



FY 2015 CONGRESSIONAL BUDGET JUSTIFICATION

March 10, 2014

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I. Overview

The President's Budget for FY 2015 requests \$3.2 million for the Administrative Conference of the United States. This is level funding from the President's FY 2014 budget.

The Administrative Conference of the United States (ACUS) is a unique executive branch agency whose principal mission is to recommend improvements to administrative procedure and process to the President, federal agencies, Congress, and the federal judiciary. Numerous ACUS recommendations have been adopted by the executive branch or enacted into law. Others have been cited by the federal courts, including more than a dozen times by the Supreme Court. ACUS also assists individual agencies to improve programs, publishes sourcebooks of enormous value to both the government and public, and provides nonpartisan advice to executive branch officials and members of Congress and their staffs. ACUS' work improves the efficiency and fairness of government processes, which frequently saves taxpayer dollars. As former ACUS Chairman and now Justice Antonin Scalia put it while testifying before Congress several years ago, ACUS is one of the government's "best bargains for the buck."

ACUS is comprised of voting and non-voting members from both the private and public sector who are supported by a small full-time staff. The voting members of ACUS, who comprise the Assembly, include the Chairman; the Council; 50 government members from federal executive departments, agencies, and independent regulatory boards and commissions; and 40 public members with diverse views and backgrounds from academia, the practicing bar, industry, and public interest organizations. None of the members, except for the Chairman, are compensated for their services.

ACUS' membership body also includes senior fellows (three of whom are Supreme Court Justices), special counsels, and liaison representatives from Congress, the federal judiciary, and other federal agencies.

The requested budget of \$3.2 million will enable ACUS to undertake 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. Overview of ACUS

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. The Act codified the prior structure of these conferences, which emphasized collaboration among a wide array of federal agencies, reliance on experts in administrative law and regulation from the private sector (many of them prominent academics), and the participation of public members representing a wide diversity of views. This collaborative effort is designed to produce consensus-based, 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."

From the beginning of its operations in 1968 until its defunding in 1995, ACUS adopted approximately 200 such recommendations, each of them 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) and appears at www.acus.gov. 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 techniques for eliminating excessive litigation and long delays in federal agency programs, as well as negotiated rulemaking 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 before Congress, ACUS provided "nonpartisan, nonbiased, comprehensive, and practical assessments and guidance with respect to a wide range of agency processes, procedures, and practices," based on "a meticulous vetting process, which gave its recommendations credence." Justice Antonin Scalia (a former Chairman of ACUS) testified before a congressional committee in 2010 that ACUS is "a unique combination of talents from the academic world, from within the executive branch . . . and . . . from the private bar, especially lawyers particularly familiar with administrative law." And Justice Stephen Breyer (a former liaison representative to ACUS from the Judicial Conference) testified that ACUS is "a unique organization, carrying out work that is important and beneficial to the average American, at low cost," and that "can make it easier for citizens to understand what government agencies are doing to prevent arbitrary government actions that could cause harm." 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.

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. (Pub. L. 108-401, 118 Stat. 2255; Pub. L. 110-290, 122 Stat. 2914.)

B. Membership

ACUS has 101 voting members who comprise its Assembly: a Chairman, a 10-member Council, 50 government members representing federal agencies, and 40 public members.. The Chairman is ACUS' only member who is employed full-time. As noted below, ACUS' membership also includes non-voting members—in particular, senior fellows and liaison representatives. None of the members other than the Chairman are compensated by ACUS for their work.

1. Chairman

The Chairman is appointed by the President and confirmed by the Senate. Paul R. Verkuil, ACUS' tenth Chairman, was sworn in by Vice President Biden on April 6, 2010, for a statutorily provided five-year term. Mr. Verkuil is a well-known administrative law teacher and scholar who has coauthored a leading treatise, *Administrative Law and Process*, now in its sixth 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, and he was 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 was his service as the special master in *New Jersey v. New York*, an original jurisdiction case in the Supreme Court, which determined sovereignty to Ellis Island.

2. Council

The Council comprises the Chairman and ten additional members appointed by the President—five government officials and five private citizens. The bipartisan Council serves as the board of directors for ACUS. The current Council members are as follows:

Government Members

Edith Ramirez
Thomasina Rogers (Vice Chair)
Geovette Washington
(Vacant)
(Vacant)

Public Members

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

Biographies of Council members appear 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 (known as government members), and 40 are drawn from outside government (known as public members). The Assembly is chartered as an advisory committee under the Federal Advisory Committee Act (FACA).

The 50 federal agencies and departments with membership in ACUS 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 ACUS' deliberations a vast experience in federal programs and processes. The list of government members and the agencies they represent appear in Appendix B.

The government members are joined by 40 non-governmental public members, appointed by the Chairman with the approval of the Council, drawn from academia, the private bar, public interest organizations, and other sources of expertise on administrative procedure and management. Many have previously served as high-ranking officials in both Democratic and Republican administrations. In appointing these members, the Chairman and Council seek diversity in demographics, viewpoint, and experience. The public members serve without compensation—with the result that the taxpayers receives millions of dollars annually in donated services. The list of public members and their current and previous affiliations appears in Appendix C.

