

**From: Susan E. Dudley (Public Member)**  
**To: Assembly of the Administrative Conference**  
**Re: Comments on Proposed International Regulatory Cooperation Recommendation**  
**Date: November 23, 2011**

I am concerned that some of the changes made to the draft recommendations at the Committee on Regulation meeting on October 25, 2011 dilute the value of the proposed recommendation to an extent that it will contribute little to the discussion on international regulatory cooperation. If these recommendations go no further than the 1991 recommendations to encourage agencies to consider international effects in developing and enforcing regulation, I question the value of issuing them at all.

**Overarching concern with changes.** ACUS should support international regulatory cooperation and competitiveness because open markets make US citizens better off, and should not limit its endorsement exclusively to situations where cooperation would further (as opposed to not conflict with) narrow agency missions (the implication of clauses added to recommendations 1, 2, 3 and 7).

### **Comments on Individual Recommendations**

**Recommendation 1.** Page 5, Line 112: I would delete the phrase “where consistent with advancing that mission.” The previous phrase, “when appropriate to further the agencies’ regulatory missions,” is sufficient.

#### **Recommendation 2.**

Page 5, Line 116: I would replace “could also consider” with “should consider.” These are international agreements and Presidential guidance, and ACUS adds nothing by saying agencies “could” consider them.

Page 5, Line 120: I would add “and United States competitiveness” after “agency missions.” This language was included in the recommendation considered at the October 25 committee meeting, and is important. ACUS should support competitiveness as well as furthering agency missions.

Page 6, Lines 121–22: I would replace “where in furtherance of” with “absent clear conflict with,” in line with the language used in the recommendation considered at the October 25 committee meeting.

**Recommendation 3.** Page 6, Line 125: Delete inserted phrase, “and that cooperation would further their mission.” This phrase changes the meaning of the recommendation to suggest that agencies should only cooperate if cooperation furthers their narrow mission, even if cooperation could bring large benefits to US citizens without detracting from an agency’s mission. While I

prefer the language of the draft recommendation considered at the October 25 committee meeting, which simply recommended that agencies cooperate with foreign authorities when they have legal authority and an interest in doing so, I could accept “would not detract from” in lieu of “would further” their mission.

**Recommendation 4.**

Page 6, Lines 144–45: For the same reason stated above, I would drop any reference to maintaining standards and practices “that are no less effective than United States equivalents” and instead refer to maintaining “high quality and appropriate” standards and practices, as in the recommendation considered at the October 25 committee meeting. That language provides agencies sufficient discretion.

Page 6, Line 146: Delete “consider.” The addition of “and practicable” already provides agencies discretion, and adding “consider” makes the recommendation meaningless.

**Recommendation 5.** Page 7, Line 162: I would delete the phrase “that are no less effective than United States equivalents” and instead refer to “high quality and appropriate” standards and practices, in accordance with the language used in the draft recommendation considered at the October 25 committee meeting.

**Recommendation 6.** Page 7, Line 169: The recommendation considered at the October 25 committee meeting contained the phrase “data-driven” prior to the word “decisionmaking.” I would reinstate that language. ACUS should not encourage US regulators to engage with foreign authorities to promote decision-making that is not data-driven. Should ACUS promote decisions that are politically-driven, culturally-driven, emotionally-driven?

**Recommendation 7.**

Page 8, Line 175: The draft recommendation considered at the October 25 committee meeting contained the following sentence at the beginning of the seventh recommendation: “Agency interactions with their foreign counterparts should generally be transparent, subject to appropriate exceptions to protect law enforcement, trade secret, or similar sensitive information.” I would re-insert that sentence at the beginning of this recommendation.

Page 8, Lines 178–79: I would delete the phrase “where it would further” and replace it with “consistent with,” returning to the language contained in the recommendation considered at the October 25 committee meeting. Alternatively, I could support replacing “where it would further” with “where it would not impede.”