

A Brief History of the Administrative Conference*

The Administrative Conference of the United States is a unique government agency. It brings together senior political officials and career civil servants from all the major departments and agencies of government, members of the federal judiciary, economists, public administrators, and other distinguished scholars and members of the private and public interest bar to monitor all aspects of the administrative process and fashion practical solutions to some of the most difficult or sensitive procedure and process issues affecting the national government.

Temporary (two-year) conferences were established by President Eisenhower in 1953 and President Kennedy in 1961.¹ The Honorable E. Barrett Prettyman, Judge of the United States Court of Appeals for the District of Columbia Circuit, was chairman of both temporary conferences.² Both temporary conferences recommended creation of a permanent body and, in 1964, President Johnson signed the Administrative Conference Act to accomplish that objective.³ With the appointment of the first Chairman, the Conference began operations in 1968.⁴ The Conference has no enforcement power, except the power of persuasion.⁵ Nevertheless, of the approximately 200 recommendations adopted by the Administrative Conference during its initial history as a statutory agency, over two-thirds were implemented in whole or in part.⁶ In 1995, Congress eliminated funding for the Conference and operations ceased on October 31, 1995.⁷

* All cited recommendations are available on the Administrative Conference website at <http://www.acus.gov/recommendations>. Federal Register citations to ACUS recommendations are also listed in *Recommendations and Statements of the Administrative Conference*, Table, 83 GEO. WASH. L. REV. 1822 (2015).

¹ Memorandum Convening the President's Conference on Administrative Procedure, 59 PUB. PAPERS 219 (Apr. 28, 1953); Exec. Order No. 10,934, 26 Fed. Reg. 3233 (Apr. 13, 1961).

² Memorandum Convening the President's Conference on Administrative Procedure, 59 PUB. PAPERS 220 (Apr. 28, 1953); ADMIN. CONFERENCE OF THE U.S., ROLL OF THE ADMIN. CONFERENCE OF THE U.S. (1961).

³ Administrative Conference Act, Pub. L. No. 88-499, § 4, 78 Stat. 615, 616 (1964).

⁴ Remarks at the Swearing In of Jerre S. Williams as Chairman, Administrative Conference of the United States, 31 PUB. PAPERS 68 (Jan. 25, 1968).

⁵ 5 U.S.C. § 594 (2012).

⁶ Final Listing of Recommendations and Statements Regarding Administrative Practice and Procedure, 60 Fed. Reg. 56,312 (Nov. 8, 1995).

⁷ *Id.*

Congress reauthorized the Conference in 2004 and again in 2008, but funding was not restored until 2009.⁸ With the Senate's confirmation of President Barack Obama's nominee, Paul R. Verkuil, as Chairman, the Administrative Conference was officially reestablished in 2010 after a fifteen year hiatus.⁹ The Conference continues to occupy a special niche in the government arena—fulfilling the role that D.C. Circuit Judge Carl McGowan long ago described as the “Guardian and Guide of the Regulatory Process.”¹⁰

MILESTONES

- **April 29, 1953.** President Eisenhower issues a Memorandum “To All Executive Departments and Administrative Agencies,” establishing the first temporary Administrative Conference, known as the President’s Conference on Administrative Procedure. The temporary Conference has seventy-five members and nine standing committees, to conduct studies and make recommendations for consideration and adoption by the full membership.¹¹
- **March 3, 1955.** President Eisenhower accepts the Final Report of the Temporary Conference, containing thirty-five recommendations, including a recommendation that a permanent Administrative Conference be established.¹²
- **April 13, 1961.** President Kennedy issues Executive Order 10934, 26 Fed. Reg. 3233 (April 15, 1961), establishing the second temporary Administrative Conference.¹³
- **December 15, 1962.** Temporary Conference presents its report to President Kennedy, containing thirty recommendations, including

⁸ Federal Regulatory Improvement Act of 2004, Pub. L. No. 108-401, 118 Stat. 2255 (2004); Regulatory Improvement Act of 2007, Pub. L. No. 110-290, 112 Stat. 2914 (2008).

⁹ S. COMM. ON THE JUDICIARY, EXECUTIVE NOMINATIONS BY DEPARTMENT, <http://www.judiciary.senate.gov/nominations/executive-by-dept> (last visited Sept. 23, 2015).

¹⁰ Carl McGowan, *The Administrative Conference: Guardian and Guide of the Regulatory Process*, 53 GEO. WASH. L. REV. 67, 67 (1984-1985).

¹¹ Memorandum Convening the President’s Conference on Administrative Procedure, 59 PUB. PAPERS 219 (Apr. 28, 1953).

¹² PRESIDENT’S CONFERENCE ON ADMINISTRATIVE PROCEDURE, REPORT OF THE CONFERENCE ON ADMINISTRATIVE PROCEDURE CALLED BY THE PRESIDENT OF THE UNITED STATES ON APRIL 29, 1953 (undated but presumably 1955), which contains President Eisenhower’s letter to Chairman E. Barrett Prettyman acknowledging receipt, dated March 3, 1955.

¹³ Exec. Order No. 10,934, 26 Fed. Reg. 3233 (Apr. 15, 1961).

a recommendation to establish a permanent Administrative Conference.¹⁴

- **June 4, 1963.** With the support of the Kennedy Administration, Senator Edward Long of Missouri introduces S. 1664, a bill to establish an Administrative Conference of the United States on a permanent basis.¹⁵
 - **August 30, 1964.** President Johnson signs Public Law 88-499, the Administrative Conference Act, establishing the Conference and providing an initial authorization of appropriations of \$250,000.¹⁶
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- **January 25, 1968.** Professor Jerre Williams is sworn in at the White House as the first Chairman of the Administrative Conference. Conference occupies office space in the New Executive Office Building.¹⁷
 - **February 7, 1968.** President Johnson announces the appointment of the first Council.¹⁸

¹⁴ ADMIN. CONFERENCE OF THE U.S., FINAL REPORT OF THE ADMIN. CONFERENCE OF THE U.S. (Dec. 15, 1962).

¹⁵ S. 1664, 88th Cong. (1963).

¹⁶ Administrative Conference Act, Pub. L. No. 88-499, § 4, 78 Stat. 615 (1964).

¹⁷ Remarks at the Swearing In of Jerre S. Williams as Chairman, Administrative Conference of the United States, 31 PUB. PAPERS 68 (Jan. 25, 1968); 1969 ACUS ANN. REP. 4.

¹⁸ 1969 ACUS ANN. REP. 6.



Jerre S. Williams, the first Chairman of the Administrative Conference, is sworn in at the White House by Senior Circuit Judge E. Barrett Prettyman on January 25, 1968. Judge Prettyman chaired the temporary Eisenhower and Kennedy Administrative Conferences. From the left, Judge Prettyman, Mrs. Williams, Chairman Williams, Ambassador and former Supreme Court Justice Arthur Goldberg (hidden), Lady Bird Johnson, and President Johnson.