4. Other (Non-Voting) Members

ACUS' deliberations are further informed by the participation of non-voting liaison representatives from a number of federal agencies that do not appoint members to ACUS, the federal judiciary, and professional associations, as well as senior fellows who are former Chairmen and carefully selected former members. Among the senior fellows are three Associate Justices of the Supreme Court of the United States—Justice Antonin Scalia, a former ACUS Chair, Justice Stephen Breyer, a former ACUS liaison representative, and Justice Elena Kagan, a former ACUS member—and several judges on the U.S. courts of appeals. Lists of these liaison representatives and senior fellows appear in in Appendix D.

C. Issuance of Recommendations

Central to ACUS' work is the adoption of Assembly-approved recommendations. Depending on the topic, ACUS may recommend, among other things, that Congress pass legislation; that agencies adopt new rules or change their practices or procedures; that the President issue an executive order or a change in executive practice; or that the federal judiciary undertake review of agency action in a particular manner or change rules of procedure. In all cases, recommendations are limited to procedural matters, including agency organization or management, and do not address substantive ones.

ACUS recommendations are based, in the first instance, on research reports, which are typically prepared by academic or other experts under contract with ACUS, or, less frequently, a member of ACUS' staff. Research reports are reviewed by staff and by the ACUS committee that will be charged with developing a recommendation for consideration by the membership. The steps involved in preparing a recommendation are as follows:

1. Gather Ideas: Ideas for 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 and 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: ACUS typically engages an expert consultant at low cost to conduct research and prepare a report and proposed recommendations on the topic. (Some research projects are done by ACUS' small staff.) Requests for proposals to serve as a consultant on a project are posted on the ACUS website and other visible places to encourage submissions.

5. Committee Consideration: The report is considered by one of ACUS' standing committees, each of which is composed of ACUS members (voting and non-voting). The committee debates the report and then formulates a recommendation on the subject of the report, often using the researcher's proposed recommendations as a starting point.

6. Council Consideration: The committee's recommendation is received and considered by the Council, which decides whether to put the recommendation on the agenda for the Assembly's consideration at a plenary session. The Council may add its own views before transmitting the recommendation to the Assembly..

7. Assembly Consideration: Twice a year, the ACUS' membership meets in a plenary session open to the public and considers and debates the recommendations received from committees. Members of the Assembly may offer amendments. At the conclusion of debate, the Assembly votes on whether to adopt a recommendation.

8. Implementation: After the plenary session, all adopted recommendations are published in the Federal Register, and ACUS' Chairman and staff work assiduously to implement them. Most of ACUS' recommendations have been implemented in whole or in part. Examples of the implementation of ACUS recommendations are set forth below in Section III.

D. Other Functions (Office of the Chairman)

In addition to issuing formal recommendations, ACUS performs other statutory functions, most of them not through its membership but instead through the staff of its Office of the Chairman. They include collecting information and statistics from agencies for analysis and dissemination; publishing reports, sourcebooks, and other materials that may be useful for evaluating and improving administrative processes; preparing reports for Congress; providing technical advice to members of Congress, their staffs, and federal agencies, whether informally or through formal reports; facilitating interchange among departments and agencies of information on matters of administrative procedure that occurs nowhere else in the federal government; conducting training session for federal agencies; and holding public forums, sometimes with other entities, to discuss matters of public interest. These forums often lead to the implementation of "best practices" among agencies..

III. Strategic Goals and Notable Activities

A. Strategic Goals

Throughout the first year of ACUS' operations, the Chairman and staff worked to develop a strategic direction for the agency that would fulfill its statutory mission of improving administrative procedure and meet the expectations of Congress. Particular reliance was placed on the Report of the Administrative Law, Process, and Procedure Project for the 21st 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 membership at the December 2010 plenary session. Members provided feedback and suggested additional goals. The Chairman then identified the following mission and strategic goals:

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. Notable Activities

1. Recommendations Adopted Since Resumption of Operations in 2010

The Assembly has adopted the following recommendation through calendar year 2013:

- **Recommendation 2013-1 – Improving Consistency in Social Security Disability Adjudication** identifies ways to improve the adjudication of Social Security disability benefits claims before administrative law judges and the Social Security Administration’s Appeals Council, suggests changes to the evaluation of opinion evidence from medical professionals, and encourages the SSA to enhance data capture and reporting. As announced in the Unified Agenda, the Administration is working on proposed regulations that would implement much of this recommendation.
- **Recommendation 2013-2 – Cost-Benefit Analysis** highlights a series of best practices directed at independent regulatory agencies in the preparation of benefit-cost analyses that accompany proposed and final rules.
- **Recommendation 2013-3 – Science in the Administrative Process** promotes transparency in agencies’ scientific decision-making, including: articulation of questions to be informed by science information; attribution for agency personnel who contributed to scientific analyses; public access to underlying data and literature; and conflict of interest disclosures for privately funded research used by the agencies in licensing, rulemaking, or other administrative processes.
- **Recommendation 2013-4 – Administrative Record in Informal Rulemaking** offers best practices for agencies in the compilation, preservation, and certification of records in informal rulemaking, and it supports the judicial presumption of regularity for agency administrative records except in certain limited circumstances.
- **Recommendation 2013-5- Social Media in Rulemaking** addresses the various policy and legal issues agencies face when using social media in rulemaking. The study examined whether and when agencies should use social media to support rulemaking activities. It also seeks 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.
- **Recommendation 2013-6 - Remand without Vacatur** examines judicial remand of an agency decision for further consideration while allowing the decision to remain in place. It examines this remedy and equitable factors that may justify its application. The recommendation offers guidance for courts that remand agency actions and for agencies responding to judicial remands.

