

# Administrative Conference of the United States



73rd Plenary Session  
December 16-17, 2020



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Agenda for 73rd Plenary Session

Wednesday, December 16, 2020 – Thursday, December 17, 2020

#### Wednesday, December 16, 2020

- 10:00 a.m. Call to Order  
Opening Remarks by Vice Chairman Matthew L. Wiener  
Initial Business (Vote on Adoption of Minutes of December 2019 Plenary Session and Resolution Governing the Order Business)
- 10:20 a.m. Consider Proposed Recommendation: *Rules on Rulemakings*
- 11:50 a.m. Lunch Break
- 12:30 p.m. Consider Proposed Recommendation: *Protected Materials in Public Rulemaking Dockets*
- 2:00 p.m. Consider Proposed Statement: *Agency Use of Artificial Intelligence*
- 3:30 p.m. Consider Proposed Recommendation: *Agency Appellate Systems*
- 5:00 p.m. Recess Until Thursday Morning

#### Thursday, December 17, 2020

- 10:00 a.m. Call to Order
- 10:05 a.m. Remarks by The Honorable Paul J. Ray, Administrator, Office of Information and Regulatory Affairs
- 10:20 a.m. Consider Proposed Recommendation: *Government Contract Bid Protests Before Agencies*
- 11:50 a.m. Update on Pending Projects by Research Director Reeve T. Bull
- 12:00 p.m. Lunch Break
- 12:45 p.m. Consider Proposed Recommendation: *Public Availability of Information About Agency Adjudicators*
- 2:15 p.m. Remarks by Jonathan R. Siegel, F. Elwood and Eleanor Davis Research Professor of Law, The George Washington University Law School (*Sourcebook of Judicial Review Statutes*)
- 2:30 p.m. Consider Proposed Recommendation: *Agency Litigation Webpages*
- 4:00 p.m. Adjourn



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### **Resolution Governing the Order of Business**

The time initially allotted to each item of business is separately stated in the agenda. Individual comments from the floor shall not exceed five minutes, unless further time is authorized by unanimous consent of the voting members present. A majority of the voting members present may extend debate on any item for up to 30 additional minutes. At any time after the expiration of the time initially allotted to an item, the Chair shall have discretion to move the item to a later position in the agenda.

Unless the Chair determines otherwise, amendments and substitutes to recommendations that have been timely submitted in writing to the Office of the Chairman before the meeting will receive priority in the discussion of any proposed item of business; and other amendments and substitutes to recommendations will be entertained only to the extent that time permits.



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Minutes  
December 12, 2019

## **I. Call to Order and Opening Remarks**

The 72<sup>nd</sup> Plenary Session of the Administrative Conference of the United States (ACUS) convened on December 12, 2019, at approximately 9:30 a.m., at The George Washington University Law School Jacob Burns Moot Court Room, 2000 H Street, NW, Washington, D.C.

ACUS Vice Chairman Matthew Wiener called the meeting to order. He introduced the Council members present and recognized former ACUS Chairman Paul Verkuil. He then thanked Associate Dean Alan Morrison, Senior Fellow, for hosting the Plenary Session at The George Washington University Law School. He asked the seventeen new ACUS members to stand and be recognized. He also introduced new ACUS staff member Mark Thomson, Deputy Director of Research. Next, he recognized the contributions to ACUS by Judith Starr, who is retiring as General Counsel of the Pension Benefit Guaranty Corporation. Next, he recognized the contributions of Susan Jensen, who retired as Senior Counsel and Parliamentarian of the House of Representatives Committee on the Judiciary where she worked extensively on legislative measures to reauthorize ACUS.

