



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

February 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

[Appointment of Adjudicators](#) (HUD, Feb. 14). The Department of Housing and Urban Development amended its regulations to, among other things, clarify how the agency appoints administrative law judges and clarify the required qualifications for administrative judges and administrative law judges.

ADMINISTRATIVE REVIEW

[Administrative Appeals](#) (BIA, Feb. 17). The Bureau of Indian Affairs held virtual tribal consultation sessions in February to obtain comments on proposed changes to agency rules governing appeals of administrative actions. Tribes are also invited to submit written input through March 24.



CONGRESS

[Legislation Proposed to Establish Article I Immigration Courts \(H.R. 6577, Feb. 3\)](#). Following a January 20 [hearing](#), Representative Zoe Lofgren (D-CA) introduced legislation with 31 cosponsors that, if enacted, would replace the immigration courts, currently housed in the Department of Justice, with a court system established under Article I of the Constitution.

ENFORCEMENT

[Regulatory Enforcement Manuals \(ACUS\)](#). Many agencies have developed documents, often called “enforcement manuals,” that provide agency personnel with a consolidated resource for enforcement-related policies. ACUS launched a project to examine whether and when enforcement manuals provide an effective means for agencies to communicate enforcement-related policies internally and publicly.

PROCEDURAL RULES

[Rules of Practice for Adjudication Proceedings \(CFPB, Feb. 22\)](#). The Consumer Financial Protection Bureau issued a final rule updating its rules of practice. Among other things, the final rule expands opportunities for depositions, amends the procedures for arguing and deciding dispositive motions, and adds a new provision addressing issue exhaustion consistent with ACUS Recommendation 2020-3, [Agency Appellate Systems](#).

REFERENCE GUIDES AND TRAINING

[Updated Bench Book \(NLRB\)](#). The Division of Judges of the National Labor Relations Board recently released the 2022 edition of its Bench Book.

[Representative Training \(EOIR\)](#). As part of its [Access EOIR](#) initiative, the Executive Office for Immigration Review has relaunched its [Model Hearing Program](#) (MHP). The MHP provides educational resources—including live events, recorded model hearings, and on-demand seminars—for representatives and government attorneys who practice before EOIR.



TECHNOLOGY

E-Appeal Portal (OMHA). The Office of Medicare Hearings and Appeals launched a new “e-Appeal Portal” in December that allows parties to submit requests for hearing, upload supporting documentation, and check appeal status.

TRANSPARENCY

Advanced Search Tools (DOL). Last fall, the Department of Labor’s Office of Administrative Law Judges unveiled new “advanced search applications for finding information about hearing procedure, specific cases, and relevant law.”

Disclosure of Agency Legal Materials (ACUS). ACUS is undertaking a project that considers whether the main statutes governing agency legal materials, including adjudicative decisions, should be amended to, among other things, consolidate and harmonize their overlapping requirements, account for technological developments, and correct statutory ambiguities and drafting errors.

FOIA Rules (FMSHRC, Feb. 1). A new provision of the Federal Mine Safety and Health Review Commission’s Freedom of Information Act rules allows parties to request expedited processing if a record is required to meet a “fast-approaching” deadline set by an agency adjudicator. According to the *Federal Register* notice, this “will be particularly helpful for parties requesting hearing transcripts needed to prepare post-hearing briefs.”

Improving Notice of Regulatory Changes (ACUS). ACUS is undertaking a project that examines and offers recommendations on agency practice for publicizing regulatory developments, including those announced in adjudicative decisions. A preliminary [report](#) is available on ACUS’s website.