



Request for Proposals—April 11, 2022

Timing of Judicial Review of Agency Action

The Administrative Conference of the United States (ACUS) is accepting proposals from individuals or groups interested in serving as a consultant(s) to produce a report on several issues related to the timing of judicial review of agency action as part of an Office of the Chairman project.

Project Description and Consultant Responsibilities

In Recommendation 2021-5, *Clarifying Statutory Access to Judicial Review of Agency Action*, 86 Fed. Reg. 53262 (Sept. 27, 2021), ACUS reserved several issues for possible consideration in future projects. *See id.* at 53262 n.7. This project addresses two of those issues and such related issues as the research for the study may suggest should also be addressed. The two issues are:

1. When does an action seeking review of a rule accrue, under both the general six-year limitations period of 28 U.S.C. § 2401(a) and the limitations periods provided in special review provisions governing particular agency rules?
2. Under what circumstances is a person or party precluded from seeking review, especially in an enforcement proceeding, because the person or party failed to seek review within the time provided for under a special review statute or 28 U.S.C. § 2401(a)? Does the answer depend on the legal basis on which the person or party challenges the rule (e.g., substantive versus procedural, constitutional versus statutory, facial versus as-applied)?

In answering these questions, the project will address whether ACUS should consider proposing any legislative reforms, and if so, what ACUS might propose and why. The project will draw upon, among prior ACUS work, Recommendation 82-7, *Judicial Review of Rules in Enforcement Proceedings*, 47 Fed. Reg. 58208 (Dec. 30, 1982), and its associated report; ACUS's *Statutory Analysis Spreadsheet* (June 2021); and ACUS's *Sourcebook of Federal Judicial Review Statutes* (forthcoming 2022), which is based on the *Spreadsheet*.

The draft report will be completed by January 27, 2023, and a final report will be completed by March 3, 2023, or such later dates upon which ACUS and the consultant(s) mutually agree. ACUS may select a single consultant or assemble a team of consultants depending on the proposals it receives. Consultants will receive between \$12,000 and \$25,000, plus a budget for related expenses, depending on the number of consultants and allocation of responsibilities. The total value of consulting fees for this project will not exceed \$25,000, to be apportioned in accordance with the number of consultants and division of responsibilities.

Submitting a Proposal and Evaluation Criteria

If you are interested in serving as a consultant for the report, send an email to Kazia Nowacki (knowacki@acus.gov) with the phrase “ACUS Project Proposal” in the subject line. Attach your curriculum vitae to the email, along with a short (ideally no more than one page) statement identifying what you see as the primary issues that the report should address. **All responsible sources must submit a proposal by 5:00 p.m. Eastern Time on April 29, 2022, in order to be guaranteed consideration by the agency.**

Proposals will be evaluated based on quality, clarity, and the proposer’s qualifications. The Conference has a strong preference for consultants who have previously authored scholarly work on judicial review of administrative action.