



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

# FY 2017 CONGRESSIONAL BUDGET JUSTIFICATION

February 9, 2016

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## I. Introduction

The President's Budget for FY 2017 requests \$3.2 million for the Administrative Conference of the United States (ACUS). This is level funding from the President's FY 2016 budget.

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. Recommendations are designed, in the words of the Administrative Conference Act, to (1) ensure that federal agencies' "regulatory activities . . . are carried out expeditiously in the public interest," (2) "promote more effective participation and efficiency in the rulemaking process," (3) "reduce unnecessary litigation in the regulatory process," (4) "improve the use of science" in that process, and (5) "improve the effectiveness of laws applicable" to that process. (5 USC § 591.) Through its Office of the Chairman, 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's work improves the efficiency and fairness of government processes. It also often saves money for the taxpayers. Indeed, the cost savings that ACUS achieves for the American taxpayers well exceeds its annual appropriation.

Numerous ACUS recommendations have been adopted by the executive branch or enacted into law. Examples appear in Section III. They include, most recently, Recommendation 2012-8, *Inflation Adjustment Act*, which Congress implemented in the Bipartisan Budget Act of 2015 when it adjusted civil penalties for regulatory violations to account for the "inflation lag" identified by ACUS; Recommendation 2011-6, *Promoting International Regulatory Cooperation*, which forms the basis of Executive Order 13609 governing cooperation between U.S. and foreign regulators to render regulatory policy more coherent; the recommendations in the Office of the Chairman Report *SSA Disability Benefits Program: The Duty of Candor and Submission of All Evidence* (2012), which set forth a blueprint for the Social Security Administration's recently promulgated final rule requiring the submission of all evidence in Social Security disability cases; and Recommendation 2011-15, *Incorporation by Reference*, which informs the Office of the Federal Register's recently-issued final rule governing the incorporation of private standards and other material in all federal regulations. Other recommendations have been relied upon in judicial opinions.

ACUS's oversight committees in Congress have expressed strong bipartisan support for the agency's work. Recently, the Chairmen and Ranking Members of the House Judiciary Committee and its Subcommittee on Regulatory Reform noted in the Congressional Record that "there is no other independent, non-partisan agency" on which "Congress can call . . . to evaluate ways to improve the regulatory process"; that "[a]s a result of" ACUS's "excellent work, our Nation's federal administrative procedures are not only looked to as a standard around the world, but constantly in the course of additional improvement;" and that "in recognition of its many accomplishments" ACUS "has enjoyed broad bipartisan and bicameral support over the years." They also noted that ACUS "helps save taxpayer dollars."

Members of the federal judiciary from diverse perspectives, among others, have likewise expressed strong support for ACUS. Two Justices (Scalia and Breyer) have even testified before Congress in support of ACUS's authorization. During his testimony in 2010, Justice Scalia observed that ACUS is one of the federal government's "best bargains for the buck."

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.

## **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 fiftieth anniversary of which was recently marked by a symposium issue of *The George Washington Law Review* (Volume 83). 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.

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](http://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.

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.) Following the appropriation of funds and the appointment of a chairman, ACUS resumed operations in 2010.

### **B. Membership**

The Assembly is the name given to the 101 statutory voting members of the Conference meeting in plenary session. The 101 members include the Chairman, the Council, Government

Members and Public Members. The Conference’s bylaws permit other types of members who are not part of the Assembly. These individuals are afforded all the privileges of membership, except that they may not vote or make motions during plenary sessions.

**Voting (Assembly) Members**

**The Chairman**

The Chairman of the Administrative Conference provides overall management and direction for the Conference. The Chairman is appointed for a five-year term by the President by and with the advice and consent of the Senate. The Chairman is the only full-time member of the Conference. With the exception of the Chairman, Conference members are unpaid.

**The Council**

The Council of the Administrative Conference functions as the Conference’s board of directors. In addition to the Chairman, the Council consists of ten members appointed by the President for three-year terms. Up to five of the Council members are current, senior officials at other government agencies, and the others are drawn from outside the federal government. One of the Council members is designated by the President as the Vice Chairman.

**Current ACUS Council**

Government Members	Public Members
Vacant (Chairman)	Ronald Cass
Steven Croley, Vice Chairman	Danielle Gray
Edith Ramirez	Ronald Klain
Jonathan Sallet	Theodore Olson
Vacant (2 Members)	Jane Sherburne

**Government Members**

Government members come from federal executive departments, agencies, independent regulatory boards, and commissions.

**Public Members**

Public members come from the private sector, including academia, the practicing bar, industry, and public interest organizations.

**Non-Voting Members**

**Liaison Representatives**

The Chairman, with the approval of the Council, may enter into liaison arrangements with federal agencies or other organizations that do not have voting members of the Conference. Agencies or

organizations so designated appoint their liaison representative. Liaison representatives serve no fixed term.

### **Senior Fellows**

Senior fellows include those who have previously served as Chairman, are former members who have served in the federal judiciary, or have served for six or more years as government or public members, or liaison representatives. Senior fellows are appointed by the Chairman with the approval of the Council. Senior fellows serve for two-year terms and may be reappointed.

### **Special Counsels**

Special Counsels are appointed by the Chairman, with the approval of the Council. They advise and assist the membership in the areas of their special expertise. They serve for 2-year terms and may be reappointed.

A full roster of the Conference's current membership is available at <https://www.acus.gov/about-members>.

### **Staff**

The Administrative Conference has a small, full-time, career staff that serves under the Chairman. The staff conducts research, supports the work of Conference committees, organizes Conference events, works to implement Conference recommendations, provides information to Conference members and to the public, and otherwise carries forward the work of the Conference.

A full roster of the Conference's current staff is available at <https://www.acus.gov/about-staff>.

