



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

# FY 2014 CONGRESSIONAL BUDGET JUSTIFICATION

April 10, 2013

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## I. Overview

The President's Budget for FY 2014 requests \$3.2 million for the Administrative Conference of the United States.

The Administrative Conference of the United States is a newly reauthorized independent agency that studies federal agency procedures and processes to recommend improvements to Congress and agencies. 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. ACUS members, with the exception of the Presidentially-appointed Chairman, are uncompensated for their time and expertise. This provision of uncompensated services represents a tremendous value for the federal government.

After a 15-year hiatus, ACUS resumed operations in April 2010 upon the confirmation of the Chairman by the Senate. The latter half of FY 2010 was a startup period for the agency. The President appointed 10 Council members and the Chairman and the Council named the other 90 statutory members of the Conference. The Administrative Conference also hired staff and secured office space, and commenced an initial program of research projects to carry out the authorizing statute's mission of improving administrative procedure. In FY 2011, the agency commenced full operations. In December 2010, the full Conference met in plenary session for the first time since 1995. The Conference has convened 5 subsequent plenary sessions leading to the adoption of 17 recommendations through December 2012. ACUS' robust research and implementation program has also yielded several *Office of the Chairman* reports, a multitude of collaborative events and workshops, and the publication of the *Sourcebook of United States Executive Agencies* that generated great demand from federal agencies, the federal judiciary, Congress, and NGOs. In less than three years of full operation, ACUS has reestablished itself at the forefront of efforts to promote improved government procedures, fair and effective dispute resolution, and wide public participation and efficiency in the rulemaking process. Moreover, ACUS has leveraged its relationships with other federal entities and private organizations to fulfill its program objectives and congressional mandate at very minimal cost to taxpayers.

The requested budget of \$3.2 million will enable ACUS to fund, supervise, and bring before the Conference members for their review a full program of research projects and other programs aimed at promoting the unique goals of the agency's enabling statute. These are (1) "to develop recommendations for action" by federal agencies designed to ensure that their responsibilities are "carried out expeditiously in the public interest," (2) to "promote more effective participation and efficiency in the rulemaking process," (3) "to reduce unnecessary litigation in the regulatory process," (4) "to improve the use of science" in that process, and (5) "to improve the effectiveness of laws applicable" to that process. 5 USC § 591.

## II. History and Structure of the Administrative Conference

### A. A Brief History of ACUS

Following bipartisan endorsement of the work of two temporary Administrative Conferences during the Eisenhower and Kennedy Administrations, Congress enacted the Administrative Conference Act of 1964 which placed the work of ACUS on a more permanent footing. The Act codified the prior structure for these 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 wide diversity of views – all of whom serve without any additional compensation. This collaborative effort is designed to produce consensus, nonpartisan recommendations for improvement in federal administrative processes, which, more than ever, 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.”<sup>1</sup>

From its beginning in 1968 until its defunding in 1995, ACUS adopted approximately 200 such recommendations, based on careful study and the informed deliberations of its members in an open process that encouraged public input. A complete list of these recommendations was published at 60 Fed. Reg. 56312 (1995). 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 provided training in, “alternative dispute resolution” (ADR) 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.”<sup>2</sup> Justice Scalia (a former Chairman of ACUS) has 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.”<sup>3</sup> Similarly, Justice Breyer (a former liaison representative to ACUS from the Judicial Conference) has described the agency as “a unique organization, carrying out work that is important and beneficial to the average American, at low cost,” and that “can make it easier

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<sup>1</sup> Administrative Conference of the United States, First Plenary Session, May 27, 1968, Tr. at 14.

<sup>2</sup> Regulatory Improvement Act of 2007: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary 110<sup>th</sup> Cong. 157 (2007).

<sup>3</sup> Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 108<sup>th</sup> Cong. 10 (2004).

for citizens to understand what government agencies are doing to prevent arbitrary government actions that could cause harm.”<sup>4</sup> In announcing his appointment of the members of the ACUS Council, President Obama emphasized the value of the “public-private partnership” reflected in the agency’s enabling statute.<sup>5</sup>

Although ACUS lost its funding in 1995, Congress never repealed the Administrative Conference Act of 1964. In 2004, in response to continued bipartisan support for the prior work of the agency, Congress reauthorized ACUS, and it extended that reauthorization in 2008.<sup>6</sup>

## **B. Membership**

The Administrative Conference of the United States has 101 members – a Chairman, a 10-member Council, 50 government members representing federal departments and agencies, and 40 public members – private citizens with expertise in administrative procedure drawn from academia, the private bar, the corporate sector, public interest organizations, and other sources. The Chairman is the only member of the Conference who is employed full-time on Conference business. The public members serve without compensation, and the government members participate in Conference business as a collateral duty to their regular federal positions.

### **1. Chairman**

The Chairman is appointed by the President and confirmed by the Senate. 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, and over 65 articles on the general topic of public law and regulation.

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.

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<sup>4</sup> *Id.* at 15.

<sup>5</sup> Press Release, “President Obama Announces More Key Administration Posts,” July 8, 2010, at 1.

<sup>6</sup> Pub. L. 108-401, 118 Stat. 2255; Pub. L. 110-290, 122 Stat. 2914.

## 2. Council

The Council comprises the Chairman and ten additional members appointed by the President – typically five government officials and five private citizens. The Council serves as the board of directors for ACUS and is bipartisan.

### Government Members

Thomasina Rogers (Vice Chair)  
Boris Bershteyn  
Thomas Perez  
Julius Genachowski  
(Vacant)

### Public Members

Ronald A. Cass  
Mariano-Florentino Cuéllar  
Theodore Olson  
Jane C. Sherburne  
Preeti D. Bansal

Biographies of Council members are attached in Appendix A.

## 3. Assembly

The 101-member Assembly of ACUS, which meets in plenary session twice a year, comprises the Chairman, Council, and 90 other members. Fifty of these members are government officials, and 40 are drawn from outside government. The Assembly is chartered as an advisory committee under the Federal Advisory Committee Act.

The 50 federal agencies and departments with membership in the Administrative Conference consist of the 16 independent regulatory agencies plus departments and agencies designated by the President. The heads of these departments and agencies name the members who will represent them. The 50 government members include agency heads, agency general counsels, chiefs of staff, and other senior officials, who bring to the Conference's deliberations a vast experience in federal programs and processes. The list of government members and the agencies they represent are attached in Appendix B.

The government members are joined by 40 non-government "public members," appointed by the Chairman with the approval of the Council, from academia, the private bar, public interest organizations, and other sources of expertise on administrative procedure and management. In appointing these members, the Chairman and Council sought diversity in both demographics, viewpoint, and experience. The current members represent broad views about the intersection of private enterprise and the administrative state; several previously served in government positions in both Democratic and Republican administrations. The list of public members and their current and previous affiliations is attached in Appendix C.

Beyond the formal membership, under provisions of the Conference's bylaws, deliberations of the Conference are further informed by the participation (without a vote) of

“liaison representatives” from several additional federal agencies, the judiciary, Congress, and professional associations, and “senior fellows” who are former Chairmen and carefully selected former members. The lists of these liaison representatives and senior fellows are attached in Appendix D. Notably, three Associate Justices of the United States Supreme Court – Justice Antonin Scalia, a former ACUS Chair, Justice Stephen Breyer, a former ACUS liaison representative, and Justice Elena Kagen, a former member – have agreed to join the Conference as senior fellows.

### **C. Research and Recommendations Process**

Conference recommendations are based on research reports, typically prepared by academic or other experts under contract with ACUS. Research reports are reviewed by staff and by the Conference committee that will be charged with developing a recommendation for consideration by the entire Conference membership at its semi-annual plenary session. The steps involved in preparing a recommendation are as follows:

**1. Gather Ideas:** Ideas for Conference projects may come from Congress, other federal agencies, public interest or business organizations, academics and other experts, Conference staff or members of the public.

**2. Select Ideas:** The Chairman, the Director of Research, and other Conference staff select the best project ideas received, based on a number of factors, including the scope of a problem, its susceptibility to potential solutions, the costs and benefits associated with such solutions, and the quality of expertise available to provide advice and guidance.

**3. Council Approval of Projects:** For projects that will require funding for study by outside consultants, the Chairman seeks approval from the Council.

