



Request for Proposals – November 28, 2011

CIVIL PENALTIES INFLATION ADJUSTMENTS

The Administrative Conference of the United States seeks proposals by potential consultants for a study of the Federal Civil Penalties Inflation Adjustment Act.

Background. The Federal Civil Penalties Inflation Adjustment Act, Pub. L. 101-410 (1990), *as amended*, Pub. L. 104-134 (1996), *codified at* 28 U.S.C. § 2461 note, requires federal agencies to adjust civil penalties to account for inflation. However, a 2003 GAO study concluded that the Act's terms may in fact prevent the required adjustments from capturing inflation fully. GENERAL ACCOUNTING OFFICE, AGENCIES UNABLE TO FULLY ADJUST PENALTIES FOR INFLATION UNDER CURRENT LAW (2003). The GAO report concluded that:

- The Act imposes a 10% cap on the first adjustment to any given penalty, even though inflation of hundreds of percent may have occurred since the penalty was last altered. The resulting “inflation gap” is never recovered.
- The Act's timing rules cause each adjustment to lose a year's worth of inflation, which is never recovered by subsequent adjustments.
- The Act's rules on the rounding of inflation adjustments can delay adjustment for many years, in some cases until inflation has reached 45% or more, and then can cause penalties to be adjusted in an amount that greatly exceeds inflation.
- The Act exempts hundreds of penalties from adjustment, and some of these penalties have not been adjusted in decades.
- Many agencies fail to comply with their statutory duty to adjust penalties.

Project. The Conference seeks proposals for a project that would study inflation adjustments to federal civil penalties. The study should evaluate the conclusions of the GAO study, provide suitable illustrations of the effect of the limits on inflation adjustments, determine what inflation adjustments would be in the absence of the Act's limitations, determine whether change is needed to preserve the deterrent effect of federal civil penalties, and recommend appropriate solutions for any problems that are determined to exist. Applicants for this study should have sufficient quantitative skills to fully understand the issues involved and to craft appropriate solutions.

How to submit a proposal

Proposals are invited from those who would like to serve as a consultant on this project. All responsible sources may respond to this invitation, and the responses will be considered by the Conference staff.



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The product of a consultant's study is a report that is delivered first for review by the Conference staff and then to a committee of the Conference membership. The report should provide proposed recommendations. The consultant interacts with Conference staff and works with the committee as the committee debates and further shapes the recommendation. The recommendation is then forwarded to the Council of the Conference and ultimately to the full Conference membership meeting in plenary session. If approved at the plenary session, the recommendation becomes an official recommendation of the Administrative Conference. (For a general understanding of how the Conference is organized, see 5 U.S.C. §§ 591-596.)

The Conference typically provides a consulting fee for a study plus a budget for expenses. The Conference also typically encourages its consultants to write up the results of their studies for publication. Thus, working as a Conference consultant provides some compensation, a publication opportunity, and the opportunity to work with Conference members from federal agencies, academia, the private sector, and public interest organizations to help shape and improve administrative law.

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

- Send an e-mail to Jonathan R. Siegel, ACUS Director of Research and Policy, at jsiegel@acus.gov. Proposals must be submitted by e-mail.
- Include the phrase “ACUS Project Proposal” in the subject line of your e-mail.
- In the body of your e-mail or in an attachment:
 - State the name of the project for which you are submitting a proposal (the name is indicated in bold at the top of this request for proposals).
 - Explain why you would be a good person to work on the project.
 - Explain how you would conduct the proposed project—what research you would do, how you would do the research, and how you would develop recommendations based on the research. There is no required format and 2-3 pages should probably be sufficient for this section.
 - Include your CV, which should contain contact information.
 - Include professional references whom the Conference staff can call.
 - Propose a budget for the project. ACUS anticipates a consulting fee of \$8,000 for this contract, travel expenses of \$1,000, and research assistance expenses of \$1,000. There is some flexibility in the expense budget based on factors relating to the proposal (e.g., the consultant's location relative to Washington, DC, and the need for research assistance and empirical or interviewing work). The amount of the expenses is not a critical factor in the award of the contract; the quality of the proposal and of the consultant is more important.



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- Propose a schedule for the project. ACUS research projects typically call for submission of an outline, a draft report, and a final report. The most important deadline is submission of the draft report, which should be substantially complete and ready for consideration by an ACUS committee. Proposals for this project should target the submission of the draft report for no later than February 29, 2012, to target the project for the June 2012 ACUS plenary session.
- Submit your proposal by 6:00 pm Eastern time on December 14, 2011. Proposals may also be submitted or amended at any time until the award of the contract, and the Conference may consider any proposals or amended proposals received at any time before the award of the contract, but only proposals submitted by the stated deadline are guaranteed to receive consideration.

Proposals will be evaluated based on:

- The qualifications and quality of the researcher(s)
- The quality of the proposal
- The timeline of the proposal
- The likelihood that the research will lead to an Administrative Conference recommendation that will improve government
- The cost of the proposal (although the other factors are more important)

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

Those submitting proposals should understand that an ACUS project will require many hours of work on the part of the consultant. In addition to the work involved in researching and writing the consultant's report, the consultant will need to work with ACUS staff and ACUS committees as the Conference considers a recommendation based on the report. The consulting fee is not designed to match the consultant's normal consulting rates. It is a significant public service to serve as an ACUS consultant.