- **Recommendation 2013-7 – Review of GPRA Modernization Act of 2010** examines the Act’s requirements for cross-agency collaboration; identifies existing constraints to collaboration; highlights tools available to help agencies collaborate; and recommends potential new or enhanced avenues of collaboration.
- **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 that 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 OMB’s OIRA 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. Much of the recommendation was incorporated into the bipartisan immigration legislation (S. 744) that passed the Senate last year.
- **Recommendation 2012-4 – Paperwork Reduction Act** addresses a variety of issues that have arisen since the Act was last revised in 1995, including those arising from the emergence of 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 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** urges Congress to repeal Section 1500, which divests the U.S. Court of Federal Claims of jurisdiction when a plaintiff has claims against the government based on substantially the same operative facts pending in another court, and replace it with a provision that would create a presumption that in such circumstances, later-filed actions would be stayed. In February

2013, The American Bar Association's (ABA) House of Delegates passed a resolution urging Congress to implement the recommendation through legislation.

- **Recommendation 2012-7 – Third-Party Programs to Assess Regulatory Compliance** addresses issues that arise when agencies develop programs in which third parties assess whether regulated entities are in compliance with regulatory standards and other requirements. In some areas of regulation, Congress has directed agencies to develop a third-party program; in others, regulatory agencies have developed programs under existing statutory authority. The recommendation sets forth guidance for federal agencies that are establishing, or considering establishing, such programs.
- **Recommendation 2012-8 – Inflation Adjustment for Civil Penalties** addresses agency adjustments to civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note). The recommendation urges Congress to change the current statutory framework by which agencies periodically adjust their penalties to address three provisions that result in penalty adjustments that may not track the actual rate of inflation. It also advises agencies to adjust their penalties for inflation as required by 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. In February 2013, the American Bar Association's House of Delegates adopted a resolution—based on Recommendation 2011-3—urging federal action to minimize government contractor personal conflicts of interest.

- **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. The Office of the Federal Register, among other agencies, has relied heavily on this recommendation in setting its regulatory policies.
- **Recommendation 2011-6 – International Regulatory Cooperation** addresses how U.S. regulators can interact with foreign authorities to accomplish their domestic regulatory missions and eliminate unnecessary non-tariff barriers to trade. The project updates Administrative Conference Recommendation 91-1, *Federal Agency Cooperation with Foreign Government Regulators*. The recommendation includes proposals for enhanced cooperation and information gathering, more efficient deployment of limited resources, and better information exchanges. The key features of this recommendation were incorporated into Executive Order 13609.
- **Recommendation 2011-7 – FACA in the 21st 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.

2. Reports and Publications

As noted above, ACUS not only adopts recommendation through its membership at semi-annual plenary sessions, but also engages in other activities in furtherance of its mission through the activities of its Office of the Chairman. Notable among them are reports to improve procedures at particular agencies and widely disseminated publications for the benefit officials in all three branches and the general public. They include:

- ***Sourcebook of United States Executive Agencies.*** Published in December 2012, the *Sourcebook* examines the diverse characteristics of the departments, agencies and other organizational entities that comprise the federal executive establishment. It 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 *Sourcebook* serves 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. Demand for the *Sourcebook* has been so strong that it is now in its second printing. Chief Justice John Roberts recently cited it in an opinion (*City of Arlington v. FCC*, No. 11-1547).
- ***SSA Disability Benefits Program: Assessing the Efficacy of the Treating Physician Rule.*** SSA requested that ACUS study and recommend improvements to its existing regulatory standards governing the evaluation of opinion evidence from physicians in the adjudication of Social Security disability benefits claims. Decisions by SSA ALJs involving the treating physician rule have been overturned at significant rates by the SSA Appeals Council, as well as by federal courts. The resulting report suggests measures to reduce the number of cases remanded by federal courts due to erroneous evaluation of medical evidence.
- ***SSA Disability Benefits Program: The Duty of Candor and Submission of All Evidence.*** At the request of SSA, the Office of the Chairman studied the duty of candor and the submission of all evidence in Social Security disability benefits claims. The resulting report summarizes the Social Security Act and SSA's current regulations and practices regarding the duty of candor and the submission of all evidence; reviews requirements from other tribunals, the Federal Rules of Civil Procedure, and regulations governing other agencies; and analyzes ethical standards concerning disclosure of information by representatives. The report presents the regulatory options available to SSA regarding future actions to improve the disability adjudication process. Last month the SSA proposed regulations, which are now subject to the notice-and-comment process, that would require the submission of all evidence in disability cases in accord with the approach laid out in ACUS' report.