**4. Selecting a Researcher:** The Conference typically engages an expert consultant to do research and prepare a report and proposed recommendations on the topic. Some research projects are done by the Conference staff. In other cases, the Conference might use a report already prepared by a respected outside researcher or organization. Research projects are posted on the ACUS website and other pertinent places to encourage submissions.

**5. Committee Consideration:** The report is considered by a committee composed of members of the Administrative Conference, including liaison representatives and senior fellows. The committee debates the report and formulates a recommendation on the subject of the report, often using the researcher’s proposed recommendations as a starting point. Depending on the topic, the recommendation may be directed to Congress (recommending new legislation); it may recommend that agencies adopt new rules; it may recommend that agencies change their practices or procedures without the need for rulemaking; it may recommend an Executive Order or a change in executive practices, or it may be directed to the judiciary in its judicial review function. In all cases, Conference recommendations are limited to

procedural matters, including agency organization or management, and do not address substantive issues.

**6. Council Consideration of Recommendations:** The committee's recommendation is received and considered by the Council. The Council may add its own views before transmitting the recommendation to the full Conference membership for action.

**7. Consideration by the Assembly:** Twice a year, the full membership of the Administrative Conference meets in plenary session and considers and debates the recommendations received from Conference committees. If approved by vote of the full membership, a recommendation becomes an official recommendation of the Administrative Conference.

When a project is undertaken, the Director of Research assigns an attorney on the ACUS staff to work closely with the consultant to ensure that the report and accompanying recommendations are in appropriate form to be considered by one of the standing committees of the Conference. Each member of the Conference is assigned to one of these committees, which cover specific topics (e.g., adjudication, administration and management, collaborative governance, regulation, rulemaking, and judicial review). The staff attorney assigned to the project works with the committee chairman and members to ensure that any necessary revisions are incorporated in the report and recommendations.

The Council sets the agenda for each plenary session, including projects coming from committees that are ready for consideration by the full membership. The deliberations of the committees and the plenary sessions are all public.

The Administrative Conference cannot compel anyone to follow its recommendations. It relies on the power of persuasion to convince those to whom its recommendations are directed to adopt the recommendations. Members and staff of the Conference assist in getting the Conference's recommendations implemented. Historically, the Conference has had considerable influence and most of its recommendations have been adopted in whole or in part.

#### **D. Other Statutory Functions**

In addition to issuing formal recommendations, the Administrative Conference and its Chairman perform other statutory functions. For example, the Act authorizes the Chairman to encourage federal agencies to adopt the recommendations of the Conference. The Conference also may collect information and statistics from departments and agencies and publish such reports as it considers useful for evaluating and improving administrative processes or summarizing developments in the implementation of statutes applicable to agencies generally (such as the Administrative Procedure Act, the Paperwork Reduction Act, the Federal Advisory Committee Act, and the Congressional Review Act). Finally, the Conference serves as a forum

for the interchange among departments and agencies of information that may be useful in improving administrative practices and procedures and holds public forums, sometimes with other entities, to discuss matters of public interest. These forums often lead to the implementation of “best practices” among agencies once common administrative problems are revealed.

### **III. Strategic Goals and Current Activities**

#### **A. Strategic Goals**

Throughout the first year of agency operations, the Chairman and staff worked to develop a strategic direction for the Administrative Conference that would fulfill its statutory mission of improving administrative procedure and meet the expectations of Congress. Of particular importance in developing these strategic goals is the Report of the Administrative Law, Process, and Procedure Project for the 21<sup>st</sup> Century, published by the House Committee on the Judiciary in December 2006, which guided Congress' decision to reauthorize and fund the Administrative Conference.

In setting direction, the Chairman and staff met with a wide variety of government agencies, bar association members, and private sector and non-profit groups to identify areas of needed reform of federal rulemaking, adjudication, and other administrative processes.

Based on this information, the Chairman and staff developed proposed goals and priorities for the Administrative Conference, which were presented to the full membership at the December 2010 plenary session. Members provided feedback and suggested additional goals, and the Chairman has identified the following mission and strategic goals to guide the Administrative Conference based on these discussions:

#### **ACUS 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.

#### **ACUS Vision and 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 imbedded 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, not whether the benefits of the underlying substantive regulations exceed their costs. 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.

### **ACUS 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.

## B. Adopted Recommendations

The projects adopted as Conference recommendations from December 2010 through December 2012:

- **Recommendation 2012-1 Regulatory Analysis Requirements** addresses the issue of agencies having to comply with numerous regulatory analysis requirements created by statute and executive orders. The recommendation is supported by an extensive report which includes an appendix charting all of the regulatory analysis requirements of the 100 major rules subject to OMB review in 2010. The goal of the recommendation is to ensure agencies fulfill the regulatory analysis requirements efficiently, and to enhance the transparency of the process. Agencies, the Congress, the President and OIRA at OMB are all encouraged to play a role in this effort.
- **Recommendation 2012-2 Midnight Rules** addresses several issues raised by the publication of rules in the final months of a presidential administration and offers proposals for limiting the practice by incumbent administrations and enhancing the powers of incoming administrations to review midnight rules.
- **Recommendation 2012-3 Immigration Removal Adjudication** addresses the problem of case backlogs in immigration removals, and suggests ways to enhance efficiency and fairness in these cases. DHS and DOJ's EOIR had significant and helpful input during the committee process.
- **Recommendation 2012-4 Paperwork Reduction Act** addresses a variety of issues that have arisen since the Act was last revised in 1995. For instance, despite OMB guidance on the application of the PRA to social media, the Act does not yet account for new technologies. The proposal offers suggestions for improving public engagement in the review of information collection requests and for making the process more efficient for the agencies and OMB.
- **Recommendation 2012-5 Improving Coordination of Related Agency Responsibility** addresses the problem of overlapping and fragmented procedures associated with assigning multiple agencies similar or related functions, or dividing authority among agencies. This recommendation proposes some reforms aimed at improving coordination of agency policymaking, including joint rulemaking, interagency agreements, and agency consultation provisions.
- **Recommendation 2012-6 The Need to Reform 28 U.S.C. § 1500** addresses the continued application of this statute and urges Congress to repeal 28 U.S.C. § 1500, which divests the United States Court of Federal Claims of jurisdiction over otherwise cognizable claims when the plaintiff has claims against the federal government "pending in any other court" and arising from substantially the same set of operative facts. It further

recommends that Congress adopt a statutory stay presumption to mitigate any burden on courts or parties from simultaneous litigation of such claims in the Court of Federal Claims and other federal courts.

- **Recommendation 2012-7 Third-Party Programs to Assess Regulatory Compliance** addresses federal agencies practices in determining whether and how to establish third-party programs for this purpose. The recommendation suggests that when considering a third-party program, agencies should consult relevant governmental and nongovernmental resources. They should compare the advantages and disadvantages of a third-party approach to a more traditional approach of direct governmental compliance assessment. The recommendation also sets forth design features for agencies to consider after the decision has been made to establish a third-party program.
- **Recommendation 2012-8 Inflation Adjustment for Civil Penalties** addresses agency adjustments to civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act, codified as amended at 28 U.S.C. § 2461 note. The recommendation highlights three statutory provisions that result in penalty adjustments that may not track the actual rate of inflation, and asks Congress to consider whether changes to the current statutory framework are appropriate. It also advises agencies to adjust their penalties for inflation as required by the law.
- **Recommendation 2011-1 Legal Considerations in e-Rulemaking** addresses legal issues associated with e-rulemaking and recommends best practices in dealing with them. These include whether agencies can require electronic filing, how they should address copyright and privacy concerns, whether and under what framework they can solicit comments through social media, and whether any amendments to the Administrative Procedure Act would be appropriate to address such issues.
- **Recommendation 2011-2 Rulemaking Comments** addresses certain best practices for agencies to consider in conducting the “comment” aspect of traditional notice-and-comment rulemaking under the Administrative Procedure Act. The recommendation addresses a possible minimum period for comments, standards for extension of the comment period, availability of comments to the public and provision for reply comments, whether agency delays may require updated comment periods, and the circumstances warranting confidentiality of material filed in public comments.
- **Recommendation 2011-3 Government Contractor Ethics** addresses the increasing use of contractors in government and asks the Federal Acquisition Regulation Council to adopt revisions regarding compliance standards for government contractor employees relating to personal conflicts of interest and use of certain non-public information.

