



ADMINISTRATIVE CONFERENCE  
OF THE UNITED STATES  
FY 2012  
CONGRESSIONAL BUDGET JUSTIFICATION

February 14, 2011

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## I. Overview

The President's Budget for FY 2012 requests \$3.2 million for the Administrative Conference of the United States. This is level funding from the President's FY 2011 budget.

The Administrative Conference of the United States is a newly reauthorized independent agency that studies federal administrative procedures and processes to recommend improvements to Congress and agencies. ACUS is a public-private partnership that brings together senior government officials and private citizens with diverse views and backgrounds to provide nonpartisan expert advice.

After a 15-year hiatus, ACUS resumed operations in April 2010 upon the confirmation of the Chairman by the Senate. The latter half of FY 2010 was a startup period for the Conference. The President appointed 10 Council members and designated federal departments and agencies for membership, and the Chairman and the Council named the other statutory members of the Conference. The Administrative Conference also hired staff and secured office space, and commenced an initial program of research projects to carry out the authorizing statute's mission of improving administrative procedure. In FY 2011, the Conference commenced full operations. In December 2010, the Conference met in plenary session for the first time since 1995. At this session, the full membership adopted a recommendation to improve agency procedures for considering regulatory preemption of state law, which will provide greater transparency and reduce unnecessary litigation over preemption questions. The full membership of the Conference also discussed strategic goals for ACUS, which are described below.

The requested budget of \$3.2 million will enable ACUS to fund, supervise, and bring before the Conference members for their review a full program of research projects and other programs aimed at promoting the unique goals of the agency's enabling statute. These are (1) "to develop recommendations for action" by federal agencies designed to ensure that their responsibilities are "carried out expeditiously in the public interest," (2) to "promote more effective participation and efficiency in the rulemaking process," (3) "to reduce unnecessary litigation in the regulatory process," (4) "to improve the use of science" in that process, and (5) "to improve the effectiveness of laws applicable" to that process. 5 USC § 591. The request for FY 2012 assumes enactment of the FY 2011 request and carryover of unobligated balances.

## II. History and Structure of the Administrative Conference

### A. A Brief History of ACUS

Following bipartisan endorsement of the work of two temporary Administrative Conferences during the Eisenhower and Kennedy Administrations, Congress enacted the Administrative Conference Act of 1964, which placed the work of ACUS on a more permanent footing. The Act codified the prior structure for these conferences, which emphasized collaboration among a wide array of federal agencies, as well as experts in administrative law and regulation from the private sector and academia, reflecting a wide diversity of views – all of whom serve without any additional compensation. This collaborative effort is designed to produce consensus, nonpartisan recommendations for improvement in federal administrative processes, which, more than ever, affect every sector of our National economy and the lives of American citizens. Judge E. Barrett Prettyman, who had served as chairman of both temporary conferences, explained at ACUS' opening plenary session in 1968 that the members of the Conference "have the opportunity to make the administrative part of a democratic system of government work."<sup>1</sup>

From its beginning in 1968 until its defunding in 1995, ACUS adopted approximately 200 recommendations, based on careful study and the informed deliberations of its members in an open process that encouraged public input. A complete list of these recommendations was published at 60 Fed. Reg. 56312 (1995). Congress enacted a number of them into law, and agencies and courts have adopted or relied upon many others. ACUS also played a leading role in developing and securing legislation to promote, and provided training in, "alternative dispute resolution" (ADR) techniques for eliminating excessive litigation costs and long delays in Federal agency programs, as well as "negotiated rulemaking" processes for consensual resolution of disputes in rulemaking.

The work of ACUS has received consistent support from a wide range of outside sources. As the Congressional Research Service noted in 2007, ACUS provided "nonpartisan, nonbiased, comprehensive, and practical assessments and guidance with respect to a wide range of agency processes, procedures, and practices," based on "a meticulous vetting process, which gave its recommendations credence."<sup>2</sup> Justice Scalia (a former Chairman of ACUS) has viewed the agency as "a unique combination of talents from the academic world, from within the executive branch . . . and . . . from the private bar, especially lawyers particularly familiar with administrative law."<sup>3</sup> Similarly, Justice Breyer (a former liaison representative to ACUS from the Judicial Conference) has described the agency as "a unique organization, carrying out

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<sup>1</sup> Administrative Conference of the United States, First Plenary Session, May 27, 1968, Tr. at 14.

<sup>2</sup> Statement of Morton Rosenberg Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary Concerning "Reauthorization of the Administrative Conference of the United States," Sept. 19, 2007, at 2-3.

<sup>3</sup> Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary, 108<sup>th</sup> Cong. 10 (2004).

work that is important and beneficial to the average American, at low cost,” and that “can make it easier for citizens to understand what government agencies are doing to prevent arbitrary government actions that could cause harm.”<sup>4</sup> In recently announcing his appointment of the members of the ACUS Council, President Obama emphasized the value of the “public-private partnership” reflected in the agency’s enabling statute.<sup>5</sup>

Although ACUS lost its funding in 1995, Congress never repealed the Administrative Conference Act of 1964. In 2004, in response to continued bipartisan support for the prior work of the agency, Congress reauthorized ACUS, and it extended that reauthorization in 2008.<sup>6</sup> ACUS received a startup appropriation of \$1.5 million in both FY 2009 and FY 2010. Congress is currently considering a \$3.2 million appropriation for ACUS in FY 2011, as proposed in the President’s budget.

## **B. Membership**

The Administrative Conference of the United States has 101 members – a Chairman, 10 Council members, 50 government members representing federal departments and agencies, and 40 public members – private citizens with expertise in administrative procedure drawn from academia, the private bar, the corporate sector, public interest organizations, and other sources. The Chairman is the only member of the Conference who is employed full-time on Conference business. The public members serve without compensation and the government members participate in Conference business as a collateral duty to their regular federal positions.

### **1. Chairman**

The Chairman is appointed by the President and confirmed by the Senate. Paul R. Verkuil, the tenth Chairman of the Administrative Conference of the United States, was sworn in by Vice President Biden on April 6, 2010. Mr. Verkuil is a well-known administrative law teacher and scholar who has coauthored a leading treatise, *Administrative Law and Process*, now in its fifth edition, several other books, and over 65 articles on the general topic of public law and regulation.

He is President Emeritus of the College of William & Mary, has been Dean of the Tulane and Cardozo Law Schools, and a faculty member at the University of North Carolina Law School. He is a graduate of William & Mary and the University of Virginia Law School and holds a JSD from New York University Law School. Among his career highlights is serving as Special Master in *New Jersey v. New York*, an original jurisdiction case in the Supreme Court, which determined sovereignty to Ellis Island.

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<sup>4</sup> *Id.* at 15.

<sup>5</sup> Press Release, “President Obama Announces More Key Administration Posts,” July 8, 2010, at 1.

<sup>6</sup> Pub. L. 108-401, 118 Stat. 2255; Pub. L. 110-290, 122 Stat. 2914.

## 2. Council

The Council comprises the Chairman and ten additional members appointed by the President – five government officials and five private citizens. The Council serves as the board of directors for ACUS and is bipartisan. On July 8, 2010, President Obama appointed the following members of the Council:

### Government Members

Preeta D. Bansal (Vice Chair)  
Thomasina Rogers  
Michael Fitzpatrick  
Julius Genachowski  
Thomas Perez

### Public Members

Ronald A. Cass  
Mariano-Florentino Cuéllar  
Theodore Olson  
Jane C. Sherburne  
Patricia McGowan Wald

Biographies of Council members are attached in Appendix A.

## 3. Assembly

The 101-member Assembly of ACUS, which meets in plenary session twice a year, comprises the Chairman, Council, and 90 other members. Fifty of these members are government officials and 40 are drawn from outside government. The Assembly is chartered as an advisory committee under the Federal Advisory Committee Act.

The 50 federal agencies and departments with membership in the Administrative Conference consist of the 16 independent regulatory agencies plus departments and agencies designated by the President. The heads of these departments and agencies name the members who will represent them. The 50 government members include agency heads, agency general counsels, chiefs of staff, and other senior officials, who bring to the Conference's deliberations a vast experience in federal programs and processes. The list of government members and the agencies they represent is attached in Appendix B.

