



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

August 2, 2024

The Honorable Andrew Fois
Chairman
Administrative Conference of the United States
1120 20th Street, NW
Suite 706 South
Washington, DC 20036

Dear Chair Fois:

Pursuant to 41 CFR § 10-3.70, enclosed for filing with the Administrative Conference is the Federal Advisory Committee Act charter for the Assembly of the Conference.

Sincerely,

Shawne McGibbon
General Counsel & Committee Management
Officer

Enclosure

cc (w/encl.): Senate Judiciary Committee
House Judiciary Committee
GSA Committee Management Secretariat
Library of Congress, Federal Advisory Committee Desk



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Assembly of the Administrative Conference of the United States Federal Advisory Committee Charter

1. Committee's Official Designation

Assembly of the Administrative Conference of the United States (Assembly).

2. Authority

The Assembly was established by the Administrative Conference Act (ACA), as amended, 5 U.S.C. §§ 591 *et seq.* The Assembly is chartered as an advisory committee of the Administrative Conference of the United States (ACUS) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. § 1001 *et seq.* Although the ACA prescribes specific procedures for the ACUS Assembly that conflict, in some instances, with the requirements of FACA, ACUS adheres to the key requirements under FACA, including those that relate to transparency, public access, and recordkeeping.

3. Objectives and Scope of Activities

The Assembly adopts recommendations that improve the efficiency, adequacy, and fairness of administrative procedures. These recommendations may be directed at federal agencies, the President, Congress, or the U.S. Courts through the Judicial Conference of the U.S. The recommendations are a vital part of the agency's statutory charge, which is to 1) provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperative study mutual problems, exchange information, and develop recommendations for action by proper authorities...; 2) promote effective public participation and efficiency in the rulemaking process; 3) reduce unnecessary litigation in the regulatory process; 4) improve the use of science in the regulatory process; and 5) improve the effectiveness of laws applicable to the regulatory process. 5 U.S.C. § 591.

4. Description of Duties

The Assembly evaluates, debates, modifies, and votes to adopt (or not adopt) proposed recommendations of its subcommittees, pursuant to its bylaws that are established under 5 U.S.C. § 595(a)(2). The Assembly operates exclusively in an advisory capacity and not in a policymaking or enforcement capacity.

5. Agency or Official to Whom the Assembly Reports

The Chair is the chief executive of the Conference. 5 U.S.C. § 595(c). Activities of the Assembly are carried out under the direction of the Chair, and under specific circumstances (e.g., setting the agenda for meetings of the Assembly), with the approval of the presidentially appointed 10-member Council. Recommendations adopted by the Assembly are reported by the Chair to the President, Congress, the Judicial Conference of the U.S., and affected agencies, as appropriate.

6. Support

The Assembly receives support services from ACUS and its small staff.

7. Estimated Annual Operating Costs and Staff Years

The annual fiscal year cost to operate the Assembly (including federal members, federal staff, travel, and other expenses is approximately \$342,127.00. This figure includes 1.1 full-time equivalent staff years.

8. Designated Federal Officer

The ACUS Chair will designate a permanent full-time or part-time Federal staff member to serve as the Designated Federal Officer (DFO) for the Assembly. The Chair may also appoint additional full-time or permanent part-time Federal staff members to serve as an alternate DFO (ADFO) for the Assembly. The DFO or ADFO shall: 1) ensure that Assembly activities comply with FACA, its regulations, agency procedures, and any other applicable laws and regulations; 2) publicly announce all meetings of the Assembly in the *Federal Register* and on the agency's website; 3) prepare and approve all meeting agendas in a manner consistent with ACUS's statutory requirements (which dictate that the presidentially appointed ACUS Council approve agendas for meetings of the Assembly, 5 U.S.C. § 595 (b)(1)); 4) attend all committee meetings; 5) if in the public interest, adjourn any meeting of the Assembly in a manner consistent with ACUS's statutory requirements (which dictate that the ACUS Chair preside at meetings of the Assembly, 5 U.S.C. 595(c)); 6) chair meetings when directed to do so by the Chair and Council; 7) maintain information on Assembly activities and provide such information to the public, as applicable; and 8) ensure that Assembly members receive appropriate training regarding FACA and ethics.

