



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Open Government Plan of the Administrative Conference of the United States

Background

The Administrative Conference of the United States (ACUS) is an independent federal agency, whose mission is to find ways to improve the procedures by which federal agencies interact with citizens and businesses in carrying out regulatory, adjudicatory, and other programmatic functions. We do this through a program of applied research, which serves as a basis for a consensus process leading to recommendations that focus on greater efficiency, effectiveness, and fairness of federal agency programs.

Most ACUS recommendations are addressed to agencies and suggest ways to improve their procedures. Some recommendations urge Congress to enact legislation that will enable agencies to implement suggested improvements. ACUS may also address recommendations to the President or the Judicial Conference of the United States.

ACUS has two principal components, the Conference's membership and a small professional staff (authorized at up to 18 FTEs) that constitutes the Office of the Chairman. The membership is a deliberative body that is authorized to adopt recommendations based on Conference-sponsored research and an entirely open and public committee process. The staff is responsible for conducting the research program, supporting and advising the membership, and conducting various activities aimed at implementing Conference recommendations. The structure and programs of the Conference are described in full on the agency's user-friendly website, which was substantially redesigned and updated in 2017 (www.acus.gov).

The Conference was established by Public Law 88-499 in 1964. During its first period of full operations, from 1968 to 1995, it adopted approximately 200 sets of recommendations. After ceasing operations for almost 15 years due to a lapse in appropriations, ACUS resumed activities in 2010, with a strong commitment to becoming a model of open government. Open government provides a means of accountability to the American public, by embodying the principles of transparency, public participation, and collaboration.

The unusual circumstances of this agency's history gave us the opportunity for a completely fresh start in designing informational and communications systems. Although we have an extensive collection of materials that document prior accomplishments, which constitute a valuable resource for future research, this agency has no legacy information systems or backlogs needing modernization. ***Therefore, from day one of this agency's "new era," the principles of open government have guided our approach to all systems design, process, and management issues, and will continue to do so.*** The Open Government Plan that follows has been designed to implement those principles, within the limitations of the budgetary and staff resources available to a micro agency.



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Overview of ACUS Philosophy

ACUS Mission Statement

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

ACUS Vision and Values

The Administrative Conference is given the power to “study the efficiency, adequacy, and fairness of administrative procedure...” 5 U.S.C. § 594. The work of the Conference is guided by these procedural values, which reflect legal and social science measures of performance. The fairness value derives from law and employs principles embedded in the Due Process Clause of the Constitution and the Administrative Procedure Act. The efficiency value derives from economics and looks at how procedures employed by an agency achieve the public purposes its regulations are intended to serve. The question is whether the agency procedures and management techniques reflect optimum resource allocations, not whether the benefits of the underlying substantive regulations exceed their costs. The adequacy value borrows from the disciplines of psychology and political science and looks at the effectiveness of regulatory techniques from the public’s perspective, including such factors as trust, transparency, and participation. In many situations, these values must be balanced by the Conference in crafting recommendations, but in no case will they be ignored.

ACUS Strategic Goals

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

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

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

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



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Alignment with the ACUS Mission and Strategic Plan

The “Open Government Directive” issued by the Office of Management and Budget on December 8, 2009 (M-10-06) directed agencies “to take specific actions to implement the principles of transparency, participation, and collaboration.” ACUS fully embraces these principles, which further the agency’s mission, vision, values, and goals by emphasizing:

- **Transparency** - promoting accountability by providing the public with access to information on government operations and activities.
- **Participation**- inviting members of the public to contribute to and influence government policies and functions, so the government can more readily represent the voice of the people.
- **Collaboration** - encouraging cooperation between agencies, across levels of government and between the public and private sectors.
- **Presumption of Openness** – applying the principle that openness is the default position for issues arising under the Freedom of Information Act.

The key to understanding the commitment of ACUS to open government is to recognize that because of our unique mission, which focuses on improving administrative procedures government-wide, the principles cited above are embodied both in how we carry out our own agency’s programs and in the best practices that our research and recommendations embody, for the guidance of agencies throughout the government.

In other words, this agency aims to be a model of openness in our own practices, but the studies and recommendations that are our “products” seek to identify ways to help other agencies incorporate the principles of openness into their own programs. Illustrative examples include several recent ACUS recommendations that focus on improving communication with the public, e-rulemaking, use of consensus processes for dispute resolution, and collaboration with private sector standards organizations.