The government members are joined by 40 non-government "public members," appointed by the Chairman with the approval of the Council, from academia, the private bar, public interest organizations, and other sources of expertise on administrative procedure and management. In appointing these members, the Chairman and Council sought diversity in demographics, viewpoint, and experience. The current members represent broad views about the intersection of private enterprise and the administrative state; several previously served in government positions in both Democratic and Republican administrations. The list of public members and their current and previous affiliations is attached in Appendix C.

Beyond the formal membership, under provisions of the Conference's bylaws, deliberations of the Conference are further informed by the participation (without a vote) of

“liaison representatives” from several additional federal agencies, the judiciary, and professional associations, and “senior fellows” who are former Chairmen and carefully selected former members. The lists of these liaison representatives and senior fellows are attached in Appendix D. Notably, two Associate Justices of the United States Supreme Court – Justice Antonin Scalia, a former ACUS Chair, and Justice Stephen Breyer, a former ACUS liaison representative – have agreed to participate in the Conference as senior fellows.

### **C. Research and Recommendations Process**

Conference recommendations are based on research reports, typically prepared by academic or other experts under contract with ACUS. Research reports are reviewed by staff and by the Conference committee that will be charged with developing a recommendation for consideration by the entire Conference membership at its semi-annual plenary session. The steps involved in preparing a recommendation are as follows:

**1. Gather Ideas:** Ideas for Conference projects may come from Congress, other federal agencies, public interest or business organizations, academics and other experts, Conference staff or members of the public.

**2. Select Ideas:** The Chairman, the Director of Research and Policy, and other Conference staff select the best project ideas received, based on a number of factors, including the scope of a problem, its susceptibility to potential solutions, the costs and benefits associated with such solutions, and the quality of expertise available to provide advice and guidance.

**3. Council Approval of Projects:** For projects that will require funding for study by outside consultants, the Chairman seeks approval from the Council.

**4. Selecting a Researcher:** The Conference typically engages an expert consultant to do research and prepare a report and proposed recommendations on the topic. Some research projects are done by the Conference staff. In other cases, the Conference might use a report already prepared by a respected outside researcher or organization. Research solicitations are posted on the ACUS website and other pertinent places to encourage submissions.

**5. Committee Consideration:** The report is considered by a committee composed of members of the Administrative Conference, including liaison representatives and senior fellows. The committee debates the report and formulates a recommendation on the subject of the report, often using the researcher’s proposed recommendations as a starting point. Depending on the topic, the recommendation may be directed to Congress (recommending new legislation); it may recommend that agencies adopt new rules; it may recommend that agencies change their practices or procedures without the need for rulemaking; it may recommend an Executive Order or a change in executive practices, or it may be directed to the judiciary in its judicial review function. In all cases, Conference recommendations are limited to

procedural matters, including agency organization or management, and do not address substantive issues.

**6. Council Consideration of Recommendations:** The committee's recommendation is received and considered by the Council. The Council may add its own views before transmitting the recommendation to the full Conference membership for action.

**7. Consideration by the Assembly:** Twice a year, the full membership of the Administrative Conference meets in plenary session and considers and debates the recommendations received from Conference committees. If approved by vote of the full membership, a recommendation becomes an official recommendation of the Administrative Conference.

When a project is undertaken, the Director of Research and Policy assigns an attorney on the ACUS staff to work closely with the consultant to ensure that the report and accompanying recommendations are in appropriate form to be considered by one of the standing committees of the Conference. Each member of the Conference is assigned to one of these committees, which cover specific topics (e.g., adjudication, administration and management, collaborative governance, regulation, rulemaking, and judicial review). The staff attorney assigned to the project works with the committee chairman and members to ensure that any necessary revisions are incorporated in the report and recommendations.

The Council sets the agenda for each plenary session, including projects coming from committees that are ready for consideration by the full membership. The deliberations of the committees and the plenary sessions are all public.

The Administrative Conference cannot compel anyone to follow its recommendations. It relies on the power of persuasion to convince those to whom its recommendations are directed to adopt the recommendations. Members and staff of the Conference assist in getting the Conference's recommendations implemented. Historically, the Conference has had considerable influence and most of its recommendations have been adopted in whole or in part.

#### **D. Other Statutory Functions**

In addition to issuing formal recommendations, the Administrative Conference and its Chairman perform other statutory functions. For example, the Act authorizes the Chairman to encourage federal agencies to adopt the recommendations of the Conference. The Conference is required to transmit to the President and to Congress an annual report and such interim reports as the Chairman considers desirable concerning the activities of the Conference, including reports on the implementation of its recommendations. The Conference also may collect information and statistics from departments and agencies and publish such reports as it considers useful for evaluating and improving administrative processes or

summarizing developments in the implementation of statutes applicable to agencies generally (such as the Administrative Procedure Act, the Paperwork Reduction Act, the Federal Advisory Committee Act, and the Congressional Review Act). Finally, the Conference serves as a forum for the interchange among departments and agencies of information that may be useful in improving administrative practices and procedures and holds public forums, sometimes with other entities, to discuss matters of public interest. These forums often lead to the implementation of “best practices” among agencies once common administrative problems are revealed.

### **III. Current Activities and Strategic Goals**

#### **A. The 2010 Restart of ACUS**

Although Congress initially appropriated FY 2009 funds for the restart of ACUS, the Senate did not confirm the Chairman until March 2010. In July 2010, the President appointed ten members to the Council of ACUS, which serves essentially as a board of directors for the agency. The Council held its first meeting on August 30, 2010. ACUS moved into its new office space at the end of August 2010. By the end of FY 2010, the agency hired its initial staff and recruited almost all of the 90 other government agency and private sector members of the Conference.

In September 2010, the Conference announced an initial set of research projects designed to lead to improvements of the administrative process government-wide and invited experts on those topics to submit proposals. ACUS also moved quickly to establish an evolving presence on the Internet, using new media to inform the public about the Conference's activities and to foster the participation of both experts and the general public in the work of the Conference.

The Conference held its 53<sup>rd</sup> Plenary Session on December 9-10, 2010, the first such event after the re-establishment of the agency. Highlights of the plenary session included adoption of an important recommendation on federal regulatory preemption and extensive discussion by the membership directed toward identifying procedural issues for possible study by the Conference or other appropriate Conference follow-up. Recommendation 2010-1, *Agency Procedures for Considering Preemption of State Law*, provides guidance to federal agencies regarding consultation with state and local governments and consideration of state interests in rulemakings that may result in the preemption of state law.

Also at the plenary session in December 2010, the members of the Conference met in breakout sessions and an all-member meeting to discuss the strategic goals for the Administrative Conference and specific projects the Conference should undertake.

#### **B. Strategic Goals**

Throughout the first year, the Chairman and staff worked to develop a strategic direction for the Administrative Conference that would fulfill its statutory mission of improving administrative procedure and meet the expectations of Congress. Of particular importance in developing these strategic goals is the Report of the Administrative Law, Process, and Procedure Project for the 21<sup>st</sup> Century, published by the House Committee on the Judiciary in December 2006, which guided Congress' decision to reauthorize and fund the Administrative Conference.

In setting direction, the Chairman and staff met with a wide variety of government agencies, bar association members, and private sector and non-profit groups to identify areas of needed reform of federal rulemaking, adjudication, and other administrative processes.

Based on this information, the Chairman and staff developed proposed goals and priorities for the Administrative Conference, which were presented to the full membership at the December 2010 plenary session. Members provided feedback and suggested additional goals, and the Chairman has identified the following mission and strategic goals to guide the Administrative Conference based on these discussions:

#### **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 USC § 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 imbedded in the Administrative Procedure Act and the due process clause of the Constitution. The efficiency value derives from economics and looks at how procedures employed by the agency achieve the public purposes the 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 agencies by compiling and publishing data and guidance on solving mutual problems.