Vice Chairman Wiener noted the continued vacancy of the position of ACUS Chairman. He then briefly described some of the recently completed and ongoing projects of the Office of the Chairman, including: the *Sourcebook of Federal Administrative Adjudication Outside the Administrative Procedure Act*; the *Sourcebook of Federal Judicial Review Statutes*; two upcoming reports on the use of artificial intelligence by federal agencies; a working group to guide agencies compiling rulemaking records for judicial review; a statutorily required annual report on awards against the government under the Equal Access to Justice Act; a statutorily required report on ways the Social Security Administration may improve information sharing in its representative payee program; a guide for consultants who conduct research for ACUS; a forum on the use of nationwide injunctions against agency actions in federal courts; and the periodic issuance of short topical guides on administrative procedure known as Information Interchange Bulletins.

Vice Chairman Wiener then noted three recent developments in the implementation of past ACUS projects. First, he noted that two orders issued by the President—Executive Order 13891 and Executive Order 13892—align with recent ACUS recommendations on guidance documents. Second, he noted that the Federal Communications Commission as well as other agencies have relied on ACUS recommendations on adjudication rules in proposing amendments



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to their rules of practice. Third, he shared that the National Labor Relations Board relied on a recent ACUS recommendation in drafting a report on the Board's recusal practices and procedures.

Vice Chairman Wiener then addressed the fiscal status of ACUS, stating that the administration has continued to request, and Congress has continued to provide, the appropriations necessary for ACUS to carry out its work.

### **II. Initial Business and Introduction to Recommendations**

Vice Chairman Wiener explained the rules for debating, voting, and making motions. He then asked for and received approval of the minutes from the 71st Plenary Session. Vice Chairman Wiener then described the standard Resolution on the Order of Business. The Resolution was then approved. Vice Chairman Wiener explained that pre-submitted amendments would receive priority during discussion and noted that the agenda included five proposed recommendations.

### **III. Consideration of the Proposed Recommendation on Agency Economists**

Vice Chairman Wiener thanked Connor Raso, Government Member and Chair of the Committee on Regulation; Jerry Ellig, project consultant; and Keith Holman, Legal Fellow. Mr. Ellig provided an overview of the report on which the Recommendation is based. Mr. Raso discussed the Committee's deliberations.

Vice Chairman Wiener took the floor and began the deliberation of three amendments to the Recommendation proposed by the Council. The first two amendments proposed stylistic changes, and they were adopted. The third amendment proposed by the Council clarified that the Recommendation applies to agencies that seek to apply economic analysis to their rulemakings, and it was also adopted.

Vice Chairman Wiener then opened the floor for amendments. John Duffy, Public Member, proposed amending the Recommendation to clarify that the use of the word "independence" does not intend that economists should be independent from agency leadership. After additional discussion and modification of Mr. Duffy's amendment, the Recommendation was amended to remove language calling on agencies to "provide their economists the independence to develop objective regulatory analysis." Following additional discussion and other amendments, Vice Chairman Wiener called for a vote on the Recommendation as amended, and the Recommendation was adopted.



**IV. Consideration of the Proposed Recommendation on Internet Evidence in Agency Adjudication**

Vice Chairman Wiener thanked Nadine Mancini, Government Member and Chair of the Committee on Adjudication; and Jeremy Graboyes, Staff Attorney and in-house researcher. Mr. Graboyes discussed his research, and Ms. Mancini discussed the Committee's proceedings. Vice Chairman Wiener took the floor and moved to the manager's amendment, which was adopted.

Following general discussion, Vice Chairman Wiener proceeded to amendments proposed by the Council, including an amendment to revise the definition of "independent research" and an amendment to remove authorial intent from the Recommendation's list of potential indicia of a source's reliability. The amendments proposed by the Council were adopted.

Vice Chairman Wiener then proceeded to two pre-submitted amendments. The first amendment, previously agreed to by a vote of the Committee on Adjudication, changed the title of the Recommendation to "Independent Research by Agency Adjudicators in the Internet Age." The amendment was adopted. The second amendment, suggested by Jeffrey Lubbers, Special Counsel, and offered by Alice Kottmyer, Government Member, proposed to change the language of a sentence to avoid giving the impression that many agencies have adopted the Federal Rules of Evidence in toto. The amendment was adopted.

