

**ADMINISTRATIVE CONFERENCE OF THE UNITED STATES**

**Nonlawyer Assistance and Representation; Request for Comments**

**AGENCY:** Administrative Conference of the United States (ACUS).

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the Chair of ACUS is requesting public input on representation and other forms of assistance provided by nonlawyers to participants in federal agency adjudication.

Responses to this request may inform an ongoing ACUS project, *Nonlawyer Assistance and Representation*, which, if warranted, may recommend best practices for agencies to use.

**DATES:** Comments must be received no later than 10:00 a.m. (ET) August 31, 2024.

**ADDRESSES:** You may submit comments by email to [info@acus.gov](mailto:info@acus.gov) (with “Nonlawyer Assistance and Representation” in the subject line of the message), or by U.S. Mail addressed to Nonlawyer Assistance and Representation, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036. ACUS will ordinarily post comments on the project web page as they are received. Commenters should not include information, such as personal information or confidential business information, that they do not wish to appear on the ACUS website. For the full ACUS public comment policy, please visit

<https://www.acus.gov/policy/public-comment-policy>.

**FOR FURTHER INFORMATION CONTACT:**

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## **SUPPLEMENTARY INFORMATION:**

The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see [www.acus.gov](http://www.acus.gov).

### **Nonlawyer Assistance and Representation**

Millions of people each year engage with administrative programs or participate in administrative adjudicative processes to access federal programs (for example, to obtain needed benefits and services) and resolve legal issues (for example, to resolve tax and immigration disputes). Many people “need assistance to access and obtain fair outcomes” in administrative adjudications.<sup>1</sup> But many people, particularly low-income people and members of other underserved communities, are not always able to access representation or other forms of assistance that they need to navigate administrative adjudications successfully.

One barrier to accessing representation or assistance is the critical shortage of affordable legal services. Agencies have long innovated various ways to expand assistance and widen the pool of available representatives. For example, many agencies currently permit participants in agency adjudications to be represented by accredited or qualified nonlawyers. In 1986, ACUS recommended that agencies “take the steps necessary to encourage—as well as eliminate inappropriate barriers to—nonlawyer assistance and representation.”<sup>2</sup> Since then, a growing

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<sup>1</sup> WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES 19 (2023).

<sup>2</sup> Admin. Conf. of the U.S., Recommendation 86-1, *Nonlawyer Assistance and Representation*, 51 Fed. Reg. 25,641 (July 16, 1986).

academic literature has analyzed the experience and outcomes people have when using various forms of nonlawyer representation. Just last year, ACUS recommended that agencies allow participants in many adjudications “to be represented by a lawyer or a lay person with relevant expertise” and to establish “rules authorizing accredited or qualified nonlawyer representatives to practice before the agency.”<sup>3</sup> Additionally, a recent recommendation on regulation of representatives in agency adjudicative proceedings led to a working group focused on developing a model code for representation.<sup>4</sup> Yet there is still much more to understand about the extent and character of representation by professionals who are not lawyers.

ACUS is undertaking a project to map and define the spectrum of assistance that parties to administrative proceedings may (or may not) have available to them. It will identify areas in which certain forms of assistance may be underutilized in administrative proceedings and, conversely, where agencies may be relying too heavily on certain types of assistance.

### **Specific Topics for Public Comment**

ACUS welcomes views, information, and data on all aspects of strategies that agencies are using or might use to expand assistance and/or representation for members of the public when they engage with administrative programs or participate in administrative adjudicative processes. ACUS also seeks specific feedback on the following questions related to assistance and nonlawyer representation:

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<sup>3</sup> Admin. Conf. of the U.S., Recommendation 2023-5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing*, 89 Fed. Reg. 1509 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2023-6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings*, 89 Fed. Reg. 1511 (Jan. 10, 2024).

<sup>4</sup> George M. Cohen, Regulation of Representatives in Agency Adjudicative Proceedings (Dec. 3, 2021) (report to the Admin. Conf. of the U.S.). See also *Working Group on Model Rules of Representative Conduct*, ADMIN. CONF. OF THE U.S., <https://www.acus.gov/research-projects/working-group-model-rules-representative-conduct>.

### **Experiences Navigating Administrative Adjudication**

1. What has been your experience interacting with an administrative adjudication regarding a benefit or service that you are applying for or renewing, for example unemployment insurance or student loan assistance? Were you able to receive adequate assistance from the agency, including interactions with agency staff and agency-provided resources, such that you did not need external legal services from lawyers or nonlawyers? If not, what steps did you take to find such assistance, if any?
2. If you have been represented by someone in an administrative adjudication, how would you describe the experience and outcome? Have you experienced any unintended consequences from representation? How did you find and decide to work with your representative? Did the agency assist you with finding your representative? Was your representative a lawyer? If not, was your representative part of an organization or a solo practitioner? How did you decide to proceed with your representative, and what alternatives did you consider?

### **Perspectives from Representatives or Legal Assistance Providers**

3. If you have worked as a nonlawyer representative in administrative adjudications, how long have you worked in this capacity? Before which agency or agencies do you practice? What tasks do you undertake as part of your representation? How were you trained? Are you required to re-certify regularly or seek ongoing training? Is training provided by the agency or by a sponsoring organization? Are you supervised by a lawyer in any capacity?

4. If you have worked as a nonlawyer representative in administrative adjudications, what was the certification and oversight process from the agency? In your experience, was that process efficient and/or successful?
5. If you have worked as a nonlawyer representative in administrative adjudications, have you felt that you were treated professionally and equally by others in the process? Was the government represented by a lawyer?
6. If you are a lawyer representing people in administrative adjudications, what are your experiences and interactions with nonlawyer representatives, if any?
7. If you represent people in administrative adjudications, what are your experiences with agency rules and procedures regarding representation? In what ways could they be improved?

#### **Landscape of Relevant Agency Programs**

8. Are you familiar with specific agency programs that encourage nonlawyer representation? Are these programs working to meet the demand of need for assistance and/or representation in administrative adjudications? If not, how might they be improved?
9. Are there specific agency programs that could be expanded to encourage more forms of nonlawyer assistance and/or representation?
10. Are you aware of studies or other data examining aspects of nonlawyer representation before federal agencies, beyond data that is publicly available through agency websites?

11. What role can public- and private-sector groups play in increasing nonlawyer representation, and how should government agencies encourage such actions, if at all?

Dated: July 8, 2024