### C. Initial Research Program

In the eleven months since the Senate confirmed the Chairman, ACUS has initiated several research projects, with the approval of the bipartisan, public-private Council appointed by the President in July 2010. These projects will comprise much of the work of the Conference over the course of FY 2011 and beyond, including work in monitoring the implementation of any recommendations by the Conference in these areas. The first project listed below has already led to adoption of a Conference recommendation at the December 2010 plenary session:

- **Regulatory Preemption.** An examination of best practices by federal agencies in implementing the requirements of Executive Order 13132 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. *Recommendation 2010-1, Agency Procedures for Considering Preemption of State Law*, based on this research, provides guidance to federal agencies regarding consultation with state and local governments and consideration of state interests in rulemakings that may result in the preemption of state law. (Strategic Goal: Collaboration)
- **Government Contractor Ethics.** An examination of whether and how the principles underlying government ethics regulations that apply to federal employees should apply to federal contractors, who currently perform many analogous functions. (Strategic Goal: Collaboration)
- **E-Rulemaking.** Two separate projects involving the growing importance of electronic rulemaking, whereby agencies are relying upon the Internet to promote public participation in the rulemaking process. (Strategic Goals: Participation/Innovation)
  - The first of these projects would address legal issues associated with e-rulemaking and recommend 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.
  - The second project would be a study of innovations and experiments in e-rulemaking in Executive and independent agencies to identify best practices that might be incorporated into the Federal Docket Management System and regulations.gov or otherwise be made available for general use.
- **FACA in the 21<sup>st</sup> Century.** An examination of the Federal Advisory Committee Act to determine whether new technologies and governance methods may require an update and whether the Act could be improved in other respects. (Strategic Goals: Participation/Innovation)

- **Rulemaking Comments.** A review of the “comment” aspect of traditional notice-and-comment rulemaking under the Administrative Procedure Act. In particular, the House Judiciary Committee’s Subcommittee on Commercial and Administrative Law has raised questions about a possible minimum time period for comments, standards for extension of the comment period, availability of comments to the public and provision for reply comments, the question whether agency delay may require updated comment periods, and the circumstances warranting confidentiality of material filed in public comments. (Strategic Goals: Participation/Innovation)
- **Immigration Adjudication.** A review of the system of processing immigration cases to examine potential barriers to representation, possible improvements in case management practices at the Executive Office for Immigration Review, and the potential for video conferencing to enhance efficiency in adjudicating these disputes. (Strategic Goal: Innovation)
- **Science in the Regulatory Process.** A study of potential improvements in the use of science by administrative agencies, to include selection and use of science advisory panels, the operation of the Information Quality Act in practice, best practices in complying with OMB’s Peer Review Bulletin, and the effect of judicial standards in civil litigation on the work of administrative agencies. (Strategic Goal: Collaboration)
- **Procedural Traps for the Unwary.** A study aimed at identifying and recommending ways to eliminate purposeless procedural rules that result in the non-merits-based dismissal of claims by or against the federal government. (Strategic Goals: Innovation/Education)
- **Methods of Collaborative Governance.** A review of the state of alternative dispute resolution (ADR), negotiated rulemaking, and other “collaborative governance” approaches and techniques following 1995, when ACUS ceased performing its statutory facilitation role for these efforts to streamline agency decision-making. Recent research indicates that the number of negotiated rulemaking committees, for example, has decreased substantially.<sup>7</sup> (Strategic Goal: Collaboration)
- **Government in the Sunshine Act.** A reexamination of potential reforms to the Government in the Sunshine Act, 5 USC 552b, identified in a 1995 report of an ACUS committee, but left unaddressed because of the elimination of funding for the agency. The question is whether the Act has had the unintended effect of discouraging collaborative deliberations and encouraging escape devices (such as “notation voting”) by multimember boards and commissions, and, if so, whether there are mechanisms that might effectively address these

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<sup>7</sup> Lubbers, *Achieving Policymaking Consensus: The (Unfortunate) Waning of Negotiated Rulemaking*, 49 S. Tex. L. Rev. 987 (2008).

problems while preserving the transparency goals of the statute. (Strategic Goal: Participation)

### **Information Exchange Activities**

- **“Best Practices” Forums.** Hosting “Best Practices” forums or workshops, highlighting at each session a useful agency practice that may warrant use at other agencies. The first such session took place in November 2010, addressing the “Use of Technology in the Management of High-Volume Caseloads.” It was co-sponsored by the National Archives and Records Administration’s Office of Government Information Services (OGIS). (Strategic Goals: Innovation/Education)
- **Council of Independent Regulatory Agencies (CIRA).** In September 2010, the Chairman invited the chairs of all independent regulatory agencies to participate in a periodic informal meeting, as a forum for exchange of ideas about best practices in addressing issues unique to such multi-member independent agencies. CIRA, which was initially established by ACUS in the 1980s, now meets on a bi-monthly basis. (Strategic Goal: Education)

### **D. Program for FY 2012**

The principal program activity for the Administrative Conference’s second full year of operations in FY 2012 will include continuation of research projects undertaken in the preceding year and development of additional areas for study. With the approval of the Council, ACUS will initiate other projects designed to improve the fairness and effectiveness of procedures by which federal agencies administer regulatory, benefit, and other government programs. In past years, ACUS issued an average of 8 to 10 recommendations each year, and at any one time had pending from 20 to 30 separate research projects. After adoption of recommendations, Conference staff will work with agencies, Congressional staff and others, as appropriate, to achieve their implementation.

Because ACUS has only recently resumed operations, research planning has been concentrated on identifying and undertaking projects that could be started relatively quickly, as resources become available. During FY 2011, a list of additional research studies for FY 2012 will be identified and submitted to the Council for approval. Among the potential topics under consideration for further study in FY 2012 are the following:

- In coordination with OGIS and the Department of Justice, examining the possibilities of reducing backlogs of FOIA requests by reliance on ADR techniques, perhaps enhanced by interactive Internet communications between agencies and requesters.
- Exploring the potential for video trials to alleviate delays common to mass justice adjudications (e.g., social security, immigration, and veterans’ benefits disputes).

- Studying the possibility for improvements in relationships between federal and state agencies, pursuant to programs of “cooperative federalism” by which states administer federal programs (e.g., Medicare).
- Identifying best practices by federal agencies in implementing the President’s directive with respect to open government.
- Assisting federal agencies in their implementation of recent major legislative reforms in the health care and financial services areas, in ways that promote fairness and public participation, while avoiding unnecessary delays and expense.
- Reviewing the possible new role of ACUS in connection with other statutory programs for which Congress previously assigned specific responsibilities to ACUS (e.g., the Congressional Accountability Act of 1995, the Equal Access to Justice Act, the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act).
- Providing testimony to Congress about proposals for legislation involving reforms of administrative procedure, organizing additional roundtables and forums for the benefit of federal agency personnel, and publishing reports that highlight the operation of federal statutes applicable generally to such agencies (e.g., the Administrative Procedure Act, Paperwork Reduction Act, Sunshine Act, and Federal Advisory Committee Act).
- Exploring the use of “audited self-regulation” as an approach to regulation.
- Exploring the creation of agencies and functions in recent legislation and identifying model practices for the 21<sup>st</sup> century.

**IV. Budget Status and Request**

**A. Proposed Appropriations Language**

**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., \$3,200,000, of which not to exceed \$1,000 is for official reception and representation expenses.

**Analysis of Appropriations Language**

During its startup years, because of the uncertainty as to when the agency would actually be able to obtain space, hire staff, and initiate operations, two-year funding was appropriate. For FY 2012, only one-year funding has been requested.