- **April 24, 1968.** President Johnson designates all twelve cabinet departments and ten additional administrative agencies as Conference members.¹⁹
- **May 27, 1968.** First Plenary Session. Bylaws are adopted, ten standing committees are established, and general methods for the conduct of business are approved. Attorney General Ramsey Clark is the keynote speaker. First Conference has eighty-two members and a permanent staff of seven, headed by an Executive Director and an Executive Secretary (later redesignated as the General Counsel).²⁰ Between 1970 and 1974, the Conference Chairman each year appointed a visiting law professor to serve as Research Director.
- **December 9–10, 1968.** Second Plenary Session. Conference adopts its first eight recommendations.²¹ Recommendation 1 (later renumbered as 68-1) deals with the establishment of adequate facilities for the conduct of administrative hearings.²² Rec-

¹⁹ *Id.* at 7.

²⁰ *Id.* at iv, 6, 16, 26.

²¹ *Id.* at 26.

²² *Id.* at 27–29; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 68-1, ADEQUATE HEARING FACILITIES (1968).

ommendation 68-7 proposes the elimination of the jurisdictional amount requirement for suits against the federal government.²³ This recommendation, along with Recommendation 70-1, *Parties Defendant*, which eliminated other technical barriers to judicial review of agency decisions,²⁴ were among the Conference's most influential proposals. They were fully implemented in 1976 by Public Law 94-574.²⁵

- **October 21–22, 1969.** Third Plenary Session.²⁶ Conference adopts first major rulemaking recommendation, Recommendation 69-8, *Elimination of Certain Exemptions from the APA's Rulemaking Requirements*.²⁷ Most major rulemaking agencies follow the recommendation and voluntarily adopt policies declining to employ the APA exemption for rules involving grants, benefits, loans and contracts.²⁸
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- **December 9, 1970.** Professor Roger Cramton is sworn in as the Conference's second Chairman.²⁹
 - **December 6–7, 1971.** Sixth Plenary Session.³⁰ Among the recommendations adopted was Recommendation 71-6, *Public Participation in Administrative Hearings*, calling for agencies to make public participation in their proceedings more meaningful.³¹ When adopted, this recommendation was at the vanguard of agency practice.
 - **July 1, 1972.** Two administrative law judges (then called hearing examiners) and the permanent member of the Atomic Energy Commission's Atomic Safety and Licensing Board Panel join the Conference membership following Council approval of the creation of special memberships to provide for their participation in

²³ 1969 ACUS ANN. REP. 39–40; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 68-7, ELIMINATION OF JURISDICTIONAL AMOUNT REQUIREMENT IN JUDICIAL REVIEW (1968).

²⁴ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 70-1, PARTIES DEFENDANT (1970).

²⁵ Act of Oct. 21, 1976, Pub. L. No. 94-574, 90 Stat. 2721.

²⁶ 1969 ACUS ANN. REP. 26.

²⁷ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 69-8, ELIMINATION OF CERTAIN EXEMPTIONS FROM THE APA RULEMAKING REQUIREMENTS (1969).

²⁸ See, e.g., Public Participation in Rulemaking, 36 Fed. Reg. 13,804 (July 24, 1971).

²⁹ 1970–71 ACUS ANN. REP. 6.

³⁰ 1971–72 ACUS ANN. REP. 10.

³¹ *Id.* at 11–12; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 71-6, PUBLIC PARTICIPATION IN ADMINISTRATIVE HEARINGS (1971).

the Conference's work.³² In later years, the Council would add an Inspector General and a Board of Contract Appeals member to the list of special memberships.³³

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- **September 29, 1972.** Professor Antonin Scalia becomes the third chairman of the Administrative Conference.³⁴
 - **December 14–15, 1972.** Eighth Plenary Session. Assembly approves a new numbering system for Conference recommendations, indicating the year of adoption.³⁵ Among the new recommendations adopted was Recommendation 72-6, *Civil Money Penalties as a Sanction*.³⁶ This recommendation, along with the model statute developed by the Office of the Chairman, has served as a model for scores of federal statutes, including the Program Fraud Civil Remedies Act, Public Law 99-509 (1986).³⁷
 - **1973.** The spring meeting of the Association of American Law Schools is the setting for a Symposium to celebrate the fifth anniversary of the Administrative Conference.³⁸ The proceedings of the Symposium are subsequently published in the *Administrative Law Review* in 1974.³⁹
 - **April 22, 1974.** Conference publishes the first edition of its *Manual for Administrative Law Judges*.⁴⁰ Revisions of the popular Manual will be issued in 1982 and 1993.⁴¹
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- **August 23, 1974.** Professor Robert A. Anthony appointed as the fourth Conference Chairman.⁴²

³² 1972–73 ACUS ANN. REP. 8.

³³ 1994–95 ACUS ANN. REP. 57.

³⁴ 1972–73 ACUS ANN. REP. 6.

³⁵ *Id.* at 10–11.

³⁶ *Id.* at 11–12; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 72-6, CIVIL MONEY PENALTIES AS A SANCTION (1972).

³⁷ ADMIN. CONFERENCE OF THE U.S., IMPLEMENTATION OF ACUS RECOMMENDATIONS: 1969–1995, at 5 (1995).

³⁸ Symposium, *The Administrative Conference of the United States*, 26 ADMIN. L. REV. 259 (1974).

³⁹ *Id.*

⁴⁰ 1973–74 ACUS ANN. REP. 25.

⁴¹ 1982 ACUS ANN. REP. 85; MORELL E. MULLINS, MANUAL FOR ADMINISTRATIVE LAW JUDGES (3d ed. 1993).

⁴² 1974–75 ACUS ANN. REP. 3.

- **January 4, 1975.** Congress passes the *Magnuson-Moss Warranty-Federal Trade Commission Improvement Act*, Public Law 93-637, directing the Conference to study the FTC's trade regulation rulemaking procedures.⁴³
- **January 1975.** Conference hires its first permanent Research Director.⁴⁴
- **June 5–6, 1975.** Twelfth Plenary Session.⁴⁵ Among the four recommendations and one formal statement adopted is Recommendation 75-3, *The Choice of Forum for Judicial Review of Administrative Action*.⁴⁶ The recommendation formulated criteria for use by Congress in selecting the appropriate forum for judicial review of agency action.⁴⁷ The recommendation has been highly influential, with many agencies and congressional drafters taking it into account in preparing legislation.
- **December 11–12, 1975.** Thirteenth Plenary Session.⁴⁸ Conference adopts six sets of recommendations regarding the procedures of the Internal Revenue Service, culminating the largest project undertaken by the Conference to date.⁴⁹
- **September 13, 1976.** Congress enacts the *Government in the Sunshine Act*,⁵⁰ requiring that forty-seven multi-member agencies consult with the Office of the Chairman in the preparation of their open meeting regulations.⁵¹
- **September 15–16, 1977.** Sixteenth Plenary Session.⁵² Conference adopts Recommendation 77-3, *Ex Parte Communications in Informal Rulemaking Proceedings*.⁵³ Based upon the work of a special committee to respond to court cases causing consternation in the

⁴³ Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, § 202(d), 88 Stat. 2183, 2198 (1975).

