



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

December 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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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 will also recommend strategies agencies can use to reduce unnecessary burdens, such as streamlining processes and digitizing services. Pamela Herd (Georgetown), Donald Moynihan (Georgetown), and Amy Widman (Rutgers) are serving as consultants.



ADMINISTRATIVE REVIEW

[Precedential Decision Making in Agency Adjudication](#) (ACUS, Dec. 15). The ACUS Assembly adopted [Recommendation 2022-4](#), which identifies best practices on the use of precedential decisions in agency adjudication. It addresses whether agencies should issue precedential decisions and, if so, according to what criteria; what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions; and how agencies should communicate precedential decisions internally and publicly.

[Administrative Review of Material Supervisory Determinations](#) (FDIC, Dec. 16). The Federal Deposit Insurance Corporation adopted revised Guidelines for Appeals of Materials Supervisor Determinations which, among other things, expand the role of the agency’s Ombudsman and require that materials considered by appellate decision makers be shared with all parties on a timely basis.

[Patent Trial and Appeal Board Oversight](#) (GAO, Dec. 22). The Government Accountability Office issued a report examining oversight and decisional independence at the Board and made recommendations to “increase transparency.”

CASELOAD MANAGEMENT

[Reducing Backlogs Through Policy and Operational Tools](#) (USCIS, Dec. 7). The U.S. Citizenship and Immigration Services released its Fiscal Year 2022 Progress Report, in which it detailed efforts to reduce backlogs and wait times.

CONGRESS

[Patents for Humanity Act of 2022](#) (Dec. 20). President Biden signed a bill into law that would allow the U.S. Patent and Trademark Office to award certificates that entities submitting patent applications addressing humanitarian issues can redeem to accelerate certain proceedings.

CUSTOMER EXPERIENCE

[Redesigned Website Eases Benefits Application](#) (SSA, Dec. 6). The Social Security Administration redesigned its website with a task-based approach, to make it easier to check eligibility or apply for benefits.



ENFORCEMENT

Regulatory Enforcement Manuals (ACUS, Dec. 15). The ACUS Assembly adopted [Recommendation 2022-5](#), which identifies best practices for agencies regarding the use and availability of enforcement manuals—that is, documents that provide agency personnel with a single, authoritative resource for enforcement-related statutes, rules, and policies. It recommends that agencies present enforcement manuals in a clear, logical, and comprehensive fashion; periodically review and update them as needed; ensure enforcement personnel can easily access them; and consider making manuals, or portions of manuals, publicly available.

PROCEDURAL RULES

VA Begins Processing PACT Act Claims. The Department of Veterans Affairs announced it would begin processing PACT Act benefits claims on January 1. The Act, signed into law in August, expands the list of presumptive conditions for veterans benefits to include exposure to burn pits and other toxic chemicals. On December 12, the VA [began expediting claims for eligible terminally ill veterans](#).

REPRESENTATION

Assisting Parties in Federal Administrative Adjudication (ACUS, LSC). ACUS and the Legal Services Corporation are partnering on a virtual public forum to examine ways to improve support for parties in adjudication processes in which parties are frequently self-represented. The first panel, *Expanding Access to Representation*, took place on December 6. A video recording is available [here](#). Future panels will address ways to promote effective representation of parties by lawyers and nonlawyers and to expand services for self-represented parties.

Working Group on Model Rules of Representative Conduct (ACUS). ACUS has convened a working group of public- and private-sector representatives to develop model rules of representative conduct. The model rules will help federal agencies amend or develop their rules governing representatives in adjudicative proceedings consistent with the best practices identified in ACUS [Recommendation 2021-9](#), *Regulation of Representatives in Agency Adjudicative Proceedings*.



TECHNOLOGY

Online Processes 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. ACUS Attorney Advisor Matthew Gluth is conducting research for this project.

TRANSPARENCY

Public Availability of Settlement Agreements in Agency Enforcement Proceedings (ACUS). The ACUS Assembly adopted [Recommendation 2022-6](#), which identifies best practices for providing public access to settlement agreements reached during administrative enforcement proceedings. It recommends that agencies develop policies addressing when to post such agreements on their websites; provides factors for agencies to consider in determining which agreements to post on their websites; and identifies best practices for presenting settlement agreements in a clear, logical, and accessible manner without disclosing sensitive or otherwise protected information.