

Request for Proposals—January 14, 2025

Drafting Regulatory Preambles

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals interested in serving as a consultant(s) to conduct a study of agency best practices drafting regulatory preambles. The study will support the development of a recommendation for action by federal agencies.

About ACUS

ACUS is an independent federal agency in the executive branch charged with identifying and promoting improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies conduct administrative processes.

Many of the hundreds of recommendations ACUS has issued since 1968 have resulted in reforms by federal agencies, the President, Congress, and the Judicial Conference of the United States. All are available at acus.gov/recommendations.

Recommendations are issued by the Conference, which consists of a Chair appointed by the President and confirmed by the Senate; ten presidential appointees; 50 senior federal officials designated by the heads of participating agencies; and 40 leading academics, practitioners, and other private-sector experts. Except for the Chair, all members are unpaid.

Recommendations are typically informed by a report prepared by one or more consultants. Consultants also work closely with committees of Conference members and the full Conference membership to develop the recommendations. Previous consultant reports are available at acus.gov/reports.

Project Description

There are many rulemaking requirements from various legal authorities with which federal agencies must comply. When an agency publishes a proposed or final rule in the *Federal Register*, it must include a preamble containing additional information about the rule and its development. A preamble can serve many purposes, including promoting transparency in agency decision making; facilitating meaningful participation by interested persons in rulemaking; enabling effective oversight and review by the Executive Office of the President, Congress, and the judiciary; providing guidance prospectively to officials charged with administering the rule and persons affected by it; and expressing a commitment to monitoring of the rule's effectiveness. ACUS has undertaken several projects that address aspects of regulatory preambles, including the use of plain-language principles; the description of benefits, costs, and

transfer payment of regulatory actions and primary alternatives; and the consideration of regulatory alternatives among other aspects of rulemaking and regulatory drafting.¹

ACUS is now undertaking a project to identify best practices for drafting rulemaking preambles in light of recent developments in how courts review agency rules. The recommendation will be directed solely to agencies. No part of the recommendation will be directed to the judiciary or Congress, and the recommendation will take no position on judicial opinions, trends in judicial decision making, or proposed or potential legislative responses.

The project will address:

- Best practices to help agencies explain, in the preambles to proposed and final rules, how they determined their legal authority, evaluated the rulemaking record, and reached policy decisions;
- Preambular writing—what is required and what agencies should consider as best practices as suggested by the text of recent Supreme Court opinions, current agency practices, and commentators’ proposals; and
- Analyses, such as those of regulatory precedents, which should be included in preambles.

Consultant Responsibilities

The consultant(s) will complete a draft report by January 2026. The consultant(s) will work with Conference staff to finalize the draft report, which will be provided to a committee of Conference members and made publicly available on the ACUS website.

During spring 2026, the consultant(s) will work with Conference staff and the committee to develop a proposed recommendation. Committees typically meet two to three times per project; meetings are conducted virtually and typically last about three hours.

The consultant(s) will work with Conference staff to complete a final report by May 2026, which will be provided to the full Conference and made publicly available on the ACUS website. The consultant(s) will also work with Conference staff and the full Conference membership to consider the committee-proposed recommendation at a plenary session of the Conference, likely in June 2026.

¹ See, e.g., Admin. Conf. of the U.S., Recommendation 2021-3, *Early Input on Regulatory Alternatives*, 86 Fed. Reg. 36,082 (July 8, 2021); Admin. Conf. of the U.S., Recommendation 2018-2, *Severability in Agency Rulemaking*, 83 Fed. Reg. 30,685 (June 29, 2018); Admin. Conf. of the U.S., Recommendation 2017-3, *Plain Language in Regulatory Drafting*, 82 Fed. Reg. 61,728 (Dec. 29, 2017); Admin. Conf. of the U.S., Recommendation 2014-3, *Guidance in the Rulemaking Process*, 79 Fed. Reg. 35,992 (June 25, 2014); Admin. Conf. of the U.S., Recommendation 2013-2, *Benefit-Cost Analysis at Independent Regulatory Agencies*, 78 Fed. Reg. 41,355 (July 10, 2013); Admin. Conf. of the U.S., Recommendation 2013-3, *Science in the Administrative Process*, 78 Fed. Reg. 41357 (July 10, 2013) (evaluating scientific information); Admin. Conf. of the U.S., Recommendation 2012-1, *Regulatory Analysis Requirements*, 77 Fed. Reg. 47,801 (Aug. 10, 2012).

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

Submitting a Proposal and Evaluation Criteria

If you are interested in serving as a consultant for the report, send an email to Kazia Nowacki (knowacki@acus.gov) with the phrase “ACUS Project Proposal” in the subject line. Attach your curriculum vitae to the email, along with a short statement (ideally no more than two pages) that:

- Addresses your interest in this study;
- Describes specific topics you would be interested in researching;
- Describes the methodologies you might employ to researching these topics; and
- Identifies any relevant scholarship you have published.

All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on February 16, 2025, in order to be guaranteed consideration by the agency.

Proposals will be evaluated based on quality, clarity, and the proposer’s qualifications. The Conference has a strong preference for consultants who have previously authored scholarly work on agreements between agencies with related regulatory responsibilities.