



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

January 2022

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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ADJUDICATORS

[Axon Enter. v. FTC](#) (SCOTUS, Jan. 24). This case concerns the constitutionality of multiple layers of for-cause removal protections for Federal Trade Commission administrative law judges. The Supreme Court granted certiorari to review whether parties can directly challenge the constitutionality of FTC adjudication in federal district court or whether judicial review of a final agency decision offers the only opportunity for judicial resolution of such challenges. The Court did not grant the petition to decide the underlying question about the constitutionality of ALJ removal protections.

ENFORCEMENT

[Agency Head Enforcement and Adjudication Functions](#) (ACUS, Jan. 21). In a new report to ACUS, *Greenlighting Administrative Prosecution: Checks and Balances on Charging Decisions*, Professor Michael Asimow (Santa Clara Law School) studies the legal questions and practical benefits and risks associated with agency heads' involvement in decisions to investigate and charge enforcement



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targets at five independent regulatory agencies at which agency heads also serve as final adjudicatory decision makers.

PRECEDENT

Precedential Decision Making in Agency Adjudication (ACUS). ACUS recently launched a new project to identify best practices on the use of precedential decisions in agency adjudication. The project examines when agencies should issue precedential decisions and according to what criteria, what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions, how agencies should structure and write precedential decisions, how agencies should enforce precedential decisions, and how agencies should communicate precedential decisions internally and publicly.

PROCEDURAL RULES

Manners of Appearance at Hearings (SSA). As part of its Fall 2021 regulatory plan, published in the *Federal Register* on January 31, the Social Security Administration announced it is developing a proposed rule that would “add[] definitions to clarify how hearings are held” and provide a process for parties to opt out of participating in administrative law judge hearings in particular manners (e.g., by video teleconference).