During further consideration of the Recommendation, Judge Stephen Williams, Senior Fellow, commented that the list of indicia of reliability in paragraph 3 favored external authority at the expense of internal indicia of reliability. Anne Joseph O'Connell, Public Member, proposed an amendment adding an item to the list encouraging adjudicators to consider "whether the information is thorough, materially supported, internally consistent, and analytically persuasive." The amendment was adopted. Following additional discussion and other amendments, Vice Chairman Wiener called for a vote on the Recommendation as amended, and the Recommendation was adopted. The meeting then recessed for lunch.

**V. Pending Assembly Projects**

Vice Chairman Wiener then announced that proceedings would continue with a brief presentation by Reeve Bull, ACUS Research Director, on pending Assembly projects, explaining that Assembly projects are those intended to result in a formal recommendation of the Assembly. Mr. Bull then briefly described several pending or potential Assembly projects: *Agency Appellate Systems*, *Government Contract Bid Protests Before Agencies*, potential Assembly



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projects that may arise from the two previously-mentioned forthcoming reports on the use of artificial intelligence by federal agencies, *Protected Materials in Public Rulemaking Dockets*, *Agency Litigation Webpages*, *Early Input on Regulatory Alternatives*. Mr. Bull also mentioned selected forthcoming Office of the Chairman projects, including a potential follow-up project to *Recusal Rules for Adjudicators* (Recommendation 2018-4) and *Classification of Agency Guidance*. Mr. Bull finished by thanking the Project Advisory Group for offering advice and ideas deserving additional research.

### **VI. Consideration of the Proposed Recommendation on Acting Agency Officials and Delegations of Authority**

Vice Chairman Wiener thanked Aaron Nielson, Public Member and Chair of the Committee on Administration and Management; Anne Joseph O'Connell, Public Member and project consultant; and Bobby Ochoa, Staff Attorney. Ms. O'Connell then discussed the research supporting the Recommendation, and Mr. Nielson discussed the Committee's deliberations. Vice Chairman Wiener took the floor and moved to the manager's amendment, which was adopted.

After general discussion of the proposed Recommendation, Vice Chairman Wiener turned to a pre-submitted inquiry and amendment proposed by the Council. Ronald A. Cass, Council Member, explained that the Council inquired whether the Recommendation should identify a particular government agency to provide government-wide training on the Vacancies Act. Mr. Cass then proposed an amendment listing several agencies as potential candidates to provide the government-wide training, and the amendment was adopted. Mr. Cass then explained that the pre-submitted Council amendment proposed to strike the language in paragraph 6 requiring agencies to identify the projected end dates of acting officials because it would be overly burdensome. After discussion, the Council amendment was adopted. Following additional discussion and other amendments, Vice Chairman Wiener called for a vote on the Recommendation as amended, and the Recommendation was adopted.

### **VII. Consideration of the Proposed Recommendation on Public Identification of Agency Officials**

Vice Chairman Wiener thanked Aaron Nielson, Public Member and Chair of the Committee on Administration and Management; and Bobby Ochoa, Staff Attorney and in-house researcher. Mr. Ochoa then discussed the research supporting the Recommendation, and Mr. Nielson spoke about the Committee's deliberations.

After general discussion, Vice Chairman Wiener proceeded to three pre-submitted amendments from the Council. Mr. Cass explained that the first Council amendment proposed to expand the scope of paragraph 1 and paragraph 2, applicable to agencies generally, to include all



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members of the Senior Executive Service, rather than limiting the scope to only those members who perform “significant leadership responsibilities.” After discussion, the amendment was not adopted. The second and third amendments proposed by the Council—to strike the word “broad” from footnote 1, and to rephrase the language concerning the regularity of publication of data in paragraph 2, respectively—were adopted.

