ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

FY 2025
CONGRESSIONAL BUDGET JUSTIFICATION

March 11, 2024

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I. EXECUTIVE SUMMARY

The President's budget for FY 2025 requests $3.523 million for the Administrative Conference of the United States (ACUS). ACUS submits this justification in support of the administration's request. $3.523 million will enable ACUS to undertake a full slate of projects aimed at improving, in the words of the agency's enabling statute, "the efficiency, adequacy, and fairness of administrative procedure" (5 U.S.C. § 594) and will enable ACUS to continue working with the Congress, President, agencies, and the judiciary to implement its recommendations.

ACUS is a unique, executive-branch agency that brings together federal agencies and outside experts to make government work better by cooperatively studying mutual problems, exchanging information, and developing recommendations for action by the President, Congress, federal agencies, and the Judicial Conference of the United States to improve the efficiency, adequacy, and fairness of federal agency rulemaking, adjudication, licensing, and investigation.

Officials in all three branches of government, as well as the public, routinely rely on the resources that ACUS provides to improve federal administrative procedure. Congress has enacted many ACUS recommendations into law, in whole or in part, and agencies and courts have adopted or relied on others. Policymakers regularly consult the many sourcebooks, reports, fact sheets, and other publications that ACUS produces; participate in interagency roundtables, public forums, and other events that ACUS organizes; and rely on nonpartisan advice and technical assistance that ACUS provides to agencies and Congress.

As a former Chairman and Ranking Member of the House Judiciary Committee emphasized: "there is no other independent, non-partisan agency" on which "Congress can call . . . to evaluate ways to improve the regulatory process." He went on to say that the agency's "excellent work" has ensured that "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."

ACUS has a demonstrated record, as no other agency does, of improving the efficiency, adequacy, and fairness of federal administrative programs for the benefit of the American public. In FY 2023 and the first quarter of FY 2024, ACUS adopted eleven recommendations to improve federal administrative processes and took substantial steps to:

- Improve access to federal programs,
- Promote public participation in rulemaking and other agency policymaking,
- Advance trustworthy artificial intelligence (AI) and promote fair and effective uses of technology in administrative processes,
- Advance equity and improve access to justice for underserved communities,
- Encourage the public availability of significant agency information and materials, and
- Provide vital information to Congress about agency programs.

The requested budget of $3.523 million will enable ACUS to undertake a research and outreach program aimed at further improving federal administrative procedures and encouraging participation, collaboration, and innovation in the operation of federal programs.

II. ABOUT THE ADMINISTRATIVE CONFERENCE

A. HISTORY AND PURPOSE

Following bipartisan endorsement of the work of two temporary administrative conferences during the Eisenhower and Kennedy administrations, Congress enacted the Administrative Conference Act in 1964. The Act codified the structure of these conferences, which emphasized collaboration among a wide array of federal agencies, reliance on administrative law and regulatory experts from the private sector (including prominent academics), and the participation of public members representing diverse views. This collaborative effort is designed to produce consensus-based, nonpartisan recommendations for improving federal administrative processes, which affect every sector of our national economy and the lives of American citizens.

Since its establishment in 1968, ACUS has adopted hundreds of recommendations, each of them based on careful study and the informed deliberations of its members in an open process that encourages public input. Congress has enacted many ACUS recommendations into law, in whole or in part, and agencies and courts have adopted or relied on others.

Recommendations are designed, in the words of the Administrative Conference Act, to help federal agencies "protect private rights," carry out regulatory activities "expeditiously in the public interest," "promote more effective participation and efficiency in the rulemaking process," "reduce unnecessary litigation in the regulatory process," "improve the use of science" in the regulatory process, and "improve the effectiveness of laws applicable" to that process (5 U.S.C. § 591). All recommendations are published in the *Federal Register* and online at www.acus.gov.

ACUS also provides for the exchange of information among agencies, publishes sourcebooks of enormous value to both the government and public, provides nonpartisan advice to agencies and Congress, and issues reports designed to improve agency regulatory programs. Agencies frequently consult and rely on these materials to improve their administrative processes.

ACUS's oversight committees in Congress have expressed strong bipartisan support for its work. Members of Congress have characterized ACUS as "a highly respected nonpartisan agency" and noted the key role it "has historically played in helping Congress identify inefficiencies among the Federal agencies."

Congress calls upon ACUS to conduct research on issues of great importance. The John D. Dingell, Jr. Conservation, Management, and Recreation Act, for example, requires ACUS to maintain an online database of attorney's fees awarded in litigation against the federal

government and submit an annual report to Congress on the amount of fees awarded during the preceding fiscal year. ACUS released its first report and data for FY 2019 in March 2020 and has continued to release new data and reports annually.

The Strengthening Protections for Social Security Beneficiaries Act of 2018 required ACUS to prepare a report for the Social Security Administration with recommendations to improve the program under which SSA appoints legal representatives for beneficiaries who cannot manage their own finances. ACUS submitted its report to SSA in June 2020.

Recognizing the value of ACUS's work, a bipartisan group of six senators on the Senate Judiciary Committee recently requested that the U.S. Patent and Trademark Office engage and fund ACUS to study whether and how to establish a small claims tribunal for patent cases. Working with USPTO, ACUS completed and delivered its report in April 2023.

Members of the federal judiciary from diverse perspectives, too, have expressed strong support for ACUS. Both Justice Breyer and the late Justice Scalia testified before a congressional committee in 2010 in support of ACUS's authorization. During his testimony, Justice Scalia called ACUS one of the federal government's "best bargains for the buck."

B. STRATEGIC PRIORITIES AND GOALS (2024-2026)

Mission

The Administrative Conference of the United States brings together federal agencies and outside experts to make government work better by cooperatively studying mutual problems, exchanging information, and developing recommendations for action by the President, Congress, federal agencies, and the Judicial Conference of the United States to improve the fairness, adequacy, and efficiency of federal agency rulemaking, adjudication, licensing, and investigation.

Strategic Goals

Participation	The Conference will engage with a wide range of stakeholders who participate in or are affected by federal administrative programs and promote participation in its activities by such individuals and groups.
Collaboration	The Conference will bring together and work with agencies and outside experts to share information and identify opportunities for improving administrative procedure.
Innovation	The Conference will identify problems and recommend solutions that will make government procedures more efficient, timely, fair, accurate, and data-driven.

Education	The Conference will provide opportunities for government officials and the public to access information about ways to improve federal administrative procedures and guidance on how best to implement them.

Vision and Values

Under its statutory authorization, ACUS is responsible for studying "the efficiency, adequacy, and fairness of administrative procedure" (5 U.S.C. § 594). These three procedural values, which reflect legal and social science performance measures, guide ACUS's work.

ACUS strives to improve the efficiency, adequacy, and fairness of federal administrative procedure by:

- Promoting more effective public participation
- Reducing unnecessary litigation
- Improving the use of science, and
- Improving the effectiveness of laws applicable to the administration of federal programs.

ACUS's core values include:

Excellence	Developing high-quality resources that federal policymakers can use effectively to improve administrative procedure.
Integrity	Conduct professional, objective, nonpartisan, non-ideological, collaborative, and consensus-driven work.
Diversity	Advancement of diversity, equity, inclusion, and accessibility.
Accountability	Responsible stewardship of public resources entrusted to the agency.
Service	Investing in and valuing the agency's human capital.

C. ORGANIZATION

ACUS carries out its mission through two components: (1) the *Assembly*, and (2) the *Office of the Chair*.

The Assembly

As defined in the Administrative Conference Act, the membership of ACUS meeting in plenary session make up the Assembly (5 U.S.C. § 595). Its membership includes the Chair, appointed for a five-year term by the President, by and with the advice and consent of the Senate; 10 Council Members appointed for three-year terms by the President; 50 Government Members; and no more than 40 Public Members. Government Members are agency heads or their designees drawn from a wide array of federal agencies. Public Members are academics,

practicing lawyers, and other experts in administrative procedure drawn from the private sector (5 U.S.C. § 593).

The Assembly meets semi-annually in plenary session to debate, amend, and formally adopt recommendations appropriate for improving administrative procedure. Sitting with the "Voting Members" of the Assembly in plenary session are three classes of "Non-Voting Members": (1) *Senior Fellows*, who are mostly former Voting Members; (2) *Special Counsels*, who are lawyers who advise the membership in their areas of expertise; and (3) *Liaison Representatives*, who represent entities with which ACUS has entered into a liaison arrangement to enhance its deliberations, such as federal courts, agencies unrepresented in the Assembly, and professional associations. Non-Voting Members have the privilege of debate but may not vote at plenary sessions.

In addition, all of the Voting Members and most of the Non-Voting Members of the Conference serve on one of five committees that develop the recommendations. Committees hold two to three meetings in both the spring and the fall to debate and approve recommendations. Once approved by a committee, the Council then decides whether to place a recommendation on the agenda for a plenary session. At the plenary session, the full Assembly debates the recommendation and votes on whether to adopt it.

A full list of all Voting and Non-Voting Members is available at www.acus.gov/members.

Office of the Chair

The Office of the Chair consists of the ACUS Chair and a small professional staff. A roster of the current ACUS staff is available at https://www.acus.gov/directory/staff.

In addition to supporting all activities of the Assembly and its committees, the Office of the Chair collects information and statistics from agencies for analysis and dissemination; publishes reports, sourcebooks, and other materials useful for evaluating and improving administrative processes; prepares reports for Congress; provides technical advice to members of Congress, their staffs, and federal agencies, whether informally or through formal reports; facilitates interchange of information among departments and agencies on matters of administrative procedure, through roundtables and publications; conducts training sessions for federal agencies; and holds public forums, sometimes with other entities, to address matters of public interest. These resources are of enormous value to both government officials and the public and often lead to the implementation of best practices at federal agencies.

III. ACCOMPLISHMENTS AND PROGRAMMATIC IMPACT

A. Improving Access to Federal Programs

Identifying barriers to access and improving fairness in administrative processes has been at the core of ACUS's statutory mission since its inception. Today, ACUS is focusing on several strategies for improving access to federal programs, including (1) ensuring members of the public can easily access information about federal programs, (2) reducing burdens on the public in administrative processes, (3) expanding access to assistance in agency proceedings, and (4) improving agency service delivery.

ACUS examined these strategies in a series of webinars with the Legal Services Corporation (LSC) in FY 2023 and the first quarter of 2024. Through four panels, and a fifth panel at the Administrative Bar Association's 2023 Administrative Law Conference, ACUS and LSC brought together senior officials from across the federal government, legal aid providers, and other experts to discuss challenges to and strategies for expanding access to legal representation, promoting effective representation, and ensuring self-represented parties receive the help they need. A large audience of agency personnel, legal aid providers, and academic scholars attended these sessions.

Ensuring members of the public can easily access information about federal programs. Individuals and organizations need information about federal programs to successfully access them and navigate administrative processes. ACUS has adopted several recommendations to help agencies effectively communicate with members of the public about their programs, such as the development of self-help tools, plain-language practice manuals and guides, and effective websites.

To ensure members of the public are aware of program developments that affect them, ACUS adopted Recommendation 2022-2, *Improving Notice of Regulatory Changes*. To provide guidance on the use of chatbots and virtual assistance to communicate with members of the public, ACUS adopted Recommendation 2022-3, *Automated Legal Guidance at Federal Agencies*. More recently, ACUS launched a project that will offer best practices for promoting fairness, accuracy, and efficiency in agency processes for providing written guidance in response to requests for advice from members of the public. A recommendation for agencies is expected in June 2024.

***Reducing burdens on the public in administrative processes*.** Administrative burdens significantly affect whether and how the public accesses a wide range of government programs, including those related to veterans benefits and services, student financial aid, Social Security benefits, health care, disaster assistance, tax credits, nutrition assistance, housing assistance, and unemployment insurance.

ACUS has adopted several recommendations to help agencies identify and reduce unnecessary burdens that impact individuals' and organizations' ability to access their programs.

In 2022, for example, ACUS adopted a recommendation identifying best practices for developing online processes by which members of the public can file forms, evidence, and briefs; view case materials and status information; receive notices and orders; and perform other common adjudicative tasks.

Building on previous ACUS recommendations and current whole-of-government initiatives to improve customer experience, ACUS recently adopted Recommendation 2023-6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings*. In addition to offering techniques to simplify and streamline processes and make information more accessible, the recommendation also identifies broad organizational and collaborative tools agencies should employ in their burden reduction efforts, including outlining how agency leadership and staff should engage with burden reduction initiatives within their agencies and across the government.

Expanding access to assistance in agency proceedings. Many administrative processes are designed so that individuals and organizations can navigate them without professional representation. Other processes are more complex, and many people benefit from additional assistance.

ACUS played a key leadership role in preparing the most recent annual report to the President from the White House Legal Aid Interagency Roundtable (LAIR). (ACUS is one of 28 member agencies of LAIR.) Throughout 2023, ACUS staff and consultants served as subject-matter experts to LAIR on addressing challenges to accessing justice in administrative proceedings. ACUS provided critical leadership, as well as analytical and logistical support in examining strategies to satisfy the frequently unmet need for representation and other forms of assistance in agency proceedings. ACUS will continue to support LAIR in 2024 by co-leading LAIR's subcommittee on data and research.

Building on these efforts, ACUS recently launched a new project to examine how nonlawyers represent and assist parties in federal agency adjudication. The agency expects to publish an independent research report in early 2025.

To ensure that representation is not only available but also fair and effective, ACUS in 2021 recommended best practices for regulating the conduct of representatives in agency adjudicative proceedings. ACUS has convened a working group of public- and private-sector representatives to develop model rules that agencies can use in implementing the 2021 recommendation. ACUS expects to publish the model rules in summer 2024.

Improving agency service delivery. For members of the public to access federal programs, agencies need to make accurate decisions in a timely manner. To provide guidance on ensuring accuracy in agency adjudication programs, ACUS adopted Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*. Recognizing that justice delayed can be justice denied, ACUS adopted a companion recommendation, *Improving Timeliness in Agency Adjudication*, in December 2023 to identify procedural, technological, organizational, and other

strategies that agencies can use to promote timely adjudication of cases and address backlogs and delays when they arise.

