



STRATEGIC PLAN
FY 2011-2015
AND
PERFORMANCE GOALS

June 2011

I. Overview

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

The statutory mandate of ACUS is (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.

After a 15-year hiatus, ACUS resumed operations in April 2010 upon the confirmation of the Chairman by the Senate. The latter half of FY 2010 was a startup period for the Conference. The President appointed 10 Council members and designated federal departments and agencies for membership, and the Chairman and the Council named the other statutory members of the Conference. The Administrative Conference also hired staff and secured office space, and commenced an initial program of research projects to carry out the authorizing statute’s mission of improving administrative procedure. In FY 2011, the Conference commenced full operations. In December 2010, the Conference met in plenary session for the first time since 1995. At this session, the full membership discussed strategic goals for ACUS.

II. History and Structure of the Administrative Conference

A. A Brief History of ACUS

Following bipartisan endorsement of the work of two temporary Administrative Conferences during the Eisenhower and Kennedy Administrations, Congress enacted the Administrative Conference Act of 1964 which placed the work of ACUS on a more permanent footing. The Act codified the prior structure for these conferences, which emphasized collaboration among a wide array of federal agencies, as well as experts in administrative law and regulation from the private sector and academia, reflecting a wide diversity of views – all of whom serve without any additional compensation. This collaborative effort is designed to produce consensus, nonpartisan recommendations for improvement in federal administrative processes, which, more than ever, affect every sector of our National economy and the lives of American citizens. Judge E. Barrett Prettyman, who had served as chairman of both temporary conferences, explained at ACUS’ opening plenary session in 1968 that the members of the Conference “have the opportunity to make the administrative part of a democratic system of government work.”¹

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Administrative Conference of the United States, First Plenary Session, May 27, 1968, Tr. at 14.

From its beginning in 1968 until its defunding in 1995, ACUS adopted approximately 200 such recommendations, based on careful study and the informed deliberations of its members in an open process that encouraged public input. A complete list of these recommendations was published at 60 Fed. Reg. 56312 (1995). Congress enacted a number of them into law, and agencies and courts have adopted or relied upon many others. ACUS also played a leading role in developing and securing legislation to promote, and provided training in, “alternative dispute resolution” (ADR) techniques for eliminating excessive litigation costs and long delays in Federal agency programs, as well as “negotiated rulemaking” processes for consensual resolution of disputes in rulemaking.

The work of ACUS has received consistent support from a wide range of outside sources. As the Congressional Research Service noted in 2007, ACUS provided “nonpartisan, nonbiased, comprehensive, and practical assessments and guidance with respect to a wide range of agency processes, procedures, and practices,” based on “a meticulous vetting process, which gave its recommendations credence.”² Justice Scalia (a former Chairman of ACUS) has viewed the agency as “a unique combination of talents from the academic world, from within the executive branch . . . and . . . from the private bar, especially lawyers particularly familiar with administrative law.”³ Similarly, Justice Breyer (a former liaison representative to ACUS from the Judicial Conference) has described the agency as “a unique organization, carrying out work that is important and beneficial to the average American, at low cost,” and that “can make it easier for citizens to understand what government agencies are doing to prevent arbitrary government actions that could cause harm.”⁴ In recently 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.⁵

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 2008.⁶ ACUS received a startup appropriation of \$1.5 million in both FY 2009 and FY 2010, and in FY 2011 received an appropriation of \$2.75 million. Congress is currently considering a \$3.2 million appropriation for ACUS in FY 2012, as proposed in the President’s budget.

² Statement of Morton Rosenberg Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary Concerning “Reauthorization of the Administrative Conference of the United States,” Sept. 19, 2007, at 2-3.

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

⁴ *Id.* at 15.

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

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

B. Membership

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

1. Chairman

The Chairman is appointed by the President and confirmed by the Senate. Paul R. Verkuil, the tenth Chairman of the Administrative Conference of the United States, was sworn in by Vice President Biden on April 6, 2010. Mr. Verkuil is a well-known administrative law teacher and scholar who has coauthored a leading treatise, *Administrative Law and Process*, now in its fifth edition, several other books, and over 65 articles on the general topic of public law and regulation.

