

Participation ADR  
Collaboration  
Administrative Law Experts  
Rulemaking  
Access to Law  
Open Government  
Transparency Federalism  
Best Practices  
Efficiency  
Timeliness Fairness  
Cost-Savings  
Education  
Recommendations  
Public-Private Partnership  
Innovation



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Performance & Accountability Annual Report

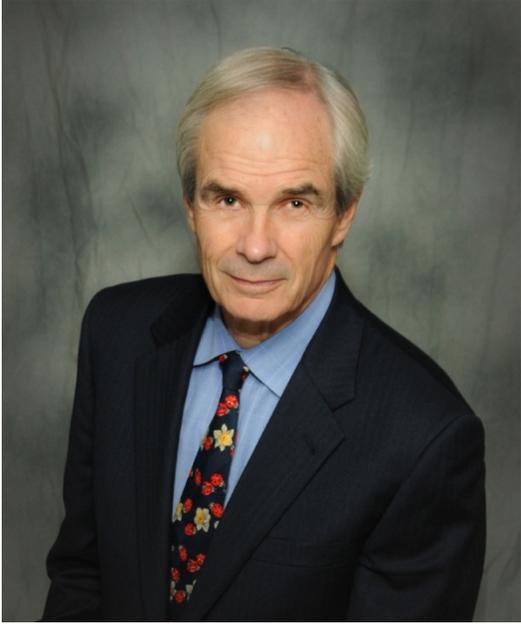
2012

Streamlining Processes Regulations

# Table of Contents

2	A Message from the Chairman
3	Overview
4	2012 Event Highlights
5	The Assembly: Chairman, Council and the Membership
21	Committees
22	Staff
23	Mission Statement, Strategic Planning and Performance Goals
32	Recommendation Process
33	Plenary Sessions and Adopted Recommendations
33	Ongoing Projects
34	Office of the Chairman Projects
36	Researchers
40	Model Agency Best Practices Initiative
41	Council of Independent Regulatory Agencies
42	Budgetary Resources and Appropriation
43	Appendix A: Administrative Conference Act
43	Appendix B: Administrative Conference Bylaws

## A Message from the Chairman



I am pleased to present the 2012 Annual Report of the Administrative Conference of the United States.

This report highlights the work of the last calendar year (except in some instances where fiscal year is specifically stated), and I am deeply grateful to the staff, Conference members, and consultants who have made the work shown on the ensuing pages possible. Since we began operations in 2010, we have adopted 17 recommendations and have more than 10 projects in the pipeline. Notably, this year President Barack Obama issued Executive Order 13609, entitled *Promoting International Regulatory Cooperation*, which is inspired by ACUS Recommendation 2011-6.

This year, we also published the first edition of the *Sourcebook of United States Executive Agencies*, which examines and explains the organizational entities of the federal executive establishment. This is an invaluable research tool and no other resource of its kind exists.

The Sourcebook continues the Conference's commitment to providing Congress, the judiciary, individual agencies, the general public, and academic researchers the means to understand and improve the federal administrative process.

Faithfully Yours,

A handwritten signature in cursive script that reads "Paul R. Verkuil".

Paul R. Verkuil  
Chairman

## Overview

The Administrative Conference of the United States is an independent agency that studies federal administrative procedures to recommend improvements to administrative agencies, Congress, the President, and the Judicial Conference of the United States. ACUS is a public-private partnership that brings together senior government officials and private citizens with diverse views and backgrounds to provide nonpartisan expert advice.

Following bipartisan endorsement of the work of two temporary Administrative Conferences during the Eisenhower and Kennedy Administrations, Congress enacted the Administrative Conference Act in 1964, which placed the work of the Conference on a more permanent footing. The Act codified a structure based on that of the prior conferences, which emphasized collaboration among a wide array of federal agencies, as well as experts in administrative law and regulation from the private sector and academia, reflecting a broad diversity of views – all of whom serve the Conference without any compensation. This collaborative effort is designed to produce consensus on nonpartisan recommendations for improvements in federal administrative processes that affect every sector of our national economy and the lives of American citizens.

Judge E. Barrett Prettyman, who had served as chairman of both temporary conferences, explained at ACUS' opening plenary session in 1968 that the members of the Conference "have the opportunity to make the administrative part of a democratic system of government work."

From its beginning in 1968 until its defunding in 1995, ACUS adopted 200-plus recommendations, based on careful study and the informed deliberations of its members in an open process that encouraged public input. Congress enacted a number of them into law, and agencies and courts have adopted or relied upon many others.

ACUS also played a leading role in developing and securing legislation to promote, and provide training in, alternative dispute resolution techniques for eliminating excessive litigation costs and long delays in federal agency programs, as well as negotiated rulemaking processes for consensual resolution of disputes in rulemaking.

The work of ACUS has received consistent support from a wide range of outside sources. As the Congressional Research Service noted in 2007, ACUS provided "nonpartisan, nonbiased, comprehensive, and practical assessments and guidance with respect to a wide range of agency processes, procedures, and practices," based on "a meticulous vetting process, which gave its recommendations credence." Justice Antonin Scalia (a former ACUS Chairman and current Senior Fellow) described the agency as "a unique combination of talents from the academic world, from within the executive branch...and...from the private bar, especially lawyers particularly familiar with administrative law," and has called ACUS one of the federal government's "best bargains...for the buck." Similarly, Justice Stephen Breyer (a former ACUS liaison representative from the Judicial Conference and current Senior Fellow) described the agency as "a unique organization, carrying out work that is important and beneficial to the average American, at low cost." In announcing his ACUS Council Member appointments, President Obama emphasized the value of the "public-private partnership" reflected in the agency's enabling statute.

Today ACUS is exploring and promoting the most efficient means of sharing information and responsibility among federal, state and local governments, businesses and citizens through new and established techniques and practices. The agency continues to seek new ideas that advance the core values of fairness, efficiency, and citizen satisfaction with government.



## 2012 Event Highlights

### Symposium on Federal Alternative Dispute Resolution

March 19, 2012

Featuring keynote speaker Attorney General Eric Holder, the symposium was co-sponsored by ACUS and the Department of Justice.



### Implementation Summit on International Regulatory Cooperation

May 1, 2012

ACUS and the U.S. Chamber of Commerce's Center for Global Regulatory Cooperation co-sponsored the summit. The keynote speaker, then-OIRA Administrator Cass Sunstein, announced Executive Order 13609, *Promoting International Regulatory Cooperation*.



### Administrative Judging in the 21<sup>st</sup> Century: The Hi-Tech Courtroom and "Googling" the Evidence

June 21, 2012

ACUS participated in this American Bar Association Program as a follow-up to ACUS Recommendation 2011-4, *Agency Use of Video Hearings*.

### Congressional Presentation on the Sourcebook of United States Executive Agencies

August 15, 2012

Professor David Lewis (Vanderbilt University) discussed his report on the federal executive establishment with congressional staff.

### Improving the Use of Science in the Administrative Process

September 10, 2012



Co-hosted by ACUS and the National Academy of Sciences, this workshop had more than 120 participants.

