

Comment from Council Member Ronald A. Cass on *Procedural Fairness in Judicial Review*
March 30, 2021

I would favor asking the consultant/committee to take a crack at drafting a provision that provides a general requirement that where there are differences in specific procedures (such as the ones identified in the proposal, though I think each category needs to be spelled out precisely) between the APA and a statute enacted [choose one: after the date of the law containing the general rule or after the APA or some specific date in the future] shall be construed as adopting the APA procedure unless that procedure is specifically referred to and rejected. I'm not sure that this is a good idea, as the unwary may be worse off if people looking to see what is necessary only read a statute, take it at its word on procedures, and later learn that the rules were different because the statute didn't reference the APA but did differ from it. However, I would like to see if there is a way to do something overarching that would make things better, and a "clear drafting" requirement with respect to divergence from APA baselines could be beneficial.