B. Promoting Meaningful Public Participation in Agency Policymaking

An integral part of ACUS's statutory mission is to promote more effective public participation in agency policymaking. As ACUS has recognized: "By providing opportunities for public input and dialogue, agencies can obtain more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for their rules."

ACUS has adopted dozens of recommendations on the subject over the years, many of which have resulted in significant reforms by federal agencies, Congress, and the President. Most notably in FY 2023, President Biden and the Office of Information and Regulatory Affairs (OIRA) relied on several ACUS recommendations to issue EO 14094, *Modernizing Regulatory Review*, and guidance for agencies on broadening public engagement in agency rulemaking. Memoranda issued by OIRA Administrator Richard Revesz in April 2023 and July 2023 encourage agencies to consult ACUS recommendations including:

- Recommendation 2021-1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*,
- Recommendation 2018-7, *Public Engagement in Rulemaking*,
- Recommendation 2014-6, *Petitions for Rulemaking*, and
- Recommendation 2014-4, *"Ex Parte" Communications in Informal Rulemaking*.

Several agencies, including the Consumer Financial Protection Bureau and Commodity Futures Trading Commission, have relied on Recommendation 2014-6 in establishing processes by which members of the public can file petitions for rulemaking online.

Both EO 14094 and the guidance from OIRA encourage agencies to consider how they can use technology to modernize the notice-and-comment process and broaden public engagement. The increasing availability of videoconferencing provides one means for agencies to reduce barriers that many individuals and small businesses face when they seek to participate in agency rulemakings. To help agencies fairly and effectively use videoconferencing to broaden public engagement, ACUS adopted Recommendation 2023-2, *Virtual Public Engagement in Agency Rulemaking*.

To help policymakers and the public navigate ACUS's extensive body of best practices for public engagement in agency rulemaking, the Office of the Chair in FY 2023 released a *Statement of Principles* that sets forth common principles and best practices derived from ACUS recommendations on the subject. The Office of the Chair will continue to update the *Statement of Principles for Public Engagement in Agency Rulemaking* as the Assembly adopts new recommendations on the subject.

ACUS launched two related projects that are expected to result in recommendations adopted by the Assembly in FY 2024 and FY 2025. The first, *Public Engagement in Agency Rulemaking Under the Good Cause Exemption*, will recommend best practices for public engagement when agencies find good cause to forgo notice-and-comment rulemaking procedures under5 U.S.C. § 553. Recognizing that public engagement can also be valuable in processes other than rulemaking, ACUS launched a project, *Public Participation in Agency Adjudication*, to identify adjudications in which public participation may be beneficial and examine options for facilitating public participation when appropriate.

C. Advancing Trustworthy Artificial Intelligence (AI) and Promoting Fair and Effective Uses of Technology in Administrative Processes

In *Statement #20*, adopted in December 2020, the ACUS Assembly observed: "[A]rtificial intelligence (AI) techniques are changing how government agencies do their work. Advances in AI hold out the promise of lowering the cost of completing government tasks and improving the quality, consistency, and predictability of agencies' decisions. But agencies' uses of AI also raise concerns about the full or partial displacement of human decision making and discretion."

In 2018, ACUS commissioned a first-of-its-kind report, *Government by Algorithm: Artificial Intelligence in Federal Agencies*, to examine the growing role that AI plays in federal regulatory activities. Based on a wide-ranging survey of federal agency activities and interviews with federal officials, the report, published in early 2020, maps current uses of AI technologies in federal agencies, highlights promising uses, and addresses challenges in assuring accountability, transparency, and non-discrimination in agency programs. Since 2018, ACUS has:

- Adopted Statement #20, *Agency Use of Artificial Intelligence*, which sets forth nine key issues that agencies should consider when adopting or modifying AI systems and developing practices and procedures for their use and regular monitoring. Among the topics it addresses are transparency, harmful biases, technical capacity, procurement, privacy, security, decisional authority, and oversight.

- Adopted five recommendations addressing the use of AI, to manage large volumes of comments received during rulemakings (Recommendation 2021-1); to make guidance more accessible, such as through chatbots (Recommendation 2022-3); to keep regulations clear, current, and accurate (Recommendation 2023-1); to assure the quality of decisions made in individual adjudications (Recommendation 2021-10); and to improve the operation of high-volume adjudication programs (Recommendation 2018-3).

- Commissioned at least ten reports examining how agencies are using or might use AI to administer federal programs.

- Partnered with the Georgetown University Law Center's Institute for Technology Law and Policy to organize a *Symposium on Artificial Intelligence in Federal Agencies*. ACUS has

also organized several additional events on the use of AI by federal administrative agencies and federal regulation of private-sector AI use.

- Launched the Roundtable on Artificial Intelligence in Federal Agencies. The Roundtable provides a forum for officials representing agencies from across the government to exchange information and best practices related to uses of AI in rulemaking, adjudication, enforcement, and other administrative processes. Its members are supported by a consultative group of leading scholars and other AI experts.

As the Administration prioritizes the deployment of safe, secure, and trustworthy AI, ACUS remains dedicated to studying how federal agencies are using and might use AI to make rules, adjudicate cases, and perform other regulatory activities in ways that are fair, equitable, effective, and efficient. ACUS recently launched another project, *Using Algorithmic Tools in Regulatory Enforcement*, to examine how agencies are using or might use AI to detect, investigate, and prosecute current and potential noncompliance with the laws they administer. That project is expected to result in recommendations to agencies in FY 2025.

In addition to its work on AI, ACUS has undertaken several projects to help agencies leverage new technologies to promote transparency, improve equity and access to justice, and enhance public participation in agency decision-making processes. Recommendation 2021-4, *Virtual Hearings in Agency Adjudication*, encourages agencies to offer virtual hearings when appropriate and to develop policies that maintain fairness, accuracy, efficiency, and participant satisfaction. Recommendation 2023-2, *Virtual Public Engagement in Agency Rulemaking*, encourages agencies to offer virtual options when they determine it would be beneficial to hold a public rulemaking engagement and offers best practices for planning, improving notice of, and managing public rulemaking engagements. Recommendation 2023-4, *Online Processes in Agency Adjudication*, provides best practices to agencies for developing online processes to perform common adjudicative tasks such as filing, serving, and viewing forms, briefs, evidence, and other case records or materials.

D. Encouraging the Public Availability of Significant Agency Information and Materials

ACUS has adopted dozens of recommendations identifying best practices for promoting fair, effective, efficient, public access to agency records related to agency rulemaking, adjudication, licensing, investigation, and judicial review of agency action. ACUS adopted several new recommendations on the subject in FY 2023 that identify best practices for providing public access to precedential decisions issued in the adjudication of cases (Recommendation 2022-4), regulatory enforcement manuals (Recommendation 2022-5), and settlement agreements (Recommendation 2022-6).

Many of these recommendations have resulted in reforms, including:

- As part of the James M. Inhofe National Defense Authorization Act for FY 2023, Congress directed the Office of Personnel Management to establish and regularly update a public website identifying the officials who hold senior policymaking positions within the federal government. This mandate implements Recommendation 2019-8, *Public Identification of Agency Officials*.

- Consistent with Recommendation 2019-3, *Public Availability of Agency Guidance Documents*, agencies across the federal government have made many important guidance documents available on their websites.

- Relying on Recommendation 2011-5, *Incorporation by Reference*, the Office of the Federal Register and the U.S. Government Accountability Office have taken steps to ensure that regulated parties and the public can access copyrighted private standards incorporated into federal regulations.

- SSA pledged to consult Recommendation 2017-1, *Adjudication Materials on Agency Websites*, when it determines how it will make precedential decisions regarding the conduct of representatives available to the public.

To help policymakers and the public navigate ACUS's extensive body of best practices for public engagement in agency rulemaking, the Office of the Chair in FY 2023 released a *Statement of Principles* that sets forth common principles and best practices derived from ACUS recommendations on the subject. The Office of the Chair will continue to update the *Statement of Principles for the Disclosure of Federal Administrative Materials* as the Assembly adopts new recommendations on the subject.

ACUS has also identified problems with the principal statutes governing the disclosure of agency legal materials—inconsistencies, uncertainties, and anachronisms, for example—that Congress should remedy through statutory reforms. In FY 2023, the ACUS Assembly adopted Recommendation 2023-1, *Proactive Disclosure of Agency Legal Materials*, which identifies several statutory reforms that, if enacted by Congress, would provide clear standards as to what legal materials agencies must publish in the *Federal Register*, post on their websites, or otherwise proactively disclose. The Chair recently transmitted to Congress draft legislation, developed by a working group of ACUS members, that would implement the reforms identified in Recommendation 2023-1.

E. Providing Vital Information to Congress About Agency Programs

Congress often calls upon ACUS to conduct research on issues of enormous importance, to ensure that federal programs continue to work effectively for those they are meant to help. In response to congressional mandates, ACUS submitted the fourth annual report of awards of attorney's fees to individuals and small businesses who prevail against the federal government

under the Equal Access to Justice Act (EAJA) and updated the accompanying searchable database to include awards for the most recent fiscal year.

Recognizing the value of ACUS's work, a bipartisan group of six senators on the Senate Judiciary Committee, Subcommittee on Intellectual Property requested that the U.S. Patent and Trademark Office (USPTO) engage ACUS to study whether and how a small claims patent court could be established. ACUS worked with a wide range of stakeholders to study the feasibility and potential structure of such a court and the relevant, legal, policy, and practical considerations in establishing one. ACUS submitted its report to USPTO in FY 2023, and USPTO submitted the report to the senators who requested it.

In recent years, Congress has also relied on ACUS to study how SSA can better prevent the fraudulent or inappropriate use of the approximately $70 billion annually in benefit payments made to the more than 7.7 million beneficiaries who are assigned a representative payee. ACUS has conducted multiple studies and analyses of the SSA's Representative Payee program, issued specific recommendations to improve accuracy and efficiency while reducing costs and fraud, and continues to provide technical advice in response to requests from House and Senate staff.

More broadly, congressional staff regularly turn to ACUS for background on issues of administrative procedure, nonpartisan advice, and technical assistance. As noted earlier, a former Chairman and Ranking Member of the House Judiciary Committee emphasized: "[T]here is no other independent, non-partisan agency" on which "Congress can call . . . to evaluate ways to improve the regulatory process."

IV. RECENT AND ONGOING PROJECTS

A. Recommendations

ACUS makes recommendations for action to federal administrative agencies, the President, Congress, and the Judicial Conference to improve the procedures that agencies use to carry out federal programs. The Assembly adopted eleven recommendations in FY 2023 and the first quarter of FY 2024 to improve the efficiency, adequacy, and fairness of rulemaking, adjudication, and other processes:

- **Recommendation 2022-4: *Precedential Decision Making in Agency Adjudication*.** This recommendation identifies best practices on the use of precedential decisions in agency adjudication. It addresses whether agencies should issue precedential decisions and, if so, according to what criteria; what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions; and how agencies should communicate precedential decisions internally and publicly. It also recommends that agencies codify their procedures for precedential decision making in their rules of practice.

- **Recommendation 2022-5: *Regulatory Enforcement Manuals*.** This recommendation identifies best practices for agencies regarding the use and availability of enforcement manuals—that is, documents that provide agency personnel with a single, authoritative resource for enforcement-related statutes, rules, and policies. It recommends that agencies present enforcement manuals in a clear, logical, and comprehensive fashion; periodically review and update them as needed; ensure enforcement personnel can easily access them; and consider making manuals, or portions of manuals, publicly available.

- **Recommendation 2022-6: *Public Availability of Settlement Agreements in Agency Enforcement Proceedings*.** This recommendation identifies best practices for providing public access to settlement agreements reached during administrative enforcement proceedings. It recommends that agencies develop policies addressing when to post such agreements on their websites; provides factors for agencies to consider in determining which agreements to post on their websites; and identifies best practices for presenting settlement agreements in a clear, logical, and accessible manner without disclosing sensitive or otherwise protected information.

- **Recommendation 2023-1, *Proactive Disclosure of Agency Legal Materials*.** This recommendation identifies statutory reforms that, if enacted by Congress, would provide clear standards as to what legal materials agencies must publish and where they must publish them (whether in the *Federal Register*, on their websites, or elsewhere). The amendments also account for technological developments and correct certain statutory ambiguities and drafting errors. The objective of these amendments is to ensure that agencies provide ready public access to important legal materials in the most efficient way possible.

- **Recommendation 2023-2, *Virtual Public Engagement in Agency Rulemaking*.** This recommendation identifies best practices to promote enhanced transparency, accessibility, and accountability when agencies use virtual tools to host public engagement meetings during the rulemaking process. It encourages agencies to offer virtual options when it would be beneficial to do so and offers best practices for structuring virtual public engagements in a way that meets public expectations and promotes valuable input for the agency.

- **Recommendation 2023-3, *Using Algorithmic Tools in Retrospective Review of Agency Rules*.** This recommendation identifies best practices for agencies to consider when designing or using artificially intelligent or other algorithmic tools to identify rules that are outmoded or redundant, contain typographical errors or inaccurate cross-references, or might benefit from resolving issues with intersecting or overlapping rules or standards. It also discusses how agencies can design these tools in a way that promotes transparency, public participation, and accountability.

- **Recommendation 2023-4, *Online Processes in Agency Adjudication*.** This recommendation identifies best practices for developing online processes by which private parties, representatives, and other participants in agency adjudications can file forms, evidence, and briefs; view case materials and status information; receive notices and orders; and perform other common adjudicative tasks.

- **Recommendation 2023-5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing*.** This recommendation examines the wide range of procedures that agencies use when adjudicating cases in programs in which there is no legally required opportunity for an evidentiary hearing. It offers a set of broadly applicable best practices that account for the diversity of matters that agencies decide through truly informal adjudication and promote fairness, accuracy, and efficiency.

- **Recommendation 2023-6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings*.** This recommendation examines best practices, such as public engagement, that agencies can use to identify unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes. It also recommends strategies agencies can use to reduce unnecessary burdens, such as simplifying processes, digitizing services, and collaborating with other agencies and nongovernmental organizations.

