



## **Request for Proposals—October 15, 2014**

### **SOCIAL SECURITY ADMINISTRATION FEDERAL COURTS ANALYSIS**

The Administrative Conference is seeking a consultant or consultants to undertake a research project that will study federal court review of social security disability insurance and supplemental security income cases and make related recommendations.

**Proposals are due by 6:00 p.m. Eastern Time on November 7, 2014.**

#### **Background.**

The Social Security Administration (SSA) administers the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs, respectively Titles II and XVI of the Social Security Act. Under these programs, the process for determining whether a claimant is disabled has several steps. State agencies make initial disability determinations using federal guidelines. If benefits are denied, claimants may request reconsideration. If benefits are denied after reconsideration, claimants may request a hearing before a federal administrative law judge (ALJ). Claimants may seek review of the ALJ's decision before SSA's Appeals Council. The Council's decision—or, if the Council denies review, the ALJ's decision—becomes the final decision of SSA.

A claimant may appeal an adverse SSA decision to a federal district court. In 2013, 19,977 social security disability appeals constituted about seven percent of the 278,442 civil cases filed in the district courts nationwide.<sup>1</sup> Claimants are required to file an appeal in the federal district where they reside. Although all federal district courts follow the Federal Rules of Civil Procedure, each judicial district may prescribe local rules and policies governing practice and procedure. Many have done just that for social security disability appeals. The result has been substantial variance among district courts in the procedure to which these appeals are subject. Today, the overall remand rate in social security cases heard in the federal courts is approximately 45 percent.<sup>2</sup> The remand rate in individual district courts varies as well.

A claimant may seek review of a district court decision in a federal court of appeals. Each court of appeals sets precedent for future social security cases in the district courts in their jurisdictions. When a court of appeals issues an opinion that is at variance with SSA's national policies in adjudicating disability claims, SSA will issue an acquiescence ruling explaining how SSA will apply that opinion, including to other cases in the same circuit involving the same issues. Currently, SSA has 45 active acquiescence rulings, and they focus on a wide range of policies. They do not have the force and effect of the law or regulations, but they are binding on all components of SSA under SSA's regulations (20 CFR § 402.35(b)(2)). Acquiescence rulings aside, SSA strives for

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<sup>1</sup> ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS, Table C-2 (2013), <http://www.uscourts.gov/Statistics/JudicialBusiness/2013.aspx>.

<sup>2</sup> Letter from Carolyn W. Colvin, Acting Comm. Soc. Sec. Admin. to the Hon. Harold Rogers, Chairman, Comm. on Appropriations U.S. House of Representatives 10 (2013), *available at* <http://www.ssa.gov/budget/FY13Files/2013COPCombined.pdf>.



consistent and accurate application of regulations and policies at all levels of adjudication, including on judicial review.

**Project Description.**

The Conference seeks proposals for a comprehensive study of SSA’s litigation in the federal courts involving social security disability claims. The study should provide an independent review that analyzes the role of courts in reviewing SSA disability decisions and should consider measures that SSA could take to reduce the number of cases remanded to it by courts. The study should also address significant observed variances among federal courts in decisional outcomes, case management and other procedures for social security cases, the timing of review, and judicial application of agency policies and procedures.

The study should use empirical methods and should gather and analyze data regarding judicial review. The Conference will facilitate access to relevant SSA data, which may be subject to access and use restrictions. The Conference will also facilitate access to SSA personnel for interviews or surveys, if necessary, and may assist in locating, identifying, and obtaining additional relevant information or data, such as copies of judicial local rules. Despite this assistance, it is expected that supplemental research will be necessary. Personal information identifiable to any specific private person should not be collected through supplemental research.

The study should:

- Review and analyze the Social Security Act, as well as SSA’s implementing regulations, policies, and practices for adjudicating social security disability claims, including the standards of appellate review. Relevant academic literature should also be reviewed and analyzed.
- Evaluate federal court interpretations and applications of SSA’s rules and regulations governing social security disability claims, noting patterns that show consistencies or inconsistencies among appellate and district courts.
- Survey federal court practices and procedures for handling social security cases—including the Federal Rules of Civil Procedure and local rules and policies of individual federal courts—to identify varying approaches and differential impacts.
- Examine SSA’s acquiescence rulings and how the agency applies decisions of federal appellate courts that are at variance with SSA’s national policies.
- Survey or interview federal officials responsible for defending the agency’s litigation or administering its programs, as well as judges and lawyers, as appropriate.

Given the breadth of the potential research, project submissions should offer concrete substantive proposals to address these topics and frame the scope of work.

