October 18, 2012

Via Electronic Mail and Facsimile

Mr. Paul Verkuil
Chairman
Administrative Conference of the United States
1120 20th St. NW
Suite 706 South
Washington, DC 20036

Re: Bias toward Views of Industry Groups and OIRA in ACUS Activities

Dear Mr. Verkuil:

We are again disappointed to see ACUS straying from its mission of neutrality and independence. In a number of its recent and planned activities, ACUS exhibits a troubling bias toward the views of regulated industries and their allies, groups that are perpetually engaged in campaigns to discredit protective regulations and the agencies that write them. The growing perception that ACUS is overly responsive to industry groups not only compromises the legitimacy of the newly resurrected organization, but it threatens to alienate the public interest groups that support ACUS' work. If public interest representatives begin to withdraw from the organization, it will inhibit the diversity of public engagement in ACUS programs.

For these reasons, we respectfully urge ACUS to:

1. Stop co-sponsoring one-sided conferences and workshops with industry-biased stakeholders;

2. Refrain from meddling in science issues that lie outside ACUS' expertise in administrative procedures—specifically, debates over risk assessment and the EPA's Integrated Risk Information System (IRIS) program, which industry groups are eager to co-opt in their attacks on regulation;

3. Terminate its close alliance with current and former officials who have led the White House Office of Information and Regulatory Affairs (OIRA) into pitched battles with members of Congress and senior leaders of regulatory agencies, to the detriment of the rulemaking process and the overall credibility of presidential administrations in the health, safety, and environmental arena;

4. Revise the composition of ACUS' Council to ensure a broad, balanced range of policy expertise and viewpoints.

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ACUS should stop co-sponsoring events with groups that represent the interests of regulated industries.

If ACUS intends to cultivate a reputation of providing unbiased and nonpartisan advice, it should not be lending its imprimatur to one-sided conferences and workshops sponsored by trade associations and industry-friendly think tanks. We wrote to you with similar concerns six months ago, after your decision to co-sponsor a conference with the Chamber of Commerce on "incorporation by reference" in the international arena.[1] To our dismay, it appears now that this partnership with biased groups was not an isolated event, but rather the beginning of a regular ACUS practice.

ACUS' upcoming October 23rd workshop on "Enhancing Science and Policy for Chemical Risk Assessments" is co-sponsored by the four groups listed below. In the ongoing, bitter disputes over the value of government regulation, all these groups are at the forefront of extraordinarily harsh attacks on regulatory agencies that have distorted the debate over regulatory policy since the 2010 mid-term election:

- The American Chemistry Council (ACC): A trade association of chemical companies that has worked relentlessly to undermine EPA's programs of chemical risk assessment.[2]
- The Society for Risk Analysis (SRA): A scholarly organization funded by large companies in the chemical, cosmetic, food, and health care industries.[3]
- The George Washington University Regulatory Studies Center (RSC): A research center created with funding from the right-leaning Searle Freedom Trust.[4]
- The George Washington Center for Risk Science and Public Health (CRSPH): A research center whose director has long-established ties to industry funding, and is also President-Elect of the SRA and a member of the GW RSC.[5]

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[1] Letter from Tom McGarity and Rena Steinzor, Ctr. for Progressive Reform, to Paul Verkuil, Chairman, ACUS (Apr. 27, 2012), *available at* http://progressivereform.org/articles/ACUS_Letter_042712.pdf.

[2] *See, e.g.,* Maria Hegstad, *Industry Steps Up Push to Streamline Agencies' Chemical Risk Programs*, INSIDE EPA, Sep. 30, 2011, *available at* http://insideepa.com/Inside-EPA-General/Inside-EPA-Public-Content/industry-steps-up-push-to-streamline-agencies-chemical-risk-programs/menu-id-565.html; Rena Steinzor, *The Age of Greed: Chemical Industry Fights to Suppress Dioxin Assessment*, CPRBlog, http://progressivereform.org/CPRBlog.cfm?idBlog=C36DC41F-FF4B-40D5-937E8307EB6FFCC8 (Jan. 9, 2012).

[3] SRA no longer discloses its funders on its website, but in the year 2000, it had a list of corporate "sustaining members" that included Amoco, the Chemical Manufacturing Association (now the ACC), Chevron, DuPont, Exxon, and Procter & Gamble. PUBLIC CITIZEN, SAFEGUARDS AT RISK: JOHN GRAHAM AND CORPORATE AMERICA'S BACK DOOR TO THE BUSH WHITE HOUSE 34 (2001), *available at* http://www.citizen.org/documents/grahamrpt.pdf.

[4] About – GW Regulatory Studies Center, http://www.regulatorystudies.gwu.edu/index.php/about (last visited Oct. 11, 2012). *See* John J. Miller, *Daniel C. Searle, R.I.P.*, NATIONAL REVIEW ONLINE, Nov. 8, 2007, http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=11811 (profiling the conservative philanthropy of the Searle Freedom Trust).