Vice Chairman Wiener then proceeded with discussion of a pre-submitted amendment from Mr. Nielson to correct a drafting error that included overbroad language in the Recommendation’s preamble describing Senate-confirmed presidential appointees, and Vice Chairman Wiener recognized and thanked both Alan Morrison, Senior Fellow, and Richard Pierce, Senior Fellow, for also raising this issue. After discussion, the proposed language was adopted. Following additional discussion and other amendments, Vice Chairman Wiener called for a vote on the Recommendation as amended, and the Recommendation was adopted.

### **VIII. Consideration of the Proposed Recommendation on Recruiting and Hiring Agency Attorneys**

Vice Chairman Wiener thanked Eloise Pasachoff, Public Member and Chair of the Ad Hoc Committee to consider the Recommendation; Todd Phillips, Staff Attorney and in-house researcher; and Todd Rubin, Staff Attorney and in-house researcher. Mr. Rubin discussed the research supporting the Recommendation, and Ms. Pasachoff spoke about the Committee’s deliberations.

Vice Chairman Wiener then turned to a pre-submitted amendment in the nature of a substitute proposed by the Council, and it was adopted. He then proceeded to the manager’s amendment, and it was adopted. After general discussion, Vice Chairman Wiener then turned to ten pre-submitted amendments by Robert J. Girouard, Government Member, consisting largely of language to clarify the Recommendation’s meaning in several locations. After deliberation and votes, eight of Mr. Girouard’s amendments adopted, and two amendments were withdrawn.

Vice Chairman Wiener opened the floor for general discussion. Ms. Pasachoff proposed an amendment to strike the appendix—containing an example of an attorney job announcement—in response to concerns raised by Mr. Morrison about the adequacy of the example. After lengthy discussion, the amendment to strike the appendix was adopted. Following additional discussion and other amendments, Vice Chairman Wiener called for a vote on the Recommendation as amended, and the Recommendation was adopted.





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### **IX. Concluding Remarks**

Vice Chairman Wiener began concluding remarks by thanking ACUS staff for planning and preparing for the plenary session, and particularly Harry Seidman, Chief Financial and Operations Officer; Talia Hutchison, Program Manager; and Alisha Anderson, Program Specialist. He noted the tentative date of June 11th, 2020, for the 73rd Plenary Session. He then adjourned the 72nd Plenary Session.



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### **Bylaws of the Administrative Conference of the United States**

[The numbering convention below reflects the original numbering that appeared in Title 1, Code of Federal Regulations (CFR), Part 302, which was last published in 1996. Although the original numbering convention is maintained below, the bylaws are no longer published in the CFR. The official copy of the bylaws is currently maintained on the Conference's website at <https://www.acus.gov/policy/administrative-conference-bylaws>.]

#### **§ 302.1 Establishment and Objective**

The Administrative Conference Act, 5 U.S.C. §§ 591 *et seq.*, 78 Stat. 615 (1964), as amended, authorized the establishment of the Administrative Conference of the United States as a permanent, independent agency of the federal government. The purposes of the Administrative Conference are to improve the administrative procedure of federal agencies to the end that they may fairly and expeditiously carry out their responsibilities to protect private rights and the public interest, to promote more effective participation and efficiency in the rulemaking process, to reduce unnecessary litigation and improve the use of science in the regulatory process, and to improve the effectiveness of laws applicable to the regulatory process. The Administrative Conference Act provides for the membership, organization, powers, and duties of the Conference.

#### **§ 302.2 Membership**

##### **(a) General**

(1) Each member is expected to participate in all respects according to his or her own views and not necessarily as a representative of any agency or other group or organization, public or private. Each member (other than a member of the Council) shall be appointed to one of the standing committees of the Conference.

(2) Each member is expected to devote personal and conscientious attention to the work of the Conference and to attend plenary sessions and committee meetings regularly, either in person or by telephone or videoconference if that is permitted for the session or meeting involved. When a member has failed to attend two consecutive Conference functions, either plenary sessions, committee meetings, or both, the Chairman shall inquire into the reasons for the nonattendance. If not satisfied by such reasons, the Chairman shall: (i) in the case of a Government member, with the approval of the Council, request the head of the appointing agency to designate a member who is able to devote the necessary attention, or (ii) in the case of a non-Government member, with the approval of the Council, terminate the member's appointment, provided that where the Chairman proposes to remove a non-Government member, the member first shall be entitled to submit a written statement to the Council. The foregoing



does not imply that satisfying minimum attendance standards constitutes full discharge of a member's responsibilities, nor does it foreclose action by the Chairman to stimulate the fulfillment of a member's obligations.