Transparency

The Administrative Conference’s standing practice is to post proactively all manner of documents of interest to the public on its website regardless of any requirement to post the documents. Among other things, ACUS posts:

- Agency policy statements on meetings, public comments, public participation, privacy, and media access
- Drafts (after internal review) and final versions of all recommendations and research reports under consideration by ACUS committees and the full Conference membership
- All recommendations and statements adopted by the Conference since the agency’s re-establishment in 2010, plus the related supporting research reports, in full-text, searchable form



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- All recommendations and statements adopted by the Conference in its initial period of operation, 1968-95, in full-text, searchable form
- ACUS Bibliography, which includes citations to all ACUS reports and other publications by staff and research consultants
- Quarterly and annual reports of ACUS activity under the Freedom of Information Act (FOIA), raw data underlying the annual report, and the Chief FOIA Officer's Annual Report
- The Administrative Conference Act, ACUS Bylaws, Congressional Budget Justifications, and Annual Audit Reports
- ACUS policies for public participation in agency activities, communications with media, and protection of privacy
- Complete listing of ACUS members and staff
- Calendar of events

ACUS staff responds promptly to all requests for information about the agency, its projects and other activities, and its body of research and recommendations, regardless of whether such requests cite FOIA. ACUS will maintain its record of never having had a backlog of FOIA requests.

In addition to the body of current and past material maintained on the agency's website with full direct access by the public, ACUS made arrangements to create electronic scanned files of a vast collection of written research materials, reports, and other documentation preserved from the agency's work prior to cessation of activities in 1995. These materials are stored on the agency's computers and are available to the public upon request to ACUS staff, because it is not cost-effective to post all of this collection on our website. The website structure is reviewed periodically and updated, as appropriate, to incorporate improvements in technology.

A number of ACUS projects have involved the creation of a database of research findings. Most significantly, the database underlying our December 2012 publication of the [Sourcebook of United States Executive Agencies](#) is maintained at no cost to the Conference on a university website and is readily available to the public for study and further research, via a link on the ACUS website. The *Sourcebook* itself is a compendium of descriptive material and data about the great variety of federal Executive Branch agency organizations and structures, which is available in full on our website. Paper copies are available for purchase online at minimal cost through the Government Printing Office's U.S. Government Bookstore. An updated version of the *Sourcebook* will be published in 2018. Similarly, an important online database, created in collaboration with Stanford University Law School in 2015, was the outgrowth of a major ACUS study of the variety of federal agency adjudicatory procedures. This database has resulted in other significant initiatives intended to assist federal agency adjudicators in their decision making. Among such other initiatives is a forthcoming sourcebook on adjudication that draws heavily on the database. The adjudication database project is described more fully below, under "Flagship Initiative."

Participation

The Administrative Conference's standing policy and practice is to open all meetings of the



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full Conference membership and its subcommittees to the public. These meetings are accessible to the public through live webcasts, which remain accessible on the ACUS website. Although direct participation in the discussions at the semiannual plenary sessions of the entire membership is generally limited to Conference members, staff and consultants, public attendees at subcommittee meetings are allowed an opportunity to express their views. We encourage public participation throughout our recommendation process by posting draft documents on our website and inviting comments at every stage. All comments will receive appropriate consideration.

In accordance with the Administrative Conference Act, 5 U.S.C. §§ 591-596, the Conference is designed to be a public-private partnership. The culture of this agency, its members, and its staff is to encourage a high level of participation by interested persons. This practice is entirely consonant with both the formal structure of the Conference and the philosophy stated above.

The ACUS staff is responsible for our evolving use of new media, including social media tools, RSS feeds, electronic newsletters, and blogs, to inform the public about current ACUS activities and to enable interested persons to communicate with our staff. We can be contacted at info@acus.gov or by telephone at 202-480-2080.

A schedule of committee meetings is available at: <http://www.acus.gov/committees>

Agency policies for public comments, participation in meetings, and media contacts are available at: <http://www.acus.gov/policies>

A listing of current research projects is available at: <http://www.acus.gov/current-projects>

Collaboration

Under the Administrative Conference Act, 5 U.S.C. §§ 591-596, the Conference is designed and structured to be a model of collaboration, both among federal departments and agencies and between the federal government and the private sector. By statute, the Conference has a maximum of 101 voting members:

- The Chairman, who is appointed by the President and confirmed by the U.S. Senate for a 5-year term.
- A Council, which acts as a Board of Directors of the agency, consisting of the Chairman and 10 other members appointed by the President for 3-year terms. Up to 5 Council members may be current senior federal government officials; the remainder are from outside the federal government.
- The chairs of all federal independent boards and commissions, or their designees.
- The heads of all federal executive departments and administrative agencies that are designated by the President, or an individual designated by the individual department or agency head.



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- Up to 40 “public members” (not federal employees) appointed by the Chairman, with the approval of the Council. The statute requires that they be selected: “in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to federal administrative procedure.” Public members serve 2-year terms and may be reappointed for up to three terms, so there are both continuity and turnover among the public members.