[5] George Gray, Director of CRSPH, served as Assistant Administrator of EPA's Office of Research and Development and EPA's Science Advisor under President George W. Bush from 2005-2009, during which time he made changes to the IRIS program that expanded industry influence over the risk assessment process. Press Release, Pub. Employees for Envtl. Responsibility (PEER), EPA Opens Chemical Risk Assessment to Corporate Lobbying, Apr. 14, 2008, *available at* http://www.peer.org/news/news-releases/2008/04/14/epa-opens-chemical-risk-assessment-to-corporate-lobbying. Prior to that, he was executive director of the corporate-funded Harvard Center for Risk Analysis (HCRA). *See* PUBLIC CITIZEN, *supra* note 3, at 1-2, 11-13 (listing more than 100 industry funders of HCRA). *See also* Brendan Coyne, *New EPA Research Head Comes with Tight Corporate Ties*, THE NEW STANDARD, Oct. 7, 2005, *available at* http://newstandardnews.net/content/index.cfm/items/2455 (summarizing Gray's ties to industry).

Additionally, the SRA and both GW Centers promote rigorous centralized review of agency actions and are strongly affiliated with past OIRA leadership.[6] The Center for Progressive Reform (CPR) has extensively documented how OIRA, located within the Office of Management and Budget (OMB), functions as a one-way ratchet to weaken protective regulations, often at the urging of industry and law firm lobbyists.[7] OIRA and OMB have a long history of delaying and revising IRIS risk assessments.[8]

With these like-minded groups at the helm, the workshop is unlikely to offer a balanced and robust forum for debate of the controversial issues surrounding risk assessment. The agenda that was just released confirms that dissenting voices will be seriously under-represented among the speakers and panelists at the event.[9] The agenda lists 12 participants besides yourself, including only three representatives from public interest groups and one EPA scientist. As for the rest, there are four speakers/moderators from the industry-sponsored groups hosting the workshop, three scientists from environmental consulting firms that serve industry clients, and a lawyer well-known for representing companies and trade associations in regulatory matters.

Inviting only a small sampling of the public interest community, for appearances' sake, presents a distorted spectrum of policy experts' opinions on this matter. Furthermore, the workshop should have solicited a range of experts from the IRIS program, the National Toxicology Program, or other agencies that perform risk assessments. Instead, a single EPA expert is responsible for relaying the experience and accumulated wisdom of agency scientists, whose work comprises the very subject of the workshop. Last but not least, the manner in which this workshop was announced—less than a month in advance, without notice in the Federal Register or even publicity on ACUS' website—adds to the impression of a closed process, unlikely to attract participation by a diverse range of experts.

In your response to our previous letter, you suggested that co-sponsoring events with industry groups is justified by ACUS' need to publicize its work in various forums, engage relevant stakeholders in the process, and persuade them to support ACUS' solutions.[10] Even if we were to accept this justification, ACUS shows no signs of reaching out to stakeholders in the middle and opposite side of the spectrum, such as current and former agency officials and public interest groups with decades of experience with the regulatory process. More to the point, as we know you are only too well aware, ACUS has limited resources and its cultivation of industry stakeholders and their allies comes at the expense of its responsibility to ensure that its activities are neutral and balanced.

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[6] Susan Dudley, who served as OIRA Administrator under President George W. Bush from 2007 to 2009, is the founding director of the GW Regulatory Studies Center. John Graham, who served as OIRA Administrator from 2001 to 2006, was President of the SRA from 1995 to 1996, and was awarded the SRA's Distinguished Lifetime Achievement Award in 2009. Graham also founded the Harvard Center for Risk Analysis, whose former executive director, George Gray, is now the director of the GW Center for Risk Science and Public Health.

[7] *See* RENA STEINZOR, MICHAEL PATOKA & JAMES GOODWIN, CTR. FOR PROGRESSIVE REFORM, BEHIND CLOSED DOORS AT THE WHITE HOUSE: HOW POLITICS TRUMP PROTECTION OF PUBLIC HEALTH, WORKER SAFETY AND THE ENVIRONMENT (2011), *available at* http://www.progressivereform.org/articles/OIRA_Meetings_1111.pdf.

[8] *See* U.S. GEN. ACCOUNTING OFFICE, CHEMICAL ASSESSMENTS: CHALLENGES REMAIN WITH EPA'S INTEGRATED RISK INFORMATION SYSTEM PROGRAM 2, 10-11, 24-26, 38-39 (2011), *available at* http://www.gao.gov/assets/590/586620.pdf.

