom of Information Act and other relevant laws and directives.
- **Recommendation 2017-2, *Negotiated Rulemaking and Other Options for Public Engagement*** offers best practices to agencies for choosing among several possible methods—among them negotiated rulemaking—for engaging the public in agency rulemakings. It also offers best practices to agencies that choose negotiated rulemaking on how to structure their processes to enhance the probability of success.
- **Recommendation 2017-3, *Plain Language in Regulatory Drafting*** identifies tools and techniques agencies have used successfully to write regulatory documents (including rulemaking preambles and guidance documents) using plain language, proposes best practices for agencies in structuring their internal drafting processes, and suggests ways agencies can best use trainings and other informational resources.
- **Recommendation 2017-4, *Marketable Permits*** provides best practices for structuring, administering, and overseeing marketable permitting programs for any agency that has decided to implement such a program.
- **Recommendation 2017-5, *Agency Guidance Through Policy Statements*** provides best practices to agencies on the formulation and use of policy statements. It lists steps that agencies can take to remain flexible in their use of policy statements and to encourage, when appropriate, public participation in the adoption or modification of policy statements.
- **Recommendation 2017-6, *Learning from Regulatory Experience*** offers advice to agencies on learning from different regulatory approaches. It encourages agencies to collect data, conduct analysis at all stages of the rulemaking lifecycle (from pre-rule analysis to retrospective review), and solicit public input at appropriate points in the process.
- **Recommendation 2017-7, *Regulatory Waivers and Exemptions*** provides best practices to agencies in structuring their waiver and exemption procedures for regulatory requirements. It encourages transparency and public input by asking agencies to consider establishing standards and procedures for approval of waivers and exemptions and to seek public comments in developing standards and procedures and in approving individual waivers and exemptions.

- **Recommendation 2016-1, *Consumer Complaint Databases*** encourages agencies that make consumer complaints publicly available through online databases or downloadable data sets to adopt and publish written policies governing the dissemination of such information to the public. These policies should inform the public of the source and limitations of the information and permit entities publicly identified to respond or request corrections or retractions
- **Recommendation 2016-2, *Aggregate Agency Adjudication*** provides guidance to agencies on the use of aggregation techniques to resolve similar claims in adjudications. It sets forth procedures for determining whether aggregation is appropriate. It also considers what kinds of aggregation techniques should be used in certain cases and offers guidance on how to structure the aggregation proceedings to promote both efficiency and fairness.
- **Recommendation 2016-3, *Special Procedural Rules for Social Security Litigation in District Court*** encourages the Judicial Conference of the United States to develop a uniform set of procedural rules for cases under the Social Security Act in which an individual seeks district court review of a final administrative decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).
- **Recommendation 2016-4, *Evidentiary Hearings Not Required by the Administrative Procedure Act*** offers best practices to agencies for structuring evidentiary hearings that are not required by the Administrative Procedure Act. It suggests ways to ensure the integrity of the decision-making process; sets forth recommended pre-hearing, hearing, and post-hearing practices; and urges agencies to describe their practices in a publicly accessible document and seek periodic feedback on those practices.
- **Recommendation 2016-5, *the Use of Ombuds in Federal Agencies*** takes account of the broad array of federal agency ombuds offices that have been established since the time of Recommendation 90-2. The recommendation suggests that agencies and Congress consider creating additional ombuds offices where they may be of benefit. It also emphasizes the importance of adherence by ombuds to the three core standards of independence, confidentiality, and impartiality, and identifies best practices for the operation, staffing, and evaluation of federal agency ombuds offices.
- **Recommendation 2016-6, *Self-Represented Parties in Administrative Hearings*** offers best practices for agencies dealing with self-represented parties in administrative hearings. Recommendations include the use of triage and diagnostic tools, development of a continuum of services to aid parties, and re-evaluation and simplification of existing hearing practices, where possible. The project builds on the activity of a working group on Self-Represented Parties in Administrative Hearings that is co-led by the Administrative Conference and the Department of Justice's Office for Access to Justice.