⁴⁴ 1974–75 ACUS ANN. REP. viii.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 13–14; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 75-3, THE CHOICE OF FORUM FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTION (1975).

⁴⁷ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 75-3, THE CHOICE OF FORUM FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTION (1975).

⁴⁸ 1974–75 ACUS ANN. REP. 10.

⁴⁹ *Id.*

⁵⁰ Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (1976).

⁵¹ 1976 ACUS ANN. REP. 1.

⁵² 1977 ACUS ANN. REP. 7.

⁵³ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 77-3, EX PARTE COMMUNICATIONS IN INFORMAL RULEMAKING PROCEEDINGS (1977).

agencies, the Conference's recommendation has been widely followed.⁵⁴

- **October 1977.** The Conference publishes the first report of its Uniform Caseload Accounting System, cataloguing formal administrative proceedings at twenty-three federal agencies for fiscal year 1975.⁵⁵ Intended as a "pilot project," a second report is issued in 1980 covering proceedings at twenty-eight agencies for fiscal years 1976–1978.⁵⁶
- **October 13–15, 1977.** The Conference, in cooperation with the White House and the Civil Service Commission, conducts the Regulatory Agency Management Seminar (RAMS), a first-of-its-kind seminar for newly appointed members of independent boards and commissions.⁵⁷
- **June 1978.** Office of the Chairman issues *An Interpretive Guide to the Government in the Sunshine Act*.⁵⁸ The *Guide* has been highly influential and has been cited with approval by the Supreme Court and the lower federal courts.⁵⁹
- **June 7–8, 1979.** Nineteenth Plenary Session. Conference responds to the congressional directive in the *Magnuson-Moss Warranty-Federal Trade Commission Improvement Act*.⁶⁰ It adopts Recommendations 79-1, *Hybrid Rulemaking Procedures of the Federal Trade Commission*,⁶¹ and then later adopts 79-5, *Hybrid Rulemaking Procedures of the FTC-Administration of the Program to Re-*

⁵⁴ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2014-4, "EX PARTE" COMMUNICATIONS IN INFORMAL RULEMAKING 2 (2014).

⁵⁵ Stephen L. Babcock, *Foreword* to ADMIN. CONFERENCE OF THE U.S., FEDERAL ADMINISTRATIVE LAW JUDGE HEARINGS: STATISTICAL REPORT FOR 1976–1978 (1980).

⁵⁶ *Id.*

⁵⁷ 1977 ACUS ANN. REP. 23; *see also* Robert S. Adler et al., *Shaping Up Federal Agencies: A Basic Training Program for Regulators*, 6 J.L. & POL. 343, 362–63 (1990).

⁵⁸ RICHARD K. BERG & STEPHEN H. KLITZMAN, ADMIN. CONFERENCE OF THE U.S., AN INTERPRETIVE GUIDE TO THE GOVERNMENT IN THE SUNSHINE ACT (1978); 1978 ACUS ANN. REP. 28–29.

⁵⁹ *See, e.g.*, FCC v. ITT World Commc'ns, Inc., 466 U.S. 463, 471–72 (1983); Nat. Res. Def. Council, Inc. v. Nuclear Regulatory Comm'n, 216 F.3d 1180, 1186–87 (D.C. Cir. 2000); A. G. Becker Inc. v. Bd. of Governors of the Fed. Reserve Sys., 502 F. Supp. 378, 387 (D.D.C. 1980).

⁶⁰ 1979 ACUS ANN. REP. 8.

⁶¹ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 79-1, HYBRID RULEMAKING PROCEDURES OF THE FEDERAL TRADE COMMISSION (1979).

*imburse Participants' Expenses*⁶² The Conference grew to eighty-nine members during fiscal year 1979.⁶³

- **June 5–6, 1980.** Twenty-first Plenary Session. In the absence of a permanent Chairman, and because Vice Chairman Margaret McKenna gave birth to a baby on the day of the plenary session, Senior Council Member Walter Gellhorn presides over the session.⁶⁴ Conference adopts Recommendation 80-1, *Trade Regulation Rulemaking Under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act*, completing its report to Congress under the Magnuson-Moss Act.⁶⁵
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- **September 25, 1980.** Reuben Robertson sworn in as the Conference's fifth Chairman.⁶⁶
 - **October 21, 1980.** Congress enacts the *Equal Access to Justice Act*, Title II of Public Law 96-481, providing for agencies to consult with the Conference before establishing procedures for awarding fees under the statute.⁶⁷ The Conference is also directed to collect statistics on such awards by agencies and report annually to Congress.⁶⁸
 - **December 11–12, 1980.** Twenty-second Plenary Session.⁶⁹ Among the recommendations adopted is Recommendation 80-5, *Eliminating or Simplifying the "Race to the Courthouse" in Appeals from Agency Action*.⁷⁰ An eight-year implementation campaign leads to enactment of Public Law 100-236 in 1988, implementing the recommendation.⁷¹ Millions of dollars have been saved by both the

⁶² ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 79-5, HYBRID RULEMAKING PROCEDURES OF THE FEDERAL TRADE COMMISSION—ADMINISTRATION OF THE PROGRAM TO REIMBURSE PARTICIPANTS' EXPENSES (1979).

⁶³ 1979 ACUS ANN. REP. 3.

⁶⁴ 1980 ACUS ANN. REP. 5–6, 11.

⁶⁵ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 80-1, TRADE REGULATION RULEMAKING UNDER THE MAGNUSON-MOSS WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENT ACT (1980).

⁶⁶ 1980 ACUS ANN. REP. 5.

⁶⁷ Equal Access to Justice Act, Pub. L. No. 96-481, sec. 203(a)(1), § 504(c)(1) 94 Stat. 2325, 2326 (1980).

⁶⁸ Sec. 203(a)(1), § 504(e), 94 Stat. at 2327.

⁶⁹ 1980 ACUS ANN. REP. 11.

⁷⁰ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 80-5, ELIMINATING OR SIMPLIFYING THE "RACE TO THE COURTHOUSE" IN APPEALS FROM AGENCY ACTION (1980).