**B. Budget Authority and Staffing by Activity**

**Salaries and Expenses**

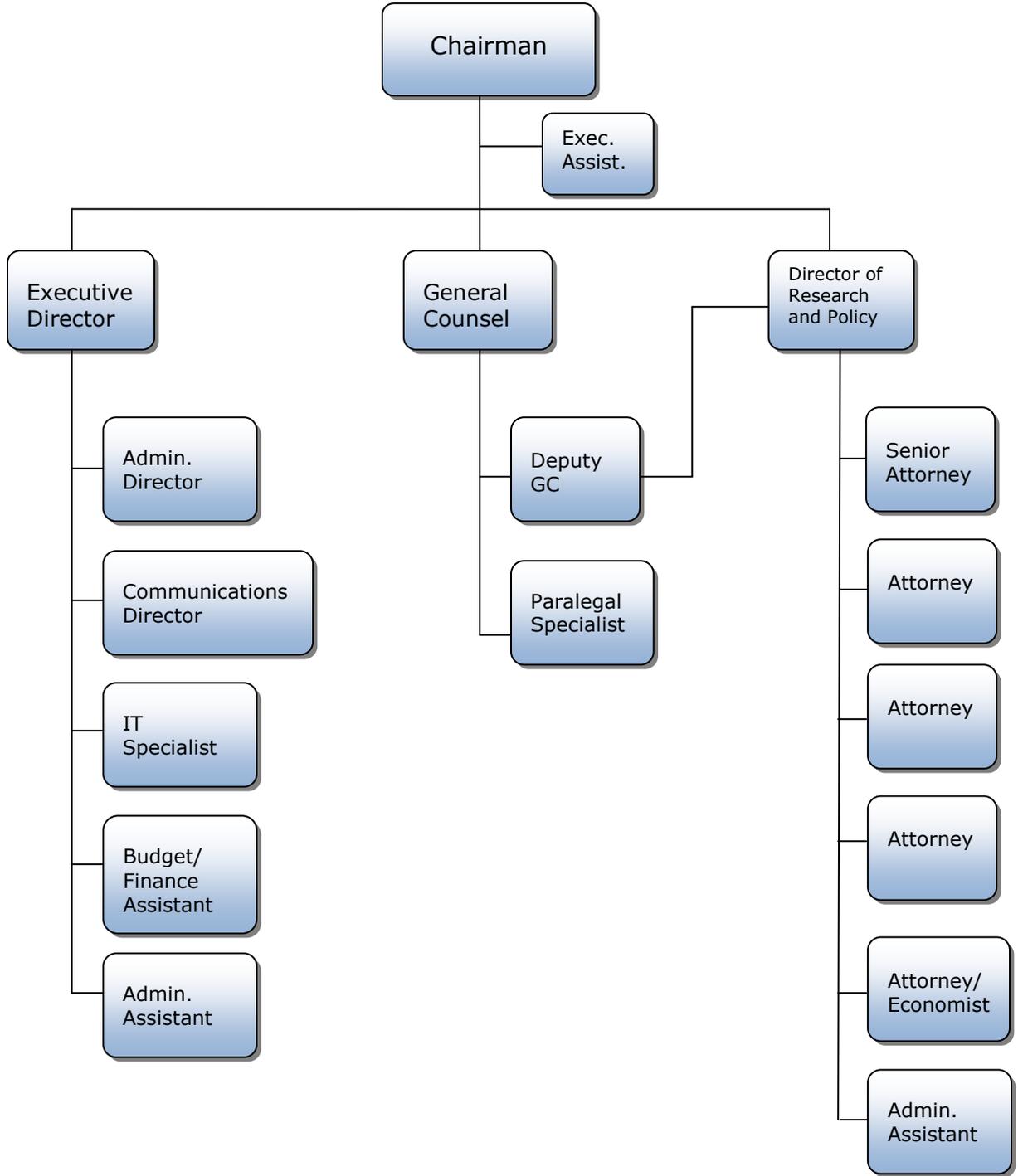
	FY 2010 Enacted	FY 2011 Requested	FY 2012 Requested
Budget Authority	\$1,500,000	\$3,200,000	\$3,200,000
FTE	18	18	18
Positions FTP	18	18	18

**Available for Obligation**

	FY 2011 President's Budget	FY 2012 Requested	Net Change
Budget Authority	\$3,200,000	\$3,200,000	\$0
FTE	18	18	0
Positions FTP	18	18	0

C. ACUS Organization Chart

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



#### D. Financial Summary

	FY 2010 OBLIGATIONS ACTUAL	FY 2011 REQUESTED BUDGET	FY 2012 PROPOSED BUDGET
Appropriation	\$ 1,500,000	\$ 2,750,000	\$ 3,200,000
Carry Forward	\$ 750,000	\$ 970,438	\$ 372,503
<b>Net Appropriation</b>	<b>\$ 2,250,000</b>	<b>\$ 3,720,438</b>	<b>\$ 3,572,503</b>
<i>Obligations/Expenses</i>			
Salaries, Full Time	\$ 155,006	\$ 1,625,971	\$ 1,658,490
<u>Benefits</u>	<u>\$ 39,445</u>	<u>\$ 450,394</u>	<u>\$ 459,402</u>
<b>Subtotal, Salaries and Benefits</b>	<b>\$ 194,451</b>	<b>\$ 2,076,365</b>	<b>\$ 2,117,892</b>
Travel	\$ 1,481	\$ 100,000	\$ 150,000
Rent	\$ 5,833	\$ 284,463	\$ 287,455
Communications	\$ 43,728	\$ 20,625	\$ 21,038
Printing/Reproduction	\$ 26	\$ 26,520	\$ 27,050
Contracts			
Research Contracts	\$ 35,232	\$ 225,000	\$ 400,000
Administrative Contracts	\$ 898,822	\$ 594,562	\$ 548,260
Supplies	\$ 12,566	\$ 20,400	\$ 20,808
Equipment	\$ 331,988	\$ -	\$ -
<u>Worksheet Adjustments</u>	<u>\$ (244,565)</u>	<u>-</u>	<u>-</u>
<b>Total Obligation/Expenses</b>	<b>\$ 1,279,562</b>	<b>\$ 3,347,935</b>	<b>\$ 3,572,503</b>
Unobligated Balances	\$ 970,438	\$ 372,503	\$ 0

Note: President's FY 2011 Budget Request was for \$3,200,000. Due to carryover balance from FY 2010, the most recent appropriations action was for \$2,750,000 to permit operation at budget level of \$3,200,000.

**E. Appropriations History**

Salaries and Expense Account  
(Amounts in thousands of dollars)

<u>Fiscal Year</u>	<u>Budget Authority</u>
2009	1,500
2010	1,500
2011	3,200 (requested)
2012	3,200 (requested)

After the Administrative Conference was reauthorized in 2008, initial funding of \$1.5 million was provided in FY 2009 for startup operations. The agency could not begin operations in FY 2009 because the Chairman had not been confirmed. For this reason, in FY 2010 ACUS again received an appropriation of \$1.5 million, to remain available through FY 2011. Upon commencing operations in April 2010, ACUS requested and received authority to carry over \$750,000 in unexpended funds from FY 2009 to FY 2010. This provided total resources for FY 2010 of \$2.25 million as the agency began operations, with the authority to carry over unexpended funds to FY 2011.

In FY 2011, the President's budget requested \$3.2 million to support a full year of operations, which is the authorized level. Both the House and Senate subcommittees recommended \$3.2 million. In September 2010, in response to inquiries from the appropriations committees on the status of operations and unobligated balances, ACUS advised that an FY 2011 appropriation of \$2.734 million, in addition to use of available carryover funds, would enable ACUS to operate at the budget level of \$3.2 million in FY 2011. Accordingly, the House-passed year-long continuing resolution funded ACUS at \$2.75 million and the omnibus bill introduced in the Senate funded ACUS at \$2.8 million. As of this submission, the final funding level for FY 2011 remains undecided.

## **F. Narrative Justification**

The appropriation request for the Administrative Conference of the United States for FY 2012 is **\$3,200,000**.

### **AGENCY PERSONNEL (Object Codes 11 and 13)**

For FY 2012, ACUS requests 18.0 FTEs (see Organization Chart). This request includes 17 full-time employees and the Chairman. As of February 2011, 12 positions are filled by full-time employees and one position is filled through an Intergovernmental Personnel Act contract. The staff of the Administrative Conference supports the 101 Members of the Conference.

The Executive Director provides executive leadership, planning, direction, and coordination for all ACUS operations and administrative activities, including recruiting and managing the ACUS staff and administering the daily operations of ACUS. The Executive Director provides managerial expertise and staff support to the ACUS Chairman and Council in developing the agency's strategic planning and direction and implementing activities essential to ensuring that ACUS continues to meet its statutory mission. The Executive Director develops performance, financial and organizational staffing plans, in accordance with applicable legislation and regulations. The Executive Director provides managerial oversight for ACUS publications and products, including the ACUS website, and administers congressional, public and media communications and strategies for ACUS. The Executive Director assesses the overall effectiveness, efficiency, and productivity of ACUS operations.