9. Estimated Number and Frequency of Meetings

The Assembly will generally meet twice each year, although only one meeting per year is required by law. All meetings of the Assembly will be open to the public and announced in accordance with FACA.

10. Duration

Per the ACA, the Committee is continuing subject to the Termination section below.

11. Termination

This charter terminates two years from the date of filing. Pursuant to Section 14 of FACA, ACUS will file a charter for the Assembly upon the expiration of two years from the date hereof. The Assembly and its subcommittees will meet in accordance with the provisions of the FACA charter.

12. Membership and Designation

The appointment and designation of members of the Assembly is prescribed by the ACA. Under that Act, the Assembly must have between 75 and 101 members. ACUS is headed by a full-time Chair appointed by the President to a five-year term, by and with the advice and consent of the Senate. The ACUS Chair has three roles—head of the agency, Chair of the 10-member Council, and Chair of the Assembly. Council members are appointed by the President (without Senate confirmation) for three-year terms. Council members may continue to serve until: a successor is

appointed by the President, they resign, or they are reappointed by the President. The Chair and Council serve at the pleasure of the president (i.e., without “for cause” protection) despite having a term of years appointment. Together, the Chair and Council represent 11 members of the 101-member ACUS Assembly.

The Assembly also includes 50 government members--designees from federal executive departments, agencies, and independent regulatory boards and commissions (no fixed terms). The agencies they represent were chosen by Order of the President. Finally, the Assembly includes not more than 40 public members (i.e., non-Government members) appointed by the Chair with the approval of the Council (two-year terms). The 40 public members must be chosen based on specific statutory criteria—they must “provide broad representation of the views of private citizens and utilize diverse experience.” 5 U.S.C. § 593(b)(6). In addition, these members “shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to federal administrative procedure.” *Id.* The bylaws impose limits on the number of continuous years of service by public members (i.e., no more than six consecutive years of service).

Under ACUS’s bylaws, each member of the Assembly is expected to participate in all respects according to his or her own views and not necessarily as a representative of any organization, public or private. Accordingly, public members of the Assembly are Special Government Employees (SGEs), and not representatives.

Members, except the Chair, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of title 5 for individuals serving without pay, subject to availability of funds.

Per ACUS’s bylaws, and subject to the approval of the ACUS Council, the Chair may appoint senior fellows and special counsel to participate in ACUS activities. The Chair may also enter liaison arrangements with organizations and government entities (e.g., advocacy organizations, congressional committees, federal courts, and federal agencies that are not already statutory members of the ACUS Assembly). The particular liaison entity designates a representative to participate on behalf of the entity. These “members” created under ACUS’s bylaws have all of the rights of Assembly members, but they may not vote, except in subcommittee deliberations, where the subcommittee chairmen generally have the authority to confer voting rights upon such individuals. All non-Assembly members who are not employed by a government entity are SGEs.

13. Subcommittees

The Assembly has authority to adopt bylaws and regulations that create such subcommittees as it considers necessary for the conduct of studies and the development of recommendations for consideration by the Assembly. 5 U.S.C. § 595(a)(2). There are five standing subcommittees of the Assembly, and on occasion, additional special subcommittees established under the authority of the ACUS bylaws. Each such subcommittee will meet, on average, four times per year. Subcommittee members are appointed by the Chair. *Id.* § 595(c)(5). All subcommittee members are either members of the Assembly or senior fellows, special counsel, or liaison representatives as described above.

In most respects, meetings of subcommittees will be conducted in accordance with the openness requirements of FACA, consistent with Federal Advisory Committee Regulation 41 CFR § 102-3.145. The primary exception is that subcommittee meetings (which are otherwise exempt from FACA's requirements) will be announced on the agency's website and not published in the *Federal Register*. In other words, despite the subcommittee exemption in FACA's implementing regulations, most transparency and openness requirements are met voluntarily at the subcommittee level.

All draft proposed recommendations of subcommittees must be considered by the Assembly prior to adoption.

14. Recordkeeping

The records made available to or prepared for or by the Assembly or its subcommittees shall be handled in accordance with General Records Schedule 6.2 or an alternative approved agency records disposition schedule. Such records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. § 552.

15. Filing Date

August 2, 2024

Submitted by: Shawne McGibbon, General Counsel and Committee Management Officer