- **Recommendation 2011-4 Video Hearings** addresses best practices for the use of video hearings by federal government agencies with high volume case loads as a means of reducing caseload backlog and conducting more efficient adjudication.
- **Recommendation 2011-5 Incorporation by Reference** addresses ways in which agencies publish rules that refer to standards or other materials that have been published elsewhere. The recommendation proposes ways to ensure that materials subject to incorporation by reference are reasonably available to the regulated community and other interested parties, to update regulations that incorporate by reference, and to navigate procedural requirements and drafting difficulties when incorporating by reference.
- **Recommendation 2011-6 International Regulatory Cooperation** addresses updates to in-house research conducted in ACUS Recommendation 91-1, which provided guidance for all U.S. regulatory agencies on working with their international counterparts. The update incorporates developments in United States government structure, trade agreements, and technology since the recommendation was adopted 20 years ago.
- **Recommendation 2011-7 FACA in the 21<sup>st</sup> Century** addresses the administrative load imposed by Federal Advisory Committee Act (FACA) and offers proposals to Congress, the General Services Administration, and agencies that use advisory committees, to alleviate certain procedural burdens associated with the existing regime, clarify the scope of the Act, and enhance the transparency and objectivity of the advisory committee process.
- **Recommendation 2011-8 Agency Innovations in e-Rulemaking** addresses ways in which agency innovations and best practices can engage the public in rulemaking activities at low cost to the government.
- **Recommendation 2010-1 Regulatory Preemption** addresses agency procedures for determining whether to preempt state law. The recommendation presents best practices by federal agencies in implementing the requirements of Executive Order 13132 and the President's May 2009 memorandum governing agency preemption of state law, including procedures for securing meaningful participation by state and local government officials in the process of considering questions of federal preemption.

### C. Ongoing Research Program: Projects Underway in FY 2013 and 2014

Projects actively under study and expected to lead to recommendations or publications in FY 2013 or FY 2014 include:

- **Cost-Benefit Analysis at Independent Agencies.** A study of the use of cost-benefit analyses and other economic assessments at independent federal regulatory agencies. Among other things, the project will examine the extent to which independent regulatory agencies already prepare economic analyses in connection with their regulatory activities, the reasons why some independent regulatory agencies may not prepare economic analyses, what considerations unique to independent regulatory agencies or categories of such agencies (e.g., financial regulatory agencies) might affect their use of economic analyses, how independent regulatory agencies use the results of economic analyses they conduct, and whether any “best practices” can be identified in independent regulatory agencies’ use of economic analyses.
- **Social Security Disability Adjudication.** A study with SSA to examine the SSDI and SSI programs and recommend improvements. The study will provide an independent review that analyzes the role of courts in reviewing SSA disability decisions and should consider measures that SSA could take to reduce the number of cases remanded to it by courts. The study will also address significant observed variances among ALJs in decisional outcomes, length of hearings, and application of agency policies and procedures, and it will analyze the benefits of video hearings in the context of reducing agency burden and improving outcomes
- **Methods of Collaborative Governance.** A study examining the application of Collaborative governance; defined as generalized or negotiated rulemaking that encompasses any arrangement whereby public agencies combine with private stakeholders in a collective decision-making process that seeks to achieve consensus. The Conference’s study of the uses of collaborative governance in the federal government will attempt to identify examples of collaborative governance, the circumstances under which it works best, technological and other tools that can support it, and practices that might be recommended, discouraged, or improved upon. The study will attempt to assess, at least qualitatively, whether collaborative governance improves outcomes and will provide any appropriate recommendations.
- **Government in the Sunshine Act.** A study to examine the potential need for reforms to the Sunshine Act. The Government in the Sunshine Act, 5 U.S.C. § 552b, generally requires multi-member federal agencies (e.g., FCC, SEC) to hold their meetings in public and to give advance public notice of their meetings. A longstanding criticism of the Act has been that, despite its laudable goals, its actual effect is to discourage collaborative deliberations at multi-member agencies, because agency members are reluctant to discuss tentative views in public. The study will consider the matter in full, and it will address questions such as whether multi-member agencies are still experiencing the same difficulties as were described in the 1995 report; whether the 1995 recommendations are still the best proposal for reform; whether those recommendations are consistent with principles of open government; what alternative proposals, if any, should be considered.

- **The Administrative Record and Judicial Review of Informal Agency Proceedings.** A study to consider the composition of administrative records prepared by federal agencies for use in informal agency proceedings and, if agency decision making is challenged, for the purposes of review by federal courts. A report analyzing the key issues, surveying federal agencies' current practices and procedures in compiling administrative records, and proposing recommendations for best practices to aid both the agencies and the courts is expected in spring 2013.
- **Improving the Use of Science in the Administrative Process.** A study examining potential improvements to processes for the use of science by administrative agencies. It will consider "best practices" designed to promote transparency in the scientific analyses that agencies conduct and will explore mechanisms for promoting integrity in agencies' use of science.
- **Social Media in Rulemaking.** A study of the various policy and legal issues agencies face when using social media in rulemaking. The study will consider whether and when agencies should use social media to support rulemaking activities. It will also seek to identify relevant issues, define applicable legal and policy constraints on agency action, resolve legal uncertainty to the greatest extent possible, and encourage agencies to find appropriate and innovative ways to use social media to facilitate broader, more meaningful public participation in rulemaking activities.
- **GPRA Modernization Act of 2010.** A study to examine the Government Performance and Results Act (GPRA) Modernization Act of 2010—in particular, its requirements for cross-agency collaboration. Specifically, the study will identify and examine existing legal constraints (real or perceived) by working with the Office of Performance and Personnel Management (OPPM) at OMB, as well as other federal agencies; highlight existing tools and identify new or enhanced tools agencies may use to improve cross-agency collaboration and prevent legal constraints from unduly inhibiting effective collaboration; examine the legal authorities, roles, and models that individuals appointed as cross-agency goal leaders might use in performing their duties; and examine the role of agency general counsels and inspectors general in coordinating with goal leaders to manage and implement CAP goals.
- **Reducing FOIA Litigation through Targeted ADR Strategies.** A study to ascertain the principal reasons for FOIA litigation in the federal courts, with an eye to identifying those areas where the Alternative Dispute Resolution (ADR) capabilities and resources of the Office of Government Information Services (OGIS) and other agencies could be directed most effectively. The study will identify where ADR is most needed along the FOIA litigation spectrum. Based on the Administrative Conference's recommendations, the OGIS, along with other federal agencies, would have evidence-based guidance on how to channel its limited resources to best effect on these FOIA "problem areas." This

study will not only help OGIS fulfill its statutory mandate, but will also benefit FOIA requesters and federal agencies alike. Moreover, this project will continue ACUS's long-standing involvement in the area of ADR, which has included a number of recommendations that laid the groundwork for the Administrative Dispute Resolution Act.

#### **D. Collaborative Initiatives and Special Publications**

In addition to projects that lead to formal recommendations, ACUS is pursuing broader projects that advance the Conference's statutory mission and strategic goals through workshops, webinars and symposia in partnership with other federal agencies as well as non-governmental organizations. A few highlights include:

- ***The Sourcebook of United States Executive Agencies.*** A project examining the diverse characteristics of the departments, agencies, and other organizational entities that comprise the federal executive establishment. 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. The report is intended both to serve as a resource for members of Congress and their staffs, administration and agency officials, and the general public, as well to provide the background necessary for the oversight process and improved performance. Publication of the resulting sourcebook occurred in December 2012. Demand for the sourcebook was so strong that it is now available for purchase through GPO.
- **Workshop on Improving the Use of Science in the Administrative Process: Sept 10, 2012.** ACUS in collaboration with the National Academy of Sciences hosted an all-day workshop aimed at improving federal agencies use and administration of regulatory science. Panelists were drawn from a cross-section of scientific disciplines, academia, federal agencies, and the private sector. This workshop is an outgrowth of the Conference's Science in the Administrative Process project.
- **IBR-IRC Implementation Summit: May 1, 2012.** ACUS and the US Chamber of Commerce co-hosted a summit related to ACUS Recommendations 2011-5 (Incorporation by Reference) and 2011-6 (International Regulatory Cooperation). At the summit, Cass Sunstein, OIRA Administrator, announced the promulgation of Executive Order 13069, which integrates many of the insights of Recommendation 2011-6 and urges agencies to cooperate with foreign authorities to remove unnecessary trade barriers.