**(b) Terms of Non-Government Members**

Non-Government members are appointed by the Chairman with the approval of the Council. The Chairman shall, by random selection, identify one-half of the non-Government members appointed in 2010 to serve terms ending on June 30, 2011, and the other half to serve terms ending on June 30, 2012. Thereafter, all non-Government member terms shall be for two years. No non-Government members shall at any time be in continuous service beyond three terms; provided, however, that such former members may thereafter be appointed as senior fellows pursuant to paragraph (e) of this section; and provided further, that all members appointed in 2010 to terms expiring on June 30, 2011, shall be eligible for appointment to three continuous two-year terms thereafter.

**(c) Eligibility and Replacements**

(1) A member designated by a federal agency shall become ineligible to continue as a member of the Conference in that capacity or under that designation if he or she leaves the service of the agency or department. Designations and re-designations of members shall be filed with the Chairman promptly.

(2) A person appointed as a non-Government member shall become ineligible to continue in that capacity if he or she enters full-time government service. In the event a non-Government member of the Conference appointed by the Chairman resigns or becomes ineligible to continue as a member, the Chairman shall appoint a successor for the remainder of the term.

**(d) Alternates**

Members may not act through alternates at plenary sessions of the Conference. Where circumstances justify, a member may designate (by e-mail) a suitably informed alternate to participate for a member in a meeting of the committee, and that alternate may have the privilege of a vote in respect to any action of the committee. Use of an alternate does not lessen the obligation of regular personal attendance set forth in paragraph (a)(2) of this section.

**(e) Senior Fellows**

The Chairman may, with the approval of the Council, appoint persons who have served as members of or liaisons to the Conference for six or more years, former members who have served as members of the federal judiciary, or former Chairmen of the Conference, to the position of senior fellow. The terms of senior fellows shall terminate at 2-year intervals in even-numbered years, renewable for additional 2-year terms at the discretion of the Chairman with the approval of the Council. Senior fellows shall have all the privileges of members, but may not



vote or make motions, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

**(f) Special Counsels**

The Chairman may, with the approval of the Council, appoint persons who do not serve under any of the other official membership designations to the position of special counsel. Special counsels shall advise and assist the membership in areas of their special expertise. Their terms shall terminate at 2-year intervals in odd-numbered years, renewable for additional 2-year terms at the discretion of the Chairman with the approval of the Council. Special counsels shall have all the privileges of members, but may not vote or make motions, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

**§ 302.3 Committees**

**(a) Standing Committees**

The Conference shall have the following standing committees:

1. Committee on Adjudication
2. Committee on Administration
3. Committee on Judicial Review
4. Committee on Regulation
5. Committee on Rulemaking

The activities of the committees shall not be limited to the areas described in their titles, and the Chairman may redefine the responsibilities of the committees and assign new or additional projects to them. The Chairman, with the approval of the Council, may establish additional standing committees or rename, modify, or terminate any standing committee.

**(b) Special Committees**

With the approval of the Council, the Chairman may establish special ad hoc committees and assign special projects to such committees. Such special committees shall expire after two years, unless their term is renewed by the Chairman with the approval of the Council for an additional period not to exceed two years for each renewal term. The Chairman may also terminate any special committee with the approval of the Council when in his or her judgment the committee's assignments have been completed.

**(c) Coordination**

The Chairman shall coordinate the activities of all committees to avoid duplication of effort and conflict in their activities.