[9] George Washington University, Workshop Agenda: Enhancing Science and Policy for Chemical Risk Assessments, Oct. 23, 2012, *available at* http://www.acus.gov/wp-content/uploads/downloads/2012/10/GW-SRA-ACC-ACUS_OCT-23-AGENDA-Updated.pdf.

[10] Letter from Paul Verkuil, Chairman, ACUS, to Tom McGarity and Rena Steinzor, Ctr. for Progressive Reform (Apr. 30, 2012).

The work of ACUS should be about making the regulatory process work more effectively, not about targeting certain scientific programs at the EPA that displease industry interests.

The agenda for the October 23rd workshop indicates that a focus of discussion will be the recent National Academy of Sciences (NAS) report on the IRIS formaldehyde assessment, a robust scientific critique with recommendations for improving the EPA's process.[11] This focus is troubling because the industry groups co-sponsoring the workshop have been using this report as a political tool to condemn the IRIS program outright, proposing excessive remedies that would further immobilize its progress.[12]

As disturbing, the George Washington University Regulatory Studies Center has described the conference as an opportunity to discuss scientific methods of "data evaluation, data integration, and peer review."[13] This is far from the first time these co-sponsors have attempted to steer the development of risk-assessment principles. In fact, these groups and their affiliates vigorously supported a 2006 OMB proposal prescribing technical standards for risk assessment,[14] which was ultimately rejected by the NAS for being "fundamentally flawed."[15] The fact that OMB/OIRA loyalists and the ACC are presiding over this event raises the concern that the workshop is an attempt to resuscitate ideas along the lines of those discredited proposals.

While members of the ACUS Committee on Regulation may be experts in administrative procedure, they do not have any significant experience in conducting agency risk assessments. It is unclear what ACUS brings to the table in a technical discussion about the quality of risk assessments. If ACUS wishes to study the role of risk assessment in the rulemaking process, it should focus on how such assessments are used by policymakers in a neutral forum, not one with such an obvious and distinctive industry bias.

ACUS has a duty to examine the administrative process objectively and independently, but in the battles between OIRA and the agencies, ACUS has decisively taken OIRA's side.

In the lead-up to ACUS' reauthorization and funding, those urging the return of the organization expected that, among other things, it would study and make recommendations related to OIRA's review of agency rulemaking, including the transparency of that process.[16] ACUS' reluctance

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[11] George Washington University, *supra* note 9.

[12] *See* Testimony of Rena Steinzor before the Subcomm. on Investigations and Oversight of the H. Comm. on Science, Space & Technology, on EPA's IRIS Program: Evaluating the Science and Process Behind Chemical Risk Assessment 2, 5-6 (July 14, 2011), *available at* http://progressivereform.org/articles/IRIS_Testimony_Steinzor_071411.pdf.

[13] Email Announcement from the GW Regulatory Studies Center (Oct. 9, 2012).

[14] The ACC submitted public comments in support of OMB's proposed risk assessment bulletin, available at http://www.whitehouse.gov/omb/inforeg_comments_rab_list_rab2006. Susan Dudley, Director of the GW Regulatory Studies Center, was OIRA Administrator at the time that OIRA released the proposal. *See* Memorandum from Susan Dudley, OIRA, and Sharon Hays, Office of Sci. & Tech. Policy, to Heads of Executive Departments and Agencies, on Updated Principles for Risk Analysis 2 (Sep. 19, 2007), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2007/m07-24.pdf.

[15] *See* Press Release, The Nat'l Acad., Report Recommends Withdrawal of OMB Risk Assessment Bulletin (Jan. 11, 2007), *available at* http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=11811.

[16] With the goal of identifying matters that would benefit from ACUS' study, the House Judiciary Committee established The Administrative Law, Process, and Procedure Project for the 21st Century. The resulting report devoted 30 pages to issues surrounding OIRA review, posing several questions about its transparency. SUBCOMM. ON COMMERCIAL AND ADMIN. LAW OF THE H. COMM. ON THE JUDICIARY, 109TH CONG., INTERIM REPORT ON THE ADMINISTRATIVE LAW, PROCESS AND PROCEDURE PROJECT FOR THE 21ST CENTURY 5-6, 39-67 (Comm. Print 2006), *available at* http://purl.access.gpo.gov/GPO/LPS78337 [hereinafter PROJECT INTERIM REPORT]. In connection with the Project, the Committee sponsored several symposia that, among other things, debated the nature and transparency of OIRA review. *Id.*

to address—or even take notice of—procedural problems in centralized review suggests an internal bias in favor of OIRA and OMB.

The way that ACUS has conducted its project on "Science in the Administrative Process," currently under consideration by ACUS' Committee on Regulation, provides a case in point. One of many findings in the draft report by Professor Wendy Wagner, the project consultant, is that OMB review procedures often play a significant, non-transparent role in the use of agency science.[17] And yet the Committee has, on every occasion, sought to eliminate any issues related to OMB/OIRA review from its project recommendations.