- **Recommendation 2023-7, *Improving Timeliness in Agency Adjudication*.** This recommendation examines strategies—including procedural, technological, personnel, and other reforms—that agencies have used or might use to address backlogs or delays in administrative adjudication. It identifies best practices to help agencies devise plans to promote timeliness in administrative adjudication, in accord with principles of fairness, accuracy, and efficiency.

- **Recommendation 2023-8, *User Fees*.** This recommendation provides best practices for agencies and Congress to consider in designing and implementing user fees in administrative programs. It addresses how Congress and agencies might determine when user fees are appropriate; how agencies might determine fair and reasonable user fees for specific programs, including whether there are reasons for waivers, exemptions, or reduced rates; when and how agencies should engage with the public in determining or modifying user fees; and how agencies should review their user fee programs.

All ACUS recommendations and statements issued since 1968, along with reports and other supporting materials, are available at www.acus/gov/recommendations.

ACUS is currently undertaking ten other projects that are expected to result in the adoption of recommendations by the Assembly in FY 2024 and FY 2025:

- ***Agency Investigative Procedures*.** This project surveys regulatory agencies' investigative procedures and recommends best practices to promote accuracy, efficiency, and fairness in agency investigations of specific regulated entities. Among other topics, the project addresses agency practices for the initiation of investigations; the exchange of evidence and arguments between the agency and the targets of investigations; the issuance of subpoenas and warrants; standards by which enforcement personnel consider evidence; public and nonpublic proceedings; negotiation and settlement procedures; standards by which enforcement personnel consider whether to terminate an investigation, negotiate with the target of an investigation, or pursue an enforcement action in an administrative or judicial tribunal; and the preparation and communication of recommendations that agencies take no action, settle, or issue a complaint.

- ***Choice of Forum for Judicial Review of Agency Rules.*** This project studies and, as appropriate, will make recommendations to guide Congress in determining the appropriate forum and venue for judicial review of agency rules—with respect to both existing programs and programs established in the future. Topics it will address include: (a) contexts in which agency rules should be subject to direct review by the courts of appeals rather than the district courts; (b) contexts in which Congress should consider limiting the venue for judicial review of rules beyond what the ordinary rules of venue would permit; (c) contexts in which the courts should consolidate multiple challenges to a single rule in a single case in a single court, and the processes for doing so; and (d) common ambiguities and other drafting problems in the statutes governing the choice of forum for judicial review of agency rules.

- ***Congressional Constituent Service Inquiries.*** This project will examine how federal agencies receive, process, and respond to congressional inquiries made on behalf of constituents who need assistance accessing federal programs or navigating adjudicative and other similar administrative processes. Based on that study, the project will identify best practices for agencies to promote quality, efficiency, and timeliness in agency procedures for responding to such inquiries. Among other topics, the project will address the body of law governing agency responses to congressional constituent service inquiries; the extent to which agencies have developed procedures for receiving, processing, and responding to such inquiries; and the scope, content, internal dissemination, and public availability of these procedures where adopted.

- ***Decisional Disparities in Administrative Programs*.** This project will study and recommend best practices for agencies to detect and address unwarranted disparities in enforcement and adjudication decisions by federal administrative programs. Among other topics, the project will address how agencies detect decisional disparities in administrative enforcement and adjudication, determine the origins of decisional disparities, and determine if disparities are unwarranted. The project will also examine

what actions agencies take to address unwarranted decisional disparities. If warranted, the project may also recommend statutory reforms to improve the collection and analysis of information for such purposes.

- ***Individualized Guidance.*** This project will study and offer best practices to promote fairness, accuracy, and efficiency in agency processes for providing written guidance in response to requests for advice from members of the public. Among other topics, it will address processes for members of the public to request guidance from agencies; agency practices for drafting responses to guidance requests, including the personnel involved and mechanisms to ensure accuracy and consistency; the public availability of individualized guidance documents; and the extent to which members of the public can rely on legal interpretations and policy statements made in individualized guidance documents.

- ***Participation of Senate-Confirmed Officials in Administrative Adjudication.*** This project examines, as a legal and practical matter, whether, when, how, and how often agency heads and other Senate-confirmed officials participate in the adjudication of cases across a range of federal administrative programs. For agencies that have decided to provide or are considering providing for participation by Senate-confirmed officials in the adjudication of individual cases, the project will identify principles and practicalities that agencies should consider in structuring such participation and recommend best practices for developing and communicating relevant policies regarding such participation. This project does not address whether agencies should, for constitutional or other reasons, provide for participation by Senate-confirmed officials in specific programs.

- ***Public Engagement in Agency Rulemaking Under the Good Cause Exemption.*** This project will recommend best practices for public engagement when agencies find good cause to forgo notice-and-comment rulemaking procedures under 5 U.S.C. § 553. Among other relevant topics, this project will recommend best practices for agencies to employ in determining (1) whether to undertake pre- or post-promulgation public engagement efforts with respect to such rules, (2) what types of public engagement to use (including *Federal Register* notices, targeted outreach, and meetings with affected interests or other interested persons), and (3) how and when to use information obtained through such public engagement efforts to modify or improve their rules.

- ***Public Participation in Agency Adjudication.*** This project will recommend best practices regarding public participation in agency adjudicative proceedings. Among other topics, it will address circumstances in which public participation may be appropriate; options for public participation (e.g., written comments, oral presentations, intervention, amicus briefing); methods for facilitating public participation (e.g., notice, managing oral and written comments, technology use); and agencies' use of information obtained through public engagement efforts.

- ***Regional Administration of Regulatory Programs*.** This project examines agency approaches to regional administration of regulatory programs, including how much discretion and authority agencies delegate to regional offices, how agencies develop and disclose policies governing the relationship between regional and central offices, how regional offices develop and disclose local policies, and how agencies coordinate and oversee regional operations. The project will offer a set of broadly applicable best practices for agencies and, if warranted, potential legislative reforms.

- ***Using Algorithmic Tools in Regulatory Enforcement.*** This project will study how agencies are using or might use algorithmic tools—including AI and predictive analytics—to detect, investigate, and prosecute current and potential noncompliance with the laws they administer. It will examine the potential benefits and risks of using algorithmic tools to support agencies' regulatory enforcement efforts and identify policies, practices, and organizational structures agencies can put in place to ensure they enforce the law fairly, accurately, and efficiently.

B. Assistance to Congress

Congress calls on ACUS to conduct research, collect information, and publish reports of its findings or recommendations. Recent projects include:

- ***Open Book on Equal Access to Justice*.** Pursuant to Section 4201 of the bipartisan "John D. Dingell, Jr. Conservation, Management, and Recreation Act," in March 2020 ACUS submitted to Congress its first annual report on attorneys' fees awards under EAJA. ACUS released its fourth annual report in March 2023. ACUS continues to work with agencies to collect EAJA award information for subsequent years, submit annual reports to Congress, and update its online database of awards as additional information comes available. Annual reports and datasets are available at www.acus.gov/eaja.

- ***U.S. Patent Small Claims Court.*** A bipartisan group of six senators on the Senate Judiciary Committee, Subcommittee on Intellectual Property, requested that the U.S. Patent and Trademark Office (USPTO) engage ACUS to study the need for a small claims patent court and options for establishing it. ACUS submitted its report to USPTO in March 2023, and USPTO submitted the report to the senators who requested it.

- ***Social Security Administration's Representative Payee Program: Information Sharing with States*.** Pursuant to the Strengthening Protections for Social Security Beneficiaries Act of 2018, ACUS submitted a report in June 2020 on information sharing between SSA and state courts regarding individuals who receive and manage benefits on behalf of beneficiaries. The representative payee program protects some of the most vulnerable members of society by having SSA appoint representative payees to help manage their benefits. State courts often appoint guardians or conservators to help manage assets for the same group of people. Information sharing between SSA and the state courts about

the individuals involved in both programs could improve outcomes for beneficiaries, but there are certain legal and practical barriers to doing so. This project examined the potential opportunities, barriers, and risks of sharing representative payees' information.

ACUS also assists members of Congress and their staffs in other ways, including through trainings, briefings, and technical assistance. More information about ACUS resources for Congress is available online at www.acus.gov/legislative-resources.

C. Model Materials

ACUS convenes working groups to develop model materials that agencies can use to design new procedures or update their existing procedures. Model materials include:

- ***Revised Model Rules for Implementation of the Equal Access to Justice Act.*** The Equal Access to Justice Act requires agencies to consult with ACUS when establishing "uniform procedures for the submission and consideration of applications for an award of fees and other expenses" under the Equal Access to Justice Act (EAJA) (5 U.S.C. § 504(c)(1)), To assist agencies in establishing procedures, ACUS developed and makes available model rules for implementing EAJA. The Office of the Chair convened a committee of agency officials and other administrative law experts to revise the model rules in light of recent developments and evolving practices. The Assembly formally recommended that agencies consider the revised model rules when developing or updating rules to implement EAJA. The model rules are available on ACUS's website and were published in the *Federal Register* at 84 Fed. Reg. 38,934 (Aug. 8, 2019).

- ***Model Adjudication Rules.*** Since 1993, ACUS has published *Model Adjudication Rules* to help agencies develop or update procedural rules governing agency adjudications. The Office of the Chair convened a working group of public- and private-sector experts to update the *Model Adjudication Rules* to reflect significant changes in adjudicative practices and procedures since 2013. The working group relied on ACUS's extensive empirical research of adjudicative practices and input from agency officials, academics, practitioners, and other stakeholders. ACUS published the revised *Model Adjudication Rules* on its website and provided notice in the *Federal Register* (83 Fed. Reg. 49,530 (Oct. 2, 2018)).

Many agencies have consulted or relied on these resources to improve their procedural rules, including, in recent years, the Consumer Financial Protection Bureau, Occupational Safety and Health Review Commission, and the Office of the Comptroller of the Currency.

The Chair has convened two other working groups which are currently developing additional model materials:

- ***Model Materials for Alternative Dispute Resolution.*** With the Federal Mediation and Conciliation Service, ACUS co-leads a working group of federal agency officials that is

developing model agreements, standards, position descriptions, training and educational resources, and other materials that agencies can adapt as needed for use in their own ADR programs. Materials developed by the working group will be disseminated to agencies and made available on ACUS's website.

- ***Model Representative Conduct Rules.*** In Recommendation 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*, the Assembly asked the Office of the Chair to convene a working group of public- and private-sector representatives to develop model rules of representative conduct consistent with the recommendation. Once completed, the model rules will help federal agencies develop or update their rules governing the qualifications and conduct of representatives in adjudicative proceedings.

D. Reference Guides

ACUS publishes reference guides of enormous value to executive-branch officials, members of Congress and their staffs, the courts, and the public. Reference guides include:

- ***Guide to Legal Issues Encountered in Public-Private Partnerships.*** The *Guide*, developed collaboratively by senior federal officials from 21 agencies who actively work on public-private partnerships, addresses the major legal and practical issues that agencies encounter when they participate in public-private partnerships. The State Department circulated the *Guide* to its Interagency Working Group on Public Private Partnerships.

- ***Handbook on Best Practices for Using Video Teleconferencing in Adjudicatory Hearings.*** Building on several of ACUS's recommendations on video hearings, the *Handbook* provides additional practical guidance to help agencies implement and improve their use of video teleconferencing for adjudicatory hearings.

- ***Handbook on Compiling Administrative Records for Informal Rulemaking.*** The *Handbook*, prepared by a working group of public- and private-sector representatives, provides step-by-step guidance to help agencies develop guidance for rulemaking personnel that is consistent with best practices recommended by ACUS. The *Handbook* addresses a wide range of legal, policy, technological, organizational, and personnel matters related to preserving, compiling, and certifying rulemaking records.

- ***Federal Administrative Adjudication Outside the Administrative Procedure Act.*** This *Sourcebook* examines federal administrative adjudication that is not subject to the adjudicatory provisions of the APA. It provides a comprehensive overview and cross-cutting analysis of non-APA adjudication, and examines, among other things, the structure of the initial adjudication and any appeals; pre-hearing, hearing, and post-hearing procedures; the types of adjudicators used; and the caseloads at individual agencies. It relies in part on case studies to flesh out the overarching findings.

- ***Federal Administrative Procedure Sourcebook.*** ACUS maintains a regularly updated, online edition of the *Federal Administrative Procedure Sourcebook.* A joint initiative with the American Bar Association's Section of Administrative Law and Regulatory Practice, the *Sourcebook* provides an annotated compilation of the key statutes and other legal authorities governing nearly every aspect of administrative procedure. The online edition provides easy access to the authorities highlighted in the *Sourcebook* along with additional government documents, scholarly articles, and other resources.

- ***Sourcebook of Federal Judicial Review Statues.*** Based on a survey of the entire U.S. Code, the *Sourcebook* comprehensively analyzes more than 650 statutory provisions that govern how federal courts review agency rules and orders. It addresses topics including who can seek judicial review of agency actions, when and in which courts individuals can seek judicial review, what standards and evidence courts use to evaluate agency actions, and what remedies courts can provide when they find agency actions to be unlawful. The *Sourcebook* also includes a checklist to help Congress draft new or amend existing judicial review statutes.

- ***Sourcebook of United States Executive Agencies.*** The *Sourcebook* examines the diverse characteristics of the departments, agencies, and other organizational entities that comprise the federal executive establishment and catalogs 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. Congress, federal agencies, and the federal courts have relied extensively on the *Sourcebook*.

- ***Statement of Principles for the Disclosure of Federal Administrative Materials*.** ACUS has adopted many recommendations for promoting effective, efficient, and equitable public access to agency records related to rulemaking, adjudication, licensing, and investigation, and judicial review of agency action. This *Statement* provides a concise description of the common principles and best practices identified by ACUS in these recommendations.

- ***Statement of Principles for Public Engagement in Agency Rulemaking*.** ACUS has adopted many recommendations to carry out its statutory mission to "promote more effective public participation . . . in the rulemaking process." This *Statement* sets forth common principles and best practices derived from these recommendations to help agencies engage effectively with the public and provide opportunities for meaningful public participation when they develop and adopt rules.

Additional reference guides that ACUS expects to publish in FY 2024 and FY 2025 include:

- ***Statement of Principles for Agency Guidance Documents*.** ACUS has adopted many recommendations identifying best practices for the use and public availability of guidance documents (i.e., interpretive rules and general statements of policy). To help agencies

implement these recommendations, ACUS is developing a *Statement* that will provide a concise description of the common principles and best practices they identify.