- **Recommendation 2015-1, *Promoting Accuracy and Transparency in the Unified Agenda*** offers proposals for improving the accuracy and transparency of the Unified Agenda of Federal Regulatory and Deregulatory Actions. Among other things, it urges agencies to consider providing relevant updates between Agenda reporting periods, offers recommendations for ensuring that Agenda entries are properly categorized by projected issuance date and status, and encourages agencies to provide notice when entries are removed from the Agenda.
- **Recommendation 2015-2, *Technical Assistance by Federal Agencies in the Legislative Process*** offers best practices for agencies when providing Congress with technical drafting assistance. It is intended to apply to situations in which Congress originates the draft legislation and asks an agency to review and provide expert technical feedback on the draft without necessarily taking an official substantive position.
- **Recommendation 2015-3, *Declaratory Orders*** identifies contexts in which agencies should consider the use of declaratory orders in administrative adjudications. It also highlights best practices relating to the use of declaratory orders.
- **Recommendation 2015-4, *Designing Federal Permitting Programs*** describes different types of permitting systems and provides factors for agencies to consider when designing or reviewing permitting programs. It encourages agencies that adopt permitting systems to design them so as to minimize burdens on the agency and regulated entities while maintaining required regulatory protections.
- **Statement #19, *Issue Exhaustion in Pre-Enforcement Judicial Review of Administrative Rulemaking*** examines judicial application of an issue exhaustion requirement in pre-enforcement review of administrative rulemaking.
- **Recommendation 2014-1, *Resolving FOIA Disputes Through Targeted ADR Strategies*** addresses more effective use of alternative dispute resolution (ADR) approaches to help resolve disputes arising under the Freedom of Information Act (FOIA). The OPEN Government Act of 2007 created the Office of Government Information Services (OGIS), a part of the National Archives and Records Administration, to assist in the resolution of FOIA disputes through use of mediation and other ADR techniques. The recommendation suggests ways that OGIS can maximize the effectiveness of its resources for this purpose. The recommendation also suggests steps agencies can take to prevent or resolve FOIA disputes, including cooperating with OGIS and making FOIA staff and requesters aware of OGIS services.
- **Recommendation 2014-2, *Government in the Sunshine Act*** highlights best practices designed to enhance transparency of decision making at multi-member boards and commissions subject to the Government in the Sunshine Act. The recommendation urges covered agencies to provide a description of the primary mechanisms for conducting

business, describe substantive business disposed of outside of open meetings subject to the Act (with appropriate protections for information made exempt from disclosure), and exploit new technologies to disseminate relevant information more broadly.

- **Recommendation 2014-3, *Guidance in the Rulemaking Process*** identifies best practices for agencies when providing guidance in preambles to final rules. It suggests ways that agencies can improve the drafting and presentation of these preambles, including making it easier to identify any guidance content. The recommendation also urges agencies to ensure that users of their websites can easily locate the required small entity compliance guides.
- **Recommendation 2014-4, *“Ex Parte” Communications in Informal Rulemaking*** provides guidance and best practices to agencies for managing "ex parte" communications between agency personnel and nongovernmental interested persons regarding the substance of informal rulemaking proceedings conducted under 5 U.S.C. § 553.
- **Recommendation 2014-5, *Retrospective Review of Agency Rules*** examines agencies' procedures for reanalyzing and amending existing regulations and offers recommendations designed to promote a culture of retrospective review at agencies. Among other things, it urges agencies to plan for retrospective review when drafting new regulations; highlights considerations germane to selecting regulations for reevaluation; identifies factors relevant to ensuring robust review; and encourages agencies to coordinate with the Office of Management and Budget, other agencies, and outside entities (including stakeholders and foreign regulators) when designing and conducting retrospective reviews.
- **Recommendation 2014-6, *Petitions for Rulemaking*** identifies agency procedures and best practices for accepting, processing, and responding to petitions for rulemaking. It seeks to ensure that the public's right to petition is a meaningful one, while still respecting the need for agencies to retain decisional autonomy. Building upon ACUS's previous work on the subject, it provides additional guidance that may make the petitioning process more useful for agencies, petitioners, and the public.
- **Recommendation 2014-7, *Best Practices for Using Video Teleconferencing for Hearings*** offers practical guidance regarding how best to conduct video hearings, and addresses the following subjects: equipment and environment, training, financial considerations, procedural practices, fairness and satisfaction, and collaboration among agencies. It also provides for the development of a video hearings handbook by ACUS's Office of the Chair.
- **Recommendation 2013-1, *Improving Consistency in Social Security Disability Adjudication*** identifies ways to improve the adjudication of Social Security disability benefits claims before administrative law judges and SSA's Appeals Council, suggests changes to the evaluation of opinion evidence from medical professionals, and encourages the SSA to enhance data capture and reporting. As announced in the Unified

Agenda, the Administration is working on proposed regulations that would implement much of this recommendation.