The General Counsel serves as the chief legal 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 and the Federal Advisory Committee Act, which govern operations of the ACUS Assembly and its committees, as well as all other federal statutes governing the operation of Executive Branch agencies. These include federal conflict of interest statutes and other standards of conduct for government employees, financial disclosure requirements for staff and Conference members pursuant to the Ethics in Government Act of 1978, Freedom of Information Act obligations, and Federal Records Act responsibilities. The General Counsel provides guidance to staff, including review of agency rules, contracts, and cooperative agreements to ensure compliance and to protect the interests of the agency. The General Counsel reviews and comments on proposed legislation and responds to congressional inquiries and requests to ACUS. The General Counsel is a member of the ACUS management team, assists with strategic planning, and may represent the interests of ACUS in meetings of bar associations and other organizations engaged in activities that will enhance the agency's research and implementation programs.

The Director of Research and Policy is responsible for running ACUS's research program and developing the agency's policy recommendations. This includes keeping abreast of issues and developments in administrative law and practice, identifying and prioritizing issues to be studied, obtaining consultants to carry out the research, and reviewing research reports to ensure that the work is accurate, thorough, and meets the highest quality standards. The Director manages the work of ACUS staff attorneys and has general oversight of the work carried out by ACUS committees to develop recommendations based on consultants' reports. The Director presents recommendations and plans for research topics and reports to the ACUS Chairman and Council, and works with them to identify areas for potential study. In coordination with the Executive Director and the Communications Director, the Director develops background and briefing materials that serve as resources for ACUS communications with all three branches of the Federal Government, the media, and other ACUS stakeholders. This position is currently filled under the Intergovernmental Personnel Act with a law professor from George Washington University, and is budgeted as an administrative contract rather than an FTE.

Together with the Deputy General Counsel, who provides support to both the General Counsel and the Director of Research and Policy, five Attorney-Advisor positions will comprise the majority of ACUS's professional staff. Staff attorneys are responsible for managing the work of committees composed of ACUS members, in the process of developing recommendations for consideration by the full membership of ACUS. This includes reviewing research studies for projects assigned to the committees, assisting the committee chairmen and the Director of Research and Policy in drafting proposed recommendations, responding to requests for information about committee activities, reviewing and summarizing public comments and, in general, providing procedural and legal oversight for the work of the committees. Staff attorneys may also participate substantially in helping to achieve implementation of ACUS recommendations, and provide assistance as needed for the work of the General Counsel. Currently, four of these Attorney-Advisor positions are filled with full time permanent employees. The vacancy for the fifth position may be filled by a detailee from another federal agency, Presidential Management Fellow, or attorney or social scientist on leave from an academic institution.

The Communications Director is responsible for managing the agency's communications program, including development of its use of new media and evolving technologies (such as cloud computing) for more effective involvement of both the ACUS government and public members and the public in the work of the Conference. The Communications Director is responsible for the Conference's publications program and serves as the main point of contact for a wide variety of media to ensure that agency activities and viewpoints and recommendations adopted by the Conference are communicated clearly and positively. An Information Technology Specialist is also funded to support both internal and external communications, including technical support, Website development and maintenance, and teleconferencing.

The Administrative Director oversees and coordinates all administrative and operational management and support services for ACUS and serves as an advisor and assistant to the management staff on administrative policy and procedural matters. This work includes management analysis, budgeting, financial management, procurement and contracting, and other related administrative and operational activities.

The authorized staff also includes an Executive Assistant supporting the Chairman, a Budget/Finance Assistant, a Paralegal Specialist, and two Administrative Assistants supporting the Conference members and staff. The responsibilities of ACUS support staff include processing member and staff travel expense claims, travel and hotel reservations, typing, filing, editing reports, providing mail services, answering telephones and directing callers to the appropriate staff, as well as record-keeping and administrative support across all areas of ACUS. These staff provide support for the Conference activities of the 45 Conference members from outside the government, who serve ACUS without compensation.

For FY 2012, ACUS requests a budget of **\$1,658,490** for salary expenses associated with full-time employees (Object Class 11). This amount represents the projected cost for a total of 16 full-time permanent positions.

Two additional full-time positions are currently reflected elsewhere in this budget (under the category of Administrative Contracts). The position of Director of Research and Policy is currently being filled pursuant to the terms of an Intergovernmental Personnel Agreement with George Washington University. There is also a vacant position for an Attorney-Advisor or a Social Scientist, which may be filled by contract to give the agency the flexibility to recruit experts from academia, the private sector, or other federal agencies to join ACUS on rotations of six months to one year to meet current project needs.

A total of **\$459,402** is budgeted for personnel benefits during FY 2012 (Object Class 12). Personnel benefits are a direct function of the amount of budgeted salary/wages and inclusive of transit subsidy.

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

As discussed in the introductory section above, the research and policy work of the Administrative Conference is most frequently pursued through contracts with law professors or other experts to study a particular problem in depth and report back to ACUS and its committees on their findings, which serve as the basis on which ACUS members develop recommendations for procedural improvements. 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, with the ultimate aim of improving the fairness and effectiveness of the rulemaking, adjudication, licensing, and investigative functions by which federal agencies carry out their programs. The Administrative Conference 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 \$20,000. These relatively modest contracts allow the federal government to call on the expertise of experts in academia and the private bar, many of whom would bill private clients at several multiples of the effective hourly rate the government is paying.

In FY 2012, ACUS is requesting **\$400,000** in funding for research contracts (Object Class 25). This funding will allow ACUS to undertake a full research program of 20 new projects directed toward the Conference's statutory mission to study and cooperatively seek solutions to issues and problems arising in the administration of federal agency programs. This number of projects is consistent with the historical activity level of the Conference and will enable the Conference to pursue the projects described in the performance section above, including projects undertaken at the request of Congress.

In addition to research contracts, ACUS requests **\$548,260** for administrative support contracts. Of this amount, \$343,750 is for contract personnel and professional services, and \$204,510 is for external administrative support.

As discussed above in the section on personnel, ACUS funds two positions as contract positions instead of full time permanent employees. This gives the agency flexibility to match expertise with current projects and rotate experts from academia, nonprofits, or other federal agencies to provide fresh and innovative thinking to the Conference. In FY 2012 ACUS is requesting \$343,750 for these two positions under contract personnel and professional services. This will fund full time salary and benefits of one senior-level expert and one mid-level attorney or social scientist.

As a small agency, ACUS must contract with multiple agencies or private vendors for many of the services typically performed in-house by staff at larger agencies. These contracts cover items such as personnel, payroll, finance, accounting, information technology, web hosting, mailing services and auditing. For FY 2012, ACUS requests \$204,510 for external administrative support. As part of the Conference's start-up operations, ACUS is reviewing the most cost-effective strategies for contracting for administrative support, including using reimbursable services offered by other federal agencies, GSA schedules, and cloud computing solutions.

As a small agency, the Conference is seeking low-cost and flexible administrative support contracts by exploring teaming agreements with other small agencies to obtain such services on a shared basis, use of reimbursable services provided by larger federal agencies such as GSA, and cost-saving technologies such as videoconferencing.

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

Travel by Conference members and staff is budgeted at **\$150,000** for FY 2012 (Object Class 21). Most of these travel expenses involve the travel of out-of-town members of the Conference to Council, committee, and plenary session meetings. Conference members, other than the Chairman, serve without pay and are only reimbursed for travel and per diem, pursuant to 5 USC 593(c) and 5 USC 5703. To the extent practicable, the Conference will use videoconferencing and Web 2.0 technologies to minimize travel expenses for Conference members at the committee meetings. In addition, some staff members will travel to conduct research or, as required, participate in various professional meetings and conferences.

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 Building Services Division of the General Services Administration. During FY 2012 ACUS will be responsible for **\$287,455** in rental payments through its lease, based on estimates set forth in the agency's Occupancy Agreement with GSA (Object Class 23).

ACUS's budget includes an estimated **\$21,038** for electronic communications expenses, including telephone service and website hosting during FY 2012 (Object Class 23). This estimate is based on historical data from similar size agencies as well as costs associated with ACUS's need to maintain responsibility for its total telephone expenditures. This amount also includes the cost of conference calls for Council and other meetings, which is a much more cost-effective method for conducting interim business than face-to-face meetings.

ACUS has budgeted **\$27,050** in FY 2012 for printing costs (Object Class 24). These costs include preparing and printing annual and interim reports to Congress and the President, reports, newsletters and other necessary publications.

ACUS's budget includes **\$20,808** for the purchase of supplies, materials and publications for FY 2012 (Object Class 26). The amount includes supplies for mailing, copying, and ordinary office supplies such as paper, pens, and pencils. Also budgeted are funds for the purchase of computer software, library materials, and for subscriptions to relevant technical, and policy-oriented publications.

