



**May 18, 2021**

**Request for Proposals  
Nationwide Injunctions and Federal Regulatory Programs**

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals or groups interested in serving as a consultant(s) to produce a report analyzing nationwide injunctions as they affect federal regulatory programs.

**Project Description and Consultant Responsibilities**

ACUS's Office of the Chairman is undertaking an empirical study of how nationwide injunctions and equivalent or similar equitable remedies (including "universal" vacatur and set-aside, as the Department of Justice has used that term<sup>1</sup>)—together "nationwide injunctive relief"—affect the administration of federal regulatory programs.<sup>2</sup> The study will examine (1) the use, frequency, and characteristics of nationwide injunctive relief in challenges to agency action, with a particular focus on agency rules; (2) how agencies understand the scope of judgments vacating and setting aside agency rules under the Administrative Procedure Act (APA);<sup>3</sup> (3) how agencies respond to nationwide injunctive relief in carrying out their rulemaking activities; (4) other implications of nationwide injunctive relief for the day-to-day administration of regulatory programs; and (5) such other related subjects as ACUS and its consultant(s) may agree upon.

The consultant(s) will be expected not only to review academic literature but also to undertake a methodologically sound empirical review of federal-court litigation over an agreed-upon period of time and to conduct interviews of agency officials involved in rulemakings, organizations of and advocates for regulated parties and regulatory beneficiaries, and others. Although the consultant report for this project should, as necessary background, address the doctrinal debates over the propriety of nationwide injunctions (as a matter of constitutional law, remedies law, the APA, and otherwise), it should focus primarily on the issues described above. It should not offer the consultant's(consultants') views as to when, if ever, nationwide injunctions should be used. It should conclude by identifying administrative and legislative reforms, if any, that the consultant(s) believes ACUS should consider in a subsequent project(s) directed to the

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<sup>1</sup> Memorandum from the Attorney General to Heads of Civil Litigation Components at 7 (Sept. 13, 2018) [[link](#)].

<sup>2</sup> The proposal uses the term "nationwide injunction" as it is generally used, with appropriate qualifications, in recent academic literature. See Mila Sohoni, *The Power to Vacate a Rule*, 88 GEO. WASH. L. REV. 1121 (2020); Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417 (2017); see also Attorney General Memorandum, *supra* note 1, at 7.

<sup>3</sup> 5 U.S.C. § 706.

formulation of a recommendation of the ACUS Assembly. This project will not result in such a recommendation.

A draft report will be completed by April 29, 2022, and a final report will be completed by July 1, 2022, or such later dates as ACUS may determine. ACUS may select a single consultant or assemble a team of consultants depending on the proposals it receives. Along with a budget for expenses related to the project, each consultant will receive between \$15,000 and \$25,000, with the final figure for each consultant to be determined based on the number of consultants, the precise scope and nature of the work the consultants agree to undertake, and the allocation of responsibilities among the consultants. The total value of consulting fees for this project will be between \$25,000 and \$50,000, depending on the number of consultants selected and the precise scope and nature of the work the consultants agree to undertake. There will also be a budget for travel and research assistant expenses, not to exceed \$6,000 in the aggregate.

The consultant(s) will be advised by a consultative group of experts assembled by ACUS. The consultants will confer with the group only periodically and will not be bound by the group's recommendations.

### **Submitting a Proposal and Evaluation Criteria**

If you are interested in serving as a consultant for the report, send an email to Gavin Young (gyoung@acus.gov) with the phrase "ACUS Project Proposal" in the subject line. Attach your curriculum vitae to the email, along with a short (ideally no more than one page) statement identifying what you see as the primary issues that the report should address. **You must submit a proposal by 5:00 p.m. Eastern Time on June 1, 2021, in order to be guaranteed consideration by the agency.** (Any prospective consultant must be a responsible source within the meaning of the Federal Acquisition Regulation.)

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 nationwide injunctions or public-law remedies, especially in the context of challenges to agency rules. After consultation with the selected consultant(s), the Office of the Chairman will assign each consultant the topic(s) and scope of work.