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

2. Council

The Council comprises the Chairman and ten additional members appointed by the President – five government officials and five private citizens. The Council serves as the board of directors for ACUS and is bipartisan. On July 8, 2010, President Obama appointed the following members of the Council:

Government Members

Preeta D. Bansal (Vice Chair)
Thomasina Rogers
Michael Fitzpatrick
Julius Genachowski
Thomas Perez

Public Members

Ronald A. Cass
Mariano-Florentino Cuéllar
Theodore Olson
Jane C. Sherburne
Patricia McGowan Wald

Biographies of Council members are attached in Appendix A.

3. Assembly

The 101-member Assembly of ACUS, which meets in plenary session twice a year, comprises the Chairman, Council, and 90 other members. 50 of these members are government officials and 40 are drawn from outside government. The Assembly is chartered as an advisory committee under the Federal Advisory Committee Act.

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

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

Beyond the formal membership, under provisions of the Conference's bylaws, deliberations of the Conference are further informed by the participation (without a vote) of "liaison representatives" from several additional federal agencies, the judiciary, and professional associations, and "senior fellows" who are former Chairmen and carefully selected former members. The lists of these liaison representatives and senior fellows are attached in Appendix D. Notably, two Associate Justices of the United States Supreme Court – Justice Antonin Scalia, a former ACUS Chair, and Justice Stephen Breyer, a former ACUS liaison representative – have agreed to participate in the Conference as senior fellows.

C. Research and Recommendations Process

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

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

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

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

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

5. Committee Consideration: The report is considered by a committee composed of members of the Administrative Conference, including liaison representatives and senior fellows. The committee debates the report and formulates a recommendation on the subject of the report, often using the researcher's proposed recommendations as a starting point. Depending on the topic, the recommendation may be directed to Congress (recommending new legislation); it may recommend that agencies adopt new rules; it may recommend that agencies change their practices or procedures without the need for rulemaking; it may recommend an Executive Order or a change in executive practices, or it may be directed to the judiciary in its judicial review function. In all cases, Conference recommendations are limited to procedural matters, including agency organization or management, and do not address substantive issues.

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

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

When a project is undertaken, the Director of Research and Policy assigns an attorney on the ACUS staff to work closely with the consultant to ensure that the report and accompanying recommendations are in appropriate form to be considered by one of the

standing committees of the Conference. Each member of the Conference is assigned to one of these committees, which cover specific topics (e.g., adjudication, administration and management, collaborative governance, regulation, rulemaking, and judicial review). The staff attorney assigned to the project works with the committee chairman and members to ensure that any necessary revisions are incorporated in the report and recommendations.

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

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

D. Other Statutory Functions

In addition to issuing formal recommendations, the Administrative Conference and its Chairman perform other statutory functions. For example, the Act authorizes the Chairman to encourage federal agencies to adopt the recommendations of the Conference. The Conference is required to transmit to the President and to Congress an annual report and such interim reports as the Chairman considers desirable concerning the activities of the Conference, including reports on the implementation of its recommendations. The Conference also may collect information and statistics from departments and agencies and publish such reports as it considers useful for evaluating and improving administrative processes or summarizing developments in the implementation of statutes applicable to agencies generally (such as the Administrative Procedure Act, the Paperwork Reduction Act, the Federal Advisory Committee Act, and the Congressional Review Act). Finally, the Conference serves as a forum for the interchange among departments and agencies of information that may be useful in improving administrative practices and procedures and holds public forums, sometimes with other entities, to discuss matters of public interest. These forums often lead to the implementation of "best practices" among agencies once common administrative problems are revealed.