- ***Statement of Principles for Federal Agency Adjudication*.** ACUS has adopted more than 100 recommendations identifying best practices for administrative adjudication. To help agencies implement these recommendations, ACUS is developing a *Statement* that will provide a concise description of the common principles and best practices they identify.

E. Reports

ACUS publishes many reports each year on specific aspects of administrative procedure, most prepared by leading scholars. Many reports are used to inform the development and adoption of recommendations by ACUS. ACUS publishes other reports to provide useful information to policymakers and the public. Reports in recent years have addressed agencies' AI use, alternative dispute resolution, recusal by administrative adjudicators, virtual hearings, and regulatory enforcement decisions. Additional reports that ACUS expects to publish in FY 2024 and FY 2025 include:

- ***International Regulatory Cooperation*.** ACUS adopted recommendations in 1991 and 2011 identifying best practices for effective cooperation between U.S. and international regulators. Based in part on these recommendations, President Obama in 2012 issued Executive Order 13609, *Promoting International Regulatory Cooperation*. This report will examine federal agencies' experiences in the decade since 2012 to examine remaining barriers and identify best practices for supporting international regulatory cooperation.

- ***Nationwide Injunctions and Federal Regulatory Programs*.** This report will examine how nationwide injunctions and similar equitable remedies affect the administration of federal regulatory programs. Among other topics, it will address the use, frequency, and characteristics of nationwide injunctive and similar relief in challenges to agency rules; how agencies understand the scope of judgments vacating and setting aside agency rules under the APA; and how agencies respond to nationwide injunctive and similar relief in carrying out their rulemaking activities. The project draws on a 2020 ACUS-sponsored forum of leading experts that examined nationwide injunctions.

- ***Nonlawyer Assistance and Representation*.** Nonlawyers have long represented or assisted participants in federal agency adjudication. But their role has taken on critical importance in recent years given a shortage of affordable legal services. This report will examine the extent to which nonlawyers represent participants in administrative adjudication, the forms of assistance other than representation that participants receive from nonlawyers, and agency policies and practices governing representation and assistance by nonlawyers.

- ***Timing of Judicial Review of Agency Action.*** In Recommendation 2021-5, *Clarifying Statutory Access to Judicial Review of Agency Action*, the Assembly identified two aspects

of judicial review warranting additional study: (1) the event that begins the period during which a litigant can challenge an agency action in federal court, and (2) circumstances under which a party should be precluded from seeking judicial review of agency action because it failed to seek review within a specified time limit. This report will examine both topics, describing what the law currently requires and whether Congress should amend the law to provide greater clarity and particularity regarding the timing of judicial review.

F. Other Publications

In addition to research-focused reference guides and reports, ACUS produces a variety of other publications to help agency officials understand legal requirements, implement best practices recommended by the Assembly, and monitor relevant developments:

- ***Information Interchange Bulletins*.** ACUS regularly issues short, one-page bulletins on discrete topics of administrative procedure. Bulletins provide useful information for agency officials on legal issues they are likely to encounter as they carry out their work.

- ***Updates in Federal Agency Adjudication*.** ACUS issues monthly updates to share adjudication-related developments from the executive branch, Congress, and the courts with agencies, Congress, and the public.

- ***Legislative Updates*.** ACUS provides updates on congressional activities related to agency operations and procedures and judicial review of agency action.

G. Public Forums

ACUS regularly holds public forums and panel discussions, often partnering with other organizations. These events are of enormous value to both government officials and the public and often lead to the implementation of best practices at federal agencies. Public forums and panel discussions in 2023 included:

- ***Access to Justice in Administrative Adjudication*** **(November 2023).** Millions of people navigate agency adjudications each year to access critical benefits and services; achieve educational and business goals; promote health, safety, and well-being in their communities; obtain redress for violations of their rights; and defend themselves against allegations of legal wrongdoing. ACUS and the Legal Services Corporation examined these processes through the perspectives of low-income people and members of historically underserved communities, many of whom receive no or inadequate legal assistance.

- ***From Complex to CX: Reducing Administrative Burdens Through (or Despite) Laws and Policies Governing Paperwork Reduction, Data Sharing, and Agency Organization*** **(December 2023).** Congress and the White House have encouraged federal agencies in recent years to take action to simplify their processes and reduce the time the public spends on paperwork and other unnecessary burdens. This panel addressed how agencies

apply customer experience strategies (CX) to identify and reduce burdens that members of the public face when they engage with administrative programs.

- ***Into the Unknown: The Regulation of AI & Emerging Technology*** **(November 2023).** The advancement of new technologies has often led to calls for the development and implementation of novel regulatory schemes to promote responsible industry growth while protecting the public and ensuring fair and transparent markets. Regulating emerging technologies comes with its own set of unique challenges, requiring regulators to rapidly adapt to changing technologies and developing understandings of their effects on the public. This may require the use of procedural mechanisms that are flexible and allow for continuous learning (e.g., regulatory sandboxes, pilots, waivers and exemptions, guidance, use of industry standards) as well as collaboration with industry stakeholders, consumers, and the broader public impacted by the new technologies. This panel discussed the regulatory toolbox available for ensuring that flexibility while safeguarding the public.

- ***Operation: Public Engagement*** **(December 2023).** When agencies make rules, they and the public benefit from meaningful opportunities for public input and dialogue. But the effectiveness of public engagement efforts depends on the details of how agencies operationalize them. As agencies work to implement Executive Order 14094, *Modernizing Regulatory Review*, this panel provided insight into and helpful tips for the nuts-and-bolts development of public engagement strategies.

- ***Assisting Parties in Federal Administrative Adjudication*** **(2022–2023).** This public forum, a joint event from ACUS and Legal Services Corporation, featured multiple panel presentations from December 2022 through December 2023 examining ways to improve support for parties in agency adjudications, including by expanding parties' access to representation, ensuring that parties receive high-quality representation, and providing support for self-represented parties.

The ACUS Chair and staff are also regularly invited to participate as experts on administrative procedure in events hosted by other organizations such as the American Bar Association's Section of Administrative Law & Regulatory Practice, the Center for Taxpayer Rights, the Federal Administrative Law Judges Conference, the Small Agency General Counsel Group, the Bar of the United States Court of Federal Claims, and the White House Legal Aid Interagency Roundtable.

H. Roundtables

ACUS participates as a member of the White House Legal Aid Interagency Roundtable (LAIR). ACUS staff served as subject matter experts to LAIR on its primary initiative for 2023: *Access to Justice in Administrative Proceedings & Non-Lawyer Legal Assistance*. ACUS staff collaborated with the Department of Justice's Office for Access to Justice, which manages LAIR,

to shape LAIR's 2023 programming; organize, run, and present at LAIR meetings; and draft LAIR's 2023 report to the President.

ACUS also regularly facilitates conversations among agencies, as well as between agency officials and outside experts, on matters of mutual interest. These programs are of enormous value to government officials and often lead to the implementation of best practices at federal agencies. The ACUS Office of the Chair convenes six roundtables on an ongoing basis where agency leaders can discuss matters of mutual interest:

- ***Alternative Dispute Resolution (ADR) Advisory Group*.** The ADR Advisory Group, made up of government officials, advises ACUS on potential new initiatives to improve—through potential ACUS-recommended administrative and legislative reforms—the design and administration of ADR programs throughout the federal government. The ADR Advisory Group builds on ACUS's longstanding study and implementation of ADR in federal administrative processes.
- ***Council on Federal Agency Adjudication*.** The Council provides an ongoing forum for the heads of agency adjudication programs to exchange information—about procedural innovations, best management practices, and other subjects—that may be "useful in improving administrative procedure."
- ***Council of Independent Regulatory Agencies.*** The Council provides an ongoing forum for leaders in independent regulatory agencies to discuss issues common to these agencies.
- ***Interagency Roundtable*.** The Roundtable provides an ongoing forum for representatives from all federal agencies to discuss legal and policy issues with government-wide effect.
- ***Roundtable on Artificial Intelligence (AI) in Federal Agencies*.** The Roundtable on AI in Federal Agencies will help agencies develop and improve protocols and practices for using AI tools in their administrative processes. It will provide a forum for officials representing agencies across the federal government to exchange information and best practices related to uses of AI in rulemaking, adjudication, enforcement, and other administrative processes.
- ***Roundtable on State Administrative Procedural Practices*.** The administrative procedural practices of state and local governments might provide helpful lessons for federal agencies. Through this program, the ACUS Office of the Chair is interested in learning more about state and local practices related to rulemaking, enforcement, adjudication, and other aspects of administrative procedure. The Office of the Chair will, on an ongoing basis, identify and share relevant practices with federal agencies and periodically convene meetings on specific topics of interest to federal officials.

In addition to these roundtables, the Office of the Chair also assists agency officials through trainings, briefings, and the provision of nonpartisan technical advice.

V. BUDGET STATUS & REQUEST

A. PROPOSED APPROPRIATIONS LANGUAGE FOR FY 2025

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., $3,523,000 to remain available until September 30, 2026, of which not to exceed $1,000 is for official reception and representation expenses.

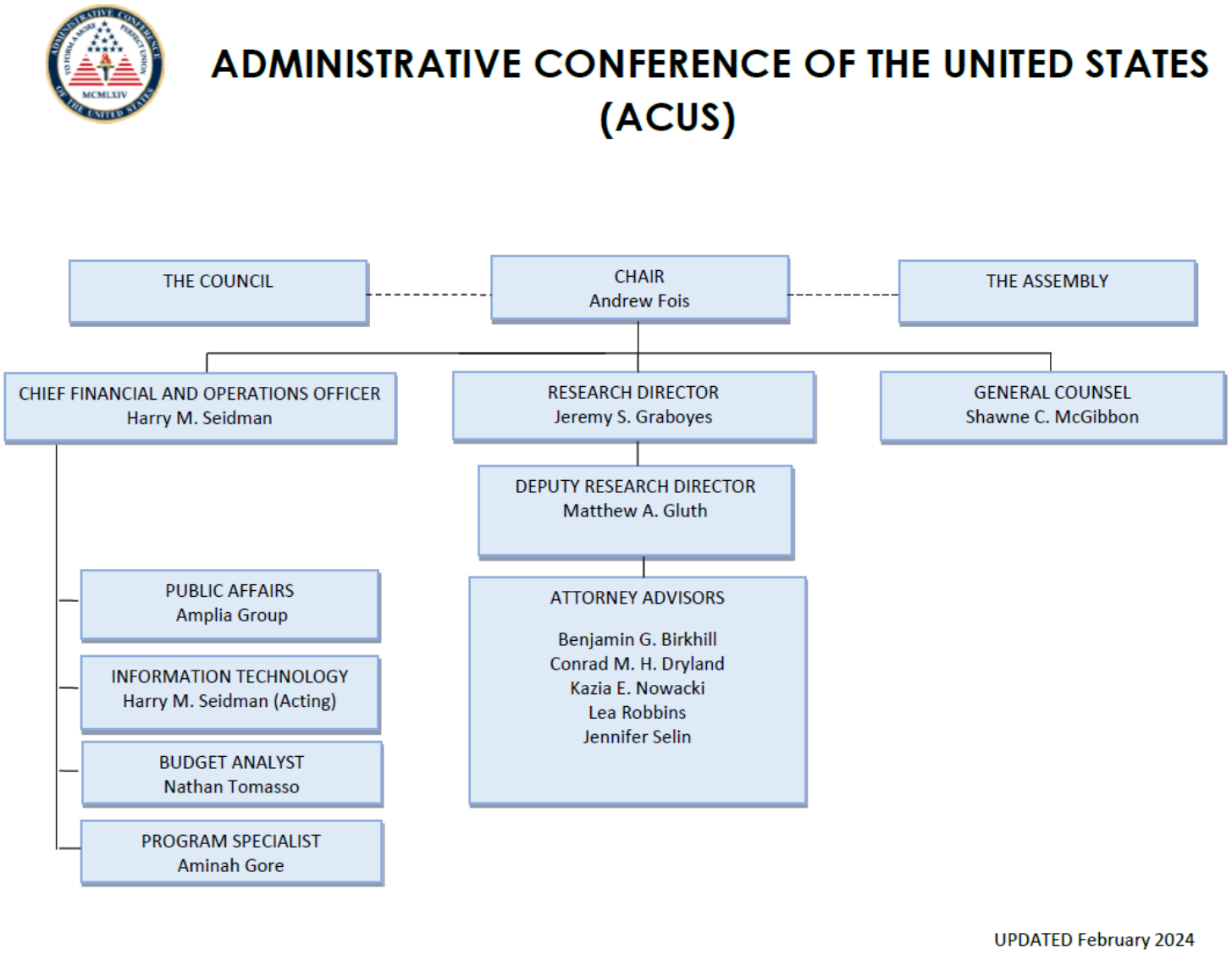
B. BUDGET AUTHORITY AND STAFFING BY ACTIVITY

Salaries and Expenses

	FY 2021 Enacted	**FY 2022** Enacted	**FY 2023** Enacted	**FY 2024** Pending	**FY 2025** Requested
Appropriation	$3,400,000	$3,400,000	$3,465,000	$3,523,000	$3,523,000
Authorized FTE	18	18	18	18	18

C. ACUS ORGANIZATION CHART

Current as of February 2024



D. FINANCIAL SUMMARY

	FY 2023 OBLIGATIONS ACTUAL	FY 2024 CURRENT BUDGET (Requested)	FY 2025 PROPOSED BUDGET
Appropriation	$3,465,000	$3,523,000	$3,523,000
Carry Forward	$175,099	$209,850	$0
Net Appropriation	**$3,640,099**	**$3,732,850**	**$3,523,000**
Obligations/Expenses			
Salaries, Full Time	$1,517,231	$1,960,000	$1,940,000
Benefits	$539,379	$530,000	$525,000
Subtotal, Salaries and Benefits	**$2,056,610**	**$2,490,000**	**$2,465,000**
Member/ Staff Travel	$18,169	$15,000	$12,000
Rent & Utilities	$420,063	$425,000	$429,000
Communications/ IT	$45,268	$35,000	$14,000
Printing/Reproduction	$24,031	$25,000	$13,000
Contract Office Personnel (Repurposed from OC 11/12)	$217,978	$140,000	$70,000
Consultant Contracts (Research & Projects)	$390,987	$375,000	$300,000
Administrative Contracts	$141,276	$154,000	$165,000
Supplies	$19,251	$8,850	$5,000
EAJA Database (Congressional Mandate)	$104,562	$65,000	$50,000
Equipment	$0	$0	$0
Subtotal, Operating expenses	**$1,381,585**	**$1,242,850**	**$1,058,000**
Total Obligation/Expenses	**$3,438,195**	**$3,732,850**	**$3,523,000**
Unexpended Prior Year Funds	($7,946)		
Unobligated Balance Brought Forward	$209,850	$0	$0

E. RECENT APPROPRIATIONS HISTORY

Salaries and Expense Account
(Amounts in thousands of dollars)

Fiscal Year	Budget Authority
2021	3,400
2022	3,400
2023	3,465
2024	3,523 (Pending)
2025	3,523 (Request)

ACUS requests $3.523 million, including two-year spending authority, to support a full year of agency operations during FY 2025. The FY 2025 request assumes flat staffing and programming levels. Tight control of agency expenditures and effective use of two-year spending authority permitted ACUS to operate on the same baseline budget from FY 2010 through FY 2020. However, new mandates and organic growth in overhead expenses have since necessitated a small increase in appropriation. Specifically, the cost of required administrative support contracts, annual cost-of-living (COLA) increases for federal employees, new requirements for IT and communications systems to comply with the Federal Information Security Management Act (FISMA), and additional agency mandates assigned by Congress, such as enacted amendments to the Equal Access to Justice Act (EAJA) have collectively increased agency operating expenses. The request of $3.523 million in FY 2025 would permit ACUS to carry out its statutorily mandated work and to fulfill the agency's mission.