- **Workshop on Alternative Dispute Resolution (ADR): March 19, 2012.** ACUS and the Department of Justice co-hosted this event designed to serve as a forum for successful use of ADR by federal agencies, generate support for ADR programs, and provide sustained momentum for federal ADR efforts. The symposium featured remarks by Eric H. Holder, Jr., Attorney General of the United States, who emphasized the importance of renewing the commitment to strengthen ADR programs across the federal government.
- **Dept of Justice (DOJ) Workshop: September 22, 2011.** ACUS and DOJ co-hosted a workshop on promising agency practices to ensure that individuals with limited English proficiency (LEP individuals) have meaningful access to administrative hearings and proceedings pursuant to Executive Order 13166. The workshop also featured two panels of experts from within the federal government, who discussed addressing language access issues in federal agency administrative hearings and proceedings and a variety of promising practices, including the cost-effectiveness of addressing language barrier issues prior to a hearing or proceeding.
- **Council of Independent Regulatory Agencies (CIRA):** ACUS continues to chair the Council of Independent Regulatory Agencies as a forum for exchanging ideas about best practices in addressing challenges unique to such multi-member independent agencies. CIRA was initially established by ACUS in the 1980s and now meets bimonthly.

#### **E. Model Agency Project**

The Conference has engaged in an initiative, the Model Agency Project, designed to help establish and identify model practices for federal agencies—both large and small, and both new and established. The idea is to utilize all of the resources and expertise of the Conference and its members to help agencies become model 21<sup>st</sup> century agencies, driven by innovation and the adoption of best practices.

A project Advisory Board was formed to design the parameters of the program. The board included general counsels from the Department of Treasury, the Department of Homeland Security, the Department of Health and Human Services, the Office of Management and Budget, the Consumer Financial Protection Bureau and ACUS. This group of visionary executives conceived the project as a way to stimulate intergovernmental efforts to share best practices regarding administrative processes, policies and ethics systems.

The Walther Gellhorn Innovation Award is named after the Conference's longest serving Council member who was a recognized scholar and known by many as the "Father of Administrative Law." The first annual award was given to the Office of the Federal Register in December 2011, for FederalRegister.gov, which streamlines and enhances public participation in the regulatory process and achieves greater regulatory data harmonization

across the government. The second annual award was given to the Citizen Archivist Initiative at the National Archives in December 2012. The Citizen Archivist Initiative is an adaptation of the long-standing tradition of crowdsourcing in science.

#### **F. Assistance to Congress**

ACUS provides non-partisan assistance to members of Congress, congressional committees, and their staffs, as well as the offices of legislative counsel, on various matters involving administrative procedure. ACUS's activities in this regard have included, most recently, the gathering and analysis of data from federal agencies on attorney fee awards for prevailing parties in lawsuits against the government under a fee-shifting statute, and a congressional briefing on the components and structure of the federal executive branch of government.

A principal program activity for ACUS in FY 2014 will include necessary follow up on, or continuation of, these research projects and programs and implementation of any recommendations resulting there from, and (with the approval of the Council) initiation of other projects that are designed to improve the fairness and effectiveness of procedures by which Executive Branch agencies administer regulatory, benefit, and other Federal Government programs. In past years, ACUS has issued an average of 8 to 10 recommendations each year, and at any one time has had pending from 15 to 25 separate research projects.

**IV. Budget Status and Request**

**A. Proposed Appropriations Language for FY 2014**

**Administrative Conference of the United States**

**Salaries and Expenses**

For necessary expenses of the Administrative Conference of the United States, authorized by 5 U.S.C. 591 et seq., [\$3,200,000]\$3,200,000 to remain available until September 30, [2014] 2015, of which not to exceed \$1,000 is for official reception and representation expenses.

**B. Budget Authority and Staffing by Activity**

**Salaries and Expenses**

|                     | FY 2010<br>Enacted | FY 2011<br>Enacted | FY 2012<br>Requested | FY 2013<br>Requested | FY 2014<br>Requested |
|---------------------|--------------------|--------------------|----------------------|----------------------|----------------------|
| Budget<br>Authority | \$1,500,000*       | \$2,750,000**      | \$2,900,000***       | \$3,200,000          | \$3,200,000          |
| FTE                 | 18                 | 18                 | 18                   | 15                   | 15                   |
| Positions FTP       | 18                 | 18                 | 18                   | 15                   | 15                   |

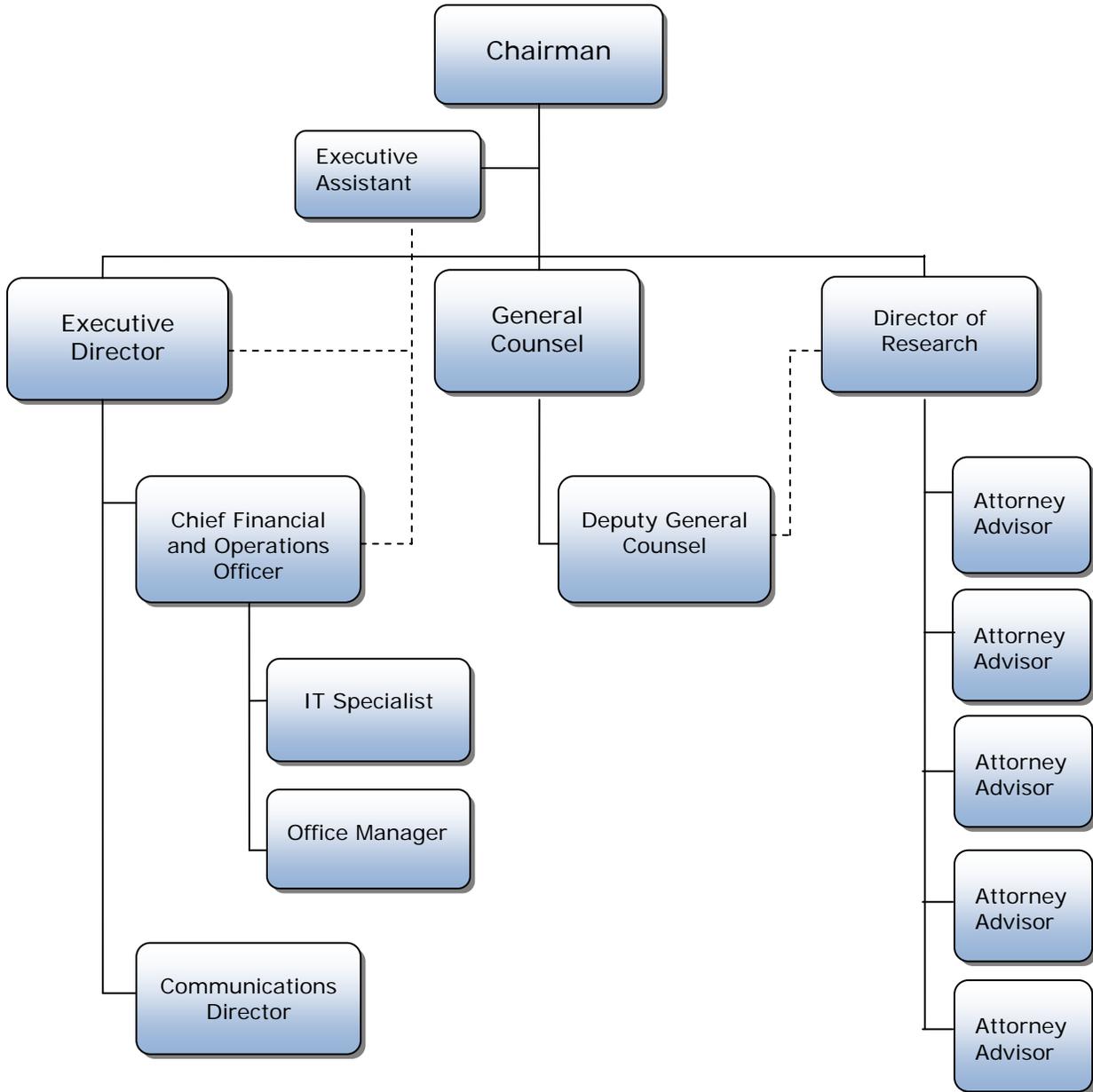
\*FY 2010 partial-year appropriation (6 months)