⁷¹ Act of Jan. 8, 1988, Pub. L. No. 100-236, 101 Stat. 1731.

government and private parties through implementation of this recommendation.⁷²

- **June 25, 1981.** Conference issues *Model Rules for Agency Implementation of the Equal Access to Justice Act (EAJA)*.⁷³ The Conference's views with respect to the applicability of the Equal Access to Justice Act and the Model Rules developed by the staff of the Office of the Chairman to implement EAJA have been noted and relied on in numerous court decisions.⁷⁴



- **June 30, 1981.** Professor Loren A. Smith appointed as the sixth Conference Chairman.⁷⁵
- **December 10–11, 1981.** Twenty-third Plenary Session.⁷⁶ Vice President Bush is the keynote speaker, addressing the issue of regulatory relief.⁷⁷ Senator William Roth of Delaware addresses the Conference concerning his bill to promote negotiated rulemaking.⁷⁸
- **April 16, 1982.** Chairman Smith establishes the Council of Independent Regulatory Agencies, consisting of the chairmen of fourteen major independent regulatory agencies, to provide a forum for the exchange of ideas on issues of mutual concern.⁷⁹ The first meeting is held at the White House with President Reagan.⁸⁰

⁷² *Hearing Before the Subcomm. on Commercial & Admin. Law of the H. Comm. on the Judiciary*, 111th Cong. 8 (2010) (statement of Paul R. Verkuil, Chairman, Admin. Conference of the U.S.).

⁷³ Equal Access to Justice Act: Agency Implementation, 46 Fed. Reg. 32,900 (June 25, 1981).

⁷⁴ See, e.g., *Hodge v. U.S. Dep't of Justice*, 929 F.2d 153 (5th Cir. 1991); *Ardestani v. U.S. Dep't of Justice*, 904 F.2d 1505, 1510 (11th Cir. 1990); *Clarke v. INS*, 904 F.2d 172, 175 (3d Cir. 1990).

⁷⁵ 1981 ACUS ANN. REP. 7–8.

⁷⁶ *Id.* at 17.

⁷⁷ *Id.* at 4.

⁷⁸ *Id.*

⁷⁹ 1982 ACUS ANN. REP. 75–77.

⁸⁰ *Id.* at 75.



The first meeting of the Council of Independent Regulatory Agencies, established by Chairman Loren Smith, at the White House with President Reagan on April 16, 1982.

- **June 17–18, 1982.** Twenty-fourth Plenary Session.⁸¹ Conference adopts Recommendation 82-4, *Procedures for Negotiating Proposed Regulations*.⁸² This recommendation for developing regulations through negotiation set forth criteria for choosing proceedings suitable for negotiation and proposed procedures that agencies should follow.⁸³ The recommendation, along with a follow-up recommendation in 1985,⁸⁴ led to enactment of the *Negotiated Rulemaking Act* in 1990 and use of the procedure by many agencies.⁸⁵ The Conference also adopts a bylaw amendment that limits public members to no more than four consecutive terms and provides for the appointment of Senior Conference Fellows.⁸⁶
- **August 1983.** Conference publishes its first *A Guide to Federal Agency Rulemaking*.⁸⁷ A second edition is published in 1991.⁸⁸

⁸¹ *Id.* at 17.

⁸² *Id.* at 40–45; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 82-4, PROCEDURES FOR NEGOTIATING PROPOSED REGULATIONS (1982).

⁸³ 1982 ACUS ANN. REP. 40–45; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 82-4, PROCEDURES FOR NEGOTIATING PROPOSED REGULATIONS (1982).

⁸⁴ 1985 ACUS ANN. REP. 26–27; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 85-5, PROCEDURES FOR NEGOTIATING PROPOSED REGULATIONS (1985).

⁸⁵ 1990 ACUS ANN. REP. 3–4, 9, 22; Negotiated Rulemaking Act of 1990, Pub. L. No. 101-648, 104 Stat. 4969.

⁸⁶ 1982 ACUS ANN. REP. 10, 20.

⁸⁷ ADMIN. CONFERENCE OF THE U.S., A GUIDE TO FEDERAL AGENCY RULEMAKING (1983).

- **May 1985.** Conference publishes its *Federal Administrative Procedure Sourcebook*, a compilation of major government-wide procedural statutes, along with explanatory material, legislative history and related documents.⁸⁹ This becomes the Conference's most popular publication. A second edition is published in 1992.⁹⁰
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- **October 17, 1985.** Marshall J. Breger sworn in as the seventh Chairman of the Administrative Conference.⁹¹
 - **June 19–20, 1986.** Thirty-second Plenary Session.⁹² The Conference adopts Recommendation 86-3, *Agencies' Use of Alternative Means of Dispute Resolution*,⁹³ the first of fifteen recommendations the Conference would issue on various aspects of this subject⁹⁴ The Conference thereafter worked closely with congressional staff in the development and passage of the *Administrative Dispute Resolution Act* in 1990.⁹⁵

⁸⁸ ADMIN. CONFERENCE OF THE U.S., A GUIDE TO FEDERAL AGENCY RULEMAKING (1991).

⁸⁹ ADMIN. CONFERENCE OF THE U.S., FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK (1985),

⁹⁰ ADMIN. CONFERENCE OF THE U.S., FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK (1992).

⁹¹ 1985 ACUS ANN. REP. 11.

⁹² 1986 ACUS ANN. REP. 21.

⁹³ *Id.* at 22; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 86-3, AGENCIES' USE OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION (1986).

⁹⁴ *Recommendations and Statements of the Administrative Conference*, *supra* note *.

⁹⁵ 1990 ACUS ANN. REP. 2–3.



Plenary session of the Administrative Conference, held in the 1980s, at the Federal Home Loan Bank Board.

- **October 14, 1986.** As part of the Conference's reauthorization, Congress increases the maximum number of Conference members from 91 to 101.⁹⁶ The Conference will exceed the original limit of 91 for the first time in 1989, when its membership increases to 94.⁹⁷
- **June 1987.** The Conference publishes its sourcebook on *Federal Agency Use of Alternative Means of Dispute Resolution*.⁹⁸
- **November 2, 1987.** The Conference inaugurates a series of annual seminars on administrative law for members of congressional staffs.⁹⁹
- **June 9, 1988.** Thirty-sixth Plenary Session. Among the recommendations adopted is Recommendation 88-1, *Presidential Transition Workers' Code of Ethical Conduct*.¹⁰⁰ This first-of-its-kind Code became the model for Transition Standards of Conduct is-

⁹⁶ Act of Oct. 14, 1986, Pub. No. L. 99-470, 100 Stat. 1198.

⁹⁷ 1989 ACUS ANN. REP. 62; 1988 ADMIN. CONFERENCE OF THE U.S. ANN. REP. 62 & n.1.

⁹⁸ ADMIN. CONFERENCE OF THE U.S., SOURCEBOOK: FEDERAL AGENCY USE OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION (1987); 1987 ADMIN. CONFERENCE OF THE U.S. ANN. REP. 35.