**§ 302.4 Liaison Arrangements**

**(a) Appointment**

The Chairman may, with the approval of the Council, make liaison arrangements with representatives of the Congress, the judiciary, federal agencies that are not represented on the Conference, and professional associations. Persons appointed under these arrangements shall have all the privileges of members, but may not vote or make motions, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

**(b) Term**

Any liaison arrangement entered into on or before January 1, 2020, shall remain in effect for the term ending on June 30, 2022. Any liaison arrangement entered into after January 1, 2020, shall terminate on June 30 in 2-year intervals in even-numbered years. The Chairman may, with the approval of the Council, extend the term of any liaison arrangement for additional terms of two years. There shall be no limit on the number of terms.

**§ 302.5 Avoidance of Conflicts of Interest**

**(a) Disclosure of Interests**

(1) The Office of Government Ethics and the Office of Legal Counsel have advised the Conference that non-Government members are special government employees within the meaning of 18 U.S.C. § 202 and subject to the provisions of sections 201-224 of Title 18, United States Code, in accordance with their terms. Accordingly, the Chairman of the Conference is authorized to prescribe requirements for the filing of information with respect to the employment and financial interests of non-Government members consistent with law, as he or she reasonably deems necessary to comply with these provisions of law, or any applicable law or Executive Order or other directive of the President with respect to participation in the activities of the Conference (including but not limited to eligibility of federally registered lobbyists).

(2) The Chairman will include with the agenda for each plenary session and each committee meeting a statement calling to the attention of each participant in such session or meeting the requirements of this section, and requiring each non-Government member to provide the information described in paragraph (a)(1), which information shall be maintained by the Chairman as confidential and not disclosed to the public. Except as provided in this paragraph (a) or paragraph (b), members may vote or participate in matters before the Conference to the extent permitted by these by-laws without additional disclosure of interest.



**(b) Disqualifications**

(1) It shall be the responsibility of each member to bring to the attention of the Chairman, in advance of participation in any matter involving the Conference and as promptly as practicable, any situation that may require disqualification under 18 U.S.C. § 208. Absent a duly authorized waiver of or exemption from the requirements of that provision of law, such member may not participate in any matter that requires disqualification.

(2) No member may vote or otherwise participate in that capacity with respect to any proposed recommendation in connection with any study as to which he or she has been engaged as a consultant or contractor by the Conference.

**(c) Applicability to Senior Fellows, Special Counsel, and Liaison Representatives**

This section shall apply to senior fellows, special counsel, and liaison representatives as if they were members.

**§ 302.6 General**

**(a) Meetings**

In the case of meetings of the Council and plenary sessions of the Assembly, the Chairman (and, in the case of committee meetings, the committee chairman) shall have authority in his or her discretion to permit attendance by telephone or videoconference. All sessions of the Assembly and all committee meetings shall be open to the public. Privileges of the floor, however, extend only to members of the Conference, to senior fellows, to special counsel, and to liaison representatives (and to consultants and staff members insofar as matters on which they have been engaged are under consideration), and to persons who, prior to the commencement of the session or meeting, have obtained the approval of the Chairman and who speak with the unanimous consent of the Assembly (or, in the case of committee meetings, the approval of the chairman of the committee and unanimous consent of the committee).

**(b) Quorums**

A majority of the members of the Conference shall constitute a quorum of the Assembly; a majority of the Council shall constitute a quorum of the Council. Action by the Council may be effected either by meeting or by individual vote, recorded either in writing or by electronic means.

**(c) Proposed Amendments at Plenary Sessions**

Any amendment to a committee-proposed recommendation that a member wishes to move at a plenary session should be submitted in writing in advance of that session by the date established by the Chairman. Any such pre-submitted amendment, if supported by a proper



motion at the plenary session, shall be considered before any amendments that were not pre-submitted. An amendment to an amendment shall not be subject to this rule.

**(d) Separate Statements**

(1) A member who disagrees in whole or in part with a recommendation adopted by the Assembly is entitled to enter a separate statement in the record of the Conference proceedings and to have it set forth with the official publication of the recommendation. A member's failure to file or join in such a separate statement does not necessarily indicate his or her agreement with the recommendation.