\*\*FY 2011 appropriation assumed FY 2010 carryover funds for total authority >\$3.2 million

\*\*\*FY 2012 appropriation assumed FY 2011 carryover funds for total authority >\$3.2 million

C. ACUS Organizational Chart

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



**D. Financial Summary**

|  | <b>FY 2012<br/>OBLIGATIONS<br/>ACTUAL</b> | <b>FY 2013<br/>REQUESTED<br/>BUDGET</b> | <b>FY 2014<br/>PROPOSED<br/>BUDGET</b> |
|--|---|---|--|
| Appropriation                                  | \$2,900,000                               | \$3,200,000                             | \$3,200,000                            |
| Carry Forward                                  | <u>\$598,989</u>                          | <u>\$671,871</u>                        | <u>\$71,871</u>                        |
| <b>Net Appropriation</b>                       | <b>\$3,498,989</b>                        | <b>\$3,871,871</b>                      | <b>\$3,271,871</b>                     |
| <b><i>Obligations/Expenses</i></b>             |   |   |  |
| Salaries, Full Time                            | \$1,456,755                               | \$1,733,013                             | \$1,729,774                            |
| <u>Benefits</u>                                | <u>\$403,433</u>                          | <u>\$411,716</u>                        | <u>\$449,741</u>                       |
| <b><i>Subtotal, Personnel<br/>Expenses</i></b> | <b>\$1,860,188</b>                        | <b>\$2,144,729</b>                      | <b>\$2,179,515</b>                     |
| Travel   | \$71,075                                  | \$35,000                                | \$30,000                               |
| Rent   | \$357,074                                 | \$290,538                               | \$394,456                              |
| Communications                                 | \$31,475                                  | \$38,905                                | \$38,905                               |
| Printing/Reproduction                          | \$20,984                                  | \$8,000                                 | \$16,000                               |
| Contracts                                      |   |   |  |
| Research Contracts                             | \$330,283                                 | \$325,000                               | \$360,000                              |
| Administrative Contracts                       | \$495,425                                 | \$490,008                               | \$165,008                              |
| Supplies                                       | \$43,863                                  | \$17,310                                | \$16,116                               |
| Equipment                                      | <u>\$0</u>                                | <u>\$0</u>                              | <u>\$0</u>                             |
| <b><i>Subtotal Operating<br/>Expenses</i></b>  | <b><u>\$1,350,179</u></b>                 | <b><u>\$1,204,761</u></b>               | <b><u>\$1,020,485</u></b>              |
| <b>Total<br/>Obligation/Expenses</b>           | <b>\$3,210,367</b>                        | <b>\$3,349,490</b>                      | <b>\$3,200,000</b>                     |
| <u>Worksheet Adjustments</u>                   | <u>\$383,249</u>                          | <u>(\$450,510)</u>                      | <u>0</u>                               |
| <b><i>Unobligated Balances</i></b>             | <b>\$671,871</b>                          | <b>\$71,871</b>                         | <b>\$71,871</b>                        |

**Notes:**

- 1) President's FY 2012 Budget Request was for \$3,200,000. Due to carryover balance from FY 2011, FY 2012 appropriations action was for \$2,900,000 to permit operation at budget level of \$3,200,000.
- 2) FY 2013 worksheet reduction of \$450,510 is cumulative result of:
  - a. Full year CR enacted March 2013 at \$2.9 million (\$300,000)
  - b. "Sequestration" reduction of 5% (\$144,710)
  - c. Permanent rescission of .02% (\$5,800)(\$450,510)

**E. Appropriations History**

| <b>Salaries and Expense Account</b> |                         |
|-------------------------------------|-------------------------|
| (Amounts in thousands of dollars)   |                         |
| <u>Fiscal Year</u>                  | <u>Budget Authority</u> |
| 2009                                | 1,500                   |
| 2010                                | 1,500                   |
| 2011                                | 2,750                   |
| 2012                                | 2,900                   |
| 2013                                | 2,900                   |

After the Administrative Conference was reauthorized in 2008, initial funding of \$1.5 million was provided in FY 2009 for startup operations. The agency could not begin operations in FY 2009 because the Chairman had not been confirmed. For this reason, in FY 2010 ACUS again received an appropriation of \$1.5 million, to remain available through FY 2011. Upon commencing operations in April 2010, ACUS requested and received authority to carry over \$750,000 in unexpended funds from FY 2009 to FY 2010. This provided total resources for FY 2010 of \$2.25 million as the agency began operations, with the authority to carry over unexpended funds to FY 2011.

In FY 2011, the President’s budget requested \$3.2 million to support a full year of operations, which is the authorized level. Both the House and Senate Appropriations committees supported the \$3.2 million request. In September 2010, in response to inquiries from the appropriations committee on the status of operations and unobligated balances, ACUS advised that an FY 2011 appropriation of \$2.734 million, in addition to the use of available carryover funds, would enable ACUS to operate at the budget level of \$3.2 million in FY 2011. Accordingly, the House-passed yearlong continuing resolution funded ACUS at \$2.75 million, and the omnibus bill introduced in the Senate funded ACUS at \$2.8 million. The enactment of the House bill ultimately appropriated \$2.75 million in FY 2011 with funds to remain available for two years.

In FY 2012, the President’s budget requested \$3.2 million to support a full year of agency operations. In H.R. 2055, the *Consolidated Appropriations Act for FY 2012*, Congress again funded ACUS at \$2.9 million with the understanding that the agency would draw on prior year funds to cover the funding level differential.

In FY 2013, the President’s budget requested \$3.2 million to support a full year of agency operations. Following passage of a full-year continuing resolution in March 2013, ACUS is currently funded at the level of its 2012 appropriation of \$2.9 million. Additionally, ACUS is subject to a 5% reduction of \$144,710 as a result of the automatic spending cuts known as “sequestration” and an additional permanent .02% spending rescission of \$5,800. ***The cumulative impact of these reductions yields a \$2,749,490 appropriation for ACUS in FY 2013.***

As illustrated in the *Section D Financial Summary* table, the net FY 2013 appropriation is insufficient to cover agency expenses. In the short term, ACUS will continue to reduce costs wherever feasible and will draw on prior year carryover funds to sustain agency operations and remain in compliance with statutory requirements. However, ACUS will effectively deplete its remaining prior year carryover funds to maintain agency operations for the duration of FY 2013. Minimal carryover of approximately \$71,000 from FY 2013 is budgeted if ACUS continues to successfully reduce operating costs. It is therefore imperative that ACUS receive an FY 2014 appropriation that funds the agency at a reasonable level consistent with the cost of operations and compliance with statutory requirements. The use of prior year carryover funds has allowed the agency's congressionally appropriated budgetary resources to meet or exceed \$3.2 million each year; although ACUS has yet to receive its fully authorized appropriation of \$3.2 million in any given fiscal year. Reliance on prior year carryover funds to bridge the gap between agency expenses and a reduced appropriation is no longer viable as these prior year funds are exhausted.

#### **F. Narrative Justification**

The appropriation request for the Administrative Conference of the United States for FY 2014 is \$3,200,000. A detailed breakdown and justification for this request follows.

#### **AGENCY PERSONNEL (Object Classes 11 and 12)**

For FY 2014, ACUS requests 15.0 FTEs. This includes the Chairman (Presidentially-appointed with Senate confirmation) and 14 permanent employees included under Object Class 11. In past years, ACUS has filled 1-2 of its allotted FTE positions under the Intergovernmental Personnel Act or other reimbursable arrangements. ACUS does not anticipate using these hiring mechanisms for personnel in FY14. The staff of ACUS supports the 101 Members of the Conference.

