

April 25, 2016

To the Distinguished Members of the Committee on Rulemaking:

The Committee is now considering what position, if any, the Administrative Conference of the United States (ACUS) should take on American Bar Association (ABA) Resolution 106B. We agree with many of the concerns expressed by other ACUS members in recent days. In short, we believe that it would be inappropriate and counterproductive for ACUS to endorse Resolution 106B, because such an endorsement would amount to a repudiation of ACUS's work product and process. We also believe that many of the proposals in the resolution are inappropriate for legislative action. And we believe that an ACUS endorsement of Resolution 106B would amount to an unnecessary and open-ended invitation for Congress to revise the basic charter of the regulatory state.

For these and other reasons, we urge ACUS to end this project and issue no Statement on Resolution 106B. If the Conference as a whole feels strongly that ACUS should at least consider whether to take a position, we urge ACUS to undertake appropriate studies about the benefits and drawbacks (to agencies, courts, and the public) of the ABA's proposed mandates and refer the proposed mandates to the Committees of appropriate jurisdiction for their consideration. Using that process, ACUS membership could decide what position, if any, ACUS should take.

Thank you for your attention.

Sincerely,

Christina E. McDonald
Government Member
U.S. Department of Homeland Security

Carol Ann Siciliano
Government Member
U.S. Environmental Protection Agency

William B. Schultz
Government Member
U.S. Department of Health and Human Services

Rebecca D. Orban
Liaison Representative
U.S. Coast Guard