**How to Submit a Proposal.**

Proposals are invited from qualified persons who would like to serve as a research consultant on this project. The Conference anticipates that the principal researcher would likely be a legal expert. The Conference anticipates engaging an additional researcher with statistical expertise to work together with the principal researcher on this project. We encourage joint submissions, particularly those that include one or more researchers with a background in political science or empirical legal



research, but will award separate contracts. All proposals will be considered by the Conference staff and the Chairman.

The consultant's study should result in a research report that is delivered first for review by the Conference staff and Chairman and then forwarded to SSA for consideration as a report from the Office of the Chairman. The report should provide proposed recommendations. The consultant will work with Conference staff and SSA to refine and further shape the report and may work with Conference staff to revise the recommendations.

The report may also be forwarded to a committee of the Conference membership for consideration. The consultant would then work with Conference staff and the committee as the committee debates and considers its own recommendations based on the research report. These recommendations may be directed to SSA, other administrative agencies, the President, Congress, or the Judicial Conference of the United States. The committee's recommendation, if any, would then be forwarded to the Council of the Conference and ultimately to the full Conference membership meeting in plenary session. If approved at the plenary session, the recommendation will become an official recommendation of the Administrative Conference. (For a general understanding of how the Conference is organized, see 5 U.S.C. §§ 591-596.)

The Conference will provide a consulting fee for this study plus a negotiable budget for related research and travel expenses, if any. The Conference also typically encourages its consultants to publish the results of their studies in journals or other publications. Thus, working as a Conference consultant provides some compensation, a publication opportunity, and the opportunity to work with Conference members from the judiciary, federal agencies, academia, the private sector, and public interest organizations to help shape and improve administrative law, procedure, and practice.

Those submitting proposals should understand that, in addition to the work involved in researching and writing the consultant's report, the consultant will (in most cases) need to work with Conference staff and committees of the Conference to develop a recommendation based on the report. The consulting fee is not designed to match a consultant's normal consulting rates. It is a significant public service to serve as a consultant to the Conference.

To submit a proposal to serve as the Conference's consultant on this project, you must:

- Send an e-mail to Attorney Advisor Stephanie J. Tatham, at [statham@acus.gov](mailto:statham@acus.gov). Proposals must be submitted by e-mail.
- Include the phrase "ACUS Project Proposal" in the subject line of your e-mail.

In the body of your e-mail or in an attachment, please:

- State the name of the project for which you are submitting a proposal: "SSA Federal Courts Analysis."
- Explain why you would be well qualified to work on the project. Include your curriculum vitae or other summary of relevant experience.
- Explain your research methodology and how you would develop recommendations based on the research. There is no required format, and 2-4 pages should probably suffice.



- State how much funding you would need for the project, keeping in mind that the consulting fee per consultant should not exceed \$25,000. The amount of the consulting fee and expenses is not a critical factor in the contract award; the quality of the proposal and the consultant’s ability to carry out the study will be the most important factors. There may be some flexibility in the budget based on factors relating to the proposal (*e.g.*, the need for research assistance and empirical or interviewing work, the consultant’s location relative to Washington, DC, or whether the project is forwarded to a committee), so your proposal should suggest any special needs in this regard.
- Propose a schedule for the project deliverables. This project requires submission of a draft outline, a final outline, a draft report, and a final report. Multiple draft reports may be necessary based on input from the Chairman, staff, or SSA; nonetheless, the draft report should be substantially complete. The timeline for deliverables should substantially adhere to the schedule below, but high quality research leading to a well-written report will be the prime consideration.

<b>Deliverable</b>	<b>Due Date</b>
Draft Project Outline	Contract award date + 30 Days
Final Project Outline	Draft Project Outline + 14 Days
Draft Report	Final Project Outline + 180 Days
Final Report	Draft Final Report + 30 days

An August 2015 submission date for the draft report is preferred, so that a committee recommendation, if any, can be targeted for completion at a plenary session of the Conference held in December 2015.

**Submit your proposal by 6:00 p.m. Eastern Time on October 31, 2014.** Only proposals submitted by the stated deadline are guaranteed to receive consideration. Proposals may also be submitted or amended at any time until the award of the contract, and the Conference may consider any proposals or amended proposals received at any time before the award of the contract.

Proposals will be evaluated based on:

- The qualifications and experience of the researcher(s) and knowledge of literature in the field (if applicable);
- The quality and clarity of the proposal;
- The timeline of the proposal and the ability of the researcher(s) to perform the research in a timely manner;
- The likelihood that the research will contribute to greater understanding of the subject matter studied and lead to an Administrative Conference recommendation that will improve administrative procedures in the federal government; and
- The cost of the proposal (although the other factors are more important).

Failure to follow the above instructions may result in your proposal not being considered. Including the phrase “ACUS Project Proposal” in the subject line of your e-mail is important so that your proposal can be easily identified.