(2) Notification of intention to file a separate statement must be given to the Executive Director not later than the last day of the plenary session at which the recommendation is adopted. Members may, without giving such notification, join in a separate statement for which proper notification has been given.

(3) Separate statements must be filed within 10 days after the close of the session, but the Chairman may extend this deadline for good cause.

**(e) Amendment of Bylaws**

The Conference may amend the bylaws provided that 30 days' notice of the proposed amendment shall be given to all members of the Assembly by the Chairman.

**(f) Procedure**

Robert's Rules of Order shall govern the proceedings of the Assembly to the extent appropriate.



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### Public Meeting Policies and Procedures

(Updated December 2, 2020)

**Note: Modified policies may be used during the COVID-19 pandemic, during which ACUS meetings are being held remotely.**

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The Administrative Conference of the United States (the “Conference”) adheres to the following policies and procedures regarding the operation and security of committee meetings and plenary sessions open to the public.

#### **Public Notice of Plenary Sessions and Committee Meetings**

The Administrative Conference will publish notice of its plenary sessions in the *Federal Register* and on the Conference’s website, [www.acus.gov](http://www.acus.gov). Notice of committee meetings will be posted only on the Conference website. Barring exceptional circumstances, such notices will be published 15 calendar days before the meeting in question. Members of the public can also sign up to receive meeting alerts at [acus.gov/subscribe](http://acus.gov/subscribe).

#### **Public Access to Meetings**

Members of the public who wish to attend a committee meeting or plenary session in person or remotely should RSVP online at [www.acus.gov](http://www.acus.gov) no later than two business days before the meeting. To RSVP for a meeting, go to the Calendar on ACUS’s website, click the event you would like to attend, and click the “RSVP” button. ACUS will reach out to members of the public who have RSVP’d if the meeting space cannot accommodate all who wish to attend in person.

Members of the public who wish to attend a meeting held at ACUS headquarters should first check in with security at the South Lobby entrance of Lafayette Centre, accessible from 20th Street and 21st Street NW. Members of the public who wish to attend an ACUS-sponsored meeting held at another facility should follow that facility’s access procedures.

The Conference will make reasonable efforts to provide interested members of the public remote access to all committee meetings and plenary sessions and to provide access on its website to archived video of committee meetings and plenary sessions. The Conference will make reasonable efforts to post remote access information or instructions for obtaining remote access information on its website no later than four calendar days before a meeting. The *Federal Register* notice for each plenary session will also include remote access information or instructions for obtaining remote access information.





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### **Participation in Meetings**

The 101 statutory members of the Conference as well as liaison representatives, special counsels, and senior fellows may speak at plenary sessions and committee meetings. Voting at plenary sessions is limited to the 101 statutory members of the Conference. Statutory members may also vote in their respective committees. Liaison representatives, special counsels, and senior fellow may vote in their respective committees at the discretion of the Committee Chair.

The Conference Chair, or the Committee Chair at committee meetings, may permit a member of the public to speak with the unanimous approval of all present voting members. The Conference expects that every public attendee will be respectful of the Conference's staff, members, and others in attendance. A public attendee will be considered disruptive if he or she speaks without permission, refuses to stop speaking when asked by the Chair, acts in a belligerent manner, or threatens or appears to pose a threat to other attendees or Conference staff. Disruptive persons may be asked to leave and are subject to removal.

### **Written Public Comments**

To facilitate public participation in committee and plenary session deliberations, the Conference typically invites members of the public to submit comments on the report(s) or recommendation(s) that it will consider at an upcoming committee meeting or plenary session.

Comments can be submitted online by clicking the "Submit a comment" button on the webpage for the project or event. Comments that cannot be submitted online can be mailed to the Conference at 1120 20th Street NW, Suite 706 South, Washington, DC 20036.

Members of the public should make sure that the Conference receives comments before the date specified in the meeting notice to ensure proper consideration.

