



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## Updates in Federal Agency Adjudication

August 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](http://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](mailto:info@acus.gov).

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### ACCESSIBILITY

#### **Identifying and Reducing Burdens in Administrative Processes (ACUS).**

ACUS is undertaking a project to recommend best practices, such as public engagement and data analysis, that agencies can use to identify unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes, including adjudication. It also recommends strategies agencies can use to reduce unnecessary burdens, such as streamlining processes and digitizing services.

### ADMINISTRATIVE REVIEW

#### **Proposed Settlement Procedure in Appeals Proceedings (NIGC, Aug. 10).**

The National Indian Gaming Commission published a proposed rule that would amend its regulations to add a settlement process for appeals proceedings on written submissions to the Commission. Written comments must be received on or before Sept. 9.



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**[Report to Congress on SSA Appellate Workloads](#) (SSA, June 30).** The Social Security Administration’s Office of the Inspector General updated its report to Congress on the workloads of the agency’s Appeals Council, as well as the agency’s efforts to improve the Council’s timeliness and quality.

**[Precedential Decision Making in Agency Adjudication](#) (ACUS).** ACUS is undertaking a project to identify best practices on the use of precedential decisions in agency adjudication. Christopher Walker (Michigan Law), Melissa Feeney Wasserman (Texas Law), and Matthew Wiener are serving as consultants.

### CONSTITUTIONALITY

**Briefs Filed in Supreme Court Cases Regarding Constitutional Challenges to Administrative Adjudication (Aug. 8).** The government filed its [response brief](#) in [SEC v. Cochran](#) and [Axon Enter. v. FTC](#). At issue in both cases is whether district courts may hear suits in which respondents in Federal Trade Commission and Securities and Exchange Commission administrative adjudications seek to enjoin those proceedings based on alleged constitutional defects in the statutory provisions governing removal of both agencies’ administrative law judges and the FTC’s commissioners. Argument is set for November 7.

### PROCEDURAL RULES

**[Honoring our PACT Act of 2022](#) (S. 3373).** This newly enacted statute expands the list of presumptive conditions for veterans benefits to include exposure to burn pits and other toxic chemicals.

**[Final DACA Rule Issued](#) (DHS, Aug. 30).** The Department of Homeland Security issued a final rule that, among other things, establishes procedures for adjudicating requests for deferred action under the Deferred Action for Childhood Arrivals policy. The final rule is intended to “preserve and fortify” the DACA policy, under which DHS defers removal of “certain noncitizens who years earlier came to the United States as children, meet other criteria, and do not present other circumstances that would warrant removal.”

**[Interim Final Rule Amends Appellate Process for TSA Security Risk Determinations](#) (DHS, Aug. 9).** The proposed rule sets forth procedures for appealing an ALJ decision related to a Transportation Safety Administration determination that an individual holding an FAA airman certificate poses or is suspected of posing a security risk. Public comments are due September 8.



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### [Social Security Expands List of Compassionate Allowance Conditions](#)

**(SSA, Aug. 15).** SSA listed 12 new medical conditions as part of its compassionate allowance program. Claimants with listed conditions receive accelerated processing of their disability claims.

## TECHNOLOGY

[Review of Video Teleconference Use in Immigration Hearings \(EOIR\)](#). An OIG report summarizes results of an inspection and review of the Executive Office for Immigration Review's use of video teleconference technologies in its hearings and makes recommendations to assist with virtual hearings.

[Use of Video and Telephone Hearings \(SSA\)](#). An OIG report summarizes an investigation into the extent to which SSA's Office of Hearings Operations utilized video and telephone hearings during the COVID-19 pandemic.

[Online Process in Agency Adjudication \(ACUS\)](#). ACUS is undertaking a project to identify best practices for developing online processes by which participants in agency adjudications, including private parties and representatives can file forms, evidence, and briefs; view case materials and status information; receive notices and orders; and perform other common tasks required for participation in adjudication.