



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

March 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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APPOINTMENT

Dahle v. Kijakazi (8th Cir., Mar. 7). The court reversed a district court decision that an ALJ lacked authority to decide a case because the ALJ's appointment had been ratified by an official not properly serving as Acting Commissioner of Social Security. The court held the official was properly serving as Acting Commissioner when she ratified the appointment and remanded for further proceedings.

CONGRESSIONAL AFFAIRS

Congressional Constituent Service Inquiries (ACUS). ACUS is examining how agencies receive, process, and respond to congressional inquiries made on



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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.

CONSTITUTIONALITY

[SEC v. Jarkesy](#) (U.S. Supreme Court, March 8). The U.S. government filed a petition for a writ of certiorari in the case, asking the Supreme Court to reverse a decision by the Fifth Circuit that held that the statutory provisions that authorize the SEC to adjudicate administrative enforcement proceedings violate the Seventh Amendment and the nondelegation doctrine, and that statutory removal protections for SEC administrative law judges (ALJs) violate Article II.

COVID-19

[Asylum Interview Interpreter Requirement Modification Extended Again](#) (USCIS, March 17). The Department of Homeland Security extended for a fourth time its temporary final rule modifying requirements for asylum adjudications to allow for telephonic interviews.

CUSTOMER EXPERIENCE

[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.



MANAGEMENT AND OPERATIONS

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

Updated Rules of Practice (CFPB, March 29). The CFPB issued a procedural rule in February updating its Rules of Practice for Adjudication Proceedings. Following a public comment period, the agency issued a final rule retaining the amendments adopted in February. The amendments expanded opportunities to conduct depositions, amended timing and deadlines, and made other technical changes. In a February [blog post](#), the agency’s General Counsel explained the role of administrative adjudication in CFPB enforcement and the updated procedures.

Representation-Case Procedures Revoked and Stayed (NLRB, March 10). The NLRB revoked and stayed certain rules governing representation cases before the agency. Characterizing the rules as procedural in nature, the NLRB issued the rules without notice and comment. In January, the D.C. Circuit affirmed a district court decision finding that the rules were substantive and not procedural in nature and therefore required pre-promulgation notice and comment.

Reinstatement of Discriminatory Effects Standard (HUD, March 31). A final rule reinstated a burden-shifting test for determining whether a sale, rental, or financing of dwellings had an unjustified discriminatory effect, rescinding a 2020 rule that would have altered the standards.



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

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.