



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

November 2021

ACUS is an independent federal agency within the executive branch that develops recommendations to improve administrative processes, including adjudication, and arranges for the interchange of information to carry out its mission. The ACUS Office of the Chairman issues monthly *Updates* to share adjudication-related developments with agencies, Congress, and the public. For additional resources, visit www.acus.gov/adjudication.

This resource is for informational purposes only. Except as noted, these updates do not represent the position of ACUS or the federal government. New developments, feedback, and corrections are welcome at info@acus.gov.

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ACCESS TO JUSTICE

[Underserved Communities and the Regulatory Process \(ACUS\)](#). ACUS held a six-part forum on underserved communities' participation in agency processes, including adjudication, for regulatory policymaking. Videos of all panels are posted at www.acus.gov/underserved-communities-and-the-regulatory-process-forum.

ADJUDICATORS

[Changing Position Title of Judgment Officer to Administrative Judge \(CFTC, Nov. 18\)](#). The Commodity Futures Trading Commission amended its rules to change the title of the adjudicator in reparations cases from “Judgment Officer” to “Administrative Judge.” The CFTC explained that the new title “more accurately describe[s] the duties performed by the adjudicator.”



ADMINISTRATIVE REVIEW

Quality Assurance Systems in Agency Adjudication (ACUS). An ACUS committee reported a proposed recommendation identifying best practices for agencies when devising and implementing systems to assess and improve decisional quality. The ACUS Assembly will consider the proposed recommendation at its [76th Plenary Session](#) on December 16. The proposed recommendation and consultant report are available [here](#).

PROCEDURAL RULES

Changes to Implement Provisions of the Trademark Modernization Act of 2020 (USPTO, Nov. 17). The Patent and Trademark Office amended its rules of practice in trademark cases to implement the Trademark Modernization Act, which, among other things, created new ex parte processes for third parties or the USPTO Director to challenge trademark registrations. The new processes are “intended to provide a more efficient and less expensive alternative” to inter partes proceedings before the Trademark Trial and Appeal Board.

Rate Reasonableness Procedure (STB, Nov. 26). The Surface Transportation Board is soliciting additional public input on its proposed Final Offer Rate Review process, which is intended to provide a less expensive and more expeditious option for resolving small disputes involving rates charged by rail carriers. Relatedly, five rail carriers [petitioned](#) the Board to establish a voluntary arbitration program for small rate disputes.

PUBLIC ACCESS

Access to Orders and Decisions (OFIA). The Office of Financial Institution Adjudication recently launched a website that will provide public access to decisions issued by administrative law judges and the four agencies the OFIA serves.

Public Access to Agency Adjudicative Proceedings (ACUS). An ACUS committee reported a proposed recommendation identifying best practices for providing public access to adjudicative proceedings. The ACUS Assembly will consider the proposed recommendation at its [76th Plenary Session](#) on December 16. The proposed recommendation and consultant report are available [here](#).



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REPRESENTATION

Regulation of Representatives in Agency Proceedings (ACUS). An ACUS committee reported a proposed recommendation addressing how agencies regulate the conduct of attorneys and non-attorneys who represent parties and others in administrative proceedings. The ACUS Assembly will consider the proposed recommendation at its [76th Plenary Session](#) on December 16. The proposed recommendation and consultant report are available [here](#).

TECHNOLOGY

Use of Videoconference Technology to Conduct Proceedings (NLRB, Nov. 5). The National Labor Relations Board is seeking public input on the use of videoconference technology to conduct proceedings in unfair labor practice and representation cases and on potential related amendments to its procedural rules.