### Legal Issues Forum

October 10, 2012

ACUS participated in this panel, hosted by the American National Standards

Institute as part of World Standards Week, and discussed the issues of "Incorporation by Reference, Reasonable Availability, and Copyright."

### Visit by Chinese Delegation

October 22, 2012

Prominent Chinese administrative law scholars visited ACUS for a roundtable discussion on significant developments in the Chinese legal system and ideas for collaboration.

### Enhancing Science and Policy for Chemical Risk Assessments

October 23, 2012

ACUS co-hosted a workshop with The George Washington University to discuss study design and peer review.

### Incorporation by Reference in Federal Regulations Webinar

November 15, 2012

Hosted by the Society for Standards Professionals, this webinar focused on ACUS Recommendation 2011-5, *Incorporation by Reference*, and discussed recent developments.



## The Assembly

Conference membership is composed of innovative senior federal officials and experts with diverse views and backgrounds from the private sector, including academia, the practicing bar, industry, and public interest organizations.



The Conference's membership, also known as the Assembly, includes the Chairman, the Council, members from 50 federal executive departments and agencies and independent regulatory boards and commissions (called "government members"), and 40 members of the public (called "public members" or "non-government members") representing diverse views and backgrounds.

The Conference also includes participation by liaison representatives from the Congress, the federal judiciary, and other federal agencies; senior fellows (three of whom are Justices of the Supreme Court); and special counsels. Liaisons, senior fellows, and special counsels have the same privileges as members, except that they may not vote at the Conference's semi-annual plenary sessions. However, many of them are assigned to committees and they may vote at committee meetings with the permission of the committee chair.

The Conference is also supported by a small, full-time staff in the Office of the Chairman.

## The Chairman



Paul R. Verkuil, the tenth Chairman of the Administrative Conference of the United States, was sworn in by Vice President Biden on April 6, 2010.

Mr. Verkuil is a well-known administrative law teacher and scholar who has coauthored a leading treatise, *Administrative Law and Process*, now in its fifth edition, several other books (most recently, *Outsourcing Sovereignty*, Cambridge Press 2007), and more than 65 articles on public law and regulation. A Festschrift held in his honor in October 2010 was published at 32 *Cardozo Law Review* 2159 (2011). As a consultant to the Conference starting in 1972 when Antonin Scalia served as Chairman, Verkuil published six studies and served as a Senior Fellow of the Conference.

He is President Emeritus of the College of William & Mary, has been Dean of the Tulane and Cardozo Law Schools, and a faculty member at the University of North Carolina Law School. He is a graduate of William & Mary and the University of Virginia Law School and holds a JSD from New York University Law School. Among his career highlights is serving as Special Master in *New Jersey v. New York*, an original jurisdiction case in the Supreme Court, which determined sovereignty to Ellis Island.

## The Council

The 10 Council members, in addition to the Chairman, are appointed by the President for three-year terms and include both government officials and private citizens. Among the Council’s functions are to call plenary sessions of the Conference, propose bylaws and regulations for adoption by the Assembly, approve budgetary proposals, approve the appointment of public members, and approve topics for research studies.

Federal officials named to the Council may constitute no more than one-half of the total Council membership. The following were Council members in 2012:

Name	Organization
<u>Preeta D. Bansal</u>	HSBC
<u>Boris Bershteyn</u>	Office of Management and Budget
<u>Ronald A. Cass</u>	Cass & Associates PC
<u>Mariano-Florentino Cuéllar</u>	Stanford Law School
<u>Julius Genachowski</u>	Federal Communications Commission
<u>Theodore B. Olson</u>	Gibson, Dunn & Crutcher
<u>Thomas E. Perez</u>	Department of Justice
<u>Thomasina V. Rogers</u>	Occupational Safety and Health Review Commission
<u>Jane C. Sherburne</u>	BNY Mellon
<u>Patricia McGowan Wald*</u>	U.S. Court of Appeals for the D.C. Circuit (Ret.)

\*Left the Council in September 2012 upon her confirmation as a member of the Privacy and Civil Liberties Oversight Board.



## Government Members

ACUS government members are current senior officials at other government agencies. The Conference’s organic statute designates certain agencies to have government members of the Conference, and it authorizes the President and the Council to designate other such agencies.

The government members are appointed by their agencies and serve no fixed term. They participate in Conference activities in addition to their full-time work at their own agencies. The following were government members as of our 57<sup>th</sup> Plenary Session, held on December 6-7, 2012:

Scott G.	Alvarez	Federal Reserve Board
Paul	Bardos	U.S. International Trade Commission
Eric	Benderson	Small Business Administration
Mark	Cahn	Securities and Exchange Commission
Daniel	Cohen	Department of Energy
Sandy	Comenetz	Federal Housing Finance Agency
Elizabeth	Dickinson	Food and Drug Administration
Margaret	Doane	Nuclear Regulatory Commission
Bridget	Dooling	Office of Management and Budget
Kris	Durmer	General Services Administration
Daniel R.	Elliott	Surface Transportation Board
Rebecca A.	Fenneman	Federal Maritime Commission

Don	Fox	Office of Government Ethics
Meredith	Fuchs	Consumer Financial Protection Bureau
Remington	Gregg	Office of Science and Technology Policy
Susan Tsui	Grundmann	Merit Systems Protection Board
Will A.	Gunn	Department of Veterans Affairs
Elaine	Kaplan	Office of Personnel Management
Edward	Keable	Department of the Interior
Cameron F.	Kerry	Department of Commerce
Harold Hongju	Koh	Department of State
Robert	Lesnick	Federal Mine Safety and Health Review Commission
Sean	Lev	Federal Communications Commission
Nadine	Mancini	Occupational Safety and Health Review Commission
Elizabeth	McFadden	Department of Education
Christopher	Meade	Treasury Department
David Morris	Michaels	Occupational Safety and Health Administration
Miriam M.	Nisbet	National Archives and Records Administration

Richard	Osterman	Federal Deposit Insurance Corporation
Patrick	Patterson	Equal Employment Opportunity Commission
Michael J.	Ravnitzky	Postal Regulatory Commission
Robert S.	Rivkin	Department of Transportation
Bob	Schiff	National Labor Relations Board
William	Schultz	Department of Health and Human Services
Robert A.	Shapiro	Department of Labor
David	Shonka	Federal Trade Commission
Carol Ann	Siciliano	Environmental Protection Agency
Kevin M.	Simpson	Department of Housing and Urban Development
Glenn E.	Sklar	Social Security Administration
Lon	Smith	Internal Revenue Service
Robert S.	Taylor	Department of Defense
Elana J.	Tyrangiel	Department of Justice
Megan	Wallace	Commodity Futures Trading Commission
Christy	Walsh	Federal Energy Regulatory Commission

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Vacant	Office of the Comptroller of the Currency
Vacant	Department of Agriculture
Vacant	Department of Homeland Security
Vacant	Federal Election Commission
Vacant	Center for Medicare and Medicaid Services
Vacant	Consumer Product Safety Commission

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## Public Members

ACUS public members are typically leading authorities in administrative law, public administration, or other areas of interest to the Conference. Most public members are lawyers, but some are experts in other disciplines. The public members come primarily from academia, law firms, and public interest organizations.