⁹⁹ 1987 ACUS ANN. REP. 30.

¹⁰⁰ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 88-1, PRESIDENTIAL TRANSITION WORKERS' CODE OF ETHICAL CONDUCT (1988).

sued by President-Elect Bush.¹⁰¹ The Clinton Administration followed what became standard procedures.¹⁰²

- **December 8–9, 1988.** Thirty-eighth Plenary Session. The Conference adopts Recommendation 88-9, *Presidential Review of Agency Rulemaking*.¹⁰³ This influential recommendation validates the practice of presidential review of agency regulations, suggests guidelines for the openness of that review, and proposes inclusion of independent agencies with the presidential review mechanism.¹⁰⁴
- **January 1990.** The Conference publishes its first *Negotiated Rulemaking Sourcebook*.¹⁰⁵ A revised edition is published in 1995.¹⁰⁶
- **November 1990.** Congress enacts the *Administrative Dispute Resolution Act*,¹⁰⁷ and the *Negotiated Rulemaking Act*,¹⁰⁸ with strong support and assistance from the Conference.¹⁰⁹ Both statutes include major advisory, oversight, and coordination roles for the Conference.¹¹⁰
- **August 26, 1992.** The President signs the *FAA Civil Penalty Administrative Assessment Act of 1992*,¹¹¹ which makes permanent the Federal Aviation Administration's civil money penalty demonstration program and transfers authority over adjudication of civil penalty cases affecting pilots and flight engineers from the FAA to the

¹⁰¹ William Funk, *R.I.P. A.C.U.S.*, AMERICAN BAR ASSOCIATION, http://apps.americanbar.org/adminlaw/news/vol21no2/acus_rip.html (last visited Sept. 23, 2015).

¹⁰² *Id.*

¹⁰³ 1988 ACUS ANN. REP. 103–06; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 88-9, PRESIDENTIAL REVIEW OF AGENCY RULEMAKING (1988).

¹⁰⁴ 1988 ACUS ANN. REP. 103–06; ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 88-9, PRESIDENTIAL REVIEW OF AGENCY RULEMAKING (1988).

¹⁰⁵ DAVID M. PRITZKER & DEBORAH S. DALTON, ADMIN. CONFERENCE OF THE U.S., NEGOTIATED RULEMAKING SOURCEBOOK (1990).

¹⁰⁶ DAVID M. PRITZKER & DEBORAH S. DALTON, ADMIN. CONFERENCE OF THE U.S., NEGOTIATED RULEMAKING SOURCEBOOK (Revised ed. 1995).

¹⁰⁷ Administrative Dispute Resolution Act, Pub. L. No. 101-552, 104 Stat. 2736 (1990).

¹⁰⁸ Negotiated Rulemaking Act of 1990, Pub. L. No. 101-648, 104 Stat. 4969.

¹⁰⁹ David M. Pritzker, *The Administrative Conference and the Development of Federal ADR*, ACUS: ADMINISTRATIVE FIX BLOG (Oct. 29, 2014), <https://www.acus.gov/newsroom/administrative-fix-blog/administrative-conference-and-development-federal-adr>.

¹¹⁰ See § 4(b), 104 Stat. at 2738–45; § 3(a), 104 Stat. at 4969–77.

¹¹¹ FAA Civil Penalty Administrative Assessment Act of 1992, Pub. L. No. 102-345, 106 Stat. 923.

National Transportation Safety Board.¹¹² The legislation specifically implements Recommendations 90-1¹¹³ and 91-8,¹¹⁴ which were developed in response to a specific request from Congress that the Conference study the issue and make recommendations.¹¹⁵

- **October 9, 1992.** Congress amends the Administrative Conference Act to authorize the Conference to respond to requests for assistance regarding the improvement of administrative procedures in foreign countries.¹¹⁶
 - **December 10–11, 1992.** Forty-seventh Plenary Session. The Conference adopts Recommendation 92-7, *The Federal Administrative Judiciary*, which is a comprehensive examination of the roles of administrative law judges and other adjudicators in the federal system.¹¹⁷ The Office of Personnel Management requested the study.¹¹⁸
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- **December 23, 1992.** Brian C. Griffin is sworn in as the eighth Chairman of the Administrative Conference.¹¹⁹
 - **March 1993.** A six-member Conference delegation, under the sponsorship of the U.S. Information Agency, conducts its first overseas seminar in Kiev, Ukraine, at the invitation of the Ukrainian Institute of Public Administration.¹²⁰ A second program, requested by the Chinese Government, is offered in Qingdao, China in August.¹²¹
 - **June 10–11, 1993.** Forty-eighth Plenary Session. The Conference adopts Recommendation 93-4, *Improving the Environment for Agency Rulemaking*, which comprised of a broad

¹¹² *Id.* sec. 2(a), § 609(a).

¹¹³ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 90-1, CIVIL MONEY PENALTIES FOR FEDERAL AVIATION VIOLATIONS (1990).

¹¹⁴ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 91-8, ADJUDICATION OF CIVIL PENALTIES UNDER THE FEDERAL AVIATION ACT (1991).

¹¹⁵ Act of Aug. 15, 1990, Pub. L. No. 101-370, § 3, 104 Stat. 451, 452.

¹¹⁶ Act of Oct. 9, 1992, Pub. L. No. 102-403, sec. 3, § 594(5), 106 Stat. 1968, 1968.

¹¹⁷ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 92-7, *THE FEDERAL ADMINISTRATIVE JUDICIARY* (1992).

¹¹⁸ *Id.* at 1.

¹¹⁹ 1992 ACUS ANN. REP. 57.

¹²⁰ 1993 ACUS ANN. REP. 3, 16.

¹²¹ *Id.* at 16–17.

study of all aspects of the federal agency rulemaking process.¹²² Numerous regulatory reform bills subsequently introduced in Congress incorporate elements of this recommendation.¹²³

- **September 20, 1993.** A Conference working group completes a set of model rules for adjudicatory proceedings.¹²⁴ The model rules are subsequently published in the Thomas M. Cooley Law Review.¹²⁵
 - **October 28, 1993.** Congress enacts appropriations legislation that cuts the Conference's budget by 23% for fiscal year 1994.¹²⁶ The House had unexpectedly voted to terminate all funding for the Conference but the Senate restored the level to approximately 80% of the President's request.¹²⁷ The reduced funding level requires several staff members to seek employment elsewhere by mid-1994.¹²⁸
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- **October 4, 1994.** Thomasina V. Rogers is sworn in as the ninth Chair of the Administrative Conference.¹²⁹
 - **February 18, 1995.** The Conference submits its report to Congress on agency implementation of the Administrative Dispute Resolution Act, detailing the growth of ADR and the concomitant savings.¹³⁰
 - **June 15–16, 1995.** Fifty-second Plenary Session. Final Conference recommendation adopted is Recommendation 95-7, *Use of Mediation under the Americans with Disabilities Act*.¹³¹

¹²² ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 93-4, IMPROVING THE ENVIRONMENT FOR AGENCY RULEMAKING (1993).

