



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

March 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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ADMINISTRATIVE REVIEW

[Quorum at Merit Systems Protection Board](#) (Mar. 1). The Senate confirmed Tristan Leavitt and Raymond Limon to the MPSB, restoring a quorum at the multi-member agency for the first time in five years. Without a quorum, the Board was unable to issue final decisions on petitions for review. According to a Board [FAQ](#), the Board will “soon begin issuing final decisions” in pending cases.

[Review of Enforcement Decisions](#) (NOAA, Mar. 24). The National Oceanic and Atmospheric Administration proposed a rule that, if finalized, would update directions for seeking review of administrative law judge decisions, explain factors the Administrator will consider in deciding whether to grant discretionary review, and clarify actions the Administrator may take on review. The rule would also make changes to procedures for filing, discovery, and evidence.



MANAGEMENT AND OPERATIONS

Immigration Court Caseload Management. The President’s FY 2023 [budget proposal](#), released on March 28, would provide funding for the Executive Office for Immigration Review “to continue addressing the backlog of over 1.5 million cases that are currently pending in the immigration courts.” This funding is intended to support hiring additional adjudicators and support staff, expand EOIR’s virtual court initiative, and support access to legal representation. More than forty members of Congress sent a [letter](#) to the Attorney General on March 29 regarding EOIR case management practices such as virtual hearings, administrative closure, deferred adjudication, and re-calendering. The letter also requested that EOIR ensure Immigration Adjudication Centers are open to the public. More information is included in the Justice Department’s FY 2023 [budget justification](#) for EOIR.

U.S. Citizenship and Immigration Services Caseload Management. The [Consolidated Appropriations Act](#), which became law on March 15, provides funding for USCIS application process and backlog reduction efforts. The President’s FY 2023 [budget proposal](#) would also provide funding “to efficiently process increasing asylum caseloads” and “address the immigration application backlog.” USCIS [announced](#) measures on March 29 to reduce the backlog and expand expedited adjudication services. USCIS issued a [final rule](#) the following day expanding premium processing, which permits some employers and individuals to pay a higher fee to access faster adjudication. More information is included in the Department of Homeland Security’s FY 2023 [budget justification](#) for USCIS.

Social Security Administration Caseload Management. The [Consolidated Appropriations Act](#) provides funds “for activities to address the disability hearings backlog” at SSA. The President’s FY 2023 [budget proposal](#) would also provide funding to “improve access to SSA’s services by adding staff to speed disability claims processing and reduce wait times.” SSA’s [budget justification](#) states that the agency “anticipate[s] eliminating the backlog and achieving a 270-day monthly average wait time by the end of FY 2023.” The document also describes the implementation of “modern, national claims processing systems that will seamlessly interact with each other from initial claim filing through a final appeal decision.”

Veterans Benefits Caseload Management. The [Consolidated Appropriations Act](#) requires the VA to submit a quarterly report on the disability claims backlog and include information on the number of appeals pending at the Veterans Benefits Administration and Board of Veterans Appeals. The President’s FY 2023 [budget proposal](#) would provide funding to, among other things, “support automating the



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disability compensation claims process from submission to authorization.” VA’s [budget justification](#) describes the development of IT systems to “digitize the entire appeals process.” Planned improvements are expected to “improve the efficiency, accuracy, and consistency” of BVA adjudication.

PROCEDURAL RULES

[Black Lung Benefits Improvement Act \(H.R. 6102, Mar. 16\)](#). The House Education and Labor Committee [marked up](#) the Black Lung Benefits Improvement Act. If enacted, the bill would make procedural and evidentiary changes to the process for adjudicating entitlement to benefits. The bill would also require the Secretary of Labor to submit a report detailing strategies to reduce the backlog of cases pending before the Department’s Office of Administrative Law Judges.

[Copyright Small Claims \(USCO\)](#). The U.S. Copyright Office issued three final rules as part of its effort to set up the Copyright Claims Board—a new tribunal with jurisdiction to decide small copyright claims. The [first](#) (Mar. 8) set forth procedures for certain entities to designate an agent for service of process. The [second](#) (Mar. 9) established procedures for libraries and archives to preemptively opt out of participating in CCB proceedings. (Participation in CCB proceedings is voluntary.) The rule also established procedures governing instances in which a party with a proceeding pending before the CCB receives notice of a pending or putative class action, arising out of the same matter as the CCB proceeding, in which the party is a class member. In such instances, the party must opt out of the class action or seek dismissal of the CCB proceeding. The [third rule](#) issued by USCO (Mar. 25) set forth procedures for the initial stages of CCB proceedings, including filing, service, notice, responses, and counterclaims.

[Expedited Removal Proceedings \(EOIR/USCIS, Mar. 29\)](#). EOIR and USCIS jointly issued an interim final rule amending the procedural regulations governing the process for considering applications for asylum and related protection by USCIS and EOIR and provides that USCIS will refer noncitizens whose applications are not granted to EOIR for streamlined removal proceedings.

[EB-5 Visa Adjudication Procedures \(USCIS, Mar. 15\)](#). The FY 2022 Consolidated Appropriations Act contains provisions, first introduced as the [EB-5 Reform and Integrity Act](#), intended to improve the efficiency and transparency of the process for adjudicating petitions for EB-5 (immigrant investor) visas.



REPRESENTATION

[Equal Access to Justice Awards](#) (ACUS, Mar. 31). ACUS released its annual report on EAJA awards against the government along with a searchable online database containing detailed information about each award in FY 2021.

[Pro Bono Trademark Representation](#) (USPTO). The Trademark Trial and Appeal Board recently launched a Pro Bono Clearinghouse Program to recognize organizations that coordinate free legal services to members of the public who might not otherwise have affordable access to legal assistance in TTAB proceedings.

[Representation of Children in Immigration Courts](#). The President’s FY 2023 budget proposal would provide funding to the Office of Refugee Resettlement to, among other things, expand access to legal counsel “to help children navigate complex immigration court proceedings.”

TECHNOLOGY

[Electronic Filing and Service](#) (DOL). The Department of Labor held [listening sessions](#) on March 3 and 5 for users to provide feedback on the agency’s e-filing and e-service system. Also, effective March 14, the system released [enhanced e-mail notifications](#) regarding filing and service of documents in cases before the Office of Administrative Law Judges. This change was made in response to user feedback.

[Immigration Court Online Tools](#) (EOIR, Mar. 30). The Executive Office for Immigration Review held the first of a series of public forums about its [Access EOIR](#) initiative on March 30. Members of the public were invited to share feedback with agency leadership about the [EOIR Courts & Appeals System](#) and [Immigration Court Online Resource](#).

TRANSPARENCY

[Immigration Court Record Requests](#) (EOIR, Mar. 15). EOIR will no longer require individuals to file Freedom of Information Act requests to obtain official copies of their own records of immigration court proceedings. The Attorney General announced the change in a policy memorandum setting forth guidelines intended to “update and strengthen the federal government’s commitment to the fair and effective administration of FOIA.” Just last August, EOIR [launched](#) a new online portal, [Public Access Link](#), to streamline FOIA and Privacy Act requests.