Public members are appointed by the Chairman with the approval of the Council. They serve two-year terms. Public members may be reappointed and may serve a total of three consecutive two-year terms. The following were public members as of our 57<sup>th</sup> Plenary Session, held on December 6-7, 2012:

Fred W.	Alvarez	Wilson Sonsini Goodrich & Rosati
Gary	Bass	The Bauman Foundation
Lisa S.	Bressman	Vanderbilt Law School
James Ming	Chen	University of Louisville, Louis D. Brandeis School of Law
John F.	Cooney	Venable LLP
Susan E.	Dudley	Trachtenberg School of Public Policy and Public Administration, The George Washington University
Cynthia R.	Farina	Cornell Law School
Michael	Fitzpatrick	Government and Regulatory Affairs, General Electric
David C.	Frederick	Kellogg, Huber, Hansen, Todd, Evans & Figel
Jody	Freeman	Harvard Law School
H. Russell	Frisby Jr.	Stinson Morrison Hecker LLP
John	Graham	Indiana University, School of Public and Environmental Affairs

Philip J.	Harter	Vermont Law School
Michael E.	Herz	Benjamin N. Cardozo School of Law
Philip	Howard	Covington and Burling LLP
John M.	Kamensky	IBM Center for the Business of Government
Peter D.	Keisler	Sidley Austin LLP
Simon	Lazarus	Constitutional Accountability Center
Ronald	Levin	Washington University School of Law
George	Madison	Retired (Former General Counsel, Department of Treasury)
Carl	Malamud	Public.Resource.Org
Jerry L.	Mashaw	Yale Law School
Randolph J.	May	Free State Foundation
Doris	Meissner	Migration Policy Institute
Nina	Mendelson	University of Michigan Law School

Gillian E.	Metzger	Columbia Law School
Beth	Noveck	New York Law School
David W.	Ogden	Wilmer Cutler Pickering Hale and Dorr
Richard J.	Pierce Jr.	The George Washington University Law School
Richard L.	Revesz	New York University School of Law
Alasdair S.	Roberts	Suffolk University Law School
Teresa Wynn	Roseborough	The Home Depot
Eugene	Scalia	Gibson, Dunn & Crutcher
Virginia	Sloan	The Constitution Project
Max	Stier	Partnership for Public Service
Larry D.	Thompson	PepsiCo Inc.
James J.	Tozzi	Center for Regulatory Effectiveness
John	Vittone	Retired (Former Chief Administrative Law Judge, Department of Labor)
Helgi C.	Walker	Wiley Rein LLC
Allison M.	Zieve	Public Citizen Litigation Group

## Liaison Representatives

The Chairman, with the approval of the Council, may designate federal agencies or other organizations without voting members of the Conference to have a liaison representative. Agencies or organizations so designated appoint their liaison representative. Liaison representatives serve no fixed term. The following were liaison representatives as of our 57<sup>th</sup> Plenary Session, held on December 6-7, 2012:

Allison Beck	Federal Mediation and Conciliation Service
Amy P. Bunk	Office of the Federal Register
Charles Center	Federal Labor Relations Authority
Claire E. Coleman	House Committee on Oversight and Government Reform
Tobias Dorsey	U.S. Sentencing Commission
D. Randall Frye	Association of Administrative Law Judges
David R. Hill	ABA Section of Administrative Law and Regulatory Practice
John Hilton	House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet
The Honorable Brett M. Kavanaugh	U.S. Court of Appeals for the D.C. Circuit
Edward Kelly	Executive Office for Immigration Review
Dan Levinson	Department of Health and Human Services, Office of the Inspector General
Rebecca MacPherson	Federal Aviation Administration

Mary C.	McQueen	National Center for State Courts
Jeffrey P.	Minear	Judicial Conference of the United States
Katie L.	Nash	Office of the Director of National Intelligence
Nina	Olson	Office of the National Taxpayer Advocate, Internal Revenue Service
Suzanne	Orenstein	Udall Foundation, U.S. Institute for Environmental Conflict Resolution
James	Park	House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet
Timothy	Reif	Office of the U.S. Trade Representative
Jill	Sayenga	Administrative Office of the U.S. Courts
Lois J.	Schiffer	National Oceanic and Atmospheric Administration
Esa L.	Sferra-Bonistalli	Coast Guard
Thomas W.	Snook	ABA National Conference of the Administrative Law Judiciary
Daniel	Solomon	Federal Administrative Law Judges Conference
Alan	Swendiman	Immigration and Customs Enforcement
Melvin F.	Williams Jr.	Millennium Challenge Corporation

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Stephen Wood National Highway Traffic Safety  
Administration

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## Senior Fellows

Senior fellows have previously served as members or liaison representatives to the Conference for six or more years, members who have served as federal judges, or former ACUS Chairmen. The senior fellows are appointed by the Chairman with the approval of the Council. Senior fellows serve for two-year terms and may be reappointed. The following were senior fellows as of our 57<sup>th</sup> Plenary Session, held on December 6-7, 2012:

William H.	Allen	Covington and Burling LLP
Warren	Belmar	Capitol Counsel Group LLC
Jodie Z.	Bernstein	Kelley Drye & Warren LLP
Marshall J.	Breger	The Catholic University, Columbus School of Law
The Honorable Stephen	Breyer	Supreme Court of the United States
Betty Jo	Christian	Stephoe & Johnson LLP
Neil R.	Eisner	Department of Transportation
E. Donald	Elliott	Willkie Farr & Gallagher LLP
Fred	Fielding	Morgan Lewis & Bockius
Brian C.	Griffin	Clean Energy Systems Inc.
The Honorable Elena	Kagan	Supreme Court of the United States
Paul D.	Kamenar	Washington Legal Foundation
Sally	Katzen	New York University School of Law

The Honorable Robert	Katzmann	U.S. Court of Appeals for the Second Circuit Court
Richard J.	Leighton	Keller and Heckman LLP
Alan B.	Morrison	The George Washington University Law School
Sallyanne	Payton	University of Michigan Law School
The Honorable S. Jay	Plager	U.S. Court of Appeals for the Federal Circuit
Jonathan	Rose	Sandra Day O'Connor College of Law, Arizona State University
The Honorable Antonin	Scalia	Supreme Court of the United States
The Honorable Loren A.	Smith	U.S. Court of Federal Claims
The Honorable Stanley	Sporkin	U.S. District Court for the District of Columbia (Retired)
The Honorable Kenneth	Starr	Baylor University
Peter L.	Strauss	Columbia Law School
David	Vladeck	Bureau of Consumer Protection, Federal Trade Commission
The Honorable John M.	Walker Jr.	U.S. Court of Appeals for the Second Circuit
The Honorable William H.	Webster	Milbank, Tweed, Hadley & McCloy LLP

Edward L.	Weidenfeld	The Weidenfeld Law Firm P.C
Richard E.	Wiley	Wiley Rein LLP
The Honorable Stephen F.	Williams	U.S. Court of Appeals for the District of Columbia Circuit

## Special Counsels

Jeffrey S.	Lubbers	American University Washington College of Law
Jonathan	Siegel	George Washington University Law School

## Committees

The Administrative Conference bylaws (section 302.3(a)) designate six standing committees of the Conference. The Chairman has the authority to appoint Conference members to the committees. With the approval of the Council, the Chairman may establish additional standing committees or rename, modify, or terminate any standing committee.