- **Recommendation 2013-2, *Benefit-Cost Analysis at Independent Regulatory Agencies*** highlights a series of best practices directed at independent regulatory agencies in the preparation of benefit-cost analyses that accompany proposed and final rules.
- **Recommendation 2013-3, *Science in the Administrative Process*** promotes transparency in agencies' scientific decision making, including: articulation of questions to be informed by science information; attribution for agency personnel who contributed to scientific analyses; public access to underlying data and literature; and conflict of interest disclosures for privately funded research used by the agencies in licensing, rulemaking, or other administrative processes.
- **Recommendation 2013-4, *Administrative Record in Informal Rulemaking*** offers best practices for agencies in the compilation, preservation, and certification of records in informal rulemaking, and it supports the judicial presumption of regularity for agency administrative records except in certain limited circumstances.
- **Recommendation 2013-5, *Social Media in Rulemaking*** addresses the various policy and legal issues agencies face when using social media in rulemaking. The recommendation examines whether and when agencies should use social media to support rulemaking activities. It also seeks to identify relevant issues, define applicable legal and policy constraints on agency action, resolve legal uncertainty to the greatest extent possible, and encourage agencies to find appropriate and innovative ways to use social media to facilitate broader, more meaningful public participation in rulemaking activities.
- **Recommendation 2013-6, *Remand without Vacatur*** examines judicial remand of an agency decision for further consideration while allowing the decision to remain in place. It examines this remedy and equitable factors that may justify its application. The recommendation offers guidance for courts that remand agency actions and for agencies responding to judicial remands.
- **Recommendation 2013-7, *Review of GPRA Modernization Act of 2010*** examines the Act's requirements for cross-agency collaboration; identifies existing constraints to collaboration; highlights tools available to help agencies collaborate; and recommends potential new or enhanced avenues of collaboration.
- **Statement #18, *Improving the Timeliness of OIRA Regulatory Review*** highlights potential mechanisms for improving review times of rules under review by the Office of Information and Regulatory Affairs (OIRA), including promoting enhanced coordination between OIRA and agencies prior to the submission of rules, encouraging increased transparency

concerning the reasons for delayed reviews, and ensuring that OIRA has adequate staffing to complete reviews in a timely manner.

- **Recommendation 2012-1, *Regulatory Analysis Requirements*** addresses the issue of agencies having to comply with numerous regulatory analysis requirements created by statute and executive orders. The recommendation is supported by an extensive report that includes an appendix charting all of the regulatory analysis requirements of the 100 major rules subject to OMB review in 2010. The goal of the recommendation is to ensure agencies fulfill the regulatory analysis requirements efficiently and to enhance the transparency of the process. Agencies, the Congress, the President, and OMB's OIRA are all encouraged to play a role in this effort.
- **Recommendation 2012-2, *Midnight Rules*** addresses several issues raised by the publication of rules in the final months of a presidential administration and offers proposals for limiting the practice by incumbent administrations and enhancing the powers of incoming administrations to review midnight rules.
- **Recommendation 2012-3, *Immigration Removal Adjudication*** addresses the problem of case backlogs in immigration removals and suggests ways to enhance efficiency and fairness in these cases. Much of the recommendation was incorporated into the bipartisan immigration legislation (S. 744) that passed the Senate in 2013.
- **Recommendation 2012-4, *Paperwork Reduction Act*** addresses a variety of issues that have arisen since the Act was last revised in 1995, including those arising from the emergence of new technologies. The proposal offers suggestions for improving public engagement in the review of information collection requests and for making the process more efficient for the agencies and OMB.
- **Recommendation 2012-5, *Improving Coordination of Related Agency Responsibility*** addresses the problem of overlapping and fragmented procedures associated with assigning multiple agencies similar or related functions, or dividing authority among agencies. This recommendation proposes reforms aimed at improving coordination of agency policymaking, including joint rulemaking, interagency agreements, and agency consultation provisions.
- **Recommendation 2012-6, *Reform of 28 U.S.C. § 1500*** urges Congress to repeal Section 1500, which divests the United States Court of Federal Claims of jurisdiction when a plaintiff has claims against the government based on substantially the same operative facts pending in another court, and replace it with a provision that would create a presumption that in such circumstances, later-filed actions would be stayed. In 2015, the House Judiciary Committee favorably reported a bill in accordance with this recommendation and a companion ABA resolution endorsing the recommendation.