¹²³ ADMIN. CONFERENCE OF THE U.S., IMPLEMENTATION OF ACUS RECOMMENDATIONS: 1969–1995, at 30 (1995), <https://bulk.resource.org/acus.gov/gov.acus.1995.implement.pdf>.

¹²⁴ Michael P. Cox, *The Model Adjudication Rules (MARs)*, 11 T.M. COOLEY L. REV. 75, 77 (1994).

¹²⁵ *Id.* at 77–128.

¹²⁶ Act of Oct. 28, 1993, Pub. L. No. 103-123, tit. 4, 107 Stat. 1226, 1238; *see also* Gary J. Edles, *The Continuing Need for an Administrative Conference*, 50 ADMIN. L. REV. 101, 130 (1998).

¹²⁷ 1993 ACUS ANN. REP. 3.

¹²⁸ *Id.*

¹²⁹ 1994–1995 ACUS ANN. REP. 55.

¹³⁰ ADMIN. CONFERENCE OF THE U.S., TOWARD IMPROVED AGENCY DISPUTE RESOLUTION: IMPLEMENTING THE ADR ACT (1995).

¹³¹ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 95-7, USE OF MEDIATION UNDER THE AMERICANS WITH DISABILITIES ACT (1995).

- **September 13, 1995.** A House-Senate appropriations conference committee votes to eliminate funding for the Conference.¹³² Although the House had declined to provide funds, the Senate had restored funding.¹³³ In conference, the Senate conferees agree to the House position.¹³⁴
 - **October 19, 1995.** An inter-agency working group coordinated by the Office of the Chairman submits its report to the National Performance Review (NPR) on methods for improving the effectiveness of the government's offices of general counsel.¹³⁵ The Conference had been specifically asked by NPR to convene the group and develop recommendations.¹³⁶
 - **October 30, 1995.** The Conference submits its Report to Congress on agency implementation of the Negotiated Rulemaking Act.¹³⁷
 - **October 31, 1995.** The Conference submits its thirteenth and final annual report to Congress on agency activity under the Equal Access to Justice Act, covering fiscal year 1994.¹³⁸
 - **October 31, 1995.** The Conference ceases operations.¹³⁹
 - **December 9, 1995.** Walter Gellhorn dies at age eighty-nine.¹⁴⁰ Professor Gellhorn had served continuously on the Council of the Administrative Conference through the terms of seven Presidents, from 1968 to 1995.¹⁴¹
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- **March 3, 2010.** Following reauthorization by Congress in 2004¹⁴² and 2008,¹⁴³ and funding approval in 2009, the Adminis-

¹³² H.R. REP. NO. 104-291, at 6 (1995) (Conf. Rep.).

¹³³ *Id.* at 43.

¹³⁴ *Id.* at 43-44.

¹³⁵ 1994-1995 ACUS ANN. REP. 11-12.

¹³⁶ *Id.* at 11.

¹³⁷ ADMIN. CONFERENCE OF THE U.S., BUILDING CONSENSUS IN AGENCY RULEMAKING: IMPLEMENTING THE NEGOTIATED RULEMAKING ACT (1995).

¹³⁸ 1994-1995 ACUS ANN. REP. 19.

¹³⁹ Jeffrey S. Lubbers, *ACUS 2.0 and its Historical Antecedents*, ADMIN. & REG. L. NEWS, Spring 2011, at 9, 10.

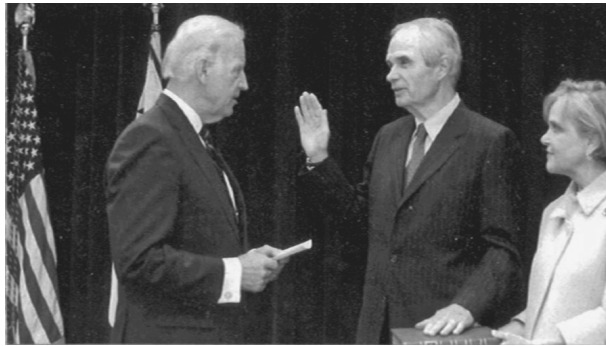
¹⁴⁰ Peter Strauss, *A Memorial to Walter Gelhorn* [sic], AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/adminlaw/news/vol21no3/gelhorn.html> (last visited Sept. 24, 2015).

¹⁴¹ *Id.*

¹⁴² Federal Regulatory Improvement Act of 2004, Pub. L. No. 108-401, sec. 3, § 596, 118 Stat. 2255, 2255-66.

trative Conference is officially reestablished after a fifteen-year hiatus, when the Senate confirms President Barack Obama's nominee, Paul R. Verkuil, as Chairman.¹⁴⁴ On May 20, 2004, Supreme Court Associate Justices Antonin Scalia and Stephen Breyer had appeared together before the House Judiciary Committee's Subcommittee on Commercial and Administrative Law in support of reauthorization of the Administrative Conference.¹⁴⁵

- **April 6, 2010.** Paul R. Verkuil is sworn in as the tenth Chairman of the Administrative Conference.¹⁴⁶



Vice President Joseph Biden swears in Paul R. Verkuil as the 10th Chairman of the Administrative Conference on April 6, 2010. Also shown is the Chairman's wife, Judith Rodin.

- **May 20, 2010.** Chairman Verkuil testifies before the House Judiciary Committee's Subcommittee on Commercial and Administrative Law, outlining plans for the work of the reconstituted Conference.¹⁴⁷ Appearing jointly a second time on behalf of the Conference, Justices Scalia and Breyer also testify at the same hearing.¹⁴⁸

¹⁴³ Federal Regulatory Improvement Act of 2007, Pub. L. No. 110-290, sec. 2, § 596, 122 Stat. 2914, 2914 (2008).

¹⁴⁴ Paul Verkuil (LL.M. '69, J.S.D. '72) Confirmed as Chairman of the Administrative Conference of the United States, NYU LAW (Mar. 9, 2010), http://www.law.nyu.edu/news/verkuil_acus.

¹⁴⁵ Federal Regulatory Improvement Act of 2004: Hearing on H.R. 4917 Before the Subcomm. on Commercial & Admin. Law of the H. Comm. on the Judiciary, 108th Cong. 10 (2004).

¹⁴⁶ Paul R. Verkuil, ADMIN. CONFERENCE OF THE U.S., <https://www.acus.gov/contacts/paul-r-verkuil> (last visited Sept. 24, 2015).