Two-year spending authority remains crucial for efficiently sustaining agency operations, and Congress has consistently given ACUS two-year funding authority. Firm control of agency expenditures has allowed ACUS to utilize its two-year funding authority to carry over small balances from one fiscal year to the next. This authority is necessary to maintain optimal spending efficiency given the nature of ACUS's work and the agency's small size.

ACUS's recent budgetary history is as follows:

For FY 2021, the President's budget requested $3.5 million to support a full year of agency operations. The Consolidated Appropriations Act of 2021 (Public Law 116-260) funded ACUS at $3.4 million and provided two-year spending authority.

For FY 2022, the President's budget requested $3.4 million to support a full year of agency operations and to remain available through September 30, 2023. The Consolidated Appropriations Act of 2022 (Public Law 117-103) funded ACUS at $3.4 million and provided two-year spending authority.

For FY 2023, the President's budget requested $3.465 million to support a full year of agency operations and to remain available through September 30, 2024. The Consolidated Appropriations Act of 2023 (Public Law 117-328) funded ACUS at $3.465 million and provided two-year spending authority.

For FY 2024, the President's budget requested $3.523 million to support a full year of agency operations and to remain available through September 30, 2025. FY 2024 appropriations are currently awaiting Congressional action.

ACUS ended FY 2023, the most recently closed fiscal year, with a carryover balance of $209,850. The FY 2023 carryover amount is consistent with ACUS's two-year budgeting methodology whereby small amounts may be carried between fiscal years to maintain staffing and program levels. Being so small, the addition or departure of even a single high-salaried employee has an outsized effect on agency finances. Similarly, ACUS projects typically span 1-2 fiscal years and, because of the agency's small size, any change to a project's scope or schedule may dramatically impact the timing of agency expenditures. Two-year funding accommodates the outsize impact of these otherwise routine administrative scenarios. An appropriation of $3.523 million would fund ACUS at the level required to cover operating and personnel costs at the current reduced staffing level while maintaining the agency's robust slate of projects and programmatic initiatives.

F. FY 2025 REQUEST

A $3.523 million FY 2025 appropriation will fund ACUS at the level required to cover operating and personnel costs.

Program	OC	Amt
Personnel Salaries	11	$1,940,000
Personnel Benefits	12	$525,000
Travel	21	$12,000
Rent, IT Comm., & Utilities	23	$443,000
Printing	24	$13,000
Contractual Services	25	$535,000
EAJA (Congressional Mandate)	25	$50,000
Supplies	26	$5,000
		$3,523,000

AGENCY PERSONNEL
(Object Classes 11 and 12)

Personnel costs are by far the largest agency expenditure. While this is the case for many federal agencies, ACUS personnel costs also reflect the agency's need to employ highly credentialed, specialized, and experienced lawyers to fulfill its mission and mandate. All but two of the agency's filled FTE positions are lawyers (classified as *Attorney Advisors* by OPM). Therefore, ACUS personnel tend to have higher GS grades—and related salary and benefits costs—relative to other federal agencies where the aggregate distribution of personnel is more evenly distributed on the pay scale.

For FY 2025, ACUS anticipates a staff of 14 filled FTEs, one filled contract FTE, and three vacant but authorized FTEs. This includes the Chair and 13 permanent employees included under Object Class 11. In some prior years, ACUS has filled 1-2 of its allotted FTE positions under the Intergovernmental Personnel Act (IPA) or other reimbursable arrangements. ACUS may opt to use these hiring mechanisms for personnel in FY25, contingent upon agency needs and the availability of funding. Both IPA and contract FTE costs would be repurposed to OC 25 (contractual services) from OC 11 and OC 12 (Personnel Salary and Benefits) if ACUS utilizes contract personnel during FY 2025.

The ACUS staff, among its many functions, supports the 101 voting ACUS members as well as the approximately 150 other ACUS members who serve in a non-voting capacity.

Agency Management

The ACUS Chair is appointed for a five-year term by the President with the advice and consent of the Senate (PAS). Among his or her duties, the Chair appoints Public Members (with the consent of the Council), initiates and oversees research studies, many of which are designed to result in ACUS recommendations and presides at meetings of the Council and plenary sessions. The Chair also oversees the staff of ACUS who, together, comprise the Office of the Chair. During a vacancy in the office, the Vice Chair exercises the Chair's powers. Currently, Mr. Andrew Fois serves as ACUS Chair. Mr. Fois was confirmed by the United States Senate on May 26, 2022.

The Chief Financial and Operations Officer (CFOO) is responsible for oversight of the agency's budget as well as management of daily operations and supervision of the agency's administrative program officials and support staff. The CFOO provides strategic planning, managerial expertise, and staff support to the ACUS Chair and Council and assesses the overall effectiveness, efficiency, and productivity of ACUS operations. The CFOO also oversees external administrative and operational support services such as payroll, human resources, financial reporting, and accounts payable. The CFOO develops performance standards and 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 directives. The CFOO also directs the agency's website, press program, marketing and social

media presence, and ensures the agency's cybersecurity compliance and IT network defense requirements.

The Research Director is responsible for overseeing the development of new research and other initiatives to carry out ACUS's mission, managing ongoing initiatives, and supporting efforts by other agencies and Congress to implement ACUS recommendations. The Research Director works closely with the Chair to develop the agency's research agenda and policy recommendations and supervises a team of attorney advisors.

The General Counsel serves as the chief legal, ethics, and EEO 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, as well as all other federal statutes governing the operation of executive branch agencies. The General Counsel also oversees the agency's records management program.

The Executive Director (vacant since July 2022) provides leadership, planning, direction, and coordination for all ACUS operations. Due to budgetary constraints, the Executive Director position remains vacant, with most position duties now vested with the Chief Financial and Operations Officer (CFOO).

As outlined above, each management position is responsible for overseeing multiple program areas and administrative functions to minimize agency overhead costs and to conserve budgetary resources.

Legal Staff

Attorney Advisors comprise the bulk of the agency's professional staff. Attorney advisors stay informed about issues and developments in administrative law and practice and work with the Research Director to develop and implement the agency's research agenda and policy recommendations. Among other things, Attorney Advisors are responsible for managing the work of committees and the Assembly in their development and adoption of recommendations. 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 generally providing procedural and legal oversight for the work of the committees. Attorney Advisors periodically also serve as in-house researchers on select projects in lieu of outside consultants. Attorney Advisors also oversee a wide range of other initiatives, including preparing and publishing research studies and reference guides, organizing and leading public forums and interagency convenings, working with public- and private-sector representatives to develop model rules and other materials, and supporting efforts by other agencies and Congress to implement ACUS recommendations.

Confidential Assistant / Counsel (Schedule C)

The ACUS Chair may elect to fill up to one FTE position with a Schedule C Confidential Assistant or Counsel. This Schedule C position is allotted by OMB and is directly tied to the Presidentially-appointment Chair position. This position is currently filled by an Attorney Advisor apportioned from the agency's authorized FTE allotment to avoid a net increase in the number of filled agency personnel slots.

Administrative and Support Staff

The ACUS staff includes an Information Technology Specialist position to support both internal and external communications, including technical support, website development and maintenance, network management, and cybersecurity. This position is also responsible for preparation and submission of IT-related reporting requirements, such as FISMA compliance. This FTE has remained vacant for the past several fiscal years due to lack of funding**.** IT services are instead overseen by the Chief Financial and Operations Officers and delivered by an outside contractor via a mix of 24/7 remote support and scheduled on-site visits for network maintenance and security patching. In response to both operating needs and a marked rise in cybersecurity threats directed at federal agencies, ACUS intends to fill this position in FY 2024 or 2025, contingent on identifying funding.

The Communications Director is responsible for developing and managing the agency's strategic communications program, which includes media relations, digital outreach, social media engagement, marketing, and special events. In recent years, ACUS has lacked the financial resources to fill this position full-time and in-house. Instead, ACUS has successfully deployed a mix of outside communications consultants coupled with in-house expertise to fill out traditional media and marketing roles. Communications duties are now vested with the Chief Financial and Operations Officer with discrete portions, such as social media management, contracted out to a third-party vendor.

Finally, a Program Specialist and a Budget Analyst provide administrative expertise and support for the ACUS staff and membership.

ACUS's FY 2025 budget request leaves vacant three allotted FTEs for additional legal, administrative, and IT support. As in previous budget requests, these vacancies reduce the agency's total FTE count below the allotted 18. During FY 2025, ACUS anticipates 15 filled FTE equivalents. Projected personnel costs assume a 2% cost-of-living adjustment (COLA) for civilian GS employees, for FY 2025. Nonetheless, ACUS intends to hold aggregate personnel costs flat by backfilling organically occurring vacancies at lower GS levels (e.g. backfilling a departing GS-14 position with a GS-13 hire).

For FY 2025, ACUS requests a budget of **$1,940,000** for salary expenses associated with full-time employees (Object Class 11). This amount represents the projected cost for a total of 15

full-time positions, including 2% annual civil service cost-of-living salary increases and grade/step increases.

A total of **$525,000** is budgeted for personnel benefits during FY 2025 (Object Class 12). Personnel benefits are a direct function of budgeted salary/wages and inclusive of transit subsidy. The FY 2025 projection assumes a Federal Employee Retirement Systems (FERS) contribution rate level with FY 2024.

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

As discussed in the introductory section above, ACUS's extensive research and policy work is most frequently pursued through contracts with academics in law, public administration, or other related fields. 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 $25,000. 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 2025, ACUS is requesting **$300,000** 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 staff counsel for ACUS committee projects, and staffing the numerous projects undertaken by the Office of the Chair described in this justification. In-house research initiatives have resulted in several ACUS recommendations and significant Office of the Chair projects for agencies such as Social Security Administration (SSA), Equal Employment Opportunity Commission (EEOC), Centers for Medicaid and Medicare (CMS), Patent and Trade Office (PTO) and Department of Health and Human Services (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 **$165,000** for administrative support contracts, including the mandated annual agency financial audit. As a small agency, ACUS

is required by law and policy to contract with multiple agencies, or private sector vendors, for many of the administrative functions typically performed in-house at larger agencies. These contracts cover administrative areas like human resources (GSA), payroll (GSA), accounting (GSA), security credentialing (GSA/ DHS), and mandated financial auditing. ACUS is also required to pay the Federal Protective Service (DHS) a monthly fee for security services due to its leased office space in a non-government owned building, and a monthly fee for administering required Federal Employee ID PIV cards. Except for the annual financial audit - which is competitively awarded to a private sector firm - all administrative support contracts are via interagency agreement (IAA) with the providing federal agency.

In most cases, there is no alternative provider for these administrative functions, and it is not cost-effective or, in some cases, legal to bring the functions in-house. As a result, ACUS is forced to absorb the annual cost increases charged by the servicing agencies. ACUS has no recourse for negotiating these costs, nor are alternative providers available. Further, interagency service contracts costs are largely fixed in that they are not proportionate to the size of ACUS's staff or appropriation. For example, the cost of payroll or Human Resources is the same whether ACUS has 14 filled FTEs, or all 18 authorized FTEs filled. ACUS is also required to proportionally fund the servicing agency's costs associated with their COLA increases, IT system upgrades, etc. as part of the service contract cost. The large cost increase for administrative support contracts in FY24 was almost entirely due to the 40% cost increase for financial reporting and accounting services charged by GSA (transferred from USDA in FY '24). Specifically, GSA increased the cost of its services from $52,000 in FY 23 to $72,000 in FY 24 in order to pay for an upgrade of its IT systems. The FY 2025 request assumes a more modest growth rate for administrative contract costs.

FY 2025 Administrative Service Contracts	
Accounting & Financial Reporting (GSA)	$69,000
Human Resources (GSA)	$55,000
Payroll (GSA)	$5,000
Security Credentials (GSA for DHS)	$4,000
Federal Protective Service (DHS)	$7,000
Subtotal IAA	$141,000
Annual Financial Audit	$25,000
Total	$165,000

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 2025, ACUS anticipates filling one FTE position with contract personnel. Any contract positions would utilize resources that would otherwise be expended from other sections of the agency budget, principally object classes 11 and 12. ACUS estimates contract personnel costs of **$70,000** in FY 2025.