These six standing committees are the most important component of the process that leads to the adoption of Administrative Conference recommendations, because it is at the committee level that researchers' reports are carefully analyzed and proposed recommendations are formulated. Although Administrative Conference researchers often provide the initial draft of proposed recommendations, the committees ultimately develop the recommendations that are considered by the Assembly. The committees typically meet several times each year, depending on the stage that their assigned projects have reached.

Each Conference member is asked to participate actively in one of the committees.

Each committee has an area of interest and activity, which generally guides the assignment of particular projects among the committees. However, these areas are defined broadly, to allow the Chairman flexibility in assigning projects. The Chairman may also, with Council approval, appoint special committees as needed.

Committees:
➤ <a href="#">Adjudication</a>
➤ <a href="#">Administration and Management</a>
➤ <a href="#">Collaborative Governance</a>
➤ <a href="#">Judicial Review</a>
➤ <a href="#">Regulation</a>
➤ <a href="#">Rulemaking</a>

## Staff



**Gretchen Jacobs**  
Research Director



**Charles Kersey**  
IT Specialist

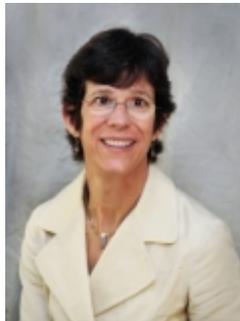


**Megan Kindelan**  
Communications Director

**Emily S. Bremer**  
Attorney Advisor

**Reeve T. Bull**  
Attorney Advisor

**Gabrielle Guy**  
Paralegal Specialist



**Shawne McGibbon**  
General Counsel



**Funmi E. Olorunnipa**  
Attorney Advisor

**David M. Pritzker**  
Deputy General Counsel

**Harry Seidman**  
Chief Financial and  
Operations Officer



**Stephanie J. Tatham**  
Attorney Advisor



**Matthew Lee Weiner**  
Executive Director



**Amber G. Williams**  
Attorney Advisor



**Porscha Winston**  
Executive Assistant to the  
Chairman



## Vision & Values

The Administrative Conference is given the power to “study the efficiency, adequacy, and fairness of administrative procedure...” 5 USC § 594.

The work of the Conference is guided by these procedural values, which reflect legal and social science measures of performance.

The fairness value derives from law and employs principles in the Administrative Procedure Act and the Due Process Clause of the Constitution.

The efficiency value derives from economics and looks at how procedures employed by the agency achieve the public purposes the regulations are intended to serve. The question is whether the agency procedures and management techniques reflect optimum resource allocations.

The adequacy value borrows from the disciplines of psychology and political science and looks at the effectiveness of regulatory techniques from the public’s perspective, including such factors as trust, transparency, and participation.

In many situations, these values must be balanced by the Conference in crafting recommendations, but in no case will they be ignored.

## Mission Statement

*The Administrative Conference of the United States is a public-private partnership whose membership develops formal recommendations and innovative solutions that make our government work better.*

## Strategic Goals

### PARTICIPATION

ACUS will expand citizen participation in the regulatory process through increased use of interactive communications technology and creative means of outreach, in order to provide essential information to government officials and to inform the public.

### COLLABORATION

ACUS will study and promote the most responsive and efficient means of sharing authority and responsibility among the federal government, state and local governments, contractors, grantees, and citizens. This will include exploration of new models of collaborative governance as well as a more effective division of responsibility between government and the private sector.

### INNOVATION

ACUS will seek new ideas that advance the core values of fairness and efficiency, and will study existing government programs to identify what works, what doesn't, and what's promising. Research will address the use of science, ensuring data quality, and performance evaluation.

### EDUCATION

ACUS will bring together senior federal officials and outside experts to identify best practices and will advise agencies on revising their rulemaking and hearing processes, technology, and management systems to deliver better results. The Conference will be a central resource for agencies by compiling and publishing data and guidance on solving mutual problems.



## strategic goal: PARTICIPATION

Expand public participation and increase transparency.

The Administrative Conference will expand citizen participation in the regulatory process through increased use of interactive communications technology, as well as by alternative means of outreach, in order to provide essential information to government officials and inform the public. The Administrative Conference will improve openness and transparency in government by promoting common standards and formats for information sharing and proposing updates to laws and rules written before the Internet era.

Performance Goal	Results Measure	FY 2012 Results
<p>1) <b>Fairness</b> ACUS will encourage more widespread participation by stakeholders in its recommendation process to ensure a fair representation of relevant viewpoints.</p>	<p>Outreach to, and inclusion of, various stakeholders during consideration of ACUS recommendations.</p>	<p>In FY 2012, participation by outside groups and individuals surpassed that of the previous year. Moreover, numerous jointly-sponsored events were held in order to hear and consider the views of persons who might not otherwise participate in committee meetings. For example, a workshop was held at the National Academy of Sciences to solicit the views of stakeholders in the ACUS project titled, "Science in the Administrative Process."</p>
<p>2) <b>Transparency</b> ACUS will ensure compliance with applicable FACA procedures regarding transparency and will ensure that the process leading to recommendations is transparent to participants and the public.</p>	<p>Publication of required <i>Federal Register</i> notices prior to semi-annual meetings of the full ACUS Assembly; publication of relevant committee documents (agendas, minutes, draft reports and recommendations) in a manner accessible to participants and the public; webcasts of committee and Assembly meetings to enhance access and transparency to all.</p>	<p>In FY 2012, all required <i>Federal Register</i> notices were published in a timely fashion. Committee documents were circulated to the public for comment (electronically) within one day of distribution to the relevant committee. An enhanced website (containing more historical information than ever before) was under development to create more user-friendly access for government agencies, students, the media, academics, Congress and public interest advocates. New webcasting capabilities were added to increase participation by members.</p>
<p>3) <b>Access to Information</b> ACUS will make available to all of its stakeholders a searchable library/database of ACUS documents and</p>	<p>Increased visits to ACUS website by stakeholders and other interested persons/groups; and full disclosure of information to FOIA requesters (to the</p>	<p>In FY 2012, ACUS employed new Web analytics tools, which demonstrated that website visits increased in volume over the previous year. The agency continued</p>

<p>video recordings—both historical and current—to educate individuals about ACUS activities and information; and will ensure compliance with applicable Open Government and FOIA procedures.</p>	<p>extent permitted by law).</p>	<p>to adhere to a policy of full disclosure with regard to information requested under FOIA, and for CY 2012, received a “green” (top) score in all 14 directly applicable key areas out of 17 measured by the Office of Information Policy on agency FOIA compliance.</p>
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## strategic goal: COLLABORATION

Promote collaborative governance.

