



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

January 2023

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.



ALTERNATIVE DISPUTE RESOLUTION

[Code of Professional Conduct for Labor Mediators](#) (FMCS, Jan. 25). The Federal Mediation and Conciliation Service published a final rule indicating that it is creating a new code of professional conduct for FMCS mediators.

CONGRESSIONAL AFFAIRS

[Congressional Constituent Service Inquiries](#) (ACUS). ACUS is examining how agencies receive, process, and respond to congressional inquiries made on behalf of constituents who need assistance accessing federal programs or navigating adjudicative and other similar administrative processes. The project will identify best practices for agencies to promote quality, efficiency, and timeliness in agency procedures for responding to such inquiries. Among other topics, the project will address the body of law governing agency responses to congressional constituent service inquiries; the extent to which agencies have developed procedures for receiving, processing, and responding to such inquiries; and the scope, content, internal dissemination, and public availability of these procedures where adopted.

MANAGEMENT AND OPERATIONS

Agencies Release Strategic Plans. The [U.S. Patent and Trademark Office](#), [Equal Employment Opportunity Commission](#), and [U.S. Citizenship and Immigration Services](#) all released strategic plans. The USPTO and EEOC seek public comment, with deadlines of February 17 and February 9, respectively.

[Proposed Rule Would Adjust Filing Fees](#) (DHS, Jan. 3). The Dept. of Homeland Security issued a proposed rule that would increase and add new fees charged by the U.S. Citizenship and Immigration Services for certain benefit requests. Comments are due on or before March 6.

[User Fees](#) (ACUS). ACUS is undertaking a project that will recommend best practices for agencies—and Congress, if warranted—to consider in designing and implementing user fees in administrative programs. It will examine, among other topics, how Congress and agencies determine when user fees are appropriate; how agencies determine fair and reasonable user fees for specific programs; how they engage with the public in determining user fees; and how often they review their user fee programs.



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[USCIS Streamlines Adjudication of Certain Visa Applications](#) (DHS, Jan. 25). As a result of a settlement, the U.S. Citizenship and Immigration Services has resumed its policy of adjudicating certain applications filed by spouses and children along with the petition filed on behalf of a principal application.

[Improving Timeliness in Agency Adjudication](#) (ACUS). ACUS launched a project to survey strategies—including procedural, technological, personnel, and other reforms—that agencies have used or might use to address backlogs or delays in administrative adjudication. Based on this survey, it will identify best practices to help agencies devise plans to promote timeliness in administrative adjudication, in accord with principles of fairness, accuracy, and efficiency. The project will also consider potential congressional reforms, if warranted.

PROCEDURAL RULES

[Horeseracing Integrity and Safety Authority Proposed Rule](#) (FTC, Jan. 26). The FTC is requesting public comment on proposed rules governing anti-doping and medication control, including procedures for disciplinary hearings. Comments must be received on or before February 9.

REPRESENTATION

[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

[New Investigations Database System Unveiled](#) (USITC, Jan. 12). The U.S. International Trade Commission deployed a new data management tool that captures, manages, and displays investigation-related information. Users can search by keywords or filter by practice area.

[Electronic Submission of Evidence](#) (Interior, Jan. 30). The Office of Hearings and Appeals of the Dept. of the Interior issued a direct final rule amending regulations to allow parties to a hearing or appeal the option of sending and receiving documents electronically.



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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

Disclosure of Agency Legal Materials (ACUS). ACUS is undertaking a project to consider whether the main statutes governing disclosure of agency legal materials, including adjudicative decisions, should be amended to consolidate and harmonize their overlapping requirements, account for technological developments, correct certain statutory ambiguities and drafting errors, and address other potential problems that may be identified. If warranted, the project will recommend statutory reforms to provide clear standards as to what legal materials agencies must publish and where they must publish them. The objective of any such amendments will be to ensure that agencies provide ready public access to important legal materials in the most efficient way possible. Bernard Bell (Rutgers), Cary Coglianese (University of Pennsylvania), Michael Herz (Yeshiva), Margaret Kwoka (Ohio State), and Orly Lobel (San Diego) are serving as consultants.