3. Research Projects Underway

Projects actively under study and expected to lead to recommendations or reports or publications in FY 2014 or FY 2015 include:

Forthcoming Reports of the Office of the Chairman

- **Federal Administrative Adjudication.** This study will map the contours of the federal administrative adjudicatory process, including both “formal” adjudication conducted under the Administrative Procedure Act (“APA”) and “informal” adjudication. There is no single, up-to-date resource that paints a comprehensive picture of agency adjudications across the federal government. The current study aims to fill this gap. It will, among other things: explore the wide variety of agency adjudicatory schemes across the federal government and their related rules of practice and case management techniques; catalog and compare the types of matters handled by formal and informal adjudication respectively; describe the federal administrative judiciary, including administrative law judges and other types of hearing and appellate officers; and collect and analyze agency caseload statistics and other empirical data. As such, this study will not only update and deepen prior studies on administrative adjudication conducted by the Conference, but also highlight adjudicatory trends and developments (such as the use of alternative dispute resolution techniques and video hearings). Best practices or other recommendations will be drawn from project-related research and data. It is expected that the project will yield a published report, which will serve as a unique resource for members of Congress and their staffs, federal agency and judicial officials, and the general public.
- **Social Security Administration Symptom Evaluation.** At the request of the SSA, ACUS’ Office of the Chairman is conducting an independent study reviewing and analyzing SSA’s laws, regulations, policies, and practices concerning evaluation of claimants’ symptoms in the adjudication of social security disability claims. The Office of the Chairman’s report will advise SSA on how to best articulate the scope of symptom evaluation in its adjudication process, so as to improve consistency in disability determinations, reduce complaints of bias and misconduct against SSA adjudicators, and lessen the frequency of remands attributable to credibility evaluation.
- **Social Security Administration Representative Payee.** Also at the request SSA, the Office of the Chairman is examining state guardianship/conservatorship laws and court practices with an eye toward improved information sharing between the SSA and state courts. The final report will identify potential ways to improve the exchange of information between SSA and state courts that relates to representative payee and state guardianship/conservatorship programs, with particular attention to situations where the SSA representative payee is also a court-appointed legal guardian.

- **ALJ Conversion. The Office of the Chairman** is conducting a study for the Equal Employment Opportunity Commission (EEOC) aimed at identifying the procedural, operational, organizational, and budgetary considerations EEOC would need to take into account in the event it decided to use administrative law judges (ALJ) instead of non-ALJ adjudicators in its federal sector hearing program. The study will result in a report from the Office of the Chairman.

Projects Anticipated to Result in Recommendations

- **Retrospective Review.** This project will examine existing regulatory lookback activities, highlight best practices, and offer recommendations for improving the overall process of retrospective review.
- **Petitions for Rulemaking.** This project will analyze the use of petitions for rulemaking to improve responsiveness to citizen concerns and offer best practices for facilitating submission and guiding agency responses.
- **Government in the Sunshine Act.** This project will analyze compliance problems that have arisen under the Government in the Sunshine Act, 5 U.S.C. § 552b—which 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—with the object of offering agencies concrete suggestions for improving their practices.
- **Examining the Guidance Function of Agency Preambles.** The project will identify best practices with regard to including guidance in statements of basis and purpose in agency preambles accompanying regulations, with the objective of forestalling later disputes about interpretative matters.
- **Ex Parte Communications in Informal Rulemaking.** This project will offer best practices for managing ex parte contacts after the issuance of a notice of a proposed rulemaking in informal rulemakings undertaken by federal agencies.
- **Reducing FOIA Litigation through Targeted ADR Strategies.** This project will examine federal court litigation under FOIA, with the goal of determining how alternative dispute resolution (ADR) procedures might help to reduce litigation over FOIA disputes.

4. Collaborative Initiatives Through the Office of the Chairman

The Office of the Chairman is pursuing other projects that will advance ACUS' statutory mission and strategic goals through workshops, symposia, and other events in partnership with other federal agencies as well as non-governmental organizations. A few highlights include:

- **Joint Workshop by ACUS and the George Washington University Regulatory Studies Center on Social Media in Rulemaking (Sept. 2013).** ACUS and GWU co-hosted a workshop on social media in rulemaking. Prominent experts on social media and the regulatory process from the public and private sectors explored, among other things, both the challenges to, and the promise of, federal agencies' use of social media in the informal rulemaking process. Officials from various federal agencies also shared their experiences using social media in rulemaking.
- **Congressional Briefing on the United States' Public-Private Standardization System (June 2013).** ACUS co-hosted an educational briefing for congressional staff on the U.S. public-private standardization system. Chairman Verkuil presented remarks, along with the President of ANSI and the Director of NIST's Standards Coordination Office. ACUS also continues to work with institutions such as NIST and ANSI to enhance accessibility of standards while also recognizing the important service that standards developers provide to government.
- **Joint Workshop by ACUS and the George Washington University Regulatory Studies Center on Enhancing Use of Science in Chemical Risk Assessments (Oct. 2012).** ACUS co-hosted a workshop with GWU on enhancing science and policy for chemical risk assessments. The major topics discussed were study design and peer review. Panelists from the public and private sectors also offered suggested areas for future ACUS science-related projects. This workshop was an outgrowth of the ACUS' project on science in the administrative process.
- **Joint Workshop by ACUS and the National Academy of Science on Improving the Use of Science in the Administrative Process (Sept. 2012).** ACUS and 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 prominent scientists and policy experts from both government agencies and the private sector. This workshop was an outgrowth of ACUS' 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. ACUS and the Department's Office of Legal Policy are working jointly to reestablish the Interagency Alternative Dispute Resolution Working Group.

- **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 quarterly.

5. 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 21st 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.

6. Assistance to Congress

ACUS provides non-partisan assistance not only to federal agencies but also to members of Congress, congressional committees, and their staffs on various matters involving

administrative procedure. ACUS' 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.