## **C. Program Description and Outcomes**

The main statutory function of ACUS is to bring together the public and private sectors to recommend improvements to administrative and regulatory processes. To do so, ACUS's Office of the Chairman, with the approval of ACUS's Council, engages consultants to study particular administrative processes or procedures that may need improvement. Consultants then prepare a comprehensive research report accompanied by suggested recommendations. Occasionally, ACUS staff members prepare these reports in-house. After extensive deliberation, committees of ACUS's voting and non-voting members adopt proposed recommendations for Council consideration. The Council then forwards the recommendations, with its views, to the Assembly. The Assembly typically meets semi-annually in plenary session to debate, amend, and formally adopt the recommendations. ACUS then undertakes to implement them.

## **D. Other Functions (Office of the Chairman)**

In addition to issuing formal recommendations, ACUS performs other statutory functions, most of them not through the staff of its Office of the Chairman rather than through the Assembly. 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 of information among departments and agencies on matters of administrative procedure; 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 Priorities Goals

##### *The ACUS Recommendation Process:*



#### Strategic Priorities and Goals

To set priorities for the selection of projects, ACUS developed the following mission statement, strategic goals, and vision and values:

##### *ACUS Mission Statement*

The Administrative Conference of the United States brings together experts from the public and private sector to advise the President, Congress, federal agencies and the federal judiciary to collaborate in maximizing fairness and efficiency in the administration of government programs.

### *ACUS Strategic Goals*

**Participation:** ACUS will expand citizen participation in the regulatory process through increased use of interactive communications technologies 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.

### *ACUS Vision and Values*

The Administrative Conference is given the power to “study the *efficiency, adequacy, and fairness* of administrative procedure....” 5 U.S.C. § 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 embedded in the Administrative Procedure Act and the Due Process Clause of the Constitution's Fifth Amendment'.

The *efficiency* value derives from economics and looks at how procedures employed by agencies 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.

## B. Notable Activities

### 1. Recommendations Adopted Since Resumption of Operations in 2010

The Assembly has adopted the following recommendations and statements through calendar year 2015:

- ***Recommendation 2015-1 – Promoting Accuracy and Transparency in the Unified Agenda*** offers proposals for improving the accuracy and transparency of the Unified Agenda of Federal Regulatory and Deregulatory Actions. Among other things, it urges agencies to consider providing relevant updates between Agenda reporting periods, offers recommendations for ensuring that Agenda entries are properly categorized by projected issuance date and status, and encourages agencies to provide notice when entries are removed from the Agenda.
- ***Recommendation 2015-2 - Technical Assistance by Federal Agencies in the Legislative Process*** offers best practices for agencies when providing Congress with technical drafting assistance. It is intended to apply to situations in which Congress originates the draft legislation and asks an agency to review and provide expert technical feedback on the draft without necessarily taking an official substantive position.
- ***Recommendation 2015-3 - Declaratory Orders*** identifies contexts in which agencies should consider the use of declaratory orders in administrative adjudications. It also highlights best practices relating to the use of declaratory orders.
- ***Recommendation 2015-4 - Designing Federal Permitting Programs*** describes different types of permitting systems and provides factors for agencies to consider when designing or reviewing permitting programs. It encourages agencies that adopt permitting systems to design them so as to minimize burdens on the agency and regulated entities while maintaining required regulatory protections.
- ***Statement # 19 (Adopted 9/25/2015)***. This statement examines judicial application of an issue exhaustion requirement in pre-enforcement review of administrative rulemaking.
- ***Recommendation 2014-1 - Resolving FOIA Disputes Through Targeted ADR Strategies*** addresses more effective use of alternative dispute resolution (ADR) approaches to help resolve disputes arising under the Freedom of Information Act (FOIA). The OPEN Government Act of 2007 created the Office of Government Information Services (OGIS), a part of the National Archives and Records Administration, to assist in the resolution of FOIA disputes through use of mediation and other ADR techniques. The recommendation suggests ways that OGIS can maximize the effectiveness of its resources for this purpose. The recommendation also suggests steps agencies can take to prevent or resolve FOIA disputes, including cooperating with OGIS and making FOIA staff and requesters aware of OGIS services.

- ***Recommendation 2014-2 - Government in the Sunshine Act*** highlights best practices designed to enhance transparency of decision making at multi-member boards and commissions subject to the Government in the Sunshine Act. The recommendation urges covered agencies to provide a description of the primary mechanisms for conducting business, describe substantive business disposed of outside of open meetings subject to the Act (with appropriate protections for information made exempt from disclosure), and exploit new technologies to disseminate relevant information more broadly.
- ***Recommendation 2014-3 - Guidance in the Rulemaking Process*** identifies best practices for agencies when providing guidance in preambles to final rules. It suggests ways that agencies can improve the drafting and presentation of these preambles, including making it easier to identify any guidance content. The recommendation also urges agencies to ensure that users of their websites can easily locate the required small entity compliance guides.
- ***Recommendation 2014-4 - “Ex Parte” Communications in Informal Rulemaking*** provides guidance and best practices to agencies for managing "ex parte" communications between agency personnel and nongovernmental interested persons regarding the substance of informal rulemaking proceedings conducted under 5 U.S.C. § 553.
- ***Recommendation 2014-5 - Retrospective Review of Agency Rules*** examines agencies' procedures for reanalyzing and amending existing regulations and offers recommendations designed to promote a culture of retrospective review at agencies. Among other things, it urges agencies to plan for retrospective review when drafting new regulations; highlights considerations germane to selecting regulations for reevaluation; identifies factors relevant to ensuring robust review; and encourages agencies to coordinate with the Office of Management and Budget, other agencies, and outside entities (including stakeholders and foreign regulators) when designing and conducting retrospective reviews.
- ***Recommendation 2014-6 – Petitions for Rulemaking*** identifies agency procedures and best practices for accepting, processing, and responding to petitions for rulemaking. It seeks to ensure that the public's right to petition is a meaningful one, while still respecting the need for agencies to retain decisional autonomy. Building upon ACUS's previous work on the subject, it provides additional guidance that may make the petitioning process more useful for agencies, petitioners, and the public.
- ***Recommendation 2014-7 – Best Practices for Using Video Teleconferencing for Hearings*** offers practical guidance regarding how best to conduct video hearings, and addresses the following subjects: Equipment and environment, training, financial considerations, procedural practices, fairness and satisfaction, and collaboration among agencies. It also provides for the development of a video hearings handbook by ACUS's Office of the Chairman.