The Administrative Conference will study and promote the most responsive and efficient means of sharing authority and responsibility among the federal government, state and local governments, contractors, grantees, and citizens. This will include exploration of new models of collaborative governance as well as the most efficient division of responsibility between government and the private sector.

Performance Goal	Results Measure	FY 2012 Results
<p>1) <b>Public-Private Partnerships</b> ACUS will leverage its public-private partnerships to enhance collaboration and cooperation.</p>	<p>Partnerships with organizations/institutions like the American Bar Association (ABA), universities and other federal agencies to aid in the development and implementation of ACUS recommendations and projects.</p>	<p>In FY 2012, the ABA adopted a resolution based on ACUS Recommendation 2011-6, International Regulatory Cooperation, thereby aiding in ACUS' implementation efforts. And, ACUS adopted several recommendations that were strengthened by input from private-sector experts such as Recommendation 2011-5, Incorporation by Reference.</p>
<p>2) <b>International Cooperation</b> ACUS will engage in activities that promote better collaboration between U.S. and foreign regulatory agencies, and educate foreign counterparts about how to improve their administrative procedures.</p>	<p>Outreach and education to foreign counterparts; recommendations, collaborations and events that establish best practices for enhancing cooperation between the U.S. Government and its foreign counterparts, particularly in the area of regulation.</p>	<p>In FY 2012, ACUS staff met with several foreign delegations, including legal scholars from China, to describe and promote the U.S. system of administrative procedure. ACUS adopted Recommendation 2011-6, International Regulatory Cooperation, which provides guidance for all U.S. regulatory agencies on working with their international counterparts. Based in part on that recommendation, President Barack Obama signed Executive Order 13609, Promoting International Regulatory Cooperation.</p>
<p>3) <b>Alternative Dispute Resolution (ADR)</b> ACUS will review current ADR programs, identify potential improvements, and educate stakeholders about the benefits of ADR techniques.</p>	<p>Programs and activities that promote the use of ADR in government.</p>	<p>In FY 2012, ACUS co-sponsored a symposium with the Department of Justice to re-focus attention on the benefits of cost-effective alternative dispute resolution (ADR) and reducing litigation at government agencies. Attorney General Eric Holder keynoted the event and emphasized the</p>

		importance of renewing the commitment to strengthen ADR programs across the federal government.
<p>4) <b>Best Practices</b>  ACUS will identify and/or develop best practices in government and share that information with agencies, or train agencies how to adopt the best practices.</p>	Recommendations and/or reports that promote adoption of best practices that produce cost savings, increased efficiency, or increased fairness; recognition of agencies that develop innovative best practices.	In FY 2012, ACUS awarded the Walter Gellhorn award to agencies that demonstrated innovative best practices that can be adopted government-wide. ACUS adopted recommendations that are based on federal agency best practices, such as ACUS Recommendation 2011-8, Agency Innovations in e-Rulemaking.

## strategic goal: INNOVATION

Identify innovations to make government procedures more efficient, fair, timely, and data-driven. The Administrative Conference will seek new ideas that advance the core values of fairness and efficiency, and will study existing government programs to identify what works, what doesn't, and what's promising. Because government action should be based on sound data, the Administrative Conference will improve the use of science, empirical data, and performance evaluation in regulations and administrative law, and the Conference's own activities will be measured to demonstrate the value that they provide.

Performance Goal	Results Measure	FY 2012 Results
<p>1) <b>Efficiency</b> ACUS will work to streamline the administrative process through research and innovations that maximize the government's capacity in a cost-effective manner.</p>	<p>Reports and/or recommendations on innovative administrative procedure reforms that help agencies put their limited resources to the best use. Outcomes measured by agencies adopting these reforms and concomitant increases in efficiency.</p>	<p>In FY 2012, ACUS adopted several recommendations in support of this goal. For instance, ACUS adopted Recommendation 2012-5, Improving Coordination of Related Agency Functions, which suggests reforms aimed at improving coordination of agency policymaking, including joint rulemaking, interagency agreements and agency consultation provisions.</p>
<p>2) <b>Timeliness</b> ACUS will work across federal agencies to reduce backlogs and unnecessary delays in case and rule processing through better use of innovative technologies and collaborative governance techniques.</p>	<p>Reports and/or recommendations that aim to reduce delays in the administrative process. Outcomes measured by the affected agencies' adoption of the recommended reforms and a reduction in backlogs and delays.</p>	<p>In FY 2012, ACUS adopted Recommendation 2012-3, Immigration Removal Adjudication, which, when implemented, will reduce backlogged cases and increase fairness for detainees awaiting a hearing. Video hearings represented one of several innovative techniques contained in the recommendation. ACUS anticipates continued work in this area and, in FY 2013, plans to conduct a pilot test in a detention facility, demonstrating the efficacy of video hearings.</p>
<p>3) <b>Technology</b> ACUS will identify and minimize procedural, legal and logistical obstacles that prevent access to the government's regulatory and adjudicatory activities through better use of innovative technologies.</p>	<p>Reports and/or recommendations on best practices to eliminate barriers to access.</p>	<p>In FY 2012, ACUS adopted Recommendation 2011-8, Agency Innovations in e-Rulemaking, which was based on innovative initiatives at 90 federal agencies, and highlights agency best practices on electronic rulemaking that can be adopted at other agencies.</p>

## strategic goal: EDUCATION

Convene leaders to share information, solve common problems, and encourage adoption of promising innovations government-wide.

The Administrative Conference will bring together senior federal officials and outside experts to identify best practices and will advise agencies on revising their rulemaking and hearing processes, technology, and management systems to deliver better results. The Conference will be a central resource for agencies by compiling and publishing data and guidance on solving mutual problems.

Performance Goal	Results Measure	FY 2012 Results
<p>1) <b>Reconvene Regular Meetings of the Council of Independent Regulatory Agencies (CIRA)</b>            ACUS will convene CIRA meetings of independent agency heads in order to provide an opportunity for these agencies to share information and solve common administrative problems.</p>	<p>Convene four meetings per year of the Council of Independent Regulatory Agencies.</p>	<p>In FY 2012, the ACUS Chairman convened four CIRA meetings. Topics discussed included the Government in the Sunshine Act, which restricts certain types of communications at agencies governed by a multi-headed body (like a Commission), and pending legislation requiring cost-benefit analysis at independent agencies.</p>
<p>2) <b>Workshops</b>            ACUS will convene a series of workshops, meetings and symposia to share knowledge and best government practices.</p>	<p>Convene two to four workshops per year.</p>	<p>In FY 2012, ACUS convened three workshops to share information on a range of current topics. An ADR symposium was held jointly with DOJ. A summit was held jointly with the U.S. Chamber of Commerce on the topics of Incorporation by Reference and International Regulatory Cooperation. A workshop on improving the use of science in the regulatory process was jointly held with the National Academy of Sciences.</p>
<p>3) <b>Publications</b>            ACUS will publish electronic and print media to educate and engage government and private sector stakeholders about ACUS activities; and ACUS will publish useful documents/guides/reports on government procedure and structure.</p>	<p>A website that is compliant with federal requirements, incorporates innovative tools such as social media, and is useful, as measured by increasing number and duration of Web visits and user surveys. Published documents/guides/reports.</p>	<p>In FY 2012, the agency continued to improve the usability and content of its website, and increased usage over the previous year by 30 percent. The Conference undertook a comprehensive study of the federal executive establishment for the purpose of cataloging the structure of federal agencies and other entities within the federal government, including independent agencies. No other resource of its kind exists. This project will be</p>

		completed in FY 2013 with the publication of a sourcebook and the underlying database. The Office of the Chairman also compiled data for a prospective report to Congress on the amount of fees and other expenses awarded in agency administrative proceedings during the preceding fiscal year pursuant to the Equal Access to Justice Act.
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# Recommendation Process

The Administrative Conference’s research and the resulting recommendations are carried out through a multi-step process.