The Executive Director provides executive leadership, planning, direction, and coordination for all ACUS operations and administrative activities, including recruiting and managing the ACUS staff and administering the daily operations of ACUS. The Executive Director provides managerial expertise and staff support to the ACUS Chairman and Council in developing the agency's strategic planning and direction and implementing activities essential to ensuring that ACUS continues to meet its statutory mission. The Executive Director develops performance, financial and organizational staffing plans, in accordance with applicable legislation and regulations. The Executive Director provides managerial oversight for ACUS publications and products, including the ACUS website, and administers congressional, public and media communications and strategies for ACUS. The Executive Director assesses the overall effectiveness, efficiency, and productivity of ACUS operations.

The General Counsel serves as the chief legal officer for ACUS and provides legal advice and counsel to the agency and its staff on a wide variety of legal matters. The General Counsel is responsible for ensuring that ACUS meets all federal legal and regulatory requirements, including compliance with the Administrative Conference Act and the Federal Advisory Committee Act, which govern operations of the ACUS Assembly and its committees, as well as all other federal statutes governing the operation of Executive Branch agencies. These include federal conflict of interest statutes and other standards of conduct for government employees, financial disclosure requirements for staff and Conference members pursuant to the Ethics in Government Act of 1978, Freedom of Information Act obligations, and Federal Records Act responsibilities. The General Counsel provides guidance to staff, including review of agency rules, contracts, and cooperative agreements to ensure compliance and to protect the interests of the agency. The General Counsel reviews and comments on proposed legislation and responds to congressional inquiries and requests to ACUS. The General Counsel is a member of the ACUS management team, assists with strategic planning, and may represent the interests of ACUS in meetings of bar associations and other organizations engaged in activities that will enhance the agency's research and implementation programs.

The Director of Research is responsible for running ACUS's research program and developing the agency's policy recommendations. This includes keeping abreast of issues and developments in administrative law and practice, identifying and prioritizing issues to be studied, obtaining consultants to carry out the research, and reviewing research reports to ensure that the work is accurate, thorough, and meets the highest quality standards. The Director manages the work of ACUS staff attorneys and has general oversight of the work carried out by ACUS committees to develop recommendations based on consultants' reports. The Director presents recommendations and plans for research topics and reports to the ACUS Chairman and Council, and works with them to identify areas for potential study. In coordination with the Executive Director and the Communications Director, the Director develops background and briefing materials that serve as resources for ACUS communications with all three branches of the Federal Government, the media, and other ACUS stakeholders.

The bulk of the ACUS professional staff comprises six positions, whose responsibilities include serving as staff counsels for each of the six ACUS committees. These staff counsels are responsible for managing the work of committees composed of ACUS members, in the process of developing recommendations for consideration by the full membership of ACUS. This includes reviewing research studies for projects assigned to the committees, assisting the committee chairmen and the Director of Research and Policy in drafting proposed recommendations, responding to requests for information about committee activities, reviewing and summarizing public comments and, in general, providing procedural and legal oversight for the work of the committees. Staff attorneys may also participate substantially in helping to achieve implementation of ACUS recommendations, and provide assistance as needed for the work of the General Counsel. These six positions are currently allotted as a

Deputy General Counsel and five Attorney-Advisors, each of which is a permanent, full-time position.

The Chief Financial and Operations Officer is responsible for oversight of the agency's budget as well as management of daily operations and the supervision of IT personnel and administrative support staff. The position also coordinates all administrative and operational management and support services for ACUS and serves as an advisor and assistant to the management staff on administrative policy and procedural matters. This work includes management analysis, budgeting, financial management, procurement and contracting, and other related administrative and operational activities as well as the preparation of annual budgetary submissions and reporting requirements to Congress and the Office of Budget and Management on behalf of the agency.

The Communications Director is responsible for managing the agency's communications program, including development of its use of new media and evolving technologies for more effective involvement of the ACUS members and the general public in the work of the Conference. The Communications Director is responsible for the Conference's publications program and serves as the main point of contact for a wide variety of media to ensure that agency activities and viewpoints and recommendations adopted by the Conference are communicated clearly and positively.

The ACUS staff also includes an Information Technology Specialist to support both internal and external communications, including technical support, website development and maintenance, and teleconferencing. Finally, an Executive Assistant supports the Chairman and a Paralegal Specialist/ Office Manager supports the Conference members and staff. These positions provide legal research and administrative support for the ACUS staff and the 45 Conference members (40 public members plus 5 Council members) from outside the government, who serve ACUS without compensation.

ACUS's FY 2013 budget request eliminated three allotted FTEs for a budget/finance assistant and two administrative assistants that were included in previous budget requests; reducing the agency's total allotted FTE count from 18 to 15. The 3 eliminated FTEs were not filled during ACUS's startup phase due to budget uncertainty. As other fixed costs have increased, ACUS cannot support these positions if the overall budget is flat or declining, without taking funds from higher priorities such as research contracts. Therefore, the FY2014 budget maintains a reduced FTE total of 15 positions.

For FY 2014, ACUS requests a budget of **\$1,729,774** for salary expenses associated with full-time employees (Object Class 11). This amount represents the projected cost for a total of 15 full-time positions including annual civil service cost-of-living salary increases and step increases.

A total of **\$449,741** is budgeted for personnel benefits during FY 2014 (Object Class 12). Personnel benefits are a direct function of the amount of budgeted salary/wages and inclusive of transit subsidy.

### **RESEARCH, CONSULTING, AND PROFESSIONAL SERVICES (Object Class 25)**

As discussed in the introductory section above, the research and policy work of ACUS is most frequently pursued through contracts with law professors or other experts to study a particular problem in depth and report back to ACUS and its committees on their findings, which serve as the basis on which ACUS members develop recommendations for procedural improvements. ACUS's research activities are at the core of the agency's ability to analyze issues and develop proposed recommendations through the ACUS committee consensus process, with the ultimate aim of improving the fairness and effectiveness of the rulemaking, adjudication, licensing, and investigative functions by which federal agencies carry out their programs. ACUS uses acquisition procedures that provide high value and low risk to the government. ACUS research contracts are generally competitive, fixed-price contracts with recognized experts in their respective fields.

The typical research contract awarded by ACUS, including expenses for research assistance and consultant travel, is approximately \$20,000. These relatively modest contracts allow the federal government to call on the expertise of scholars in academia and the private bar, many of whom would bill private clients at several multiples of the effective hourly rate the government is paying.

In FY 2014, ACUS is requesting **\$360,000** in funding for consultant services necessary to undertake a research program of new projects directed toward the Conference's statutory mission to study and cooperatively seek solutions to issues and problems arising in the administration of federal agency programs. This budgetary line item also funds ACUS' part-time Special Counsel, thus allowing ACUS to draw on outside expertise in a more cost-effective way than utilizing a full FTE position. Similarly, consultants are retained to produce research studies and reports that underlie ACUS recommendations; however, not all consultant studies ultimately lead to a Conference recommendation that's adopted by the Assembly. In these cases, the consultant's research may be incorporated into a separate *Office of the Chairman* report and made available to Congress, the public, and other key agency stakeholders as appropriate. The number of projects is dependent on the agency's funding level, which enables the Conference to pursue the projects described in the performance section above, including projects undertaken at the request of Congress.

To minimize contracting costs, ACUS staff attorneys conduct their own in-house research in addition to serving as legal counsel for ACUS committee projects. In-house research initiatives resulted in several Conference recommendations during 2012 and have featured

prominently in scholarly debate within the administrative law community. In-house staff research projects and other outreach initiatives, including inter-agency workshops, are included within ACUS's salary and administrative overhead expenses; a cost effective approach to meeting the agency's statutory mandate at no additional cost to taxpayers.

In addition to research contracts, ACUS requests **\$165,008** for administrative support contracts. As a small agency, ACUS must contract with multiple agencies or private vendors for many of the administrative functions typically performed in-house at larger agencies. These contracts cover items such as personnel, payroll, finance, accounting, Web hosting, mailing services and auditing. For FY 2014, ACUS requests \$165,008 for external administrative support. This amount is unchanged from that requested in FY 2013 and is a reduction from the budget request for this category in prior fiscal years. As part of the Conference's start-up operations, ACUS reviewed the most cost-effective strategies for contracting for administrative support, including using reimbursable services offered by other federal agencies, GSA schedules, and cloud computing solutions, and found more cost-effective ways to provide the needed administrative support.