- ***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.
- ***Statement #18 - Improving the Timeliness of OIRA Regulatory Review*** (adopted December 6, 2013) highlights potential mechanisms for improving review times of rules

under review by the Office of Information and Regulatory Affairs (OIRA), including promoting enhanced coordination between OIRA and agencies prior to the submission of rules, encouraging increased transparency concerning the reasons for delayed reviews, and ensuring that OIRA has adequate staffing to complete reviews in a timely manner.

- ***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 in 2013.
- ***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 - Reform of 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 2015, the House Judiciary Committee favorably reported a bill in accordance with this recommendation and a companion ABA resolution endorsing the recommendation.

- ***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. As urged by the Administration, Congress implemented the recommendation in the Bipartisan Budget Act of 2016. The inflation-adjustment provisions of that Act will increase general revenues to the government by \$1.3 billion over the next ten years.
- ***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 (OFR), among other agencies, has relied heavily on this recommendation in setting its regulatory policies. In late 2014, in fact, the OFR implemented the recommendation in a final rule modifying its long-standing requirements for incorporation by reference in all federal regulations.
- ***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 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.

## 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 of officials in all three branches and the general public. They include:

- ***Social Security Administration: Symptom Evaluation.*** At the request of the SSA, ACUS's Office of the Chairman prepared an independent study that reviewed and analyzing SSA's laws, regulations, policies, and practices concerning evaluation of claimants' symptoms in the adjudication of social security disability claims. The report advised 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.
- ***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. The federal judiciary demand for the *Sourcebook* has been so strong that it is now in its second printing. In 2013, Chief Justice Roberts cited it in a Supreme Court opinion.
- ***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. Implementation by SSA is anticipated.
- ***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 cases. 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 (and offers accompanying recommendations for each) regarding future actions to improve the disability adjudication process. SSA recently issued a final rule implementing the report's recommendations.
- ***Social Security Administration: Representative Payee.*** Also at the request SSA, the Office of the Chairman examined state guardianship/conservatorship laws and court practices with an eye toward improving information sharing between the SSA and state

courts. The final report, which was largely based on a survey of state courts, identifies trends, state court best practices, and opportunities for improved coordination and communication between SSA and state courts on matters relating 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.** At the request of the Equal Employment Opportunity Commission (EEOC) the Office of the Chairman prepared a report that identified 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. Staff in the Office of the Chairman briefed the EEOC's members on these and related issues.

### 3. Research Projects Underway

Projects actively under study and expected to lead to recommendations or reports or publications in FY 2016 or FY 2017 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 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. As such, this study will not only update and deepen prior studies on administrative adjudication conducted by ACUS, 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. The project will yield a published report that will be submitted to an ACUS Committee for the development of recommendations. The extensive research underlying the forthcoming report resides on a publicly available, searchable database jointly established by ACUS and Stanford Law School.

#### *Projects Anticipated to Result in Recommendations*

- **Aggregate Agency Adjudication.** This project examines recent efforts by agencies to aggregate administrative proceedings by analyzing how agencies choose the cases appropriate for aggregation, which aggregation tools agencies use, the successes and failures of aggregation programs, how often agencies employ aggregation procedures, and whether other types of proceedings with different aggregation tools might facilitate more expeditious and fair handling of large groups of claims.

- ***Electronic Case Management in Federal Administrative Adjudication.*** This project examines the use and incorporation of electronic case management in agency adjudication in order to make recommendations and share best practices. Electronic case management is a comprehensive system that enables an agency to manage its adjudications for increased efficiency and access.
- ***Federal Court Analysis.*** The Social Security Administration (SSA) has engaged the Office of the Chairman to conduct an independent study reviewing and analyzing SSA's laws, regulations, policies, and practices as they are applied in federal courts on review of appealed social security disability claims. Upon completion of the study, the report and its attendant recommendations may be presented to one of the Conference's committees (and then its Assembly) for consideration as a recommendation of the Conference.
- ***Information Dissemination in the Internet Era.*** This project will consider novel agency approaches for communicating information to the general public. It seeks to encourage widespread dissemination of information, promote accuracy to the greatest extent feasible, and ensure that the public is notified of the precise nature of public information sets.
- ***Negotiated Rulemaking.*** This project will build upon the Conference's previous work on the topic of negotiated rulemaking (as reflected in Recommendations 82-4 and 85-5), examining the reasons for the historical decline in the usage thereof and for the small resurgence in recent years. The project seeks to identify the optimal circumstances for the use of negotiated rulemaking as well as contexts in which alternative collaborative policymaking approaches may prove more attractive.
- ***The Ombudsman in Federal Agencies.*** This project will identify which federal agencies make use of ombuds and describe the scope of their ombuds activities, identify best practices for the establishment and operation of ombuds offices, and recommend situations in which expanded use of ombuds may benefit agencies.
- ***Regulatory Waivers and Exemptions.*** This project draws conceptual distinctions among waivers, exemptions, and prosecutorial discretion; examines current practices in agencies that grant waivers and exemptions; reviews statutory and doctrinal requirements; and makes concrete procedural recommendations for implementing agency best practices.