The process includes gathering and selecting ideas for a project, obtaining Council approval, and selecting the researcher. The Conference’s six committees will then consider the researcher’s report. The committee then collaborates on the project with staff, the research consultant, other agencies as appropriate, and other interested persons, in public meetings (that are also broadcast online). Once the committee formulates a recommendation, the draft recommendation is then considered by the Council and then the full Conference membership.

Upon approval by the full Conference, ACUS follows up to see that its recommendations are implemented.

The graphic shown above represents the steps involved in preparing a recommendation.



### What is unique about this process?

*...ACUS provides “non-partisan, non-biased, comprehensive, and practical assessments and guidance with respect to a wide range of agency processes, procedures, and practices,...based on a meticulous vetting process, which give its recommendations credence.”*

Congressional Research Service, 2007

## Plenary Sessions and Adopted Recommendations

During its plenary sessions and committee meetings, members exchange views and work together to reach consensus solutions to complex problems. This process at the committee level, which typically involves at least two to three committee meetings for each project, produces the recommendations the Conference considers at plenary sessions. The following are the recommendations adopted by the voting members of the Conference during the 2012 plenary sessions.

### 56<sup>th</sup> Plenary Session: June 14-15, 2012

- ❖ [Recommendation 2012-1 \(Regulatory Analysis Requirements\)](#)
- ❖ [Recommendation 2012-2 \(Midnight Rules\)](#)
- ❖ [Recommendation 2012-3 \(Immigration Removal Adjudication\)](#)
- ❖ [Recommendation 2012-4 \(Paperwork Reduction Act\)](#)
- ❖ [Recommendation 2012-5 \(Improving Coordination of Related Agency Responsibilities\)](#)

### 57<sup>th</sup> Plenary Session: December 6-7, 2012

- ❖ [Recommendation 2012-6 \(Reform of 28 U.S.C. § 1500\)](#)
- ❖ [Recommendation 2012-7 \(Agency Use of Third-Party Programs to Assess Regulatory Compliance\)](#)
- ❖ [Recommendation 2012-8 \(Inflation Adjustment Act\)](#)

## Ongoing Projects

The following projects were in varying stages of the research process in 2012:

- ❖ [Administrative Record in Informal Agency Proceedings](#)
- ❖ [Benefit-Cost Analysis at Independent Regulatory Agencies](#)
- ❖ [Government in the Sunshine Act](#)
- ❖ [Methods of Collaborative Governance](#)
- ❖ [Science in the Administrative Process](#)
- ❖ [Social Media in Rulemaking](#)
- ❖ [Social Security Disability Adjudication](#)



## Office of the Chairman Projects

### The Federal Executive Establishment

The Administrative Conference undertook a project to examine the agencies and other organizational entities of the federal executive establishment, including independent agencies. The study catalogues a comprehensive set of characteristics for each entity, including structure (e.g., commission or single-head agency, internal organization), personnel (e.g., number and types of appointed positions, limitations on removal), decision-making processes and requirements, political oversight, and sources of funding. No other resource of its kind exists.



The results of this study are contained in the *Sourcebook of United States Executive Agencies*, prepared by David E. Lewis and Jennifer L. Selin of Vanderbilt University and first published by the Administrative Conference in December 2012. The information from this research will be an especially valuable resource to Congress, both in carrying out its oversight activities and in legislating on matters concerning the organization, functioning, and governance of federal administrative agencies. It also serves as a useful resource to the judiciary, individual agencies, the general public, and academic researchers in government and public administration.



ACUS Chairman Paul Verkuil with Sourcebook authors Jennifer L. Selin and David E. Lewis.

### SSA Disability Benefits Programs: The Duty of Candor and Submission of All Evidence

At the request of the Social Security Administration (SSA), the Office of the Chairman studied the duty of candor and the submission of all evidence in Social Security disability adjudications. The report, released in October 2012, briefly reviewed and summarized the Social Security Act and SSA's current regulations and practices regarding the duty of candor and the submission of all evidence. It then reviewed requirements from other tribunals, the Federal Rules of Civil Procedure, and regulations governing other agencies. It also analyzed ethical standards concerning disclosure of information by claimants' representatives. Based on the research, the report presented the regulatory options available to SSA regarding future actions to improve the disability adjudication process.

*"We are very pleased with the quality and timeliness of this report. ACUS' suggestions will greatly assist us as we consider changes to improve the disability process. I do want to add that this report and the other fine work ACUS is doing at our request demonstrates Congress' wisdom in reviving this agency. Their work has been timely, high-quality, and quite cost-effective compared to alternative contractors."*

Michael J. Astrue  
Social Security Commissioner

## Office of the Chairman Projects

### Equal Access to Justice Act (EAJA)

Since the 1980s, the Equal Access to Justice Act (Title II of Pub. L. 96-481, 94 Stat. 2325) has provided for the award of attorney fees and expenses to certain parties who prevail over the federal government in administrative and court proceedings. The Act assigned important consultative and reporting responsibilities to the Chairman of the Administrative Conference. As part of its consultative role, in 1986 the Office of the Chairman published revised model rules for implementation of EAJA in agency proceedings, which provided extensive guidance to agencies (51 FR 16665, May 6, 1986).

Prior to cessation of the Administrative Conference's activities in 1995, the Office of the Chairman compiled an annual report to Congress on the amount of fees and other expenses awarded in agency administrative proceedings during the preceding fiscal year pursuant to EAJA. The report described the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may have aided Congress in evaluating the scope and impact of such awards (5 USC 504(e)). The last such report covered fiscal year 1994.

The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104-66) eliminated the statutory requirements for both the Conference's report on EAJA payments in administrative proceedings and a corresponding report by the Department of Justice on payments in court proceedings. However, because of the continuing interest in Congress in acquiring data about payments under EAJA, the Office of the Chairman requested the data from agencies for FY 2010 and then compiled data to prepare a report for Congress.

## Researchers

ACUS has a history of collaborating with researchers whose work has proven indispensable to the core of the Conference’s mission.

Hundreds of the nation’s leading academic and professional experts in government and administrative law have contributed to fulfilling the Conference’s mission of engaging in research that addresses the efficiency, adequacy, and fairness of administrative agency programs. This list includes consultants and researchers, both paid and pro bono, who have produced recommendations and reports over the course of the Conference’s existence.