¹⁴⁷ Administrative Conference of the United States: Hearing before the Subcomm. on Commercial & Admin. Law of the H. Comm. on the Judiciary, 111th Cong. 44 (2010) (statement of Paul R. Verkuil, Chairman, Administrative Conference of the United States).

¹⁴⁸ *Id.* at 14 (statement of Stephen Breyer, Associate J., United States Supreme Court); *id.* at 20 (statement of Antonin Scalia, Associate J., United States Supreme Court).

- **July 8, 2010.** President Barack Obama names ten members to serve with Chairman Verkuil on the Administrative Conference Council.¹⁴⁹ In announcing these appointments, President Obama said, “ACUS is a public-private partnership designed to make government work better.”¹⁵⁰
- **December 9–10, 2010.** Fifty-third Plenary Session. Supreme Court Justice and former Conference Chairman Antonin Scalia swears in the new Conference membership.¹⁵¹



Plenary session of the Administrative Conference at the Commodity Futures Trading Commission in June 2013.

- **October 18, 2011.** The Conference launches its Model Agency Initiative, to identify federal agency best practices, celebrate success stories, and share lessons learned government-wide.¹⁵²
- **November 2011.** The Conference marks the passing of two key figures in its history, former Chairman Robert Anthony¹⁵³ and Se-

¹⁴⁹ Paul R. Verkuil, *supra* note 146.

¹⁵⁰ Press Release, President Barack Obama, President Obama Announces More Key Administration Posts, 7/8/10 (July 8, 2010), <https://www.whitehouse.gov/the-press-office/president-obama-announces-more-key-administration-posts-7810>.

¹⁵¹ ADMIN. CONFERENCE OF THE U.S., 53RD PLENARY SESSION MINUTES 1-2 (2010), <https://www.acus.gov/sites/default/files/documents/12-2010-Plenary-Minutes-6-7-2011.pdf>.

¹⁵² Megan Kindelan, *Model Agency Initiative Launched at www.acus.gov/best-practices*, Administrative Conference of the United States (Oct. 18, 2011, 1:04 PM), <https://www.acus.gov/newsroom/news/model-agency-initiative-launched-wwwacusgovbest-practices>.

¹⁵³ Robert A. Anthony, ADMIN. CONFERENCE OF THE U.S., <https://www.acus.gov/contacts/robert-anthony> (last visited Sept. 24, 2015).

nior Fellow Malcolm Mason, who at age 101 was the oldest member.¹⁵⁴ Mr. Mason was among the longest serving members, representing the Office of Economic Opportunity starting in 1968, and later the Department of Health, Education, and Welfare.¹⁵⁵

- **December 8, 2011.** The Office of the Federal Register's federalregister.gov is the first recipient of the Walter Gellhorn Innovation Award.¹⁵⁶ The Gellhorn Award was created by the Conference in conjunction with its Model Agency Initiative, to recognize federal agencies with innovative best practices that save costs, increase transparency and/or efficiency, and can be duplicated by other federal agencies.¹⁵⁷ Subsequent recipients are the Citizen Archivist Initiative at the National Archives in December 2012,¹⁵⁸ and the General Services Administration's DigitalGov User Experience Program in June 2014.¹⁵⁹
- **December 2012.** The Administrative Conference publishes the *Sourcebook of United States Executive Agencies* and arranges for free online public access to the underlying database.¹⁶⁰
- **December 4–5, 2014.** Sixty-first Plenary Session. The Conference observes the fiftieth anniversary of the Administrative Conference Act with a program at the Supreme Court of the United States.¹⁶¹

¹⁵⁴ Megan Kindelan, *Malcolm Mason, Senior Fellow*, ADMIN. CONFERENCE OF THE U.S.: ADMIN. FIX BLOG (Nov. 2, 2011, 11:53 AM), <https://www.acus.gov/newsroom/administrative-fix-blog/malcolm-mason-senior-fellow>.

¹⁵⁵ Bart Barnes, *Malcom S. Mason, Lawyer*, WASH. POST (Nov. 17, 2011), http://www.washingtonpost.com/local/obituaries/malcom-s-mason-lawyer/2011/11/16/gIAHVUCUVN_story.html.

¹⁵⁶ Admin. Conference of the U.S., *Walter Gellhorn Innovation Award 2011 Winner: Office of Federal Register*, MODEL AGENCY INITIATIVE (Dec. 9, 2011), <https://www.acus.gov/best-practices/awards/ofr/>.

¹⁵⁷ Admin. Conference of the U.S., *Gellhorn Award Application*, MODEL AGENCY INITIATIVE, <https://www.acus.gov/best-practices/gellhorn-award-application/> (last visited May 18, 2015).

¹⁵⁸ Admin. Conference of the U.S., *Walter Gellhorn Innovation Award 2012 Winner: National Archives*, MODEL AGENCY INITIATIVE, (Dec. 7, 2012), <https://www.acus.gov/best-practices/awards/archives/>.

¹⁵⁹ Admin. Conference of the U.S., *Walter Gellhorn Innovation Award 2013–14 Winner: U.S. General Services Administration*, MODEL AGENCY INITIATIVE, (June 26, 2014), <https://www.acus.gov/best-practices/awards/walter-gellhorn-innovation-award-2013-14-winner-u-s-general-services-administration/>.

¹⁶⁰ DAVID E. LEWIS & JENNIFER L. SELIN, ADMIN. CONFERENCE OF THE U.S., *SOURCEBOOK OF UNITED STATES EXECUTIVE AGENCIES* (2012), <https://www.acus.gov/publication/sourcebook-united-states-executive-agencies>.

¹⁶¹ ADMIN. CONFERENCE OF THE U.S., *AGENDA FOR 61ST PLENARY SESSION* (2014), <https://www.acus.gov/sites/default/files/documents/61st%2520Plenary%2520Session%2520Agenda.pdf>.

- **September 18–25, 2015.** Sixty-third Plenary Session. Consistent with the innovative techniques outlined in Recommendation 2011-7, *The Federal Advisory Committee Act—Issues and Proposed Reforms*, the Conference, for the first time, conducts a virtual plenary session, with participation via the Internet over a period of one week.¹⁶² Members approve Statement 19, *Issue Exhaustion in Preenforcement Judicial Review of Administrative Rulemaking*.¹⁶³



Chairman Verkuil with Justices Stephen Breyer and Antonin Scalia, pictured at an event at the Supreme Court to mark the 50th anniversary of the Administrative Conference Act, enacted on August 30, 1964. Justice Scalia was the third Chairman of the Administrative Conference.