A principal program activity for ACUS in FY 2016-17 will include necessary follow up on, or continuation of, these research projects and programs and implementation of any recommendations resulting from them, 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.

#### 4. Collaborative Initiatives Through the Office of the Chairman

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

- ***Regulatory Capture (March 2016)***. ACUS will cosponsor a congressionally sponsored bipartisan forum on regulatory capture. We have scheduled the forum for March 3 from 9:30-12:30, (Senate Dirksen 106). Senator Whitehouse will deliver opening remarks. They will be followed by a bipartisan panel of four of five members that will include Senator Whitehouse. At least two panels—one focusing on capture in the policymaking/rulemaking context, the other on enforcement-related capture—of former agency officials, academics, policy experts, judges, and others will follow.
- ***Criminal Law and the Administrative State: Defining and Enforcing Regulatory Crimes (May 2014)***. Together with the American Bar Association's Criminal Justice and Administrative Law and Regulatory Practice Sections, the American Constitution Society, and The Federalist Society, ACUS organized and hosted a workshop to explore current topics at the intersection of criminal law and the administrative state. Senator Mike Lee, Senator Sheldon Whitehouse, and U.S. Sentencing Commissioner Rachel Barkow offered keynote remarks.
- ***Workshop on Examining Guidance in Agency Preambles, Regulation Text and Separately Issued Documents (February 2014)***. ACUS consultant Professor Kevin M. Stack led a discussion among agency personnel to identify best practices with regard to including guidance in statements of basis and purpose in agency preambles, regulatory text, appendices, or separately issued documents. Professor Stack used his discussion in preparing the report that underlies Recommendation 2014-3.
- ***Joint Workshop by ACUS and the George Washington University Regulatory Studies Center on Social Media in Rulemaking (September 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 (October 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's 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 (September 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's Science in the Administrative Process project.
- ***IBR-IRC Implementation Summit (May 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 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.
- ***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. Assistance to Congress and Federal Agencies by the Office of the Chairman

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'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.

## 6. Leadership of Inter-Agency Working Groups

ACUS co-led two key working groups in 2015. The first, established by the President in February 2015, was convened to expedite the OPM-administered process for hiring administrative law judges and thereby reduce the growing backlogs of disability claims at SSA. One of the group's proposals was implemented by Congress in Section 846 of the Bipartisan Budget Act of 2015, which requires OPM to "expeditiously administer a sufficient number of competitive examinations [to ensure that] an adequate number of candidates . . . be appointed as" ALJs. The second working group, established by the Department of Justice's Office for Access to Justice, was convened to facilitate agency communication and develop best practices to improve fairness and efficiency in administrative adjudication involving self-represented parties. This working group began meeting in April 2015 and operates under the umbrella of the presidentially established Legal Aid Interagency Roundtable (LAIR), of which ACUS is a member.

**IV. Budget Status and Request**

**A. Proposed Appropriations Language for FY 2017**

**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., [\$3,207,000] \$3,200,000 to remain available until September 30, [2017] 2018, of which not to exceed \$1,000 is for official reception and representation expenses.

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

**Salaries and Expenses**

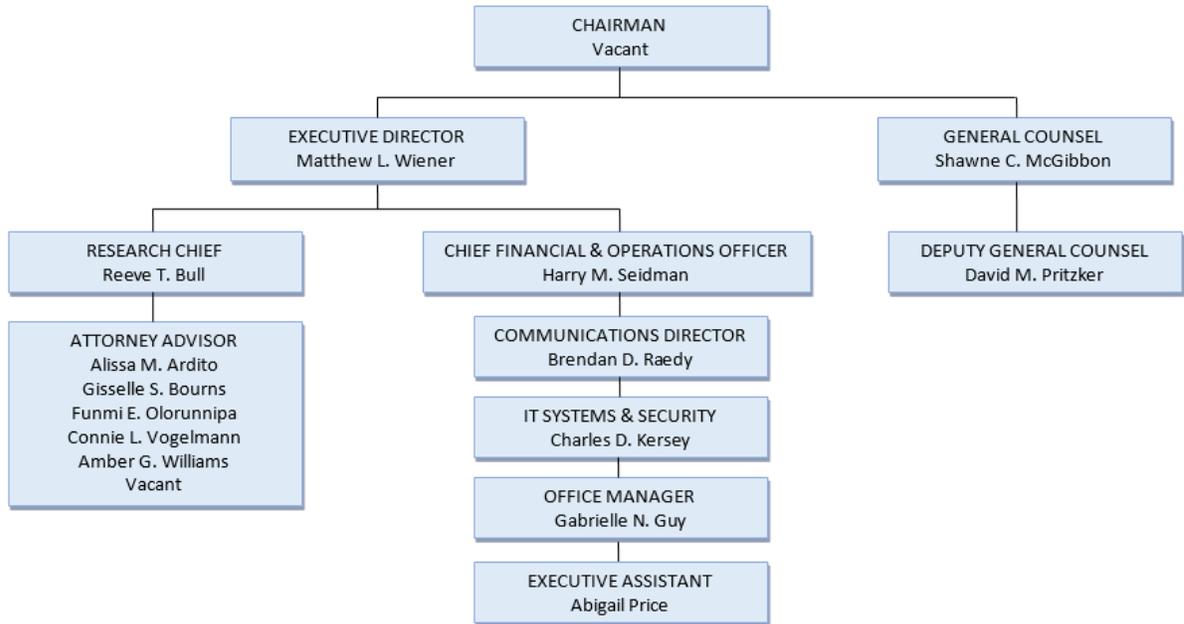
	FY 2013 Enacted	FY 2014 Enacted	FY 2015 Enacted	FY 2016 Enacted	FY 2017 Requested
Budget Authority	\$2,900,000*	\$3,000,000*	\$3,100,000*	\$3,100,000*	\$3,200,000
Authorized FTE	18	18	18	18	18
Filled FTE	15	16	15	16	16