### 2012 ACUS Research Consultants

Consultant	Project
Leland E. Beck	Administrative Record
Jack M. Beermann	Midnight Rules
Lenni B. Benson	Immigration Removal Adjudication
James Ming Chen	Inflation Adjustment for Civil Penalties
Curtis Copeland	Review of Regulatory Analysis Requirements, Benefit-Cost Analysis
Jody Freeman	Improving Coordination of Related Agency Responsibilities
Michael E. Herz	Social Media in Rulemaking
Harold J. Krent	Social Security Disability Adjudication
David E. Lewis	Federal Executive Establishment
Lesley K. McAllister	Agency Use of Third-Party Programs to Assess Regulatory Compliance
Scott Morris	Social Security Disability Adjudication
Jim Rossi	Improving Coordination of Related Agency Responsibilities
Jennifer L. Selin	Federal Executive Establishment
Stuart Shapiro	Paperwork Reduction Act
Wendy E. Wagner	Science in the Administrative Process
Russell Wheeler	Immigration Removal Adjudication

## Former Researchers

### Former Researchers Who are Current ACUS Members

Marshall Breger  
Ronald A. Cass  
E. Donald Elliott  
Philip J. Harter  
Sally Katzen  
Ronald M. Levin  
Jeffrey S. Lubbers  
William V. Luneburg  
Jerry Mashaw  
Richard J. Pierce  
Richard Revesz  
Jonathan Rose  
Antonin Scalia  
Loren A. Smith  
Peter L. Strauss  
Paul R. Verkuil

### Consultants, Researchers and Contributors

#### A

Charles D. Ablard  
Arvil Adams  
Robert S. Adler  
Nicholas Allard  
David Altschuler  
Alfred C. Aman  
David R. Anderson  
Frederick R. Anderson  
Dennis S. Aronowitz  
Michael Asimow

#### B

Steven J. Balla  
Michael Baram  
Lawrence Baxter  
Richard Bednar  
Bernard W. Bell  
Michael E. Bell  
Robert W. Bennett  
Richard K. Berg

George A. Bermann  
Phyllis E. Bernard  
Francis X. Beytagh  
Frank S. Bloch  
Arthur G. Bonfield  
John E. Bonine  
Michael Botein  
Michael W. Bowers  
Barry B. Boyer  
Emily S. Bremer  
Albert Broderick  
Harold Bruff  
Reeve Bull  
James E. Byrne

#### C

Richard B. Cappalli  
Michael H. Cardozo  
Milton M. Carrow  
Reid P. Chambers  
Brice McAdoo Clagett  
Kathleen Clark  
Cary Coglianese  
Michael P. Cox  
Roger C. Cramton  
Steven P. Croley  
Eldon H. Crowell  
David P. Currie

#### D

Johnnie Daniel  
Charles Davenport  
William I. Davey  
Frederick Davis  
James V. DeLong  
Colin S. Diver  
Robert G. Dixon  
Bridget C.E. Dooling  
Elizabeth K. Dorminey

#### E

George C. Eads  
Gary Edles

Emory Ellis  
Samuel Estreicher

#### F

Richard Fallon  
Margaret G. Farrell  
Howard Fenton III  
Eugene Fidell  
Jose R. Figueroa  
Mary Candace Fowler  
James O. Freedman  
John H. Frye  
William F. Funk

#### G

Warner W. Gardner  
Ernest Gellhorn  
Peter M. Gerhart  
Donald A. Giannella  
Daniel J. Gifford  
Margaret Gilhooley  
Michelle Gilbert  
Clayton P. Gillette  
Brian Griffin  
Harvey Goldschmidt  
Frank Goodman  
Frank P. Grad  
Heather G. Graham  
Charles E. Grassley  
Harold P. Green  
Dov Grundsclag  
Mark H. Grunewald

#### H

Norbert Halloran  
Robert W. Hamilton  
Michael P. Healy  
Ann C. Hodges  
Thomas D. Hopkins  
Donald T. Hornstein  
Zona Fairbanks Hostetler

## I

Carole Iannelli

## J

John H. Jackson  
George Robert Johnson  
Phillip E. Johnson  
Charlotte Jones  
Ellen R. Jordan  
Daniel Joseph  
Timothy Stoltzfus Jost

## K

David E. Kartalia  
Cornelius Kerwin  
Eleanor Kinney  
Stephen H. Klitzman  
Charles H. Koch  
David Koplow  
Lewis A. Kornhauser  
William E. Kovacic  
William P. Kratzke  
Harold Krent  
Jack Kress  
Stephen Kurzman

## L

Laura Langbein  
Paul Larsen  
Arnold H. Leibowitz  
Jacqueline C. Leifer  
Stephen Legomsky  
Lisa G. Lerman  
Howard Lesnick  
L. Harold Levinson  
William J. Lockhart  
Andreas F. Lowenfeld  
William Lyons

## M

Jonathan R. Macey  
Thomas J. Madden

Michael P. Malloy  
Wendy K. Mariner  
David A. Martin  
David B.H. Martin  
Peter W. Martin  
Philip Martin  
Malcolm S. Mason  
Michael McCarthy  
Thomas O. McGarity  
Carl McGowan  
John McGregor  
Errol Meidinger  
Richard A. Merrill  
Douglas Michael  
Geoffrey P. Miller  
Nancy G. Miller  
Thomas D. Morgan  
Morell E. Mullins  
Arthur W. Murphy

## N

James Nafziger  
Nathaniel L. Nathanson  
Alfred S. Neely IV  
David S. North  
J.D. Nyhart

## O

Gregory Ogden  
Funmi Olorunnipa  
James T. O'Reilly

## P

Max D. Paglin  
Robert E. Park  
Henry Perritt, Jr.  
William D. Popkin  
Anna Marie Portz  
Charles Pou, Jr.  
Burnele V. Powell  
Monroe E. Price  
David M. Pritzker

## R

Robert L. Rabin  
Malcolm C. Rich  
Douglas A. Riggs  
Leonard L. Riskin  
Robert N. Roberts  
Reuben B. Robertson  
Glen O. Robinson  
William F. Robinson, Jr.  
Arnold Rochvarg  
Morton Rosenberg  
Victor Rosenblum  
Ronald D. Rotunda  
George Ruttinger

## S

Sidney A. Shapiro  
Catherine M. Sharkey  
Harold Sharlin  
William Shaw  
Allen Shoenberger  
Jonathan Siegel  
Michael J. Singer  
Diane M. Stockton  
Stuart A. Smith  
Marianne K. Smythe  
Abraham Sofaer  
Ralph S. Spritzer  
Thomas H. Stanton  
John M. Steadman  
Thomas O. Sargentich  
Steven Schlesinger  
Roy A. Schotland  
Peter H. Schuck  
Teresa M. Schwartz  
Warren F. Schwartz  
Kenneth E. Scott  
Peter F. Shane  
Brian D. Shannon  
Ann Steinberg  
Russell B. Stevenson  
Charles A. Sullivan  
Neil J. Sullivan  
Peter Szanton

## T

Larry W. Thomas  
Norman C. Thomas  
Carl W. Tobias  
Edward A. Tomlinson

## V

Katherine L. Vaughns  
Jan Vetter  
G. Joseph Vining

## W

William Walsh  
Theodore Wang  
Leland Ware  
Wallace Warfield  
Russell L. Weaver  
David Welborn  
Martin B. White  
Jerre S. Williams  
Stephen F. Williams  
Mason Willrich  
Julia Wondolleck  
Frank M. Wozencraft  
Ronald Wright

## Y-Z

Steven L. Yaffee  
Lynda Zengerle  
Nicholas Zeppos  
Michael J. Zimmer



## Model Agency Best Practices Initiative

*From Need-to-Know to Know-How*

The Administrative Conference of the United States is uniquely situated to help both new and established agencies build better organizations for the new century. To accomplish this, the Conference has a long-term project to identify and share best administrative and operational practices among agencies.