IV. Budget Status and Request

A. Proposed Appropriations Language for FY 2015

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., [~~\$3,000,000~~]~~\$3,200,000~~ to remain available until September 30, [2015] 2016, 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 2011 Enacted	FY 2012 Enacted	FY 2013 Enacted	FY 2014 Enacted	FY 2015 Requested
Budget Authority	\$2,750,000	\$2,900,000*	\$2,900,000**	\$3,000,000***	\$3,200,000
FTE	18	18	18	15	15
Positions FTP	18	18	18	15	15

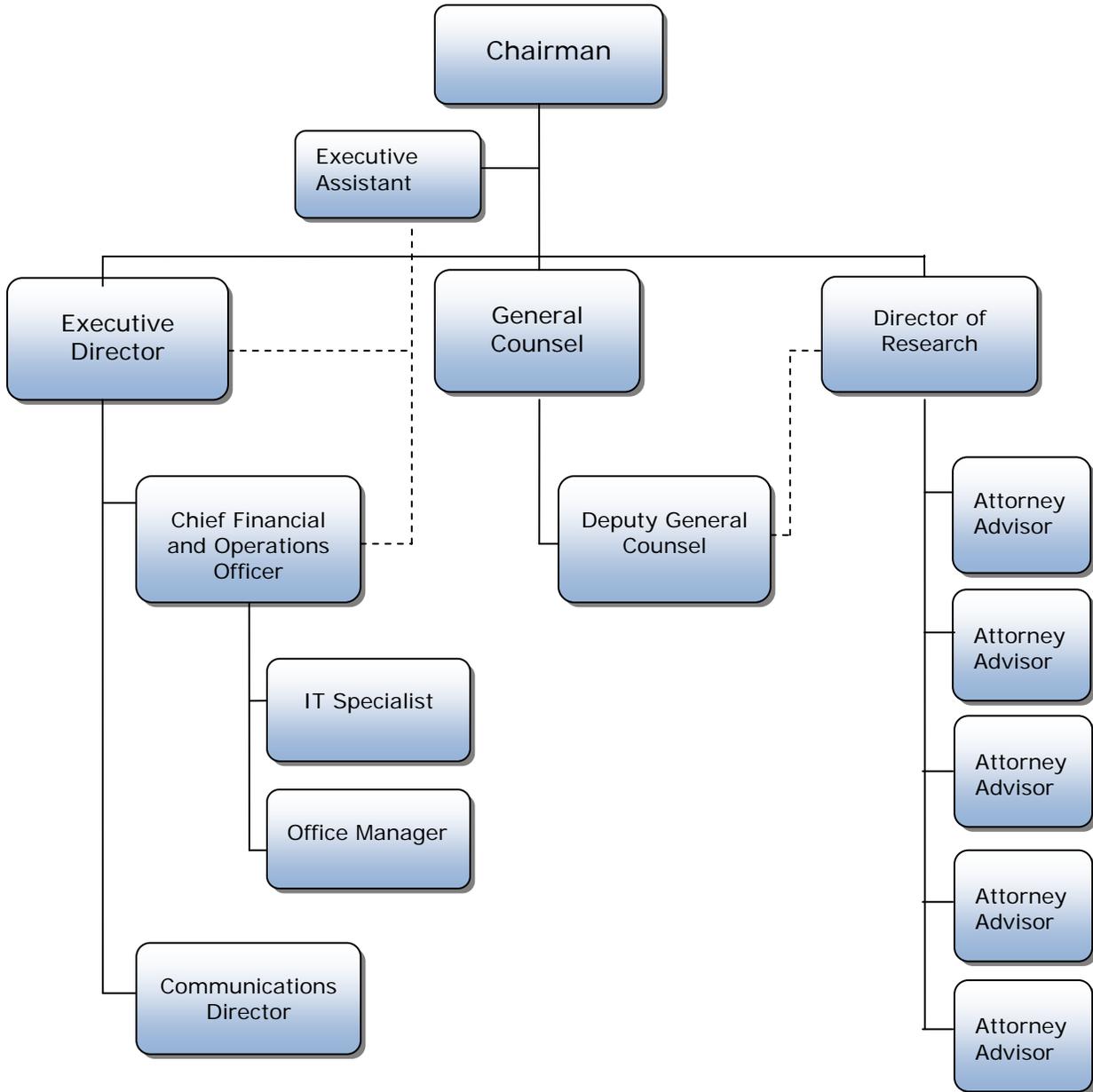
* FY 2012 appropriation assumes FY 2011 carryover funds for total authority of \$3.2 million

**FY 2013 appropriation assumes FY 2012 carryover funds for total authority of \$3.2 million

***FY 2014 appropriation assumes FY 2013 carryover funds for total authority of \$3.2 million

C. ACUS Organization Chart

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



D. Financial Summary

	FY 2013 OBLIGATIONS ACTUAL	FY 2014 (Current) BUDGET	FY 2015 PROPOSED BUDGET
Appropriation	\$2,900,000	\$3,000,000	\$3,200,000
Carry Forward	\$671,871	\$197,056	\$0
Sequestration	(\$151,687)	\$0	\$0
Net Appropriation	\$3,420,184	\$3,197,056	\$3,200,000
<i>Obligations/Expenses</i>			
Salaries, Full Time	\$1,714,108	\$1,748,515	\$1,797,643
Benefits	\$500,214	\$472,099	\$485,364
<i>Subtotal, Salaries and Benefits</i>	\$2,214,322	\$2,220,614	\$2,283,007
Member/ Staff Travel	\$19,576	\$22,000	\$22,000
Rent & Utilities	\$405,314	\$398,537	\$407,480
Communications/ IT	\$40,374	\$38,905	\$38,905
Printing/Reproduction	\$19,802	\$19,000	\$16,000
Consultant Contracts (Research & IT)	\$323,151	\$325,000	\$280,000
Administrative Contracts (GSA, Audit)	\$146,357	\$145,000	\$136,608
Supplies	\$54,232	\$28,000	\$16,000
Equipment	\$0	\$0	\$0
<i>Subtotal, Operating expenses</i>	\$1,008,806	\$976,442	\$916,993
Worksheet Adjustments	-	-	-
Total Obligation/Expenses	\$3,223,128	\$3,197,056	\$3,200,000
Unobligated Balances	\$197,056	\$0	\$0