\*FY2013-16 appropriations assumed carryover funds for total budgetary resources of \$3.2 million

**C. ACUS Organization Chart**



**ADMINISTRATIVE CONFERENCE OF THE UNITED STATES**



UPDATED JANUARY 2016

**D. Financial Summary**

	<b>FY 2015 OBLIGATIONS ACTUAL</b>	<b>FY 2016 CURRENT BUDGET</b>	<b>FY 2017 PROPOSED BUDGET</b>
Appropriation	\$3,100,000	\$3,100,000	\$3,200,000
Carry Forward	\$40,506	\$182,147	\$0
Sequestration	\$0	\$0	\$0
<b>Net Appropriation</b>	<b>\$3,140,506</b>	<b>\$3,282,147</b>	<b>\$3,200,000</b>
<i>Obligations/Expenses</i>			
Salaries, Full Time	\$1,632,707	\$1,833,343	\$1,778,000
Benefits	\$487,295	\$513,336	\$480,620
<b>Subtotal, Salaries and Benefits</b>	<b>\$2,120,002</b>	<b>\$2,346,679</b>	<b>\$2,258,620</b>
Member/ Staff Travel	\$15,419	\$22,000	\$20,000
Rent & Utilities	\$410,957	\$421,000	\$429,180
Communications/ IT	\$20,297	\$39,000	\$39,000
Printing/Reproduction	\$16,800	\$30,000	\$17,200
Consultant Contracts (Research & Projects)	\$235,265	\$250,000	\$286,000
Administrative Contracts	\$124,127	\$140,000	\$134,000
Supplies	\$14,281	\$23,468	\$16,000
Equipment	\$0	\$10,000	\$0
<b>Subtotal, Operating expenses</b>	<b>\$837,146</b>	<b>\$935,468</b>	<b>\$941,380</b>
<b>Total Obligation/Expenses</b>	<b>\$2,957,148</b>	<b>\$3,282,147</b>	<b>\$3,200,000</b>
<b>Unexpended Prior Year Funds</b>	<b>(\$1,211)</b>		
Unobligated Balance Brought Forward	\$182,147	\$0	\$0

**E. Recent Appropriations History**

<u>Salaries and Expense Account</u> (Amounts in thousands of dollars)	
<u>Fiscal Year</u>	<u>Budget Authority</u>
2012	2,900*
2013	2,900*
2014	3,000*
2015	3,100*
2016	3,100* (Enacted, President's Budget requested \$3,200)
2017	3,200 (Requested)

\*FY2012-16 appropriations assumed carryover funds for total budgetary resources of \$3.2 million

The budget request of \$3.2 million to support a full year of agency operations during FY 2017 is the same amount requested in FY 2011 through FY 2016. Although 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. Tight control of agency expenditures has allowed ACUS to utilize its two-year funding authority to carryover small balances from one fiscal year to the next; a budgeting tool that ACUS feels strongly increases spending efficiency. However, the impact of sequestration combined with the natural growth of payroll and other expenses requires a full appropriation of \$3.2 million simply to maintain current agency operations.

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 of 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.

In FY 2015, the President’s budget again requested \$3.2 million to support a full year of agency operations. The bill marked up by the Senate Committee on Appropriations Subcommittee on Financial Services and General Government maintained ACUS’s FY 2014 funding level—\$3.2 million—for FY 2015. The House of Representatives Financial Services and General Government Appropriations Act, FY 2015, H.R. 5016, which passed the House, included \$3.0 million for ACUS. OMB’s *Statement of Administration Policy* (July 14, 2014) also emphasized support for ACUS in stating “The Administration Appreciates the [House Appropriations] Committee’s support for ACUS, which would help save taxpayer dollars through ACUS recommendations” (p. 5). Ultimately, H.R. 83 became Public Law 113-235 and included a FY 2015 appropriation of \$3.1 million for ACUS. Prior year carryover funds were expected to make up the \$100,000 difference between the President’s request and Congress’s appropriation.

For FY 2016, the President’s budget again requested \$3.2 million to support a full year of agency operations. The relevant bills reported by the House and Senate Appropriations Committees governing FY 2016 appropriations for financial services and general government (S. 1910 and H.R. 2995) would have funded ACUS at \$3.1 million (with carryover authority). Through the Consolidated Appropriations Act of 2016 (Public Law 114-113), ACUS received an appropriation of \$3.1 million (with carryover authority) for FY 2016.

ACUS ended FY 2015, the most recent closed fiscal year, with a carryover balance of \$182,147 as a result of personnel vacancies in senior-level legal and administrative positions. Both positions are now filled. An appropriation of \$3.2 million would fund ACUS at the level required to cover actual operating and personnel costs necessary to sustain agency operations and to meet its statutory requirements.

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

For FY 2017, ACUS anticipates a staff of 16 filled FTEs and 2 vacant but authorized FTEs. This includes the Chairman (presidentially-appointed with Senate confirmation) and 15 permanent employees included under Object Class 11. In some past years, ACUS has filled 1-2 of its allotted FTE positions under the Intergovernmental Personnel Act or other reimbursable arrangements. ACUS may opt to use these hiring mechanisms for personnel in FY17, contingent upon agency needs and the availability of funding. The ACUS staff supports the 101 voting Members of the Conference as well as the approximately 50 other ACUS members who serve in a non-voting capacity.