The question this project is designed to answer is: what model practices can be widely adopted to help every federal agency improve its operations and procedures? The hallmark of the entire effort is collaboration with other federal agencies. The primary vehicle to promote, solicit, and share information about best practices is an interactive website, [www.acus.gov/best-practices](http://www.acus.gov/best-practices).



The Walter Gellhorn Innovation Award is named after the Conference's longest-serving Council member, who was known by many as the "Father of Administrative Law." Judged by a distinguished panel of experts, the award recognizes the federal agency with the best model practice that can be adopted government-wide.

The second annual award, presented during the 57th Plenary Session in December 2012, went to the National Archives and Records Administration for their Citizen Archivist Initiative project. The Honorable Mention awards went to the Consumer Financial Protection Bureau of its Consumer Complaint Database and the Bureau for its Mobil Apps program.



General Counsel Shawne McGibbon, National Archivist David Ferriero, and Chairman Paul Verkuil.

### Panel of Judges:

- **Sheila Bair:** Senior Advisor at Pew Charitable Trusts and Chair of the Systemic Risk Council. Former FDIC Chair, acting Chair of the CFTC, and Dean's Professor of Financial Regulatory Policy for the Isenberg School of Management (U. Mass. Amherst)
- **John Dilulio Jr.:** Frederic Fox Leadership Professor of Politics, Religion, and Civil Society and Professor of Political Science at the University of Pennsylvania. Former Director of White House Office of Faith-Based Initiatives.
- **David Lewis:** Professor of Political Science at Vanderbilt University. He is the author of *Presidents and the Politics of Agency Design* and *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*.
- **Robert Litan:** Director of Research, Bloomberg Government. Former VP for Research and Policy at the Kauffman Foundation and Senior Fellow in Economic Studies at the Brookings Institution; also former Deputy Assistant Attorney General at DOJ and Associate Director of OMB.

# Council of Independent Regulatory Agencies

## MEMBERS

U.S. Consumer Product Safety Commission  
Commodity Futures Trading Commission  
Equal Employment Opportunity Commission  
Federal Communications Commission  
Federal Deposit Insurance Corporation  
Federal Election Commission  
Federal Energy Regulatory Commission  
Federal Housing Finance Agency  
Federal Maritime Commission  
Federal Mine Safety and Health Review Commission  
Federal Reserve Board  
Federal Trade Commission  
U.S. International Trade Commission  
Merit Systems Protection Board  
National Labor Relations Board  
Nuclear Regulatory Commission  
Occupational Safety and Health Review Commission  
Postal Regulatory Commission  
Securities and Exchange Commission  
Surface Transportation Board

A council for leaders of independent regulatory agencies, CIRA's goal is to provide a forum for executives to discuss issues common to these agencies.

Because independent regulatory agencies are subject to limited OMB oversight, they have limited mechanisms for sharing information and solving common administrative problems.

Over the last year, the Council of Independent Regulatory Agencies convened three meetings to discuss issues of common interest, such as the use of cost-benefit analysis by independent regulatory agencies, international regulatory cooperation, and independent regulatory agency practices for dissents in rulemakings.

## FY 2012 Meeting Dates

- November 15, 2011
- March 1, 2012
- May 30, 2012
- September 7, 2012



President Ronald Reagan  
Addressing Agency Chairmen at the  
White House During the Initial  
Meeting of the Council of  
Independent Regulatory Agencies.

April 16, 1982

## Budgetary Resources and Appropriation

### Appropriation History

Congress appropriated \$2.5 million for FY 2010, with authority to carry over unused funds to FY 2011. ACUS carried over approximately \$0.9 million to FY 2011. To that, Congress appropriated an additional \$2.75 million for FY 2011 (again, with authority to carry over unused funds to FY 2012), bringing the total of available funds for FY 2011 to approximately \$3.7 million. Given the substantial carryover funds available to ACUS for FY 2012, Congress appropriated \$2.9 million for FY 2012 (again, with carryover authority) and, as a result of a continuing resolution, the same amount for FY 2013. As a result, for each full fiscal year of ACUS's operation, the agency's congressionally appropriated budgetary resources have exceeded \$3.2 million; although ACUS has yet to receive its fully authorized appropriation of \$3.2 million in any given fiscal year.

### FY 2012 Appropriation Language

For necessary expenses of the Administrative Conference of the United States, authorized by 5 U.S.C. 591 et seq., \$2,900,000 to remain available until September 30, 2013, of which not to exceed \$1,000 is for official reception and representation expenses.

### FY 2012 Programmatic Application of Funds

Personnel Compensation and Benefits (Administration, Legal Counsel, Project Management)	\$1,896,600
Administrative Overhead (Rent, Office Supplies, Equipment)	\$348,000
Recommendations and Other Projects (Research, Reports, Contracted Experts)	\$435,000
Implementation and Advisory (Publications, Workshops, Symposia)	\$220,400
	\$2,900,000

<b>FY 2012 Total Budget Authority</b>	<b>\$2,900,000</b>
---------------------------------------	--------------------

<b>FY 2011 Carryover Funds</b>	<u>\$598,989</u>
Total Budgetary Authority (FY11/12 Funds)	\$3,498,989

<b>Total Outlays in FY 2012 (FY11/12 Funds)</b>	<u>\$2,827,119</u>
Carryover Balance to FY 2013	\$671,870

<b>FY 2012 Personnel Resources – FTEs:</b>	<b>15</b>
--------------------------------------------	-----------

## Appendix A

# Administrative Conference Act

United States Code  
Title 5. Government Organization and Employees  
Part I. The Agencies Generally  
Chapter 5. Administrative Procedure  
Subchapter V. Administrative Conference of the United States

### § 591. Purposes

The purposes of this subchapter are—

- (1) to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;
- (2) to promote more effective public participation and efficiency in the rulemaking process;
- (3) to reduce unnecessary litigation in the regulatory process;
- (4) to improve the use of science in the regulatory process; and
- (5) to improve the effectiveness of laws applicable to the regulatory process.

Read the full text of the Act here: <http://www.acus.gov/publication/administrative-conference-act>.

## Appendix B

# Administrative Conference Bylaws

The current bylaws were approved by the Assembly during the Administrative Conference's 56th Plenary Session in June 2012.

Read the bylaws here: <http://www.acus.gov/policy/administrative-conference-bylaws>.

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Washington, DC 20036

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