In addition to the statutory members, to increase the breadth of collaboration ACUS Bylaws provide for liaison arrangements with Congress, the judiciary, additional federal agencies, and professional associations.

Attorneys on the ACUS staff are very active members of the American Bar Association’s Section of Administrative Law and Regulatory Practice. We regularly cooperate with that Section’s broader membership in panel presentations and discussions at local and national meetings, on a variety of topics directly relating to ACUS’s mission, its research program, and activities directed toward implementing ACUS recommendations. Other examples of recent and ongoing collaborative activities include:

- Leadership of the [Public-Private Partnership](#) Working Group—a working group of key federal officials convened by ACUS to chart the landscape of such partnerships at the federal level and to devise best practices for establishing partnerships.
- Leadership of the [Council of Independent Regulatory Agencies \(CIRA\)](#), an informal organization that ACUS created in the 1980s with the endorsement of President Reagan, which continues to provide an opportunity for the heads of independent agencies to share problems and solutions in connection with procedural issues of mutual interest.
- Active participation in interagency committees focusing on various procedural matters involving the Freedom of Information Act, the Federal Advisory Committee Act, and the Administration’s Open Government Initiative.
- A [Forum in 2017 on Federal Administrative Adjudication](#) to address possible reforms agencies and the Congress might consider in, for instance, balancing fairness and efficiency in high-volume adjudication programs.
- Serving as a member agency of the White House Legal Aid Interagency Roundtable (LAIR)—a collaboration of 22 federal agencies that sought to ensure equal access to justice to vulnerable members of society by integrating civil legal aid into programs that serve low-income individuals. The Department of Justice released its First Annual LAIR Report in 2016, and highlighted the Working Group on Self-Represented Parties in Administrative Hearings, co-chaired by ACUS and DOJ’s Office of Access to Justice, which the report calls a “centerpiece” of the roundtable’s efforts to develop promising practices. The report also features ACUS’s project on Self-Represented Parties in Administrative Hearings, which was later adopted as an official [ACUS Recommendation](#).



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Flagship Initiative

A few years ago, ACUS conducted a major research project to map the contours of the federal administrative adjudicatory process, including both “formal” adjudication conducted under the Administrative Procedure Act and “informal” adjudication. The “[Federal Administrative Adjudication](#)” project incorporates several areas of collaboration in its design, and the final product was structured to give the public a more transparent view of the variety of adjudicatory processes followed by federal agencies. This study not only updated and deepened prior studies on administrative adjudication conducted by the Conference but also highlighted adjudicatory trends and developments (such as the use of alternative dispute resolution techniques and video hearings).

Drawing on this significant study and database, a [working group](#) (comprising leading academics in the field, as well as senior federal agency officials and adjudicators) was established in 2017 to update ACUS’s 1993 *Model Adjudication Rules*. The Model Rules are designed for use by federal agencies to amend or develop their procedural rules for hearings conducted under the Administrative Procedure Act. Public comment will be sought on the report of the working group in 2018 prior to publication of a final document. In addition to serving as the basis of the Model Rules, the Adjudication Database will also inform a new publication, *Sourcebook of Adjudication Outside the Administrative Procedure Act*. These projects incorporate the principles of collaboration and transparency, and are intended to result in greater efficiency and fairness in government.

Freedom of Information Act

Generally speaking, the Freedom of Information Act (FOIA) provides that any person has the right to obtain access to federal agency records except to the extent that those records are protected from disclosure under FOIA or by some other statute. At the core of ACUS’s FOIA program is a “presumption of openness.” ACUS FOIA responses are timely, with most requesters receiving a response within one or two days for simple requests. The agency’s website contains a wealth of information about the agency’s current activities, and also contains a great deal of historical information, which has been scanned and placed on our website for the benefit of the public. Persons seeking information from ACUS are encouraged to contact the agency first to avoid having to submit a formal request. In many cases, we are able to point to information already located on our website (proactively disclosed), or locate and send the agency records requested.

ACUS has updated its FOIA regulations per the FOIA Improvements Act of 2016 (available at 82 Fed. Reg. 7631 (Jan. 23, 2017)), and continues its record of excellent FOIA compliance. ACUS continues to be in the top one or two agencies for speed of FOIA responses. In 2018, ACUS will be working with the Office of Information Policy to achieve agency interoperability with the National FOIA Portal.

Plain Language

The Plain Writing Act of 2010 requires federal agencies to write "clear Government communication that the public can understand and use." ACUS is committed to writing new



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documents in plain language, using the Federal Plain Language Guidelines. We will use plain language in any document that:

- is necessary for obtaining any federal government benefit or service;
- provides information about any federal government benefit or service; or
- explains to the public how to comply with a requirement that the federal government administers or enforces.

