



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

February 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.



ADMINISTRATIVE REVIEW

[Requirements for Filing Motions and Administrative Appeals](#) (USCIS; Feb. 22). As part of its semiannual regulatory agenda, the Department of Homeland Security proposed a rule to update and restructure the regulations for U.S. Citizenship and Immigration Services appeals, motions and certifications. Publication is targeted for December 2023.

CONGRESSIONAL AFFAIRS

[EPA Denial of Petitions Determined to be Order, Not Rule](#) (GAO, Feb. 9). The U.S. Government Accountability Office concluded that the Environmental Protection Agency's denial of 69 small refinery exemption petitions was an order, not a rule, under the Administrative Procedure Act, and thus not subject to the Congressional Review Act.

[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.

ENFORCEMENT

[Update to Enforcement Proceedings Finalized](#) (CFPB, Feb. 24). The Consumer Financial Protection Bureau issued a final rule to update its Rules of Practice for Adjudication Proceedings. Amendments expanded opportunities to conduct depositions, amended timing and deadlines, and made other technical changes. In a [blog post](#), the agency's General Counsel explained the role of administrative adjudication in CFPB enforcement and the updated procedures.



MANAGEMENT AND OPERATIONS

[Report Addresses VA Management Challenges](#) (GAO, Feb, 28). A GAO report on Department of Veterans Affairs management addressed, in part, challenges within the VA disability programs.

[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 legislative reforms, if warranted.

[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.

PROCEDURAL RULES

[Resumption of Bundling Visa Applications](#) (USCIS, Jan. 25). As a result of a settlement, U.S. Citizenship and Immigration Services has agreed to resume its policy of adjudicating extension of status, change of status, and employment authorization applications filed by spouses and children of certain nonimmigrant visa holders along with the petition filed on behalf of the principal applicant, so long as they are concurrently and properly filed.

REPRESENTATION

[Working Group on Model Rules of Representative Conduct](#) (Feb. 7, ACUS). A working group of public- and private-sector representatives, which ACUS convened to develop model rules of representative conduct, had its first meeting. 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

Veterans Can Access Disability Benefit Decisions Online (VA, Feb. 23).

Applicants for disability benefits can now access their decision letters electronically on [VA.gov](https://www.va.gov), instead of waiting for a paper copy to be mailed to them.

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 published a [draft report](#) as part of a project considering 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 Coglianesse (University of Pennsylvania), Michael Herz (Yeshiva), Margaret Kwoka (Ohio State), and Orly Lobel (San Diego) are serving as consultants.