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

Travel by ACUS members and staff is budgeted at **$12,000** for FY 2025 (Object Class 21). This is a substantial reduction from previous budget requests and is below historical actuals. Through FY 2023, approximately 94% of agency travel expenses involved the travel of out-of-town ACUS members to Council, committee, and plenary session meetings. ACUS members, other than the Chair, 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, ACUS uses videoconferencing and other virtual hosting technologies to minimize travel expenses at the committee meetings. During Covid-19, ACUS transitioned to an entirely virtual meeting process to ensure the agency continued to fulfill its mission. To minimize travel expenses, ACUS has opted to continue holding the approximately 30 committee meetings held each year virtually. However, in-person biennial plenary sessions are necessary for ensuring robust debate and effective exchange of ideas. Therefore, ACUS returned to hosting some in-person events during FY 2022, including a "hybrid" June 2022 plenary session that also allowed members the option of participating virtually. ACUS has maintained this hybrid model since, including for both FY 2023 and FY 2024 plenary sessions. In addition, some staff members may travel to conduct research or, as required, participate in various professional meetings, training courses, and conferences. Nonetheless, ACUS staff travel is extremely limited in both real terms and relative to our peer agencies.

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 Public Building Services Division (PBS) of the General Services Administration (GSA). During FY 2025, ACUS is responsible for **$429,000** in rental payments and related fees to GSA, as estimated in the Occupancy Agreement with GSA (Object Class 23). ACUS re-negotiated a new 15-year lease of its existing office space in 2019 for the leasing period 2020 through 2035.

ACUS staff were among the earliest in the federal workforce to return to in-person work. From March 2022, all ACUS staff are required to report to the ACUS office at least 3 days a week.

ACUS's budget includes an estimated **$14,000** for electronic communications expenses, including telephone service and website hosting during FY 2025 (Object Class 23). This estimate is based on ACUS's historical usage as well as compliance costs related to mandated security and accessibility requirements for federal government-owned websites, such as Section 508 compliance, and other government-wide IT security mandates such as FISMA compliance. This estimate 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 is able to take on these additional costs without a significant increase in this section of our budget due to the agency's successful migration to the Enterprise Infrastructure Solutions (EIS) in 2022, resulting in an 80% reduction in telephone service expenses. ACUS's successful migration to AWS in 2023 has resulted in an over 70% reduction in web-hosting costs and increased ACUS's web security by moving away from legacy platforms.

ACUS has budgeted **$13,000** in FY 2025 for printing costs (Object Class 24). Most of this expense is the cost of printing notices in the *Federal Register* as mandated by the Federal Advisory Committee Act (FACA). 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 **$5,000** for the purchase of supplies, materials, and legal publications during FY 2025 (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.

EQUAL ACCESS TO JUSTICE (EAJA) STATUTORY MANDATE
(Object Classes 11, 12, 25)

S. 47, the Natural Resources Management Act, was signed into law on March 12, 2019. The act assigned to ACUS a new statutory responsibility to report and maintain a database on attorneys' fees awards paid out government-wide under the Equal Access to Justice Act (EAJA). The Congressional Budget Office (CBO) scored the cost of new personnel and IT infrastructure necessary to comply with the new mandate at $500,000 to $1 million in the initial start-up fiscal year and $500,000 or less annually thereafter. However, ACUS has complied with the new mandate at a much lower cost of approximately $150,000 per annum now that the initial database design and setup is complete. ACUS will apportion $100,000 in salary and benefits (from OC 11 and 12) to support a portion of a GS-14 grade Attorney Advisor necessary to carry out this mandate.

ACUS further requests **$50,000** (OC 25) to operate and maintain the database and public-facing website for disseminating EAJA award data, as mandated by S. 47. Again, CBO's estimate for building out and maintaining the required IT infrastructure is significantly higher than this request as ACUS estimates that annual costs of $150,000 are achievable in FY 2025.

VI. CONCLUSION

For FY 2025, ACUS submits a budget request of $3.523 million. This level of funding will allow ACUS to pursue a full program of research projects and other programs aimed at discharging the agency's mission and 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 citizens.

Appendix A: Council Members

Current as of March 2024

Funmi Olorunnipa Badejo

Funmi Olorunnipa Badejo is the Head of Compliance at Palantir Technologies, inc., a global software company. She previously served as Special Assistant to the President and Associate Counsel in the White House Counsel's Office. Her prior government service includes General Counsel of the U.S. House of Representatives Select Subcommittee on the Coronavirus Crisis, Counsel for Policy to the Assistant Attorney General in the Civil Division at the U.S. Department of Justice, Ethics Counsel at the White House Counsel's Office and Attorney Advisor at the Administrative Conference of the United States. Olorunnipa Badejo began her legal career as an associate with the law firm of Manatt, Phelps & Phillips, LLP and was Legal Counsel at Palantir Technologies Inc. She is a graduate of the University of California, Berkeley, School of Law, Harvard University's John F. Kennedy School of Government, and the University of Florida

Shakuntla L. Bhaya

Shakuntla L. Bhaya is a co-owner of a statewide Delaware law firm, Law Offices of Doroshow, Pasquale, Krawitz & Bhaya. Bhaya's practice focuses on representing individuals who are seriously injured as a result of businesses and people making unsafe decisions. Bhaya, past President of the Delaware Trial Lawyers Association, continues to be involved in protecting consumers' 7th Amendment Right to a jury trial and access to courts. Bhaya is the first South Asian Indian to be admitted to the Delaware Bar Association. Bhaya continues to work towards diversity, equity, and inclusion in the legal profession and in politics. Bhaya is a graduate from Northeastern University School of Law.

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 Chair 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, Chair 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.

Kristen Clarke

Kristen Clarke is the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. In this role, she leads the Justice Department's broad federal civil rights enforcement efforts and works to uphold the civil and constitutional rights of all who live in America. Assistant Attorney General Clarke began her career as a trial attorney in the Civil Rights Division through

the Department of Justice's Honors Program. In 2006, she joined the NAACP Legal Defense Fund, where she helped lead the organization's work in the areas of voting rights and election law across the country. In 2011, she was named the head of the Civil Rights Bureau for the New York State Attorney General's Office, where she led broad civil rights enforcement actions. In 2015, Ms. Clarke became the president and executive director of the Lawyers' Committee for Civil Rights Under Law, leading the organization's legal work in courts across the country addressing some of the nation's most complex racial justice and civil rights challenges. Assistant Attorney General Clarke received her A.B. from Harvard University and her J.D. from Columbia Law School.

Andrew Fois (Chair)

Andrew Fois is Chair of ACUS. Before his Senate confirmation in May 2022 he served as Attorney Advisor in the Office of Legislative Affairs in the Administrative Office of U.S. Courts. Prior to that position, he was the Deputy Attorney General for Public Safety in the Office of the Attorney General for Washington, D.C. He has worked for the National Crime Prevention Council, as a solo practitioner and as a partner in the Venable law firm. He has served in the Department of Justice on three occasions in five positions including as the Assistant Attorney General for Legislative Affairs and as an Assistant United States Attorney for the District of Columbia. His experience on Capitol Hill includes service as the Chief Counsel of the House Judiciary Committee's Subcommittee on Crime. In 2020, Mr. Fois was appointed by the Mayor to the D.C. Clemency Board. Mr. Fois earned his J.D. from the Georgetown University Law Center and his B.A. from Georgetown University. He also holds a master's degree in American government from the University of Essex in the U.K.

Leslie B. Kiernan

Leslie B. Kiernan was sworn in on June 15, 2021, as the General Counsel at the Department of Commerce. She serves as the Chief Legal Officer of the Department and as legal advisor to the Secretary, Secretarial Officers and the Department's operating units. During the Obama-Biden Administration, Ms. Kiernan served in the White House as Deputy Counsel to the President from 2011-14, where she advised on a wide range of compliance, risk-management, policy, and oversight issues. She also worked with the White House Council on Women and Girls, and later served as a senior advisor to the U.S. Mission to the United Nations.

Fernando Laguarda

Fernando Laguarda is General Counsel at AmeriCorps. Prior to his current role, he was Faculty Director of the Program on Law and Government and a Professor at American University Washington College of Law, where he taught and developed courses in administrative law, legislation, and antitrust, launched the law school's LLM in Legislation, and founded the nation's first student-centered initiative to study the work of government oversight. Fernando worked previously for nearly ten years in the telecommunications industry and for fifteen years as a partner at two different Washington, DC law firms focusing on technology and competition law. He was also a founder, and served as General Counsel and then Board Chair, of the National

Network to End Domestic Violence, as well as a member of numerous non-profit, civil rights, academic, and advisory boards. Fernando has received numerous national and local awards for his nonprofit advocacy work. He received his J.D. cum laude from Georgetown University Law Center and his A.B. cum laude in government from Harvard College.

Neil H. MacBride

Neil H. MacBride currently serves as General Counsel of the Department of Treasury. MacBride serves as the chief legal officer of the Department and the principal legal advisor to the Secretary of Treasury and senior leaders on a wide range of issues relating to domestic finance, terrorism finance, financial crimes enforcement, and international economic affairs. MacBride previously served as a litigation partner at the law firm of Davis Polk & Wardwell. Before entering private practice, MacBride spent more than 15 years as a government official focusing on law enforcement, national security, financial enforcement, and complex civil litigation matters. He served in the Obama-Biden Administration, first as an Associate Deputy Attorney General and then as the Senate-confirmed United States Attorney for the Eastern District of Virginia overseeing all criminal enforcement and civil litigation on behalf of the United States. MacBride earlier served as Chief Counsel to then-Senator Joseph R. Biden, Jr., on the Senate Judiciary Committee and as a federal prosecutor in the United States Attorney's Office for the District of Columbia. Earlier in his career, MacBride served as General Counsel to the Business Software Alliance, in private practice at a Washington, D.C. law firm, and clerked for U.S. District Court Judge Henry Morgan of the Eastern District of Virginia. He graduated from the University of Virginia School of Law and Houghton College.

Anne Joseph O'Connell

Anne Joseph O'Connell, a lawyer and social scientist, is the Adelbert H. Sweet Professor of Law at Stanford Law School. She served as an ACUS consultant, public member, and senior fellow before joining the Council. She is a three-time recipient of the American Bar Association's Scholarship Award in Administrative Law for the best article or book published in the preceding year and a two-time winner of the Richard D. Cudahy Writing Competition on Regulatory and Administrative Law from the American Constitution Society. Before entering the legal academy, O'Connell clerked for Judge Stephen F. Williams and Justice Ruth Bader Ginsburg and worked as a trial attorney in the Department of Justice's Federal Programs Branch. She is an elected fellow of the American Academy of Arts and Sciences and the National Academy of Public Administration.

Nitin Shah (Vice Chair)

Nitin Shah currently serves as General Counsel of the U.S. General Services Administration. He oversees all legal matters arising before the agency, is GSA's Designated Agency Ethics Official and Chief FOIA Officer, and manages a nationwide office of approximately 170 attorneys and staff. During his career, Mr. Shah has focused on administrative law issues from various perspectives. He previously served in the Department of Justice in several

capacities, including as Chief of Staff of the Civil Division and as an attorney in the Office of Legal Counsel. He also served as senior counsel at a nonprofit organization focused on administrative litigation and was a legal director for the Biden-Harris Transition Team.

Jonathan Su

Jonathan C. Su is a partner in the White Collar Defense & Investigations Practice of the law firm of Latham & Watkins LLP. Mr. Su most recently served in government as Deputy Counsel to President Joseph R. Biden, Jr., where he had principal responsibility for congressional oversight and controversy matters at the White House and across the Executive Branch. Among other high-profile matters, Mr. Su advised on unprecedented executive privilege issues that implicated substantial litigation ultimately addressed by the US Supreme Court. During the Obama-Biden Administration, Mr. Su served as Special Counsel to President Barack Obama, where he advised on a wide range of controversy matters. Mr. Su was also a federal prosecutor at the United States Attorney's Office for the District of Maryland. He served as a law clerk to U.S. Circuit Judge Ronald M. Gould and U.S. District Judge Julian Abele Cook, Jr. Mr. Su is a graduate of the University of California at Berkeley and Georgetown University Law Center.

Appendix B: Government Members

The following were government members as of February 29, 2024:

James Anderson	Federal Deposit Insurance Corporation
David Apol	U.S. Office of Government Ethics
Samuel R. Bagenstos	U.S. Department of Health & Human Services
Gregory Baker	Federal Election Commission
Laura Barhydt	U.S. Office of Personnel Management
Eric Benderson	U.S. Small Business Administration
Krystal Brumfield	U.S. General Services Administration
Daniel Cohen	U.S. Department of Transportation
Michael Cole	Federal Mine Safety and Health Review Commission
Peter Constantine	U.S. Department of Labor
Susan Davies	U.S. Department of Justice
Rita Davis	U.S. Department of Defense
Scott de la Vega	U.S. Department of the Interior
Seth Frotman	Consumer Financial Protection Bureau
Ami Grace-Tardy	U.S. Department of Energy
Carson M. Hawley	U.S. Department of Agriculture
Richard Hipolit	U.S. Department of Veterans Affairs
Janice Hoffman	Centers for Medicare & Medicaid Services
Erica Hough	Federal Energy Regulatory Commission
Phillip Hughey	Federal Maritime Commission
Kristin Johnson	U.S. Commodity Futures Trading Commission

Alice Kottmyer	U.S. Department of State
Adam Kress	Surface Transportation Board
Michael Lezaja	Federal Trade Commission
Jeremy Licht	U.S. Department of Commerce
Raymond A. Limon	U.S. Merit Systems Protection Board
Philip Lindenmuth	Internal Revenue Service
Hilary Malawer	U.S. Department of Education
Nadine Mancini	Occupational Safety and Health Review Commission
Christina McDonald	U.S. Department of Homeland Security
Elizabeth A. M. McFadden	U.S. Securities and Exchange Commission
David Mednick	U.S. Food & Drug Administration
Patrick Nagle	Social Security Administration
Raymond Peeler	U.S. Equal Employment Opportunity Commission
Mitchell Plave	Office of the Comptroller of the Currency
Roxanne Rothschild	National Labor Relations Board
Jay Schwarz	Board of Governors of the Federal Reserve System
Helen Serassio	U.S. Environmental Protection Agency
Miriam Smolen	Federal Housing Finance Agency
Caitlin M. Stephens	U.S. International Trade Commission
Jessica Stone	Occupational Safety and Health Administration
Stephanie Tatham	U.S. Office of Management and Budget
David Trissell	U.S. Postal Regulatory Commission
Daniel Vice	U.S. Consumer Product Safety Commission
Miriam Vincent	U.S. National Archives and Records Administration
Chin Yoo	Federal Communications Commission
Marian Zobler	U.S. Nuclear Regulatory Commission