## **V. Conclusion**

For FY 2012, the Administrative Conference of the United States (ACUS) is requesting an appropriation of \$3,200,000. This request assumes enactment of FY 2011 appropriations and carryover of unobligated balances. The level of funding requested will allow ACUS to continue in its second full year of resumed operations to pursue a full program of research projects and other programs to carry out the agency's statutory responsibility to develop recommendations for improvements in administrative procedures. Such reforms will be designed to enhance fairness, efficiency, expedition, and public participation in the work of the federal government, given the substantial impact of its activities on all sectors of the National economy and on the lives of all of our citizens.

## **Appendix A: Council Members**

### Preeta D. Bansal (Vice Chair)

Preeta Bansal is currently the General Counsel and Senior Policy Advisor for the Office of Management and Budget. Prior to joining the Obama Administration, Bansal was a Partner and Head of the Appellate Litigation Practice at Skadden, Arps, Slate, Meagher and Flom LLP in New York City. She also served as the Solicitor General of the State of New York from 1999-2001, where she helped supervise 600 attorneys in the New York Attorney General's office. While in private practice from 2003-2009, Bansal served as a Commissioner of the bipartisan United States Commission on International Religious Freedom, serving as Chair in 2004-2005. Raised in Lincoln, Nebraska, Bansal was a Visiting Professor of constitutional law and federalism at the University of Nebraska College of Law in 2002-2003. Earlier in her career, Bansal was a law clerk to Justice John Paul Stevens of the United States Supreme Court, counselor in the United States Department of Justice, and a Special Counsel in the Office of the White House Counsel. Bansal received a J.D., magna cum laude, from Harvard Law School, where she was Supervising Editor of the Harvard Law Review, and an A.B., magna cum laude and Phi Beta Kappa, from Harvard-Radcliffe College.

### Thomasina Rogers

Thomasina Rogers is the Chair of the Occupational Safety and Health Review Commission. She was first appointed to the Review Commission by President Clinton in 1998 and served as Chairman from 1999 to 2002; she was then reappointed to the Review Commission in 2003 and 2009. Ms. Rogers previously served as Chairman of the Administrative Conference of the United States from 1994 to 1995. Rogers also served for seven years in the Federal Government's Senior Executive Service (SES). During her time in the SES, she served as Legal Counsel to the Equal Employment Opportunity Commission where she had primary responsibility for managing the development of the Americans With Disabilities Act employment regulations. She is a member of the American Bar Association and the National Bar Association. Ms. Rogers is a graduate of the Northwestern University School of Journalism and the Columbia University School of Law.

### Michael Fitzpatrick

Michael Fitzpatrick currently serves as the Associate Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs, where he helps to lead the development of regulatory policy and White House review of significant Executive Branch regulatory actions. He serves as the Executive Branch liaison to the ABA's Administrative Law Section and has led several U.S. delegations abroad for meetings with the European Union and Canada. During the Presidential Transition, Mr. Fitzpatrick served as deputy lead of the Executive Office of the President and Government Operations Agency Review Teams. From 2001 to 2009, Mr. Fitzpatrick was in the Washington, DC office of Akin Gump Strauss Hauer &

Feld LLP, where he was a partner in the Litigation Practice Group, specializing in white collar, complex civil, and regulatory matters. Before joining Akin Gump, Mr. Fitzpatrick served as an Assistant United States Attorney in Washington, DC and as a Senior Advisor to the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget. Mr. Fitzpatrick clerked for Judge William Norris on the U.S. Court of Appeals for the Ninth Circuit after graduating from Stanford Law School.

#### 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 Chairman 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, Chairman 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. Cass received his B.A. with high distinction from the University of Virginia and J.D. with honors from the University of Chicago Law School in 1973.

#### Mariano-Florentino Cuéllar

Mariano-Florentino (Tino) Cuéllar is Professor of Law and the Deane F. Johnson Faculty Scholar at Stanford Law School. His teaching and research focus on how organizations manage complex regulatory, criminal justice and international security problems. From 2009 to 2010, he was on leave from Stanford to serve as Special Assistant to the President for Justice and Regulatory Policy at the White House Domestic Policy Council, with responsibility for public health and safety, regulatory reform, and civil rights. Before joining the Stanford faculty in 2001, he served for several years as Senior Advisor to the U.S. Treasury Department's Under Secretary for Enforcement, and clerked for Chief Judge Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit. While at Treasury, he worked on countering financial crime, improving border coordination, and enhancing anti-corruption measures. He has served on the Executive Committee of the Stanford Center for International Security and Cooperation and the Silicon Valley Blue Ribbon Task Force on Aviation Security. A member of the American Law Institute, he received a Ph.D. in political science from Stanford University, a J.D. from Yale Law School, and an A.B. from Harvard University.

#### Julius Genachowski

Julius Genachowski is the Chairman of the Federal Communications Commission. Chairman Genachowski has two decades of experience in the private sector and public service. Prior to his appointment, he spent more than 10 years working in the technology industry as an executive and entrepreneur. He co-founded LaunchBox Digital and Rock Creek Ventures, where

he served as Managing Director, and he was a Special Advisor at General Atlantic, a global private equity firm based in New York. In these capacities, he worked to start, accelerate, and invest in early- and mid-stage technology companies. From 1997-2005, he was a senior executive at IAC/InterActiveCorp, a Fortune 500 company, where his positions included Chief of Business Operations and General Counsel. Chairman Genachowski's confirmation as FCC Chairman returned him to the agency where, from 1994 until 1997, he served as Chief Counsel to FCC Chairman Reed Hundt, and, before that, as Special Counsel to then-FCC General Counsel (later Chairman) William Kennard. Previously, he was a law clerk at the U.S. Supreme Court for Justice David Souter and Justice William J. Brennan, Jr., and at the U.S. Court of Appeals for the D.C. Circuit for Chief Judge Abner Mikva. Chairman Genachowski also worked in Congress for then-U.S. Representative (now Senator) Charles E. Schumer (D-N.Y.), and on the staff of the House select committee investigating the Iran-Contra Affair. He received a J.D, magna cum laude, from Harvard Law School, where he was co-Notes Editor of the Harvard Law Review, and his B.A., magna cum laude, from Columbia College.

### Theodore Olson

Theodore B. Olson is a partner in Gibson, Dunn & Crutcher's Washington, D.C. office and a member of the firm's Executive Committee, Co-Chair of the Appellate and Constitutional Law Group and the firm's Crisis Management Team. Previously, he served as the 42nd Solicitor General of the United States from 2001-2004. Mr. Olson also served as Assistant Attorney General for the Office of Legal Counsel from 1981 to 1984. Except for those two intervals, he has been a lawyer with Gibson, Dunn & Crutcher in Los Angeles and Washington, D.C. since 1965. Throughout his career, Mr. Olson has argued numerous cases before the Supreme Court of the United States. Mr. Olson is a Fellow of both the American College of Trial Lawyers and the American Academy of Appellate Lawyers. He has written and lectured extensively on appellate advocacy, oral advocacy in the courtroom and constitutional law. He received his bachelor's degree cum laude from the University of the Pacific in Stockton, California, where he received awards as the outstanding graduating student in both journalism and forensics, and his law degree from the University of California at Berkeley (Boalt Hall), where he was a member of the California Law Review and Order of the Coif.

### Thomas Perez

Thomas Perez is currently the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. He previously served as the Secretary of Maryland's Department of Labor, Licensing and Regulation. From 2002 until 2006, Perez was a member of the Montgomery County Council. He was the first Latino ever elected to the Council, and served as Council President in 2005. Earlier in his career, Perez spent 12 years in federal public service. As a federal prosecutor for the Civil Rights Division of the Department of Justice, he prosecuted and supervised the prosecution of some of the Department's most high profile civil rights cases. Perez later served as Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno. Perez also previously served as Special Counsel to Senator Edward Kennedy, and

was Senator Kennedy's principal adviser on civil rights, criminal justice and constitutional issues. For the final two years of the Clinton administration, Perez served as the Director of the Office for Civil Rights at the United States Department of Health and Human Services. Perez was a law professor for six years at University of Maryland School of Law and later as a part-time professor at the George Washington School of Public Health. He is a graduate of Brown University, Harvard Law School and the John F. Kennedy School of Government.