### **Disability or Special Needs Accommodations**

The Conference will make reasonable efforts to accommodate persons with physical disabilities or special needs. If you need special accommodations due to a disability, you should contact the Staff Counsel listed on the webpage for the event or the person listed in the *Federal Register* notice no later than seven business days before the meeting.



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## Council Members

<b>Name</b>	<b>Organization</b>	<b>Title</b>
Ronald A. Cass	Cass & Associates, PC	President
Jennifer B. Dickey	U.S. Department of Justice	Principal Deputy Assistant Attorney General, Civil Division
Jeffrey M. Harris	Consovoy McCarthy PLLC	Partner
Donald F. McGahn II	Jones Day	Practice Leader of Government Regulation
Michael H. McGinley	Dechert LLP	Partner
Matthew E. Morgan	Elections, LLC	Partner
Roger Thomas Severino	U.S. Department of Health & Human Services	Director, Office for Civil Rights (OCR)
Adrian Vermeule	Harvard Law School	Ralph S. Tyler, Jr. Professor of Constitutional Law
Matthew L. Wiener	Administrative Conference of the U.S.	Acting Chairman, Vice Chairman, and Executive Director

## Government Members

<b>Name</b>	<b>Organization</b>	<b>Title</b>
James L. Anderson	Federal Deposit Insurance Corporation	Deputy General Counsel, Supervision and Legislation Branch
David J. Apol	U.S. Office of Government Ethics	General Counsel
Gregory R. Baker	Federal Election Commission	Deputy General Counsel for Administration
Eric S. Benderson	U.S. Small Business Administration	Associate General Counsel for Litigation & Claims
Ketan D. Bhirud	U.S. Equal Employment Opportunity Commission	Legal Counsel



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Christina M. Brown	U.S. Department of Housing and Urban Development	Senior Counsel
Paige Bullard	Federal Energy Regulatory Commission	Managing Attorney
Daniel Cohen	U.S. Department of Energy	Assistant General Counsel for Legislation, Regulation and Energy Efficiency
Michael J. Cole	Federal Mine Safety and Health Review Commission	Senior Attorney, Office of General Counsel
Peter J. Constantine	U.S. Department of Labor	Associate Solicitor, Office of Legal Counsel
Anika S. Cooper	Surface Transportation Board	Attorney, Office of General Counsel
Elizabeth H. Dickinson	U.S. Food & Drug Administration	Senior Deputy Chief Counsel
Jonathan Dols	U.S. Department of Transportation	Deputy Assistant General Counsel for Regulation
Robert J. Girouard	U.S. Office of Personnel Management	Senior Counsel, Office of General Counsel
Gina K. Grippando	U.S. International Trade Commission	Assistant General Counsel for Administrative Law
Richard J. Hipolit	U.S. Department of Veterans Affairs	Deputy General Counsel for Legal Policy
Janice L. Hoffman	U.S. Department of Health & Human Services	Associate General Counsel, Centers for Medicare & Medicaid Services
Paul S. Koffsky	U.S. Department of Defense	Senior Deputy General Counsel and Deputy General Counsel (Personnel and Health Policy)
Alice M. Kottmyer	U.S. Department of State	Attorney Adviser
Tristan L. Leavitt	U.S. Merit Systems Protection Board	Acting Chief Executive and Administrative Officer
Hilary Malawer	U.S. Department of Education	Deputy General Counsel, Office of the General Counsel



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Nadine N. Mancini	Occupational Safety and Health Review Commission	General Counsel
Christina E. McDonald	U.S. Department of Homeland Security	Associate General Counsel for Regulatory Affairs, Office of the General Counsel
Mary E. McLeod	Consumer Financial Protection Bureau	General Counsel
Brian Morrissey	U.S. Department of the Treasury	Principal Deputy General Counsel
Patrick R. Nagle	Social Security Administration	Chief Administrative Law Judge
Bao Nguyen	Office of the Comptroller of the Currency	Principal Deputy Chief Counsel
Alfred M. Pollard	Federal Housing Finance Agency	General Counsel
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