As discussed above in the section on personnel, ACUS has utilized contract positions in past years instead of full time permanent employees to give the agency flexibility to match expertise with current projects and to rotate experts from academia, nonprofits, or other federal agencies to provide fresh and innovative thinking to the Conference. In FY 2014, ACUS is not requesting any funding for contract positions. However, ACUS may utilize contracted and interagency personnel agreements in the future to achieve budgetary goals and to obtain desired expertise.

#### **SUPPORT AND INFRASTRUCTURE (Object Classes 21, 23, 24 and 26)**

Travel by Conference members and staff is budgeted at **\$30,000** for FY 2014 (Object Class 21). This is a reduction from previous budget requests, and is based on actual travel expenses from the Conference's first 2 years of full operation. Most of these travel expenses involve the travel of out-of-town members of the Conference to Council, committee, and plenary session meetings. Conference members, other than the Chairman, serve without pay and are only reimbursed for travel and per diem, pursuant to 5 U.S.C § 593(c) and 5 U.S.C § 5703. To the extent practicable, the Conference will use videoconferencing and Web 2.0 technologies to minimize travel expenses for Conference members at the committee meetings. In addition, some staff members will travel to conduct research or, as required, participate in various professional meetings and conferences.

ACUS has negotiated a lease to occupy office space at 1120 20th Street, NW, Suite 706 South, Washington, D.C. 20036. Leasing arrangements are coordinated for ACUS through the Building Services Division of the General Services Administration. During FY 2014 ACUS will be

responsible for **\$394,456** in rental payments through its lease, based on estimates set forth in the agency's Occupancy Agreement with GSA (Object Class 23).

ACUS's budget includes an estimated **\$38,905** for electronic communications expenses, including telephone service and website hosting during FY 2014 (Object Class 23). This estimate is based on ACUS's historical. This estimate also accounts for the natural growth in ACUS's electronic records and online presence that will require incremental scaling-up of data storage and processing capacity. This amount also includes the cost of conference calls for Council and other meetings, which is a much more cost-effective method for conducting interim business than face-to-face meetings.

ACUS has budgeted **\$16,000** in FY 2014 for printing costs (Object Class 24). These costs include preparing and printing annual and interim reports to Congress and the President, reports, newsletters, and plenary materials. *Federal Register* notices and other related FACA-mandated publications are the single largest category of printing expense.

ACUS's budget includes **\$16,116** for the purchase of supplies, materials and publications for FY 2014 (Object Class 26). The amount includes supplies for mailing, copying, and ordinary office supplies such as paper, pens, and pencils. Also budgeted are funds for the purchase of computer software, library materials, and for subscriptions to relevant technical, and policy-oriented publications and online services.

#### **IV. Conclusion**

For FY 2014, the Administrative Conference of the United States (ACUS) is requesting an appropriation of \$3,200,000. The level of funding requested will allow ACUS to continue to pursue a full program of research projects and other programs to carry out the agency's statutory responsibility to develop recommendations for improvements in administrative procedures. Such reforms will be designed to enhance fairness, efficiency, expedition, and public participation in the work of federal agencies, given their substantial impact on all sectors of the National economy and on the lives of all of our citizens.

## **Appendix A: Council Members**

### Thomasina Rogers (Vice Chair)

Thomasina Rogers is the Chair of the Occupational Safety and Health Review Commission. She was first appointed to the Review Commission by President Clinton in 1998 and served as Chairman from 1999 to 2002; she was then reappointed to the Review Commission in 2003 and 2009. Ms. Rogers previously served as Chairman of the Administrative Conference of the United States from 1994 to 1995. Rogers also served for seven years in the Federal Government's Senior Executive Service (SES). During her time in the SES, she served as Legal Counsel to the Equal Employment Opportunity Commission where she had primary responsibility for managing the development of the Americans With Disabilities Act employment regulations. She is a member of the American Bar Association and the National Bar Association. Ms. Rogers is a graduate of the Northwestern University School of Journalism and the Columbia University School of Law.

### Boris Berstheyn

Boris Bershteyn has served as the General Counsel of the Office of Management and Budget (OMB) since July 2011 and as the Deputy General Counsel of OMB from 2009 to 2010. Between his tours at OMB, he served as Special Assistant to the President and Associate White House Counsel, with responsibility for legal issues in regulatory, economic, health, and environmental policy. Before joining the Obama Administration, he was a litigator at Skadden, Arps, Slate, Meagher and Flom, LLP, and at Wachtell, Lipton, Rosen and Katz in New York. He also served as a law clerk to Justice David H. Souter of the U.S. Supreme Court and Judge José A. Cabranes of the U.S. Court of Appeals for the Second Circuit. He holds a B.A. in Economics and Political Science from Stanford University and a J.D. from Yale.

### Preeta D. Bansal

Preeta Bansal is HSBC's General Counsel for Litigation and Regulatory Affairs. She is the former General Counsel and Senior Policy Advisor for the Office of Management and Budget. Prior to joining the Obama Administration, Bansal was a Partner and Head of the Appellate Litigation Practice at Skadden, Arps, Slate, Meagher and Flom LLP in New York City. She also served as the Solicitor General of the State of New York from 1999-2001, where she helped supervise 600 attorneys in the New York Attorney General's office. While in private practice from 2003-2009, Bansal served as a Commissioner of the bipartisan United States Commission on International Religious Freedom, serving as Chair in 2004-2005. Raised in Lincoln, Nebraska, Bansal was a Visiting Professor of constitutional law and federalism at the University of Nebraska College of Law in 2002-2003. Earlier in her career, Bansal was a law clerk to Justice John Paul Stevens of the United States Supreme Court, counselor in the United States Department of Justice, and a Special Counsel in the Office of the White House Counsel. Bansal

received a J.D., magna cum laude, from Harvard Law School, where she was Supervising Editor of the Harvard Law Review, and an A.B., magna cum laude and Phi Beta Kappa, from Harvard-Radcliffe College.

#### Ronald A. Cass

Ronald A. Cass has been the President of Cass & Associates since 2004. He is also Dean Emeritus of Boston University School of Law where he served as Dean from 1990-2004. Cass was a law professor at the University of Virginia School of Law from 1976-1981 and at Boston University from 1981-2004. Outside of his professional activities, he has also served as Vice Chairman of the U.S. International Trade Commission (1988-1990), U.S. Representative to the World Bank Panel of Conciliators (2009-Present), advisor to the American Law Institute, Chairman of the Federalist Society Practice Group on Administrative Law, Past Chair of the American Bar Association Administrative Law Section, and President of the American Law Deans Association. Cass received his B.A. with high distinction from the University of Virginia and J.D. with honors from the University of Chicago Law School in 1973.

#### Mariano-Florentino Cuéllar

Mariano-Florentino (Tino) Cuéllar is Professor of Law and the Deane F. Johnson Faculty Scholar at Stanford Law School. His teaching and research focus on how organizations manage complex regulatory, criminal justice and international security problems. From 2009 to 2010, he was on leave from Stanford to serve as Special Assistant to the President for Justice and Regulatory Policy at the White House Domestic Policy Council, with responsibility for public health and safety, regulatory reform, and civil rights. Before joining the Stanford faculty in 2001, he served for several years as Senior Advisor to the U.S. Treasury Department's Under Secretary for Enforcement, and clerked for Chief Judge Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit. While at Treasury, he worked on countering financial crime, improving border coordination, and enhancing anti-corruption measures. He has served on the Executive Committee of the Stanford Center for International Security and Cooperation and the Silicon Valley Blue Ribbon Task Force on Aviation Security. A member of the American Law Institute, he received a Ph.D. in political science from Stanford University, a J.D. from Yale Law School, and an A.B. from Harvard University.

