



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

71ST PLENARY SESSION
(June 13, 2019)

COUNCIL EXPLANATION OF PROPOSED BYLAW AMENDMENTS

In advance of the plenary session, the Council offers the following explanation for its proposed amendments to the Conference's Bylaws, which are attached.

1. Proposed Amendment to § 302.3(a) (“Committees”): to strike from the list of standing committees the Committee on Collaborative Governance.

In May 2016, Vice Chairman Steven Croley, with the Council's consent, dissolved the Committee on Collaborative Governance because, among other things, its subject-matter proved to be too narrowly drawn and its work was easily accommodated by other standing committees. The proposed amendment reflects that action.

2. Proposed Amendment to § 302.4 (“Liaison Arrangement”): to provide that liaison arrangements shall be subject to renewable two-year terms.

Section 302.4 of the Bylaws authorizes the Chairman, with the Council's consent, to “make liaison arrangements with representatives of the Congress, the judiciary, federal agencies that are not represented on the Conference, and professional associations.” A list of current entities with which the Conference has liaisons arrangements (hereafter called “liaisons,” as is customary) appears at <https://www.acus.gov/directory/liaison-representative> and will appear in the printed member packet for the plenary session.

Liaisons, like senior fellows and special counsels, enjoy the privilege of debate, but they may not make motions or vote at plenary sessions. They may make motions and vote in committee with the permission of the committee chair (which is regularly given). But unlike senior fellows, special counsels, and public members, liaisons are not appointed for particular terms. The proposed amendment provides that they serve for renewable two-year terms. Like senior fellows and special counsels, they would not be subject to term limits.

The Chairman and the Council should consider every two years whether the reasons justifying the appointment of each liaison still exist and whether the liaison has appropriately contributed to the Conference's mission as contemplated. It may be, for example, that a liaison was appointed to assist the Conference with respect to particular subjects that no longer remain on its agenda and are not likely to return to it. Liaisons should be subject to the same reappointment process as public members, senior fellows, and special counsels.

3. Proposed Amendment to § 302.6 (“General”): to provide (a) that amendments to committee-proposed recommendations should be submitted in advance of plenary sessions and (b) that pre-submitted amendments will be considered before amendments that were not pre-submitted.

Amendments to committee-proposed recommendations should be submitted in advance of the plenary session (by the date established by the Chairman for the pre-submission of amendments) so that members have an opportunity to give them careful consideration and the Chairman can best organize the proceedings.

The first part of the proposed amendment, which tracks the approach adopted by the American Law Institute, strongly encourages—but does not require—the pre-submission of amendments. In drafting it this way, the Council recognizes that it may not be feasible for members to pre-submit all amendments. That will be the case when the need for important amendments is not apparent until there has been debate on a recommendation or the Conference adopts one amendment that suggests the need for another.

This proposed change covers what are often called first-degree amendments. It does not cover proposed amendments to amendments, whose pre-submission would be impracticable.

As for the second part of the proposed amendment, which provides that pre-submitted amendments will be considered first during plenary-session debates, it reflects the Conference’s long-standing practice. This practice should be codified in the Bylaws both to emphasize the Conference’s preference for the pre-submission of amendments and to notify new members that these amendments will receive priority in debate.

While the proposed amendment does not address committee proceedings, the Council encourages members, whenever possible, to offer their amendments first at the committee level. They can be addressed there without the press of time that exists at the plenary sessions. This is especially important in the case of amendments that raise significant issues or whose resolution may benefit from additional research. Members can follow the committees’ work through the Conference’s website.

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A Note on Members’ Proposals for Bylaw Amendments

The Council welcomes other proposed amendments to the Bylaws for possible consideration at future plenary sessions. Any proposals should be offered sufficiently far in advance of the plenary session at which they are proposed for consideration to allow the Council to consider them and, if the Council supports them, to circulate them to the membership at least 30 days before that session. *See* Bylaws, § 302.6(d) (existing version dated June 22, 2012), <https://www.acus.gov/policy/administrative-conference-bylaws>.