#### Jane C. Sherburne

Jane C. Sherburne is Senior Executive Vice President and General Counsel of BNY Mellon. She was formerly principal in her own law firm, and prior to that, Senior Executive Vice President and General Counsel Of Wachovia Corporation. Before Joining Wachovia in mid-2008, she served as Deputy General Counsel and Senior Deputy General Counsel of Citigroup, and General Counsel of Citigroup's Global Consumer Group. Sherburne was previously a Partner at Wilmer, Cutler & Pickering, where she practiced litigation, representing clients in matters requiring crisis management, including matters involving Congressional investigations, internal government and corporate investigations, and complex civil litigation. She has also served as Special Counsel to the President during the Clinton Administration, Chief of Staff and Executive Assistant to the Commissioner of Social Security in the Carter Administration, and as a Legislative Assistant to Congressman Donald Fraser (D-MN). Sherburne is a trustee of the Lawyers' Committee for Civil Rights Under Law and the National Women's Law Center. She is also an executive committee member of the New York City Bar. She received her B.A. and M.S.W. from the University of Minnesota in 1974 and 1976, respectively, and her J.D. from Georgetown University Law Center in 1983.

#### Patricia McGowan Wald

The Honorable Patricia Wald served for twenty years on the U.S. Court of Appeals for the District of Columbia, from 1979-1999, including five years as Chief Judge. Since that time she has served in various capacities including as a Judge on the International Criminal Tribunal for the former Yugoslavia and a Member on the President's Commission on the Intelligence Capabilities of the U.S. Regarding Weapons of Mass Destruction. Prior to serving on the U.S. Court of Appeals for the District of Columbia Circuit, Judge Wald was the Assistant Attorney General for Legislative Affairs at the Department of Justice. She also previously served as an attorney with the Mental Health Law Project, an attorney with the Center for Law and Social Policy, co-director of the Ford Foundation Drug Abuse Research Project, an attorney with the Neighborhood Legal Services Program, and an attorney with the Office of Criminal Justice at the Department of Justice. She is a member of the American Law Institute. Judge Wald is also a member of the American Philosophical Society, and serves on the Open Society Institute's Justice Initiative Board, including two years as chair (2002-2004). Judge Wald clerked for the Honorable Jerome Frank on the U.S. Court of Appeals for the Second Circuit, and received her B.A. from the Connecticut College for Women and her J.D. from Yale Law School.

## **Appendix B: Government Members**

Department of Agriculture  
Steven C. Silverman, Acting General Counsel

Department of Commerce  
Cameron F. Kerry, General Counsel

Department of Defense  
Robert S. Taylor, Principal Deputy General Counsel

Department of Education  
Elizabeth A. M. McFadden, Assistant General Counsel for Regulatory Services

Department of Energy  
Scott Blake Harris, General Counsel

Department of Health and Human Services  
David Horowitz, Deputy General Counsel

Food and Drug Administration  
Ralph Tyler, Associate General Counsel, OGC's Food and Drug Division

Centers for Medicare and Medicaid Services  
Mark Polston, Deputy Associate General Counsel for Litigation

Department of Homeland Security  
Ivan K. Fong, General Counsel

Department of Housing and Urban Development  
Kevin M. Simpson, Principal Deputy General Counsel

Department of the Interior  
Arthur E. Gary, Deputy Solicitor

Department of Justice  
Christopher H. Schroeder, Assistant Attorney General, Office of Legal Policy

Department of Labor  
Robert A. Shapiro, Associate Solicitor

Occupational Safety and Health Administration  
David M. Michaels, Assistant Secretary

Department of State  
Harold Hongju Koh, Legal Advisor

Department of Transportation  
Robert S. Rivkin, General Counsel

Department of the Treasury  
George W. Madison, General Counsel

Office of the Comptroller of the Currency  
Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel

Internal Revenue Service  
Lon Smith, National Counsel (Special Projects) to the IRS Chief Counsel

Department of Veterans Affairs  
Will A. Gunn, General Counsel

Bureau of Consumer Financial Protection  
Vacant

Commodity Futures Trading Commission  
Gary Gensler, Chairman

Consumer Product Safety Commission  
Cheryl A. Falvey, General Counsel

Environmental Protection Agency  
Carol Ann Siciliano, Associate General Counsel

Equal Employment Opportunity Commission  
Patrick Patterson, Senior Counsel to the Chair

Federal Communications Commission  
Edward P. Lazarus, Chief of Staff

Federal Deposit Insurance Corporation  
Richard Osterman, Deputy General Counsel

Federal Election Commission  
Christopher Hughley, Acting General Counsel

Federal Energy Regulatory Commission  
Michael Bardee, General Counsel

Federal Housing Finance Agency  
Sandy Comenetz, Executive Advisor to the Acting Director

Federal Maritime Commission  
Rebecca A. Fenneman, General Counsel

Federal Mine Safety and Health Review Commission  
Robert Lesnick, Chief Administrative Law Judge

Federal Reserve Board  
Scott G. Alvarez, General Counsel

Federal Trade Commission  
Willard K. Tom, General Counsel

General Services Administration  
Martha N. Johnson, Administrator

Merit Systems Protection Board  
Susan Tsui Grundmann, Chairman

National Archives and Records Administration  
Miriam M. Nisbet, Director, Office of Government Information Services

National Labor Relations Board  
Arlene Fine Klepper, Chief of Staff

Nuclear Regulatory Commission  
Stephen Burns, General Counsel

Occupational Safety and Health Review Commission  
Nadine N. Mancini, General Counsel

Office of Government Ethics  
Robert I. Cusick, Director

Office of Management and Budget  
Daniel Werfel, Controller

Office of Personnel Management  
Elaine Kaplan, General Counsel

Office of Science and Technology Policy  
Vacant

Postal Regulatory Commission  
Michael J. Ravnitzky, Chief Counsel

Securities and Exchange Commission  
David M. Becker, General Counsel

Surface Transportation Board  
Daniel R. Elliott, Chairman

Small Business Administration  
Martin Conrey, Assistant General Counsel for Leg. and Approp.

Social Security Administration  
Glenn E. Sklar, Deputy Commissioner for Disability Adjudication and Review

United States International Trade Commission  
Paul R. Bardos, Assistant General Counsel for Administration

## **Appendix C: Public Members**

Fred W. Alvarez

Partner, Wilson Sonsini Goodrich & Rosati, San Francisco, CA  
Assistant Secretary of Labor (1987-89) and EEOC Commissioner (1984-87)

Jodie Z. Bernstein

Of Counsel, Kelley Drye & Warren LLP, Washington, DC  
Director, FTC Bureau of Consumer Protection (1995-2001)  
General Counsel, EPA (1977-79) and Department of Health and Human Services (1979-80)

James Ming Chen

Dean and Professor of Law, Louis D. Brandeis School of Law, University of Louisville

John F. Cooney

Partner, Venable LLP, Washington, DC  
Assistant and Deputy General Counsel for Litigation and Regulatory Affairs, OMB (1982-87)

Walter Dellinger

Partner, O'Melveny & Myers LLP, Washington, DC  
Acting Solicitor General (1996-97); Assistant Attorney General, Office of Legal Counsel (1993-96)

Susan E. Dudley

Research Professor, Trachtenberg School of Public Policy and Public Administration  
The George Washington University  
Administrator, OMB Office of Information and Regulatory Affairs (2007-09)

Christopher Edley, Jr.