## Agency Management

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 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 reviews and comments on proposed legislation and may respond to congressional inquiries and requests to ACUS.

The Chief Financial and Operations Officer is responsible for oversight of the agency's budget as well as management of daily operations and management of the agency's administrative and support staff. The position also oversees contracts for external administrative and operational support services such as payroll, human resources, and accounts payable. The position develops performance standards, financial and organizational staffing plans, and is responsible for the preparation of annual budgetary and administrative reports to Congress and OMB in accordance with applicable legislation and regulations.

The Research Chief is a Senior Attorney responsible for coordinating the activities of attorney advisors in developing new research projects and managing existing projects. This includes working in conjunction with agency leadership in developing the agency's policy recommendations, keeping abreast of issues and developments in administrative law and practice, and identifying and prioritizing issues to be studied.

## Legal Staff

The bulk of the agency's professional staff comprises eight Attorney Advisors who serve as staff counsels for ACUS's committees. These staff counsels are responsible for managing the work of committees in their development of recommendations for consideration by the full membership of ACUS. This includes reviewing research studies for projects assigned to the committees, assisting the committees 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 serve as in-house researchers on select projects in lieu of outside consultants, research and draft reports of the Office of the Chairman, and participate in the implementation of ACUS recommendations.

## Administrative and Support Staff

The Communications Director is responsible for developing and managing the agency's strategic communications program, which includes media relations, digital outreach, marketing, and special events. The Communications Director serves as the media spokesperson for ACUS and is responsible for ensuring that agency activities are communicated clearly and in a manner that maintains positive and trusting relationships with members of the media. The Communications Director also creates communications materials about the agency's work that are comprehensible to journalists, Congressional members and staff, and other stakeholders.

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 Conference members.

ACUS's FY 2017 budget request leaves vacant 2 allotted FTEs for additional legal and administrative support. As in previous budget requests, these vacancies reduce the agency's total FTE count below the allotted 18. The vacant 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 contractual subject matter expertise. During FY 2017, ACUS anticipates 16 total FTEs while maintaining salaries and benefits at their current spending level. This will be accomplished by backfilling naturally occurring senior-level vacancies (GS 13/14/15) with more junior-level attorneys (GS 9/11/12). Historically, this approach has worked well in controlling agency personnel costs while providing much-needed capacity for in-house research and project management. Therefore, the FY2017 budget maintains salaries and benefits at FY 2016 funding levels while anticipating a total 16 filled FTE positions.

For FY 2017, ACUS requests a budget of **\$1,778,000** for salary expenses associated with full-time employees (Object Class 11). This amount represents the projected cost for a total of 16 full-time positions including annual civil service cost-of-living salary increases and grade/ step increases.

A total of **\$480,620** is budgeted for personnel benefits during FY 2017 (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 academics in law, public administration, or other expert consultants. 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. 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 \$22,000. These modest contracts allow the federal government to enlist the expertise of scholars in academia and the private bar, many of whom would receive research grants or bill private clients at several multiples of the effective hourly rates the government is paying.

In FY 2017, ACUS is requesting **\$286,000** in funding for research contracts (Object Class 25). This funding will allow ACUS to maintain a research program of new projects directed toward ACUS'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 ACUS 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 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 have resulted in several Conference recommendations and significant Office of the Chairman projects for agencies such as SSA, EEOC, CMS, and DHHS. In-house staff research projects and other outreach initiatives, including inter-agency workshops, are included within ACUS's salary and administrative overhead expenses.

In addition to funding for research contracts, ACUS requests **\$134,000** 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, website hosting, mailing services, and mandated financial auditing. For FY 2017, ACUS requests \$134,000 for external administrative support including the mandated annual agency financial audit (\$29,000). This amount is consistent with recent fiscal years and a substantial reduction from earlier years as ACUS continuously reviews strategies for contracting administrative support, including using reimbursable services offered by other federal agencies, GSA schedules, and Cloud computing solutions, to find the most 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 ACUS. In FY 2017, ACUS is not requesting any funding for contract positions. However, ACUS may opt to utilize contracted and interagency personnel agreements in the future to achieve budgetary goals and obtain desired expertise.

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

Travel by Conference members and staff is budgeted at **\$20,000** for FY 2017 (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 (GSA). During FY 2017 ACUS will be responsible for **\$429,180** 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 **\$39,000** for electronic communications expenses, including telephone service and website hosting during FY 2017 (Object Class 23). This estimate is based on both ACUS's historical usage and anticipated new spending to comply with Congressional and OMB mandates to secure government IT infrastructure. For instance, both the DATA Act and ongoing FISMA compliance require purchasing expensive equipment as well as ongoing security monitoring services. ACUS has tentatively concluded that fully implementing the provisions in the DATA Act would cost the agency several hundred thousand dollars; an unaffordable amount given the agency's total annual appropriation of just over \$3 million. The agency is, therefore, likely to seek exemptions from certain provisions once the internal review and analysis of DATA Act requirements is complete. The estimated IT cost 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.

ACUS has budgeted **\$17,200** in FY 2017 for printing costs (Object Class 24). The majority of this expense, approximately \$14,000, is the cost of printing FACA-mandated notices in *The Federal Register* as required by the Federal Advisory Committee Act. The remaining balance funds annual and interim reports to Congress and the President, inter-agency reporting requirements, outreach to ACUS members and key stakeholders, and other mandated reports and publications.

ACUS's budget includes **\$16,000** for the purchase of supplies, materials, and legal publications during FY 2017 (Object Class 26). The amount includes supplies for mailing, copying, and ordinary office supplies such as paper, pens, and printer cartridges. Also budgeted are funds for the purchase of computer software, mandated anti-virus protection for the agency's IT network, library materials, and for subscriptions to relevant technical, and policy-oriented publications and online services such as Lexis Nexis.