- **Recommendation 2012-7, *Third-Party Programs to Assess Regulatory Compliance*** addresses issues that arise when agencies develop programs in which third parties assess whether regulated entities are in compliance with regulatory standards and other requirements. In some areas of regulation, Congress has directed agencies to develop a third-party program; in others, regulatory agencies have developed programs under existing statutory authority. The recommendation sets forth guidance for federal agencies that are establishing, or considering establishing, such programs.
- **Recommendation 2012-8, *Inflation Adjustment for Civil Penalties*** addresses agency adjustments to civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note). The recommendation urges Congress to change the current statutory framework by which agencies periodically adjust their penalties to address three provisions that result in penalty adjustments that may not track the actual rate of inflation. It also advises agencies to adjust their penalties for inflation as required by law. As urged by the Administration, Congress implemented the recommendation in the Bipartisan Budget Act of 2016. The inflation-adjustment provisions of that Act will increase general revenues to the government by \$1.3 billion over the next ten years.
- **Recommendation 2011-1, *Legal Considerations in e-Rulemaking*** addresses legal issues associated with e-rulemaking and recommends best practices in dealing with them. These include whether agencies can require electronic filing, how they should address copyright and privacy concerns, whether and under what framework they can solicit comments through social media, and whether any amendments to the Administrative Procedure Act would be appropriate to address such issues.
- **Recommendation 2011-2, *Rulemaking Comments*** addresses certain best practices for agencies to consider in conducting the “comment” aspect of traditional notice-and-comment rulemaking under the Administrative Procedure Act. The recommendation addresses a possible minimum period for comments, standards for extension of the comment period, availability of comments to the public and provision for reply comments, whether agency delays may require updated comment periods, and the circumstances warranting confidentiality of material filed in public comments.
- **Recommendation 2011-3, *Government Contractor Ethics*** addresses the increasing use of contractors in government and asks the Federal Acquisition Regulation Council to adopt revisions regarding compliance standards for government contractor employees relating to personal conflicts of interest and use of certain non-public information. In February 2013, the American Bar Association’s House of Delegates adopted a resolution—based on Recommendation 2011-3—urging federal action to minimize government contractor personal conflicts of interest.

- **Recommendation 2011-4, *Video Hearings*** addresses best practices for the use of video hearings by federal government agencies with high volume case loads as a means of reducing caseload backlog and conducting more efficient adjudication.
- **Recommendation 2011-5, *Incorporation by Reference*** addresses ways in which agencies publish rules that refer to standards or other materials that have been published elsewhere. The recommendation proposes ways to ensure that materials subject to incorporation by reference are reasonably available to the regulated community and other interested parties, to update regulations that incorporate by reference, and to navigate procedural requirements and drafting difficulties when incorporating by reference. The Office of the Federal Register (OFR), among other agencies, has relied heavily on this recommendation in setting its regulatory policies. In late 2014, in fact, the OFR implemented the recommendation in a final rule modifying its long-standing requirements for incorporation by reference in all federal regulations.
- **Recommendation 2011-6, *International Regulatory Cooperation*** addresses how United States regulators can interact with foreign authorities to accomplish their domestic regulatory missions and eliminate unnecessary non-tariff barriers to trade. The project updates Administrative Conference Recommendation 91-1, *Federal Agency Cooperation with Foreign Government Regulators*. The recommendation includes proposals for enhanced cooperation and information gathering, more efficient deployment of limited resources, and better information exchanges. The key features of this recommendation were incorporated into Executive Order 13,609.
- **Recommendation 2011-7, *FACA in the 21st Century*** addresses the administrative load imposed by Federal Advisory Committee Act (FACA) and offers proposals to Congress, the General Services Administration, and agencies that use advisory committees, to alleviate certain procedural burdens associated with the existing regime, clarify the scope of the Act, and enhance the transparency and objectivity of the advisory committee process.
- **Recommendation 2011-8, *Agency Innovations in e-Rulemaking*** addresses ways in which agency innovations and best practices can engage the public in rulemaking activities at low cost to the government.
- **Recommendation 2010-1, *Regulatory Preemption*** addresses agency procedures for determining whether to preempt state law. The recommendation presents best practices by federal agencies in implementing the requirements of Executive Order 13,132 and the President's May 2009 memorandum governing agency preemption of state law, including procedures for securing meaningful participation by state and local government officials in the process of considering questions of federal preemption.