William H. Orrick Jr. Distinguished Chair and Dean, UC Berkeley School of Law  
Associate Director, Office of Management and Budget (1993-95)

Cynthia R. Farina

Professor, Cornell Law School  
Principal Researcher, e-Rulemaking Initiative

David C. Frederick

Partner, Kellogg, Huber, Hansen, Todd, Evans & Figel, Washington, DC  
Assistant to the Solicitor General (1996-2001)

Jody Freeman

Archibald Cox Professor of Law, Harvard Law School  
White House Counselor for Energy and Climate Change (2009-10)

H. Russell Frisby, Jr.  
Partner, Stinson Morrison Hecker LLP, Washington, DC  
Former Chair, ABA Section of Administrative Law and Regulatory Practice

Patti Goldman  
Vice President for Litigation, Earthjustice

Philip J. Harter  
Professor of Law Emeritus, University of Missouri  
Former Chair, ABA Section of Administrative Law and Regulatory Practice  
Senior Staff Attorney, Administrative Conference of the United States (1975-77)

Michael E. Herz  
Professor of Law, Benjamin N. Cardozo School of Law  
Chair Elect, ABA Section of Administrative Law and Regulatory Practice

James E. Johnson  
Partner, Debevoise & Plimpton, New York, NY  
Under Secretary of the Treasury for Enforcement (1998-2001)

John M. Kamensky  
Senior Fellow, IBM Center for the Business of Government  
Former Deputy Director, National Partnership for Reinventing Government

Peter D. Keisler  
Partner, Sidley Austin, Washington, DC  
Acting Attorney General (2007); Assistant Attorney General, Civil Division (2003-07)

Simon Lazarus  
Public Policy Counsel, National Senior Citizens Law Center  
Associate Director, White House Domestic Policy Staff (1977-81)

Ronald M. Levin  
Henry Hitchcock Professor of Law, Washington University School of Law  
Former Chair, ABA Section of Administrative Law and Regulatory Practice

Carl Malamud  
President and Founder, Public.Resource.Org

Jerry L. Mashaw  
Sterling Professor of Law, Yale Law School

Randolph J. May  
President, Free State Foundation  
Former Chair, ABA Section of Administrative Law and Regulatory Practice

Doris Meissner  
Senior Fellow and Director, US Immigration Policy Program, Migration Policy Institute  
Commissioner, Immigration and Naturalization Service (1993-2000)

Nina Mendelson  
Professor of Law, University of Michigan Law School

Gillian E. Metzger  
Professor of Law, Columbia Law School

David W. Ogden  
Partner, Wilmer Cutler Pickering Hale and Dorr  
Deputy Attorney General (2009-10); Assistant Attorney General, Civil Division (1999-2001)

John A. Payton  
President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.  
Former President, D.C. Bar

Richard J. Pierce, Jr.  
Lyle T. Alverson Professor of Law, The George Washington University Law School

Michael K. Powell  
Senior Advisor, Providence Equity Partners  
Commissioner and Chairman, Federal Communications Commission (1997-2005)

Saikrishna B. Prakash  
Sullivan & Cromwell Professor of Law, University of Virginia Law School

Richard L. Revesz  
Dean and Lawrence King Professor of Law, New York University School of Law

Alasdair S. Roberts  
Rappaport Professor of Law and Public Policy, Suffolk University Law School  
Fellow, National Academy of Public Administration

Teresa Wynn Roseborough  
Deputy General Counsel, Metropolitan Life Insurance Company  
Deputy Assistant Attorney General, Office of Legal Counsel (1994-96)

Lisa Schultz Bressman  
Associate Dean for Academic Affairs and Professor of Law, Vanderbilt University Law School

Max Stier  
President and CEO, Partnership for Public Service  
Deputy General Counsel, Department of Housing and Urban Development (1999-2001)  
Fellow, National Academy of Public Administration

Larry D. Thompson  
Senior Vice President and General Counsel, Pepsico  
Deputy Attorney General (2001-03)

James J. Tozzi  
Member, Board of Directors, Center for Regulatory Effectiveness  
Assistant Director, Office of Management and Budget (1977-80)  
Deputy Administrator, OMB Office of Information and Regulatory Affairs (1980-83)

John Vittone  
Chief Administrative Law Judge, Department of Labor (Retired)  
Administrative Law Section Delegate, ABA Board of Governors

Helgi C. Walker  
Wiley Rein, Washington, DC  
Associate Counsel to the President (2001-03)

Allison M. Zieve  
Director, Public Citizen Litigation Group

## **Appendix D: Senior Fellows and Liaison Representatives**

### Senior Fellows

William H. Allen

Retired Partner, Covington and Burling LLP  
Senior Fellow (1982-95)

Robert A. Anthony

George Mason University Foundation Professor Emeritus, George Mason University School of Law  
Chairman (1974-79), Senior Fellow (1982-95)

Warren Belmar

Chairman of the Board, Clean Economy Network Education Fund  
Public Member (1986-95), Senior Fellow (1995)

Marshall J. Breger

Professor of Law, Catholic University Columbus School of Law  
Chairman (1985-91), Senior Fellow (1991-95)

The Honorable Stephen Breyer

Associate Justice, United States Supreme Court  
Liaison Representative (1981-1994)

Betty Jo Christian

Partner, Steptoe & Johnson LLP  
Senior Fellow (1989-95)

Neil R. Eisner

Assistant General Counsel, United States Department of Transportation  
Government Member (1982-95)

Brian C. Griffin

Chairman of the Board, Clean Energy Systems Inc.  
Chairman (1992-93), Senior Fellow (1993-95)

Paul D. Kamenar

Senior Fellow (1990-95)

Sally Katzen

Consultant and Visiting Professor, New York University School of Law  
Public Member (1988-93), Vice Chairman (1993), Acting Chairman (1993-94)

Richard J. Leighton  
Partner, Keller and Heckman LLP  
Senior Fellow (1991-95)

Malcolm S. Mason  
Senior Fellow (1984-95)

Alan B. Morrison  
Lerner Family Associate Dean for Public Interest and Public Service Law  
The George Washington University Law School  
Senior Fellow (1989-95)

Sallyanne Payton  
William W. Cook Professor of Law, University of Michigan Law School  
Senior Fellow (1988-95)

The Honorable Antonin G. Scalia  
Associate Justice, United States Supreme Court  
Chairman (1972-74), Public Member (1978-82), Senior Fellow (1982-95)

The Honorable Loren A. Smith  
Senior Judge, United States Court of Federal Claims  
Chairman (1981-85), Senior Fellow (1985-95)

Peter L. Strauss  
Betts Professor of Law, Columbia Law School  
Senior Fellow (1991-95)

Edward L. Weidenfeld  
Founder, The Weidenfeld Law Firm, P.C.  
Senior Fellow (1992-95)

Richard E. Wiley  
Partner, Wiley Rein LLP, Senior Fellow (1984-95)

#### Liaison Representatives

ABA Section of Administrative Law and Regulatory Practice  
William V. Luneburg, Immediate Past Chair

ABA National Conference of the Administrative Law Judiciary  
Judge Thomas Snook, Chair

Administrative Office of the U.S. Courts  
Jill Sayenga, Deputy Director

Council of the Inspectors General on Integrity and Efficiency  
Dan Levinson, Inspector General, Department of Health and Human Services

Council on Environmental Quality  
Vacant

Executive Office for Immigration Review  
Edward Kelly, Chief of Staff, Office of the Chief Immigration Judge

Federal Administrative Law Judges Conference  
Judge Daniel Solomon, President

Federal Aviation Administration  
Rebecca MacPherson, Assistant Chief Counsel for Regulation

Federal Labor Relations Authority  
Judge Charles Center, Chief Administrative Law Judge

Federal Mediation and Conciliation Service  
Allison Beck, Deputy Director for National and International Programs

Judicial Conference of the United States  
Jeffrey P. Minear, Counselor to the Chief Justice

Government Accountability Office  
Lynn Gibson, Acting General Counsel

National Academy of Public Administration  
Vacant

National Aeronautics and Space Administration  
Vacant

National Center for State Courts  
Mary C. McQueen, President

National Highway Traffic Safety Administration  
Vacant

National Oceanic and Atmospheric Administration  
Lois J. Schiffer, General Counsel

National Transportation Safety Board  
Gary L. Halbert, General Counsel

Office of the Director of National Intelligence  
Katie L. Nash, Associate General Counsel

Office of the Federal Register  
Amy P. Bunk, Director of Legal Affairs and Policy

Transportation Security Administration  
Vacant

U.S. Agency for International Development  
Vacant

U.S. Coast Guard  
Esa Sferra-Bonistalli, Senior Attorney/Team Leader, Office of Regulations and Administrative Law

U.S. Court of Appeals for the D.C. Circuit  
The Honorable Brett M. Kavanaugh, Circuit Judge

U.S. Court of Appeals for the Federal Circuit  
Vacant

U.S. Citizenship and Immigration Services  
Vacant

U.S. Immigration and Customs Enforcement  
Alan Swendiman, Chief of Staff

U.S. Trade Representative  
Timothy Reif, General Counsel