If visitors to our website find a document that is hard to understand, please send the title of the page and the exact URL to info@acus.gov and, if possible, a brief message about what is not clear.

In addition to the agency's adherence to plain language principles, ACUS's Assembly recently adopted Recommendation 2017-3, on the subject of plain language (Admin. Conf. of the U.S., Recommendation 2017-3, *Plain Language in Regulatory Drafting*, 82 Fed. Reg. 61728 (Dec. 29, 2017), which proposes best practices for federal agencies in structuring their internal drafting processes, and suggests ways agencies can best use trainings and other informational resources.

Media Inquiries

Media representatives seeking answers to questions concerning research projects, studies, recommendations or any other topics concerning the agency should contact Chief Financial and Operating Officer Harry Seidman, at 202-480-2080 or via email at hseidman@acus.gov. Administrative Conference transcripts, archival photographs, and video or audio clips of ACUS meetings are available on the Administrative Conference website.

Committee Meetings: Media representatives wishing to attend public meetings are asked to RSVP via info@acus.gov. Advance notice is appreciated due to space limitations.

Plenary Sessions, Symposia and Other Events: Because the location of these sessions is variable, media representatives seeking to attend should contact the Harry Seidman, for complete details, hseidman@acus.gov.

Interview Requests: Media requests for interviews with ACUS officials should be made through Harry Seidman.

Privacy

Protecting the privacy of our employees, contractors, and the public is of paramount importance to ACUS. The agency maintains privacy safeguards that are suited for the size of the agency, as well as the volume and type of records. The vast majority of records are maintained in electronic format on secure servers (with adequate back-up systems), and paper records containing personally identifiable information are maintained in locked cabinets at the agency's headquarters. The agency's Senior Agency Official for Privacy is General Counsel Shawne McGibbon.



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Whistleblower Protection

The Chairman of the Conference is required by 5 U.S.C. § 2302(c) to ensure, in consultation with the Office of Special Counsel (OSC), that employees are informed of their rights and remedies under the prohibited personnel practices and whistleblower retaliation protection provisions of Title 5. ACUS has informed all current employees of their rights and protections under the applicable laws, and will similarly inform any new employees. In 2016, ACUS received a Certificate of Completion for successful completion of the Office of Special Counsel's certification program. ACUS has published the required public notice under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174, at 79 Fed. Reg. 60126 (Oct. 6, 2014).

Records and Email Management

As noted above, the re-establishment of ACUS after almost 15 years of non-funding gave us the opportunity for a completely fresh start in designing informational, communications, and records management systems. Official records of the agency are maintained in electronic form in password-protected files on the agency's servers. Records of the agency from the period of activity 1968-95 were transferred to the National Archives and Records Administration (NARA) prior to cessation of activities in 1995. No further transfer to NARA of agency records has been necessary because insufficient time has elapsed since our re-establishment to require such action. More importantly, ACUS records are retained long enough to protect all public rights and assure accountability.

Within the past couple of years, ACUS migrated to a cloud-based email management system to protect against inadvertent deletion of agency email records and to ensure a FISMA-compliant hosting environment. ACUS was also an early adopter of the https Internet platform to enhance the security of its public-facing website.

In addition to being an agency, the membership of the Conference, constituted under the Administrative Conference Act as the "Assembly," is chartered as an advisory committee under the Federal Advisory Committee Act and we conform to records management requirements for advisory committees. The agency's Committee Management Officer (CMO) participates regularly in the quarterly meetings of the CMO Council as scheduled by the General Services Administration to remain current on any developments in this area.

Congressional Requests

The Administrative Conference Act specifically authorizes ACUS to make recommendations to Congress on administrative procedures. Although most ACUS recommendations are addressed primarily to administrative agencies, some recommendations urge Congress to enact legislation that will enable agencies to implement suggested improvements. During the period of development of such recommendations and when seeking implementation of the recommendations after adoption by the Conference, the Chairman or his designee(s) on the agency's staff will consult, as appropriate, with relevant congressional committee staff. Such



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contacts are coordinated and overseen by the Vice Chairman/Executive Director Matthew Wiener. Specific requests to the Chairman from Members of the Senate or House, or their staffs, for comments on pending legislation or other matters of congressional concern are given priority attention and responses are ordinarily submitted by the Chairman or by a designated senior ACUS staff member.

ACUS staff consults with the Office of Management and Budget during the development of the agency's proposed budget and the annual Congressional Budget Justification (CBJ) document. Each year's CBJ is posted on the ACUS website.

Declassification

Declassification is not applicable because ACUS does not have classified information.