Note:

1) President's FY 2014 President's Budget Request was for \$3,200,000. Due to carryover balance from FY 2013, most recent appropriations action was for \$3,000,000 to permit operation at budget level of \$3,200,000.

E. Appropriations History

<u>Salaries and Expense Account</u>	
(Amounts in thousands of dollars)	
<u>Fiscal Year</u>	<u>Budget Authority</u>
2010	2,250 (750 from 2009)
2011	2,750
2012	2,900*
2013	2,900**
2014	3,000***
2015	3,200 (Requested)

FY 2012 appropriation assumes FY 2011 carryover funds for total authority of \$3.2 million

**FY 2013 appropriation assumes FY 2012 carryover funds for total authority of \$3.2 million

***FY 2014 appropriation assumes FY 2013 carryover funds for total authority of \$3.2 million

The President’s budget request of \$3.2 million to support a full year of agency operations during FY 2015 is the same amount requested in FY 2011 through FY 2014. Due to start-up operations and the authority to carry forward unobligated funds from the prior fiscal year, ACUS has never received a full \$3.2 million appropriation. Congress has consistently appropriated funding for ACUS at a level equal to, or in excess of, \$3.2 million in total budgetary resources once prior year carryover funds are added. Stringent management of agency costs has permitted small carryover balances for the past four fiscal years; however, the impact of sequestration combined with the natural growth of payroll and other expenses has now exhausted all prior year balances. Consequently, a full appropriation of \$3.2 million is required simply to maintain current agency operations and level funding.

ACUS was reauthorized in 2008 at \$3.2 million. The agency could not begin operations in FY 2009 because the Chairman had not been confirmed. For this reason, in FY 2010 ACUS received an appropriation of \$1.5 million to begin agency operations mid-year and 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 of \$2.25 million for the final six months of FY 2010 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. Both the House and Senate appropriations subcommittees recommended \$3.2 million. 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 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. H.R. 2055, the *Consolidated Appropriations Act for FY 2012*, again funded ACUS at \$2.9 million, citing the agency's ability to use 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. Congress subsequently enacted a full-year continuing resolution to fund the agency at its 2012 appropriation of \$2.9 million. Additionally, ACUS was subject to a 5% reduction, or approximately \$151,000, due to the automatic spending cuts known as "sequestration," and as a result netted an effective appropriation of \$2.76 million.

In FY 2014, the President's budget again requested \$3.2 million to support a full year of agency operations. H.R. 3547 the *Consolidated Appropriations Act, 2014* funded ACUS at \$3.0 million. FY 2013 carryover funds of \$197,056 net total budgetary resources just shy of \$3.2 million in FY2014.

To sustain agency operations and to meet its statutory requirements, ACUS will deplete its remaining carryover balance during the current fiscal year. ACUS anticipates no carryover funds from FY 2014. It is therefore imperative that ACUS receive an FY 2015 appropriation that funds the agency at \$3.2 million, a level that covers actual annual operating costs. Reliance on prior year carryover funds to bridge the difference resulting from a reduced appropriation is no longer viable as these funds have been, or will be, exhausted.

F. Narrative Justification

The appropriation request for the Administrative Conference of the United States for FY 2015 is \$3,200,000. A detailed breakdown and justification for this request follows.

AGENCY PERSONNEL (Object Classes 11 and 12)

For FY 2015, ACUS requests 15 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 FY15. The FTE's consist of the following:

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. 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' 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 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 also participate substantially in researching and drafting reports and others publications of the Office of the Chairman, implementing of ACUS recommendations, and assisting the work of the Chairman, General Counsel, and the Executive Director. 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 other staff, and a Paralegal Specialist/ Office Manager supports the Conference members and staff.

ACUS' FY 2013 budget request eliminated three allotted FTEs for a budget/finance assistant and two administrative assistants that were included in previous budget requests, thereby reducing the agency's total allotted FTE count from 18 to 15. The 3 eliminated FTEs were not filled during ACUS' 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 FY2015 budget maintains a reduced FTE total of 15 positions.

For FY 2015, ACUS requests a budget of **\$1,797,643** 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 **\$485,364** is budgeted for personnel benefits during FY 2015 (Object Class 12). Personnel benefits are a direct function of the amount of budgeted salary/wages and include the standard transit subsidy.

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

As discussed in the introductory section above, the research y work of ACUS is usually 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' 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 rates the government is paying.

In FY 2015, ACUS is requesting **\$280,000** in funding for research contracts (Object Class 25). This funding will allow ACUS 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. The number of projects is dependent on the 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 sometimes conduct their own in-house research in addition to serving as legal counsel for ACUS committee projects and staffing the numerous projects undertaken by the Office of the Chairman described in this justification. In-house research initiatives resulted in several Conference recommendations since 2012.. In-house staff research projects and other outreach initiatives, including inter-agency workshops, are included within ACUS' salary and administrative overhead expenses..