#### Julius Genachowski

Julius Genachowski is the Chairman of the Federal Communications Commission. Chairman Genachowski has two decades of experience in the private sector and public service. Prior to his appointment, he spent more than 10 years working in the technology industry as an executive and entrepreneur. He co-founded LaunchBox Digital and Rock Creek Ventures, where he served as Managing Director, and he was a Special Advisor at General Atlantic, a global private equity firm based in New York. In these capacities, he worked to start, accelerate, and invest in early- and mid-stage technology companies. From 1997-2005, he was a senior

executive at IAC/InterActiveCorp, a Fortune 500 company, where his positions included Chief of Business Operations and General Counsel. Chairman Genachowski's confirmation as FCC Chairman returned him to the agency where, from 1994 until 1997, he served as Chief Counsel to FCC Chairman Reed Hundt, and, before that, as Special Counsel to then-FCC General Counsel (later Chairman) William Kennard. Previously, he was a law clerk at the U.S. Supreme Court for Justice David Souter and Justice William J. Brennan, Jr., and at the U.S. Court of Appeals for the D.C. Circuit for Chief Judge Abner Mikva. Chairman Genachowski also worked in Congress for then-U.S. Representative (now Senator) Charles E. Schumer (D-N.Y.), and on the staff of the House select committee investigating the Iran-Contra Affair. He received a J.D, magna cum laude, from Harvard Law School, where he was co-Notes Editor of the Harvard Law Review, and his B.A., magna cum laude, from Columbia College.

### Theodore Olson

Theodore B. Olson is a partner in Gibson, Dunn & Crutcher's Washington, D.C. office and a member of the firm's Executive Committee, Co-Chair of the Appellate and Constitutional Law Group and the firm's Crisis Management Team. Previously, he served as the 42nd Solicitor General of the United States from 2001-2004. Mr. Olson also served as Assistant Attorney General for the Office of Legal Counsel from 1981 to 1984. Except for those two intervals, he has been a lawyer with Gibson, Dunn & Crutcher in Los Angeles and Washington, D.C. since 1965. Throughout his career, Mr. Olson has argued numerous cases before the Supreme Court of the United States. Mr. Olson is a Fellow of both the American College of Trial Lawyers and the American Academy of Appellate Lawyers. He has written and lectured extensively on appellate advocacy, oral advocacy in the courtroom and constitutional law. He received his bachelor's degree cum laude from the University of the Pacific in Stockton, California, where he received awards as the outstanding graduating student in both journalism and forensics, and his law degree from the University of California at Berkeley (Boalt Hall), where he was a member of the California Law Review and Order of the Coif.

### Thomas Perez

Thomas Perez is currently the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. He previously served as the Secretary of Maryland's Department of Labor, Licensing and Regulation. From 2002 until 2006, Perez was a member of the Montgomery County Council. He was the first Latino ever elected to the Council, and served as Council President in 2005. Earlier in his career, Perez spent 12 years in federal public service. As a federal prosecutor for the Civil Rights Division of the Department of Justice, he prosecuted and supervised the prosecution of some of the Department's most high profile civil rights cases. Perez later served as Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno. Perez also previously served as Special Counsel to Senator Edward Kennedy, and was Senator Kennedy's principal adviser on civil rights, criminal justice and constitutional issues. For the final two years of the Clinton administration, Perez served as the Director of the Office for Civil Rights at the United States Department of Health and Human Services. Perez was a law

professor for six years at University of Maryland School of Law and later as a part-time professor at the George Washington School of Public Health. He is a graduate of Brown University, Harvard Law School and the John F. Kennedy School of Government.

Jane C. Sherburne

Jane C. Sherburne is Senior Executive Vice President and General Counsel of BNY Mellon. She was formerly principal in her own law firm, and prior to that, Senior Executive Vice President and General Counsel Of Wachovia Corporation. Before Joining Wachovia in mid-2008, she served as Deputy General Counsel and Senior Deputy General Counsel of Citigroup, and General Counsel of Citigroup's Global Consumer Group. Sherburne was previously a Partner at Wilmer, Cutler & Pickering, where she practiced litigation, representing clients in matters requiring crisis management, including matters involving Congressional investigations, internal government and corporate investigations, and complex civil litigation. She has also served as Special Counsel to the President during the Clinton Administration, Chief of Staff and Executive Assistant to the Commissioner of Social Security in the Carter Administration, and as a Legislative Assistant to Congressman Donald Fraser (D-MN). Sherburne is a trustee of the Lawyers' Committee for Civil Rights Under Law and the National Women's Law Center. She is also an executive committee member of the New York City Bar. She received her B.A. and M.S.W. from the University of Minnesota in 1974 and 1976, respectively, and her J.D. from Georgetown University Law Center in 1983.

## Appendix B: Government Members

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    | International Trade Commission                     |
| Eric          | Benderson | U.S. Small Business Administration                 |
| Mark          | Cahn      | U.S. 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 and Safety & 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               |
| Steven C.    | Silverman | Department of Agriculture                     |
| 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                         |
| Megan        | Wallace   | Commodity Futures Trading Commission          |
| Christy      | Walsh     | Federal Energy Regulatory Commission          |
| Julie L.     | Williams  | Office of the Comptroller of the Currency     |
| Tyrangiel    | Elana     | Department of Justice                         |
| Vacant       |           | Department of Homeland Security               |
| Vacant       |           | Federal Election Commission                   |
| Vacant       |           | Center for Medicare and Medicaid Services     |
| Vacant       |           | Consumer Product Safety Commission            |

## Appendix C: Public Members

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                          |
| Lisa S.    | Bressman    | Vanderbilt Law School                                     |
| Gary       | Bass        | The Bauman Foundation                                     |
| James Ming | Chen        | University of Louisville, Louis D. Brandeis School of Law |
| John F.    | Cooney      | Venable LLP   |
| Susan E.   | Dudley      | 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 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     | National Senior Citizens Law Center                       |
| Ronald     | Levin       | Washington University School of Law                       |
| George     | Madison     | Former General Counsel of the Dept 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 | Metropolitan Life Insurance Company         |
| 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     | Department of Labor (retired)               |
| Helgi C.    | Walker      | Wiley Rein LLC                              |
| Allison M.  | Zieve       | Public Citizen Litigation Group             |

## Appendix D: Liaison Representatives and Senior Fellows

The Chairman, with the approval of the Council, may designate federal agencies or other organizations that do not have 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 57th Plenary Session held on December 6-7, 2012:

|                               |                       |   |
|-------------------------------|-----------------------|---|
| Allison<br>Amy P.             | Beck<br>Bunk          | Federal Mediation and Conciliation Service<br>Office of the Federal Register                |
| The Hon. Charles<br>Claire E. | Center<br>Coleman     | Federal Labor Relations Authority<br>House Committee on Oversight and Government            |
| Tobias<br>D. Randall          | Dorsey<br>Frye        | U.S. Sentencing Commission<br>The 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, Commercial & Administrative Law   |
| The Hon. Brett M.<br>Edward   | Kavanaugh<br>Kelly    | U.S. Court of Appeals for the D.C. Circuit<br>Executive Office for Immigration Review       |
| Dan                           | Levinson              | Health and Human Services, Office of the Inspector General                                  |
| Rebecca<br>Mary C.            | MacPherson<br>McQueen | Federal Aviation Administration<br>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 Commercial and Administrative Law         |
| Timothy                       | Reif                  | Office of the U.S. Trade Representative   |
| Jill<br>Lois J.               | Sayenga<br>Schiffer   | Administrative Office of the U.S. Courts<br>National Oceanic and Atmospheric Administration |
| Esa L.                        | Sferra-Bonistalli     | Coast Guard   |

|           |              |   |
|-----------|--------------|---|
| Thomas W. | Snook        | ABA National Conference of Administrative Law Judiciary |
| Daniel    | Solomon      | Federal Administrative Law Judges Conference            |
| Alan      | Swendiman    | Immigration and Customs Enforcement                     |
| Melvin F. | Williams Jr. | Millennium Challenge Corporation                        |
| Stephen   | Wood         | National Highway Traffic Safety Administration          |

Senior fellows have previously served as Chairman of the Conference or have served for six or more years as government or public members of, or liaison representatives to, the Conference. 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 | Steptoe & Johnson LLP                           |
| Neil R.               | Eisner    | United States Department of Transportation      |
| Don                   | 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, 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             |
| Kenneth                | Starr      | Baylor University  |
| Peter L.               | Strauss    | Columbia Law School  |
| David                  | Vladeck    | Bureau of Consumer Protection, FTC                           |
| The Honorable John M.  | Walker Jr. | U.S. Court of Appeals, Second Circuit                        |
| 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  | Williams   | U.S. Court of Appeals for the District of Columbia           |