Appendix C: Public Members

The following were public members as of February 29, 2024:

Nicholas Bagley	University of Michigan Law School
Kent H. Barnett	University of Georgia School of Law
Bernard W. Bell	Rutgers Law School
Maggie Blackhawk	New York University School of Law
Susan G. Braden	George Mason University Antonin Scalia Law School
Ilona R. Cohen	HackerOne
Kirti Datla	Earthjustice
Jennifer B. Dickey	U.S. Chamber Litigation Center
John F. Duffy	University of Virginia School of Law
David Freeman Engstrom	Stanford Law School

Claire J. Evans	Wiley Rein LLP
Chai R. Feldblum	Morgan Lewis & Bockius LLP
Arjun Garg	Hogan Lovells LLP
Abbe R. Gluck	Yale Law School and Yale Medical School
Deepak Gupta	Gupta Wessler PLLC
Emily Hammond	The George Washington University Law School
Allyson N. Ho	Gibson Dunn & Crutcher LLP
Daniel E. Ho	Stanford Law School
Thomas M. Johnson, Jr.	Wiley Rein LLP
David E. Lewis, PhD	Vanderbilt University
Erika Lietzan	University of Missouri School of Law
Elbert Lin	Hunton Andrews Kurth LLP
Michael A. Livermore	University of Virginia School of Law
Jennifer L. Mascott	George Mason University Antonin Scalia Law School
Jesse Panuccio	Boies Schiller Flexner LLP
Elizabeth P. Papez	Gibson Dunn & Crutcher LLP
Eloise Pasachoff	Georgetown University Law Center
Paul J. Ray	The Heritage Foundation
Jeffrey A. Rosen	Cravath Swaine & Moore LLP; American Enterprise Institute
Bertrall Ross	University of Virginia School of Law
Kate A. Shaw	University of Pennsylvania Carey Law School
Ganesh Sitaraman	Vanderbilt Law School
Mila Sohoni	University of San Diego School of Law
Kevin M. Stack	Vanderbilt Law School
Cheryl M. Stanton	BrightStar Care
Kate Todd	Torridon Law PLLC
Louis J. Virelli III	Stetson University College of Law
Melissa Feeney Wasserman	The University of Texas at Austin School of Law
Jonathan B. Wiener	Duke University School of Law
Susan Webb Yackee	University of Wisconsin-Madison La Follette School of Public Affairs

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

The following were liaison representatives as of February 29, 2024:

Thomas H. Armstrong	U.S. Government Accountability Office
Eleanor Barrett	The American Law Institute
Elizabeth Binczik	American Constitution Society
Casey Q. Blaine	National Transportation Safety Board

Emily Burns	U.S. House of Representatives Committee on Oversight and Accountability (Minority)
H. Thomas Byron III	Administrative Office of the U.S. Courts
Lena C. Chang	U.S. Senate Committee on Homeland Security and Governmental Affairs (Majority)
Tobias A. Dorsey	Executive Office of the President, Office of Administration
Daniel M. Flores	U.S. House of Representatives Committee on Oversight and Accountability (Majority)
William Funk	ABA Section of Administrative Law & Regulatory Practice
Douglas C. Geho	U.S. House of Representatives Committee on the Judiciary (Majority)
Claire Green	Social Security Advisory Board
Will A. Gunn	Legal Services Corporation
Kristen L. Gustafson	National Oceanic & Atmospheric Administration
Eileen Barkas Hoffman	Federal Mediation & Conciliation Service
Scott Jorgenson	U.S. Senate Committee on the Judiciary (Majority)
Nathan Kaczmarek	The Federalist Society
Allison C. Lerner	Council of the Inspectors General on Integrity and Efficiency
Daniel S. Liebman	Pension Benefit Guaranty Corporation
Katie McInnis	U.S. House of Representatives Committee on the Judiciary (Minority)
Mary C. McQueen	National Center for State Courts
Mohammad H. Mesbahi	Taxpayer Advocate Service
Danette L. Mincey	ABA National Conference of the Administrative Law Judiciary
Randolph D. Moss	U.S. District Court for the District of Columbia
Alayna Ness	U.S. Coast Guard
Cornelia T.L. Pillard	U.S. Court of Appeals for the District of Columbia Circuit
Lauren Alder Reid	Executive Office for Immigration Review
Eleni M. Roumel	U.S. Court of Federal Claims
Christina Salazar	U.S. Senate Committee on Homeland Security and Governmental Affairs (Minority)
Max Stier	Partnership for Public Service
Channing Strother	Federal Administrative Law Judges Conference
Ethan V. Torrey	Judicial Conference of the U.S.
Susan K. Ullman	U.S. Office of Special Counsel
David L. Welch	Federal Labor Relations Authority

The following were senior fellows as of February 29, 2024:

Gary D. Bass	GDB Consulting
Jack M. Beermann	Boston University School of Law
Warren Belmar	Capitol Counsel Group LLC
Jodie Z. Bernstein	*Formerly*, Kelley Drye & Warren LLP

Boris Bershteyn	Skadden Arps Slate Meagher & Flom LLP
Marshall J. Breger	The Catholic University of America Columbus School of Law
Emily S. Bremer	University of Notre Dame Law School
Stephen G. Breyer	Harvard Law School
Amy P. Bunk	Federal Trade Commission
James Ming Chen	Michigan State University College of Law
Betty Jo Christian	*Formerly*, Steptoe & Johnson LLP
Cary Coglianese	University of Pennsylvania Carey Law School
H. Clayton Cook, Jr.	Cook Maritime Finance
John F. Cooney	*Formerly*, Venable LLP
Steven P. Croley	Ford Motor Company
Bridget C.E. Dooling	The Ohio State University Moritz College of Law
Susan E. Dudley	The George Washington University
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William H. Webster	Center for Strategic & International Studies
Russell R. Wheeler, PhD	The Brookings Institution
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Richard E. Wiley	Wiley Rein LLP
Allison M. Zieve	Public Citizen

The following were special counsel as of February 29, 2024:

Andrew Emery	The Regulatory Group
Jeffrey S. Lubbers	American University Washington College of Law
David M. Pritzker	*Formerly*, Administrative Conference of the U.S.
Matthew L. Wiener	*Formerly*, Administrative Conference of the U.S.

Appendix E: Recommendations and Statements Adopted 2010 – 2022

The following ACUS projects – both Assembly recommendations and statements – were adopted in FY 2010 through FY 2022. A full listing of ACUS projects is available at https://www.acus.gov/research-projects.

- ***Recommendation 2022-1: Contractors in Rulemaking.*** This recommendation identifies best practices for managing contractors that assist agencies in the rulemaking process. It recommends that agencies clearly delineate responsibility between contractors and agency staff, provide proper oversight of contractors, and ensure transparency in connection with the agency's contractual activities.

- ***Recommendation 2022-2: Improving Notice of Regulatory Changes.*** This recommendation offers best practices for agencies to ensure that members of the public receive effective notice of regulatory changes, focusing especially on the needs of parties with limited resources to monitor agency actions. It recommends that agencies consider a variety of possible strategies for improving notice of regulatory changes, including designing agency websites to provide clear notice of regulatory changes, publicizing regulatory changes through social media and email lists, and providing direct notice of regulatory changes to those affected by them.

- ***Recommendation 2022-3: Automated Legal Guidance at Federal Agencies.*** This recommendation identifies best practices for agencies to use when designing and updating automated tools, such as interactive chatbots and virtual assistants, to provide legal guidance to the public. It addresses factors agencies should consider in deciding whether to utilize automated legal guidance tools, how agencies that utilize those tools can ensure that the information they provide is accurate and current, and how agencies can ensure that recipients of such guidance understand its limitations and do not rely on it to their detriment.

- ***Recommendation 2022-4: Precedential Decision Making in Agency Adjudication.*** This recommendation identifies best practices on the use of precedential decisions in agency adjudication. It addresses whether agencies should issue precedential decisions and, if so, according to what criteria; what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions; and how agencies should communicate precedential decisions internally and publicly. It also recommends that

agencies codify their procedures for precedential decision making in their rules of practice.

- ***Recommendation 2022-5: Regulatory Enforcement Manuals.*** This recommendation identifies best practices for agencies regarding the use and availability of enforcement manuals—that is, documents that provide agency personnel with a single, authoritative resource for enforcement-related statutes, rules, and policies. It recommends that agencies present enforcement manuals in a clear, logical, and comprehensive fashion; periodically review and update them as needed; ensure enforcement personnel can easily access them; and consider making manuals, or portions of manuals, publicly available.

- ***Recommendation 2022-6: Public Availability of Settlement Agreements in Agency Enforcement Proceedings.*** This recommendation identifies best practices for providing public access to settlement agreements reached during administrative enforcement proceedings. It recommends that agencies develop policies addressing when to post such agreements on their websites; provides factors for agencies to consider in determining which agreements to post on their websites; and identifies best practices for presenting settlement agreements in a clear, logical, and accessible manner without disclosing sensitive or otherwise protected information.

- **Recommendation 2021-1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*** offers agencies best practices for managing mass, computer-generated, and falsely attributed comments in agency rulemakings. It provides guidance for agencies on using technology to process such comments in the most efficient way possible while ensuring that the rulemaking process is transparent to prospective commenters and the public more broadly.

- **Recommendation 2021-2, *Periodic Retrospective Review*** offers practical suggestions to agencies about how to establish periodic retrospective review plans. It provides guidance for agencies on identifying regulations for review, determining the optimal frequency of review, soliciting public feedback to enhance their review efforts, identifying staff to participate in review, and coordinating review with other agencies.

- **Recommendation 2021-3, *Early Input on Regulatory Alternatives*** offers guidance about whether, when, and how agencies should solicit input on alternatives to rules under consideration before issuing notices of proposed rulemaking. It identifies specific, targeted measures for obtaining public input on regulatory alternatives from knowledgeable persons in ways that are cost-effective and equitable and that maximize the likelihood of obtaining diverse, useful responses.

- **Recommendation 2021-4, *Virtual Hearings in Agency Adjudication*** addresses the use of virtual hearings—that is, proceedings in which participants attend remotely using a personal computer or mobile device—in agency adjudications. Drawing heavily on

agencies' experiences during the COVID-19 pandemic, the recommendation identifies best practices for improving existing virtual-hearing programs and establishing new ones in accord with principles of fairness and efficiency and with due regard for participant satisfaction.

- **Recommendation 2021-5, *Clarifying Statutory Access to Judicial Review of Agency Action*** urges Congress to enact a cross-cutting statute that addresses certain recurring technical problems in statutory provisions governing judicial review of agency action that may cause unfairness, inefficiency, or unnecessary litigation. It also offers drafting principles for Congress when it writes new or amends existing judicial review statutes.

- **Recommendation 2021-6, *Public Access to Agency Adjudicative Proceedings*** identifies best practices regarding when and how federal agencies provide public access to adjudicative proceedings. Within the legal framework established by federal law, it identifies factors agencies should consider when determining whether to open or close particular proceedings. It also offers best practices to promote public access to proceedings that agencies open to the public and recommends that agencies make the policies governing public access readily available.

- **Recommendation 2021-7, *Public Availability of Inoperative Agency Guidance Documents*** provides best practices for maintaining public access to agency guidance documents that are no longer in effect—that is, inoperative. It identifies factors agencies should consider in deciding whether to include certain types of inoperative guidance documents on their websites, outlines steps agencies can take to make it easier for the public to find inoperative guidance documents, and identifies ways that agencies can label and explain the significance of inoperative guidance documents.

- **Recommendation 2021-8, *Technical Reform of the Congressional Review Act*** offers technical reforms of the Congressional Review Act (CRA) to clarify certain of its procedural aspects and reduce administrative burdens on executive-branch agencies and congressional offices. Specifically, it recommends (1) requiring electronic rather than paper submission of the materials agencies must transmit to Congress, (2) making it easier to ascertain key dates and time periods relevant to review of agency rules under the CRA, and (3) formalizing the procedure by which members of Congress initiate congressional review of rules that agencies conclude are not covered by the CRA.

- **Recommendation 2021-9, *Regulation of Representatives in Agency Adjudicative Proceedings*** recommends that agencies consider adopting rules governing attorney and non-attorney representatives in order to promote accessibility, fairness, integrity, and efficiency in agency adjudicative proceedings. It provides guidance on the topics that rules might cover and recommends that agencies consider whether greater harmonization of different bodies of rules is desirable and ensure that their rules are readily accessible on their websites.

- **Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*** identifies best practices for promoting fairness, accuracy, timeliness, and consistency in agency adjudications through the use of quality assurance systems. It provides guidance to agencies on the selection, role, and institutional placement of quality-assurance personnel. It also identifies specific considerations for the timing of and process for quality-assurance review; outlines different methodologies for identifying and correcting quality issues; and addresses how agencies might use electronic case management, data analytics, and artificial intelligence for quality-assurance purposes.

- **Recommendation 2020-1, *Rules on Rulemakings*** encourages agencies to consider issuing rules governing their rulemaking procedures. It identifies subjects that agencies should consider addressing in their rules on rulemakings—without prescribing any particular procedures—and it urges agencies to solicit public input on these rules and make them publicly available.

- **Recommendation 2020-2, *Protected Materials in Public Rulemaking Dockets*** offers agencies best practices for protecting sensitive personal and confidential commercial information in public rulemaking dockets. It identifies, in particular, best practices for agencies to use when redacting, summarizing, and aggregating comments that contain such information. It also encourages agencies to provide public notices that discourage commenters from submitting such information in the first place.

- **Recommendation 2020-3, *Agency Appellate Systems*** offers agencies best practices to improve administrative review of hearing-level adjudicative decisions with respect to case selection, decision-making process and procedures, management oversight, and public disclosure and transparency. In doing so, it encourages agencies to identify the objectives of such review and structure their appellate systems to serve those objectives.