## **V. Conclusion**

For FY 2017, ACUS submits a budget request of \$3,200,000. This level of funding will allow ACUS to pursue a full program of research projects and other programs aimed at discharging the agency's statutory responsibilities. This level of funding will also allow ACUS to pursue a robust research program that will help improve and reform government procedures. Such reforms will be designed to enhance fairness, efficiency, expedition, and public participation in the work of federal executive branch 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**

Current as of January 2016

### Steven Croley (Vice Chair)

Dr. Steven Croley is General Counsel of the Department of Energy. Prior to this, he was Deputy Assistant to the President and Deputy Counsel to the President in the Office of the White House Counsel from 2012 to 2014. Previously, Croley served as Senior Counsel to the President in the Office of the White House Counsel from 2011 to 2012 and Special Assistant to the President for Justice and Regulatory Policy at the White House Domestic Policy Council from 2010 to 2011. Since 2010, Croley has been on leave from the University of Michigan Law School where he is the Harry Burns Hutchins Collegiate Professor of Law. From 2006 to 2010, he served as a Special Assistant to the U.S. Attorney for the Eastern District of Michigan. Croley was Associate Dean for Academic Affairs at the University of Michigan Law School from 2003 to 2006. He served as a Research Consultant to the Michigan Law Revision Commission from 1996 to 1999, and previously as a Research Consultant to the Administrative Conference of the United States and the U.S. Department of Labor from 1994 to 1995. He began his teaching career as an Assistant Professor of Law at the University of Michigan Law School in 1993 before becoming a Professor of Law in 1998. Croley served as a Law Clerk for Judge Stephen Williams of the U.S. Court of Appeals for the D.C. Circuit from 1991 to 1992. He received an A.B. from the University of Michigan, a J.D. from Yale Law School, and a Ph.D. from Princeton University

### 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.

### Danielle Gray

Danielle Gray is a partner in O'Melveny & Myers LLP New York and Washington, D.C. offices. She is a member of O'Melveny's Financial Services Practice Group and provides counseling to financial institutions, health-care companies, and other consumer financial services companies on complex regulatory problems and litigation. Gray also plays an active role in the firm's Appellate and White Collar and Corporate Investigations Practices. Gray served in the administration of President Barack Obama for five years in senior legal and policy positions, most recently as Assistant to the President and Cabinet Secretary. In that role, she was responsible for policy and communications coordination among all Cabinet-level agencies and

worked closely with Executive Branch agencies on a range of high-stakes matters — from congressional investigations to the promulgation of agency rules and regulations.

### Ronald A. Klain

Ron Klain is General Counsel of Revolution LLC, an investment firm launched by AOL Co-Founder Steve Case to back disruptive, innovative companies that offer consumers more choice, convenience, and control in their lives. Prior to joining Revolution in 2005, Klain spent four years as a partner and National Practice Group Chair at O'Melveny & Myers LLP, where his practice focused on constitutional and commercial litigation, antitrust, and corporate transactions. In addition to his private sector career, Klain has devoted considerable time to public service, most recently as a senior White House aide to President Obama, and Chief of Staff to Vice President Joe Biden from 2009 to 2011. Earlier, he served as Chief of Staff for Vice President Al Gore, Chief of Staff and Counselor to Attorney General Janet Reno, Staff Director of the Senate Democratic Leadership Committee, and Chief Counsel of the Senate Judiciary Committee. Klain was also Associate Counsel to President Clinton in charge of judicial selection. Through his work on the Judiciary Committee, and in the Clinton and Obama administrations, he has played a role in the selection or confirmation of eight Supreme Court Justices. Klain began his legal career as a law clerk to Justice Byron White, for the Supreme Court's 1987 and 1988 Terms.

### 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 was sworn in as a Commissioner of the Federal Trade Commission on April 5, 2010. She was subsequently designated to serve as Chairwoman of the Federal Trade Commission effective March 4, 2013, by President Barack H. Obama. 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).

#### Jonathan Sallet

Jonathan Sallet is General Counsel at the Federal Communications Commission, a position he has had since 2013. Previously, he was a partner at O'Melveny & Myers and was a partner at Jenner & Block and Miller, Cassidy, Larroca & Lewin. In 2008, he served on President Obama's transition team for technology and economic development at the Department of Commerce. From 1993 to 1996, he served as Assistant to the Secretary and Director of the Office of Policy & Strategic Planning at the Department of Commerce. Mr. Sallet was a law clerk for United States Supreme Court Justice Lewis Powell, Jr. from 1979 to 1980, and he was a law clerk for Judge Edward Tamm on the United States Court of Appeals for the District of Columbia Circuit from 1978 to 1979. Mr. Sallet received an A.B. from Brown University and a J.D. from the University of Virginia School of Law.

#### Jane C. Sherburne

Jane C. Sherburne is the owner of Sherburne PLLC, a legal consulting firm providing strategic advice in crisis environments and in connection with regulatory policy developments. Previously, Sherburne was Senior Executive Vice President and General Counsel of BNY Mellon. She was formerly 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 following were government members as of our 64<sup>th</sup> Plenary Session held on December 3-4, 2015:

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Priya R.	Aiyar	Department of the Treasury
Scott G.	Alvarez	Federal Reserve Board
Justin	Antonipillai	Department of Commerce
David J.	Apol	Office of Government Ethics
Eric S.	Benderson	Small Business Administration
Anika	Cooper	Surface Transportation Board
Daniel	Cohen	Department of Energy
Elizabeth	Dickinson	Food and Drug Administration
Margaret	Doane	Nuclear Regulatory Commission
Bridget C.E.	Dooling	Office of Management and Budget
Kris E.	Durmer	General Services Administration
Daniel R.	Elliott	Surface Transportation Board
Chai R.	Feldblum	Equal Employment Opportunity Commission
Amy S.	Friend	Office of the Comptroller of the Currency
Meredith	Fuchs	Consumer Financial Protection Bureau
Susan Tsui	Grundmann	Merit Systems Protection Board
Janice	Hoffman	Department of Health and Human Services
James	Holzer	National Archives and Records Administration
Edward	Keable	Department of the Interior
Chris	Kirkpatrick	Commodity Futures Trading Commission
Alice	Kottmyer	Department of State
Clara E.	Kuehn	International Trade Commission
Robert	Lesnick	Federal Mine Safety and Health Review Commission

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Andy	Liu	Social Security Administration
Nadine	Mancini	Occupational Safety & Health Review Commission
Christina E.	McDonald	Department of Homeland Security
Elizabeth A. M.	McFadden	Department of Education
Christopher J.	Meade	Department of Treasury
David Morris	Michaels, PhD, MPH	Occupational Safety and Health Administration
Richard J.	Osterman, Jr.	Federal Deposit Insurance Corporation
Alfred M.	Pollard	Federal Housing Finance Agency
Carrie F.	Ricci	Department of Agriculture
Bob	Schiff	National Labor Relations Board
William	Schultz	Department of Health and Human Services
Robert A.	Shapiro	Department of Labor
Elisabeth S.	Shellan	Postal Regulatory Commission
David	Shonka	Federal Trade Commission
Carol Ann	Siciliano	Environmental Protection Agency
Kevin M.	Simpson	Department of Housing and Urban Development
Anne K.	Small	Securities and Exchange Commission
Lon	Smith	Internal Revenue Service
Jennifer	Tatel	Federal Communications Commission
Robert S.	Taylor	Department of Defense
Kathryn B.	Thomson	Department of Transportation
Stephanie	Tsacoumis	Consumer Product Safety Commission
Elana J.	Tyrangiel	Department of Justice
Christy	Walsh	Federal Energy Regulatory Commission
Tyler	Wood	Federal Maritime Commission
Vacant	Vacant	Department of Veterans Affairs
Vacant	Vacant	Federal Communications Commission

Vacant	Vacant	Federal Election Commission
Vacant	Vacant	Office of Science & Technology Policy

### Appendix C: Public Members

The following were public members as of our 63<sup>rd</sup> Plenary Session held on December 3-4, 2015:

Gary	Bass	The Bauman Foundation
Boris	Bershteyn	Skadden, Arps, Slate, Meagher & Flom LLP
James Ming	Chen	Michigan State University College of Law
John F.	Cooney	Venable LLP
Viet D.	Dinh	Georgetown University Law Center
Susan E.	Dudley	Trachtenberg School of Public Policy and Public Administration, The George Washington University
Cynthia R.	Farina	Cornell Law School
Michael	Fitzpatrick	General Electric Company
David C.	Frederick	Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
Caroline	Fredrickson	American Constitution Society for Law and Policy
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
Demetrios L.	Kouzoukas	United HealthCare Medicare & Retirement
Ronald M.	Levin	Washington University School of Law
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
Anne Joseph	O'Connell	UC Berkeley School of Law
David W.	Ogden	Wilmer, Cutler, Pickering Hale and Dorr
Lee Liberman	Otis	The Federalist Society for Law & Public Policy Studies
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 LLP
Catherine M.	Sharkey	New York University School of Law
Jonathan	Siegel	George Washington University Law School
Kate Comerford	Todd	U.S. Chamber Litigation Center
James J.	Tozzi	Center for Regulatory Effectiveness
John	Vittone	Retired
Allison M.	Zieve	Public Citizen Litigation Group

#### **Appendix D: Liaison Representatives, Senior Fellows and Special Counsel**

The following were liaison representatives as of our 63<sup>rd</sup> Plenary Session held on December 3-4, 2015:

Krista	Boyd	U.S. House of Representatives, Committee on Oversight and Government Reform
Amy P.	Bunk	Office of the Federal Register
Charles	Center	Federal Labor Relations Authority
Tobias	Dorsey	United States Sentencing Commission

Ronald S.	Flagg	Legal Services Corporation
Daniel	Flores	U.S. House of Representatives, Committee on the Judiciary
D. Randall	Frye	Association of Administrative Law Judges
Lu-Ann	Glaser	Federal Mediation and Conciliation Service
Michael E.	Horowitz	Council of the Inspectors General on Integrity and Efficiency
Susan	Jensen	U.S. House of Representatives, Committee on the Judiciary
Brett M.	Kavanaugh	U.S. Court of Appeals for the DC Circuit
Jean	King	Department of Justice, Executive Office of Immigration Review
Charles	Maresca	Small Business Administration, Office of Advocacy
Thomas P.	McCarthy	Federal Mine Safety and Health Review
Mary C.	McQueen	National Center for State Courts
Stephanie	Middleton	The American Law Institute
Jeffrey P.	Miner	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
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
Judith R.	Starr	Pension Benefit Guaranty Corporation
Max	Stier	Partnership For Public Service
Alan	Swendiman	Immigration and Customs Enforcement

Stephen	Wood	National Highway Traffic Safety Administration
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The following were senior fellows as of our 63<sup>rd</sup> Plenary Session held on December 3-4, 2015:

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 for the Second Circuit
Richard J.	Leighton	Keller and Heckman LLP
Dan	Levinson	Council of the Inspectors General on Integrity and Efficiency
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	Retired
Kenneth W.	Starr	Baylor University
Peter L.	Strauss	Columbia Law School
Paul R.	Verkuil	Center for American Progress
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 Circuit

**Special Counsel**

Jeffrey	Lubbers	American University; Washington College of Law
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