In addition to research contracts, ACUS requests **\$136,608** 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 mandated financial auditing. For FY 2015, ACUS requests \$136,608 for external administrative support. This amount is a reduction from prior fiscal years as 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 2015, 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 **\$22,000** for FY 2015 (Object Class 21). This is a reduction from previous budget requests, and reflects the agency's tight control of travel-related costs. 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 2015 ACUS will be responsible for **\$407,480** in rental payments through its lease, based on estimates set forth in the agency's Occupancy Agreement with GSA (Object Class 23).

ACUS' budget includes an estimated **\$38,905** for electronic communications expenses, including telephone service and website hosting during FY 2015 (Object Class 23). This estimate is based on ACUS' historical. This estimate also accounts for the natural growth in ACUS' 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 2015 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-session materials. *Federal Register* notices and other related FACA-mandated publications are the single largest category of printing expense.

ACUS' budget includes **\$16,000** for the purchase of supplies, materials and publications for FY 2015 (Object Class 26). The amount includes supplies for mailing, copying, and ordinary office supplies.. 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.

V. Conclusion

For FY 2015, 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 undertake other critical 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.

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.

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.

Edith Ramirez

Edith Ramirez is Chairwoman of the Federal Trade Commission (FTC). Prior to joining the Commission, Ramirez was a partner in the Los Angeles office of Quinn Emanuel Urquhart & Sullivan, LLP, where she handled a broad range of complex business litigation, including successfully representing clients in intellectual property, antitrust, unfair competition, and Lanham Act matters. She also has extensive appellate litigation experience. From 1993-1996, Ramirez was an associate at Gibson, Dunn & Crutcher, LLP in Los Angeles. She clerked for the Hon. Alfred T. Goodwin in the United States Court of Appeals for the Ninth Circuit from 1992-1993. Throughout her career, Ramirez has been active in a variety of professional and community activities. Most recently, she served as the Vice President on the Board of Commissioners for the Los Angeles Department of Water and Power, the nation's largest municipal utility. Ramirez graduated from Harvard Law School *cum laude* (1992), where she served as an editor of the *Harvard Law Review*, and holds an A.B. in History *magna cum laude* from Harvard University (1989).

Jane C. Sherburne

Jane C. Sherburne is Senior Executive Vice President and General Counsel of BNY Mellon. She was formerly a 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 59th Plenary Session held on December 5-6, 2013:

Scott G.	Alvarez	Federal Reserve Board
Paul	Bardos	U.S. International Trade Commission
Eric	Benderson	Small Business Administration
Daniel	Cohen	Department of Energy
Sandy	Comenetz	Federal Housing Finance Agency
Elizabeth	Dickinson	Food and Drug Administration
Margaret	Doane	Nuclear Regulatory Commission
Bridget C.E.	Dooling	Office of Management and Budget
Kris	Durmer	General Services Administration
Daniel R.	Elliott	Surface Transportation Board
Amy S.	Friend	Office of the Comptroller of the Currency
Meredith	Fuchs	Consumer Financial Protection Bureau
Seth	Grossman	Department of Homeland Security
Susan Tsui	Grundmann	Merit Systems Protection Board
Will A.	Gunn	Department of Veterans Affairs
Janice	Hoffman	Centers for Medicare & Medicaid Services
Seth	Jaffe	Office of Government Ethics
Edward	Keable	Department of the Interior
Alice	Kottmyer	Department of State
Robert	Lesnick	Federal Mine Safety and health Review Commission
Nadine	Mancini	Occupational Safety & Health Review Commission
Elizabeth A. M.	McFadden	Department of Education
Christopher J.	Meade	Department of Treasury

David Morris	Michaels	Occupational Safety and Health Administration
Miriam M.	Nisbet	National Archives and Records Administration
Richard	Osterman	Federal Deposit Insurance Corporation
Patrick O.	Patterson	Equal Employment Opportunity Commission
Michael J.	Ravnitzky	Postal Regulatory Commission
Ramona E.	Romero	Department of Agriculture
Bob	Schiff	National Labor Relations Board
William	Schultz	Department of Health and Human Services
Robert A.	Shapiro	Department of Labor
David	Shonka	Federal Trade Commission
Carol Ann	Siciliano	Environmental Protection Agency
Kevin M.	Simpson	Department of Housing and Urban Development
Glenn E.	Sklar	Social Security Administration
Anne K.	Small	Securities and Exchange Commission
Lon	Smith	Internal Revenue Service
Robert S.	Taylor	Department of Defense
Stephanie	Tsacoumis	Consumer Product Safety Commission
Elana J.	Tyrangiel	Department of Justice
Megan	Wallace	Commodity Futures Trading Commission
Christy	Walsh	Federal Energy Regulatory Commission
Tyler	Wood	Federal Maritime Commission
Vacant	Vacant	Department of Commerce
Vacant	Vacant	Department of Transportation
Vacant	Vacant	Federal Communications Commission
Vacant	Vacant	Federal Election Commission
Vacant	Vacant	Office of Personnel Management
Vacant	Vacant	Office of Science & Technology

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 59th Plenary Session held on December 5-6, 2013:

Gary	Bass	The Bauman Foundation
Boris	Bershteyn	Skadden, Arps, Slate, Meagher & Flom LLP
Lisa S.	Bressman	Vanderbilt Law School
James Ming	Chen	Michigan State University College of Law
John F.	Cooney	Venable LLP
John C.	Cruden	Environmental Law Institute
Viet D.	Dinh	The Bancroft Firm; Georgetown Law Center
Susan E.	Dudley	Trachtenberg School of Public Policy
Cynthia R.	Farina	Cornell Law School
Michael	Fitzpatrick	Gov. and Regulatory Affairs, General Electric
David C.	Frederick	Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
Caroline	Fredrickson	American Constitution Society for Law and Policy
Jody	Freeman	Harvard Law School
H. Russell	Frisby, Jr	Stinson Morrison Hecker LLP
Philip J.	Harter	Vermont School of Law
Lisa	Heinzerling	Georgetown University Law Center
Michael E.	Herz	Benjamin N. Cardozo School of Law
John M.	Kamensky	IBM Center for the Business of Government
Simon	Lazarus	National Senior Citizens Law Center
Ronald M.	Levin	Washington University School of Law
George	Madison	Retired
Jerry L.	Mashaw	Yale Law School

Randolph J.	May	Free State Foundation
Nina	Mendelson	University of Michigan Law School
Gillian E.	Metzger	Columbia Law School
David W.	Ogden	Wilmer, Cutler, Pickering Hale and Dorr
Lee Liberman	Otis	The Federalist Society
Richard J.	Pierce, Jr.	The George Washington University Law School
Arti K.	Rai	Duke University School of Law
Richard L.	Revesz	New York University School of Law
Alasdair S.	Roberts	Suffolk University Law School
Teresa Wynn	Roseborough	The Home Depot
Jeffrey	Rosen	Kirkland & Ellis LLP
Eugene	Scalia	Gibson, Dunn & Crutcher
Larry D.	Thompson	PepsiCo
James J.	Tozzi	Center for Regulatory Effectiveness
John	Vittone	Retired
Helgi C.	Walker	Gibson, Dunn & Crutcher LLP
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 59th Plenary Session held on December 5-6, 2013:

Allison	Beck	Federal Mediation and Conciliation Service
Amy P.	Bunk	Office of the Federal Register
Charles	Center	Federal Labor Relations Authority
Tobias	Dorsey	United States Sentencing Commission
D. Randall	Frye	Association of Administrative Law Judges
The Hon. Brett	Kavanaugh	U.S. Court of Appeals for the DC Circuit
Jean	King	Department of Justice, Executive Office of Immigration Review
Daniel R.	Levinson	Council of the Inspectors General on Integrity & Efficiency
Charles	Maresca	Small Business Administration, Office of Advocacy
Mary C.	McQueen	National Center for State Courts
Jeffrey P.	Minear	Judicial Conference of the United States
Katie L.	Nash	Office of the Director of National Intelligence
Nina	Olson	Internal Revenue Service, Office of the National Taxpayer Advocate
Rebecca	Orban	U.S. Coast Guard
Suzanne	Orenstein	Udall Foundation, US Institute for Environmental Conflict Resolution
James	Park	U.S. House of Representatives, Committee on the Judiciary
Susan A.	Poling	U.S. Government Accountability Office
Timothy	Reif	Office of the U.S. Trade Representative
Jill	Sayenga	Administrative Office of the U.S. Courts
Lois J.	Schiffer	National Oceanic and Atmospheric Administration
Anna W.	Shavers	ABA Section of Administrative Law and Regulatory Practice
Thomas W.	Snook	ABA National Conference of the Administrative Law Judiciary

Daniel	Solomon	Federal Administrative Law Judges Conference
Max	Stier	Partnership For Public Service
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 59th Plenary Session held on December 5-6, 2013:

William H.	Allen	Retired
Warren	Belmar	Capitol Counsel Group, LLC
Jodie Z.	Bernstein	Kelley Drye & Warren LLP
Marshall J.	Breger	The Catholic University, Columbus School of Law
Stephen	Breyer	U.S. Supreme Court
Betty Jo	Christian	Steptoe & Johnson, LLP
H. Clayton	Cook, Jr.	Seward & Kissel LLP
Neil R.	Eisner	Retired
E. Donald	Elliott	Yale Law School, Covington & Burling LLP
Fred F.	Fielding	Morgan Lewis & Bockius
Brian C.	Griffin	Clean Energy Systems, Inc.
Elena	Kagan	U.S. Supreme Court
Paul D.	Kamenar	Washington Legal Foundation
Sally	Katzen	The Podesta Group; New York University School of Law

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
S. Jay	Plager	U.S. Court of Appeals for the Federal Circuit
Jonathan	Rose	Sandra Day O'Connor College of Law, Arizona State University
Antonin	Scalia	U.S. Supreme Court
Loren A.	Smith	U.S. Court of Federal Claims
Stanley	Sporkin	Gavel Consulting Group
Kenneth W.	Starr	Baylor University
Peter L.	Strauss	Columbia Law School
David	Vladeck	Georgetown University Law Center
John M.	Walker, Jr.	U.S. Court of Appeals for the Second Circuit
William H.	Webster	Retired
Edward L.	Weidenfeld	The Weidenfeld Law Firm, P.C
Richard E.	Wiley	Wiley Rein LLP
Stephen F.	Williams	U.S. Court of Appeals for the District of Columbia