- **Recommendation 2020-4, *Government Contract Bid Protests*** Before Agencies suggests improvements to the procedures governing agency-level procurement contract disputes—commonly called bid protests—under the Federal Acquisition Regulation and agency-specific regulations to make those procedures more simple, transparent, and predictable. It urges agencies to clarify what types of decisions can be the subjects of agency-level bid protests, what processes and deadlines will govern such protests, and who in the agency will decide such protests; make it easier for protesters to get information about the decisions they protest; and publish more data on agency-level protests.

- **Recommendation 2020-5, *Publication of Policies Governing Agency Adjudicators*** encourages agencies to disclose policies governing the appointment and oversight of adjudicators that bear on their impartiality and constitutional status. It offers best practices on how to provide descriptions of, and access to, such policies on agency websites.

- **Recommendation 2020-6, *Agency Litigation Webpages*** offers agencies best practices for making their federal court filings and relevant court opinions available to the public on their websites, with particular emphasis on materials from litigation dealing with agency regulatory programs. It provides guidance on the types of litigation materials that will be of greatest interest to the public and on how agencies can disseminate the materials in a way that makes them easy to find.

- **Statement # 20, *Agency Use of Artificial Intelligence*** identifies issues agencies should consider when adopting, revamping, establishing policies and practices governing, and regularly monitoring artificial intelligence systems. Among the topics it addresses are transparency, harmful biases, technical capacity, procurement, privacy, security, decisional authority, and oversight.

- **Recommendation 2019-1, *Agency Guidance Through Interpretive Rules*** identifies ways agencies can offer the public the opportunity to propose alternative approaches to those presented in an interpretive rule and to encourage, when appropriate, public participation in the adoption or modification of interpretive rules. It largely extends the best practices for statements of policy adopted in Recommendation 2017-5, *Agency Guidance Through Policy Statements*, to interpretive rules, with appropriate modifications to account for differences between interpretive rules and policy statements.

- **Recommendation 2019-2, *Agency Recruitment and Selection of Administrative Law Judges*** addresses the processes and procedures agencies should establish for exercising their authority under Executive Order 13,843 (2018) to hire administrative law judges (ALJs). It encourages agencies to advertise ALJ positions in order to reach a wide pool of applicants, to publish minimum qualifications and selection criteria for ALJ hiring, and to develop policies for the review of ALJ applications.

- **Recommendation 2019-3, *Public Availability of Agency Guidance Documents*** offers best practices for promoting widespread availability of guidance documents on agency websites. It urges agencies to develop and disseminate internal policies for publishing, tracking, and obtaining input on guidance documents; post guidance documents online in a manner that facilitates public access; and undertake affirmative outreach to notify members of the public of new or updated guidance documents.

- **Recommendation 2019-4, *Revised Model Rules for Implementation of the Equal Access to Justice Act*** revises the Conference's 1986 model agency procedural rules for addressing claims under the Act, which provides for the award of attorney fees to individuals and small businesses that prevail against the government in certain agency adjudications. The revisions reflect, among other things, changes in law and agency practice since 1986.

- **Recommendation 2019-5, *Agency Economists*** addresses the placement of economists within rule-writing agencies (e.g., centralized versus dispersed throughout the agency) and describes methods for promoting high-quality economic analysis within each of the potential organizational structures. Each potential structure has strengths and weaknesses that can affect the flow of information between economists and decision makers. The recommendation does not endorse any one organizational structure over another, but identifies steps agencies can take to remove structural barriers that can impede the communication of objective, consistent, and high-quality economic analysis to decision-makers during the rulemaking process.

- **Recommendation 2019-6, *Independent Research by Agency Adjudicators in the Internet Age*** addresses agency adjudicators' increasing reliance on their own factual research—especially internet research—when conducting hearings and deciding cases. Though such independent research can be an efficient means to acquire facts, it can also raise concerns regarding the accuracy of information uncovered and fairness to the litigants. The recommendation encourages agencies to develop publicly available policies on independent research that identify sources of information that are reliable in all cases, set forth standards for adjudicators to apply when assessing the reliability of other sources, and ensure that litigants have ready access to all sources.

- **Recommendation 2019-7, *Acting Agency Officials and Delegations of Authority*** offers agencies best practices for promoting greater transparency and compliance with the Federal Vacancies Reform Act of 1998 when a Senate-confirmed position sits vacant. It also addresses the use of delegations of authority in response to staffing vacancies. It urges agencies to determine whether they are subject to the Vacancies Act and, if so, establish compliance processes; improve transparency by disclosing on their websites information about acting officials and delegations of authority; and provide additional support and training to agency officials responsible for Vacancies Act compliance.

- **Recommendation 2019-8, *Public Identification of Agency Officials*** promotes the public availability of real-time information about high-level officials leading federal agencies. It encourages agencies to publish on their websites basic information about high-level agency leaders and identify vacant leadership positions and acting officials. It also recommends that the Office of Personnel Management regularly publish on its website a list of high-level agency leaders, as well as an archival list of former Senate-confirmed presidential appointees.

- **Recommendation 2019-9, *Recruiting and Hiring Agency Attorneys*** urges agencies to avail themselves of the flexibilities available to them when hiring attorneys and offers best practices for structuring their hiring processes. First, it suggests that the Office of Personnel Management offer training for agencies on the alternative processes and flexibilities available to them when they hire attorneys. Then, among other suggestions, it advises agencies to post and disseminate vacancy announcements widely when seeking broad applicant pools, draft announcements clearly and concisely, communicate

to applicants any limitations on the number of applicants they will consider, and establish policies for reviewing applications and interviewing candidates.

- **Recommendation 2018-1**, ***Paperwork Reduction Act Efficiencies*** encourages collaboration between the Office of Information and Regulatory Affairs and federal agencies to maximize opportunities for making the information collection clearance process under the Paperwork Reduction Act more efficient, while still maintaining its integrity. The recommendation encourages using generic clearances and common forms more frequently, providing more training to agencies, and improving several other aspects of the information collection clearance process.

- **Recommendation 2018-2:** ***Severability in Agency Rulemaking*** encourages federal agencies that anticipate litigation over their rules to consider early in the rulemaking process whether a rule is severable—that is, divisible into portions that can and should function independently. It also identifies steps agencies should take if they intend that portions of a rule should continue in effect even though other portions have been held unlawful on judicial review. In addition, it encourages courts reviewing an agency rule to solicit the parties' views on the issue of severability in appropriate circumstances.

- **Recommendation 2018-3,** ***Electronic Case Management in Federal Administrative Adjudication*** offers guidance for agencies considering whether and how to implement an electronic case management system. It provides factors for agencies to consider in weighing the costs and benefits of an electronic case management system; sets forth measures an agency should take to ensure privacy, transparency, and security; and describes ways an electronic case management system may improve adjudicatory processes.

- **Recommendation 2018-4*, Recusal Rules for Administrative Adjudicators*** urges agencies to issue procedural regulations governing the recusal of adjudicators to ensure both impartiality and the appearance of impartiality in agency adjudications. It encourages agencies to adopt procedures by which parties can seek the recusal of adjudicators assigned to their cases and to provide written explanations for recusal decisions.

- **Recommendation 2018-5,** ***Public Availability of Adjudication Rules*** offers best practices to optimize agencies' online presentations of procedural rules governing adjudications. It encourages agencies to make procedural rules for adjudications and related guidance documents available on their websites and to organize those materials in a way that allows both parties appearing before the agencies and members of the public to easily access the documents and understand their legal significance.

- **Recommendation 2018-6,** ***Improving Access to Regulations.gov's Rulemaking Docket*** offers suggested improvements to Regulations.gov, the website that allows the public to comment on many federal agencies' rulemaking proposals. It provides recommendations

to the governing body of Regulations.gov, called the eRulemaking Program, and to agencies that participate in Regulations.gov for ensuring that rulemaking materials on Regulations.gov are easily searchable and categorized consistently and clearly. These recommendations include using one electronic docket per rulemaking, promoting interoperability among key websites (e.g., Federalregister.gov and Reginfo.gov), and making rulemaking materials available to search engines.

- **Recommendation 2018-7, *Public Engagement in Rulemaking*** offers strategies for agencies to enhance public engagement prior to and during informal rulemaking. It encourages agencies to invest resources in a way that maximizes the probability that rule-writers obtain high quality public information as early in the process as possible. It recommends expanding the use of requests for information and advance notices of proposed rulemaking, targeting outreach to individuals who might otherwise be unlikely to participate, and taking advantage of in-person engagement opportunities to solicit stakeholder input and support future informed participation.

- **Recommendation 2018-8, *Public-Private Partnerships*** offers agencies guidance on legal and other considerations for participating in public-private partnerships. It commends to agencies a *Guide to Legal Issues Involved in Public-Private Partnerships at the Federal Level*, which provides guidance on the key legal questions agencies encounter in the operation of public-private partnerships, and proposes mechanisms that would allow agencies to share resources and best practices with one another when creating and administering such partnerships.

- **Recommendation 2017-1, *Adjudication Materials on Agency Websites*** provides guidance regarding the online dissemination of administrative adjudication materials. It offers best practices and factors for agencies to consider as they seek to increase the accessibility of adjudication materials on their websites and maintain comprehensive, representative online collections of adjudication materials, consistent with the transparency objectives and privacy considerations of the Freedom of Information Act and other relevant laws and directives.

- **Recommendation 2017-2, *Negotiated Rulemaking and Other Options for Public Engagement*** offers best practices to agencies for choosing among several possible methods—among them negotiated rulemaking—for engaging the public in agency rulemakings. It also offers best practices to agencies that choose negotiated rulemaking on how to structure their processes to enhance the probability of success.

- **Recommendation 2017-3, *Plain Language in Regulatory Drafting*** identifies tools and techniques agencies have used successfully to write regulatory documents (including rulemaking preambles and guidance documents) using plain language, proposes best practices for agencies in structuring their internal drafting processes, and suggests ways agencies can best use trainings and other informational resources.

- **Recommendation 2017-4, *Marketable Permits*** provides best practices for structuring, administering, and overseeing marketable permitting programs for any agency that has decided to implement such a program.

- **Recommendation 2017-5, *Agency Guidance Through Policy Statements*** provides best practices to agencies on the formulation and use of policy statements. It lists steps that agencies can take to remain flexible in their use of policy statements and to encourage, when appropriate, public participation in the adoption or modification of policy statements.

- **Recommendation 2017-6, *Learning from Regulatory Experience*** offers advice to agencies on learning from different regulatory approaches. It encourages agencies to collect data, conduct analysis at all stages of the rulemaking lifecycle (from pre-rule analysis to retrospective review), and solicit public input at appropriate points in the process.

- **Recommendation 2017-7, *Regulatory Waivers and Exemptions*** provides best practices to agencies in structuring their waiver and exemption procedures for regulatory requirements. It encourages transparency and public input by asking agencies to consider establishing standards and procedures for approval of waivers and exemptions and to seek public comments in developing standards and procedures and in approving individual waivers and exemptions.

- **Recommendation 2016-1, *Consumer Complaint Databases*** encourages agencies that make consumer complaints publicly available through online databases or downloadable data sets to adopt and publish written policies governing the dissemination of such information to the public. These policies should inform the public of the source and limitations of the information and permit entities publicly identified to respond or request corrections or retractions

- **Recommendation 2016-2, *Aggregate Agency Adjudication*** provides guidance to agencies on the use of aggregation techniques to resolve similar claims in adjudications. It sets forth procedures for determining whether aggregation is appropriate. It also considers what kinds of aggregation techniques should be used in certain cases and offers guidance on how to structure the aggregation proceedings to promote both efficiency and fairness.

- **Recommendation 2016-3, *Special Procedural Rules for Social Security Litigation in District Court*** encourages the Judicial Conference of the United States to develop a uniform set of procedural rules for cases under the Social Security Act in which an individual seeks district court review of a final administrative decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).

- **Recommendation 2016-4, *Evidentiary Hearings Not Required by the Administrative Procedure Act*** offers best practices to agencies for structuring evidentiary hearings that are not required by the Administrative Procedure Act. It suggests ways to ensure the integrity of the decision-making process; sets forth recommended pre-hearing, hearing, and post-hearing practices; and urges agencies to describe their practices in a publicly accessible document and seek periodic feedback on those practices.

- **Recommendation 2016-5, *the Use of Ombuds in Federal Agencies*** takes account of the broad array of federal agency ombuds offices that have been established since the time of Recommendation 90-2. The recommendation suggests that agencies and Congress consider creating additional ombuds offices where they may be of benefit. It also emphasizes the importance of adherence by ombuds to the three core standards of independence, confidentiality, and impartiality, and identifies best practices for the operation, staffing, and evaluation of federal agency ombuds offices.

- **Recommendation 2016-6, *Self-Represented Parties in Administrative Hearings*** offers best practices for agencies dealing with self-represented parties in administrative hearings. Recommendations include the use of triage and diagnostic tools, development of a continuum of services to aid parties, and re-evaluation and simplification of existing hearing practices, where possible. The project builds on the activity of a working group on Self-Represented Parties in Administrative Hearings that is co-led by the Administrative Conference and the Department of Justice's Office for Access to Justice.

- **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, *Issue Exhaustion in Pre-Enforcement Judicial Review of Administrative Rulemaking*** 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 Chair.

- **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 SSA'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, *Benefit-Cost Analysis at Independent Regulatory Agencies*** 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 recommendation examines 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*** 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 United States 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 United States 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 13,609.

- **Recommendation 2011-7, *FACA in the 21st Century*** addresses the administrative load imposed by Federal Advisory Committee Act (FACA) and offers proposals to Congress, the General Services Administration, and agencies that use advisory committees, to alleviate certain procedural burdens associated with the existing regime, clarify the scope of the Act, and enhance the transparency and objectivity of the advisory committee process.

- **Recommendation 2011-8, *Agency Innovations in e-Rulemaking*** addresses ways in which agency innovations and best practices can engage the public in rulemaking activities at low cost to the government.

- **Recommendation 2010-1, *Regulatory Preemption*** addresses agency procedures for determining whether to preempt state law. The recommendation presents best practices by federal agencies in implementing the requirements of Executive Order 13,132 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.