



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

April 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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CHOICE OF LAW

[Controlling Circuit Law in Immigration Court Cases](#) (EOIR, March 24). As agencies increasingly conduct proceedings remotely, choice-of-law questions have arisen. A panel of the Board of Immigration Appeals held that the circuit law that applies in immigration court proceedings is the law governing the geographic location of the immigration court where venue lies, regardless of where the parties and immigration judge are physically located during the hearings.

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



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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

[Axon v. FTC and SEC v. Cochran](#) (Supreme Court, Apr. 14). The Court held that the statutory review schemes set out in the Federal Trade Commission Act and Securities Exchange Act do not displace district courts' federal-question jurisdiction over claims challenging as unconstitutional the structure or existence of the FTC or SEC. The underlying constitutional challenges relate to the statutory removal protections for administrative law judges and the combination of prosecutorial and adjudicative functions in a single agency.

MANAGEMENT AND OPERATIONS

[Immigration Court Performance and Management](#) (GAO, Apr. 26). The Government Accountability Office issued a report identifying “actions needed to address workforce, performance, and data management challenges” at the Executive Office for Immigration Review.

[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. Jeremy Graboyes and Jennifer Selin, both of ACUS, are serving as researchers.

[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



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streamlining processes and digitizing services. Pamela Herd (Georgetown), Donald Moynihan (Georgetown), and Amy Widman (Rutgers) are serving as consultants.

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 (including application fees and filing fees in agency adjudications). 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. Erika Lietzan (Missouri Law) is serving as a consultant.

PROCEDURAL RULES

Changes Under Consideration for Trial Proceedings before PTAB (USPTO, April 21). As described in an advance notice of proposed rulemaking, the U.S. Patent and Trademark Office is considering modifications to the rules of practice for inter partes review and post-grant review proceedings before the Patent Trial and Appeal Board. Comments (PTAB) are due by June 20.

Best Practices for Adjudication Not Involving an Evidentiary Hearing (ACUS). ACUS launched a project to examine the wide range of procedures that agencies use when adjudicating cases in programs in which there is no legally required opportunity for an evidentiary hearing. It will offer a set of broadly applicable best practices that account for the diversity of matters that agencies decide through truly informal adjudication and promote fairness, accuracy, and efficiency.

Public Participation in Agency Adjudication (ACUS). ACUS launched a project to identify best practices for public participation in agency adjudicative proceedings. Among other topics, the project will address circumstances in which public participation may be appropriate; options for public participation (e.g., written comments, oral presentations, intervention, amicus briefing); methods for facilitating public participation (e.g., notice, managing oral and written comments, technology use); and agencies' use of information obtained through public engagement efforts.



REPRESENTATION

Assisting Parties in Federal Administrative Adjudication (ACUS and LSC).

ACUS and the Legal Services Corporation continue to host a series of virtual panel discussions examining ways to improve support for parties in federal administrative adjudication. At the [second webinar](#), scheduled for May 11, legal aid attorneys will share their best practices for training staff and pro bono attorneys to assist low-income clients with applications for or appeals involving benefits, and government leaders will discuss training and professional development opportunities their agencies provide to help advocates represent their clients' interests effectively. The [third webinar](#), examining resources for self-represented parties, will take place on June 27. The first webinar, held in December, examined ways to expand access to representation. A recording is available [here](#).

Model Rules of Representative Conduct (ACUS). Following the adoption of [Recommendation 2021-9, Regulation of Representatives in Agency Adjudicative Proceedings](#), the Chair 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 own rules consistent with the best practices identified in Recommendation 2021-9. The working group's qualifications subcommittee held its first [meeting](#) on April 25.

Pro Bono Representation at USPTO. The USPTO is seeking public feedback on the Patent Pro Bono Program and PTAB Pro Bono Program. The agency is accepting written comments and will hold two public listening sessions in June.

TECHNOLOGY

Online Processes in Agency Adjudication (ACUS). ACUS's Committee on Adjudication held its [first meeting](#) to consider 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. The [second meeting](#) is scheduled for May 4. The committee is informed by a [draft report](#) by ACUS Attorney Advisor Matthew Gluth.



TRANSPARENCY

Disclosure of Agency Legal Materials (ACUS). A special ad hoc committee is 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 possible statutory reforms to provide clear standards as to what legal materials agencies must publish and where they must publish them. The objective of any amendments will be to ensure that agencies provide ready public access to important legal materials in the most efficient way possible. The committee held its [second](#) and [third](#) meetings in April and will have a [fourth meeting](#) on May 10. The committee is informed by a [draft report](#) by Bernard Bell (Rutgers), Cary Coglianese (University of Pennsylvania), Michael Herz (Yeshiva), Margaret Kwoka (Ohio State), and Orly Lobel (San Diego) are serving as consultants.