III. Strategic Plan

During the first year of operations, the Chairman and staff have worked to develop a strategic direction for the Administrative Conference that would fulfill its statutory mission of improving administrative procedure and meet the expectations of Congress. Of particular importance in developing these strategic goals is the Report of the Administrative Law, Process, and Procedure Project for the 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 full membership at the December 2010 plenary session. Members provided feedback and suggested additional goals, and the Chairman has identified the following mission and strategic goals to guide the Administrative Conference based on these discussions.

ACUS Mission Statement

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

ACUS Vision and Values

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

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

The *fairness* value derives from law and employs principles imbedded in the Administrative Procedure Act and the due process clause of the Constitution.

The *efficiency* value derives from economics and looks at how procedures employed by the agency achieve the public purposes the regulations are intended to serve. The question is whether the agency procedures and management techniques reflect optimum resource allocations, not whether the benefits of the underlying substantive regulations exceed their costs.

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

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

ACUS Strategic Goals

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

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

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

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

IV. Performance Goals

In accordance with OMB guidance, ACUS has identified results-oriented performance goals for FY 2011 and FY 2012 that are based on the agency's strategic goals.

Strategic Goal: Participation

Expand public participation and increase transparency

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

Performance goals:

- 1) *Participation*: Identify and encourage more widespread adoption of new methods for public input into the rulemaking process. Results measure: number of comments received, adoption of models with greater opportunities for dialogue.
- 2) *Transparency*: Pilot virtual online meetings of federal advisory committees, using technology to provide public access and transparency, and recommend proposed regulatory and legislative changes to update the Federal Advisory Committee Act for the Internet era. Results measure: new guidance and legislation on FACA.
- 3) *Access to law*: Foster placing all primary legal materials on the Web, promote common standards and formats for federal agencies to post searchable, accessible, and complete records of adjudications. Results measure: increasing number of primary legal materials available online.

Strategic Goal: Collaboration

Promote collaborative governance

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

Performance Goals:

- 1) *Public-private partnerships*: Develop guidance for agencies to ensure accountability when reliant on non-government personnel to fulfill their mission. Results measure: Published guidance and/or recommendation on management of public-private partnerships.
- 2) *Federalism*: Reform agency procedures to promote better collaboration between federal and state and local officials in the regulatory process. Results measure: Published guidance and/or recommendation on agency federalism procedures.
- 3) *Alternative dispute resolution*: Convene conference to review alternative dispute resolution programs, identify improvements to ADR Act, and develop and advocate ADR reform legislation. Results measure: conference leading to recommendations, cost savings from recommended improvements, progress of legislation.

Strategic Goal: Innovation

Identify innovations to make government procedures more efficient, fair, timely, and data-driven

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

Performance goals:

- 1) *Efficiency*: The Administrative Conference will work to modernize the inspections process by exploring innovations like audited self-regulation which increase the government's capacity without increasing costs. Results measure: increase in inspection activity, decrease in cost per inspection.
- 2) *Timeliness*: Because justice delayed can be justice denied, the Administrative Conference will work across federal agencies to reduce backlogs and unnecessary delays in case and rule processing through better use of technology such as video conferencing. Results measure: increase in alternative hearing methods, decrease in backlogs.
- 3) *Fairness*: The Administrative Conference will identify obstacles that prevent access to the government's regulatory and administrative activities, including procedural legal

barriers and reduced access to technology, and seek to eliminate these barriers. Results measure: Adoption of recommendation

- 4) *Data-driven*: The Administrative Conference will study best practices for agencies to use in considering scientific and empirical data during the rulemaking process, and will make a recommendation to agencies on best practices for scientific integrity. Results measure: achieving consensus recommendation, agency implementation of recommendation.
- 5) *Agency Management*: As a new agency not constrained by outdated infrastructure and processes, the Administrative Conference will be an innovative test lab for experiments in agency management and government performance, focusing on flexible and transparent information technology, minimal overhead and administrative costs, and drawing on top talent through innovative personnel policies and partnerships. Results measure: cost savings in technology, employee survey, clean audit opinion.