SIGNIFICANT CURRENT IMPLEMENTATION AND ADVISORY ACTIVITIES

- Recommendation 2011-3, *Compliance Standards for Government Contractor Employees—Personal Conflicts of Interest and Use of Certain Non-Public Information*.¹⁶⁴ In February 2013, the American Bar Association (ABA) House of Delegates adopted Resolution 110A, which reflects the Conference's recommendation, urging federal government action to minimize government con-

¹⁶² Admin. Conference of the U.S., Recommendation 2011-7, *The Federal Advisory Committee Act—Issues and Proposed Reforms* (2011); 80 Fed. Reg. 50,819 (Aug. 21, 2015).

¹⁶³ ADMIN. CONFERENCE OF THE U.S., STATEMENT 19, *ISSUE EXHAUSTION IN PREENFORCEMENT JUDICIAL REVIEW OF ADMINISTRATIVE RULEMAKING* (2015).

¹⁶⁴ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2011-3, *COMPLIANCE STANDARDS FOR GOVERNMENT CONTRACTOR EMPLOYEES* (2011).

tractor personal conflicts of interest.¹⁶⁵ The Federal Acquisition Regulatory Council proposed extending the personal conflict of interest rules to certain contractor employees performing activities that are closely related to inherently governmental functions,¹⁶⁶ which parallels a proposed reform contained in Recommendation 2011-3.¹⁶⁷

- Recommendation 2011-5, *Incorporation by Reference*.¹⁶⁸ (1) The Office of the Federal Register issued a final rule on incorporation by reference that is fully consistent with the overall Conference recommendation and implements several provisions relating to “reasonable availability” to the public of incorporated material.¹⁶⁹
- Recommendation 2011-5, *Incorporation by Reference*. (2) In proposing revision of Circular A-119 on “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” the Office of Management and Budget (“OMB”) noted that it would adopt the Conference recommendations on public access and agency assessment of “reasonable availability.”¹⁷⁰ OMB also noted that its criteria for agencies to consider, when they examine whether a voluntary standard meets agency needs and should be used for purposes of their regulations, were adopted in part from Conference Recommendation 78-4, *Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulation*.
- Recommendation 2011-6, *International Regulatory Cooperation*.¹⁷¹ On May 1, 2012, President Obama issued Executive Order 13609, *Promoting International Regulatory Cooperation*, based in part on the Administrative Conference Recommendation, which aims to enhance cooperation between United States agencies and foreign

¹⁶⁵ AMERICAN BAR ASSOCIATION, RESOLUTION 110A, at 1 (2013).

¹⁶⁶ Federal Acquisition Regulation; Extension of Limitations on Contractor Employee Personal Conflicts of Interest, 79 Fed. Reg. 18,503, 18,504 (Apr. 2, 2014)

¹⁶⁷ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2011-3, COMPLIANCE STANDARDS FOR GOVERNMENT CONTRACTOR EMPLOYEES 1 (2011).

¹⁶⁸ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2011-5, INCORPORATION BY REFERENCE (2011).

¹⁶⁹ Compare *id.* at 3, with *Incorporation by Reference*, 79 Fed. Reg. 66,267, 66,273 (Nov. 7, 2014).

¹⁷⁰ Request for Comments on a Proposed Revision of OMB Circular No. A-119, 79 Fed. Reg. 8,207, 8,207 (Feb. 11, 2014).

¹⁷¹ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2011-6, INTERNATIONAL REGULATORY COOPERATION (2011).

authorities.¹⁷² In August 2012, the ABA House of Delegates adopted Resolution 109B, based on the same recommendation.¹⁷³

- Recommendation 2012-3, *Immigration Removal Adjudication*.¹⁷⁴ On June 27, 2013, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act, a comprehensive immigration bill, which would implement portions of the Conference recommendation with respect to increasing the number of immigration judges and other personnel, increasing access to legal information, establishing legal access/orientation programs, improving training of immigration judges, and improving technology for proceedings.¹⁷⁵
- Recommendation 2012-6, *Reform of 28 U.S.C. Section 1500*.¹⁷⁶ In February 2013, the ABA House of Delegates adopted Recommendation 300, which is in accordance with the Conference's recommendation, urging Congress to repeal and replace an outdated law that may unfairly bar certain court claims on procedural grounds.¹⁷⁷ In the 113th Congress, the House Judiciary Committee favorably reported H.R. 5683, which also reflects the Conference's recommendation.¹⁷⁸
- Recommendation 2012-8, *Inflation Adjustment Act*.¹⁷⁹ The Administration's Budget for fiscal year 2016 adopted the Conference's position on improving the Federal Civil Penalties Inflation Adjustment Act, to maintain the deterrent effect of civil monetary penalties.¹⁸⁰
- Administrative Conference of the United States (Office of the Chairman), *SSA Disability Benefits Programs: The Duty of Candor*

¹⁷² Exec. Order No. 13609, 77 Fed. Reg. 26,413, 26,414 (May 1, 2012).

¹⁷³ AMERICAN BAR ASSOCIATION, RESOLUTION 109B, at 10 (2012).

¹⁷⁴ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2012-3, IMMIGRATION REMOVAL ADJUDICATION (2012).

¹⁷⁵ Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013).

¹⁷⁶ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2012-6, REFORM OF 28 U.S.C. SECTION 1500 (2012).

¹⁷⁷ AMERICAN BAR ASSOCIATION, RECOMMENDATION 300 (2013).

¹⁷⁸ H.R. REP. NO. 113-650, at 2 (2014); *see also* S. 2769, 113th Cong. (2014) (the companion bill in the Senate).

¹⁷⁹ ADMIN. CONFERENCE OF THE U.S., RECOMMENDATION 2012-8, INFLATION ADJUSTMENT ACT (2012).

¹⁸⁰ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2016: INVESTING IN AMERICA'S FUTURE 36 (2015).

*and Submission of All Evidence, Final Report.*¹⁸¹ The Social Security Administration's proposed rule on *Submission of Evidence in Disability Claims* was based in part on recommendations and principles in the Conference's report.¹⁸²

- Office of Management & Budget, Executive Office of the President, Budget of the United States Government, Fiscal Year 2016: Investing in America's Future.¹⁸³ To address increasing wait times for disability appeal decisions, the Administration's Budget for fiscal year 2016 announced the formation of the Interagency Workgroup on the Selection of Administrative Law Judges, co-led by the Administrative Conference, to review the process of hiring Social Security Administration Judges and recommend administrative or legislative actions to improve that process.¹⁸⁴

¹⁸¹ ADMIN. CONFERENCE OF THE U.S., SSA DISABILITY BENEFITS PROGRAMS: THE DUTY OF CANDOR AND SUBMISSION OF ALL EVIDENCE (2012).

¹⁸² Submission of Evidence in Disability Claims, 79 Fed. Reg. 9,663, 9,665 (Feb. 20, 2014).

¹⁸³ OFFICE OF MGMT. & BUDGET, *supra* note 180.

¹⁸⁴ *Id.* at 42.