Before Professor Wagner's draft recommendations were even presented to the Committee, ACUS staff had already stripped out all the items seeking to enhance the transparency of OIRA review.[18] Then, at the Committee Meeting on March 7, 2012, several Committee members and public attendees (including two former OIRA administrators) objected to the report's "hostility" toward OMB and criticized the decision to focus on these issues in the report—notwithstanding the fact that only a small portion of the report considers the role of OMB.[19] At the NAS-ACUS conference on September 10, Professor Wagner confirmed that the Committee wants to leave OIRA out of this project.[20] When panelists and public participants nevertheless continued to raise the subject of OIRA interference in the use of science in rulemaking, the two Committee members in attendance (both former OIRA officials) insisted that: (1) any such inquiry was inappropriate to this project; (2) OIRA does not interfere in agency science; and (3) OIRA's activities are transparent.[21] Most recently, at another meeting on September 24, the Committee Chair reaffirmed the Committee's decision to exclude any items related to OIRA and its use of the deliberative process privilege from ACUS' recommendations.[22] When Professor Wagner made clear that the OIRA material would remain in the report, the Chair reminded everyone in attendance that whatever she wrote in the report would not be supported by ACUS recommendations.

The explanation offered for this hands-off approach to OIRA is that a project on science is simply not the appropriate forum for considering issues of centralized review. But there is no

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app. at 1319-43, 1415-36. *See also Regulatory Improvement Act of 2007: Hearing on H.R. 3564 Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. 38-39 (2007), *available at* http://judiciary.house.gov/hearings/printers/110th/37845.PDF [hereinafter 2007 Hearing] (statement of Curtis Copeland, Specialist in Am. Nat'l Gov't, Cong. Research Serv.) (suggesting that ACUS consider the value of greater transparency in OIRA's formal and informal reviews, and reevaluate OIRA's use of the deliberative process privilege).

[17] WENDY WAGNER, DRAFT 2/27/12 – SCIENCE IN THE ADMINISTRATIVE PROCESS: A STUDY OF AGENCY DECISIONMAKING APPROACHES 25-26, 40, 54, 80-92, *available at* http://www.acus.gov/wp-content/uploads/downloads/2012/02/COR-Science-Project-Report-2-27-12-CIRCULATED-TO-COMMITTEE.pdf.

[18] *See* Workshop, *Improving the Use of Science in the Administrative Process* 109 (Sep. 10, 2012) (unedited transcript commissioned by NAS), *available at* http://sites.nationalacademies.org/PGA/stl/index.htm [hereinafter Workshop Transcript] (Susan Dudley stating that "ACUS chose not to present these recommendations to the committee, because the redline that you see was actually before the committee saw it."). *See also* Admin. Conference of the U.S., Minutes from March 7, 2012 Committee Meeting 3, *available at* http://www.acus.gov/wp-content/uploads/downloads/2012/03/COR-Formal-Minutes-Science-3-7-12-Meeting-v-21.pdf [hereinafter March 7 Minutes]; Admin. Conference of the U.S., Revised Draft Recommendation Considered at March 7 Meeting 3-4, *available at* http://www.acus.gov/wp-content/uploads/downloads/2012/03/COR-Science-Project-Draft-Markup.pdf (a redlined version of the recommendations prepared by ACUS staff).

[19] March 7 Minutes, *supra* note 18, at 2.

[20] Workshop Transcript, *supra* note 18, at 35.

[21] *Id.* at 109, 122, 220-222 (statements of Susan Dudley and Michael Fitzpatrick).

[22] *See* Video: Meeting of Committee on Regulation, Sep. 24, 2012, *available at* http://acus.granicus.com/MediaPlayer.php?view_id=2&clip_id=53 (showing the first 15 minutes of the meeting).

justification for such an arbitrary separation. In fact, in a 2006 symposium designed to elicit issues for ACUS' attention, a panel on "agencies' science capabilities" recognized that OIRA's review function is intertwined with the use of science in the administrative process.[23] Furthermore, the polite reassurances that the OIRA issues will be shelved for "another report and another day"[24] ring hollow, since there appear to be no plans to take them up in the foreseeable future.

Most troubling, this bias appears to color even the most routine of tasks. ACUS staff prepared an official summary of the September 10th NAS-ACUS workshop that echoes the conclusions of those who defended OIRA and overlooks the points made by others.[25] Throughout the workshop, several participants offered examples of OIRA's interference with the use of agency science:

- Dr. Paul Gilman of Covanta Energy (a panelist) stated that when he worked at OMB, he learned that certain tools could be used to slow down agency actions, including interagency review, referral to the NAS for review, and the need for OMB approval of any survey of 10 or more respondents. Then, when he worked at EPA, OMB used the latter requirement to delay approval for an EPA study on the effect of pesticides on children.[26]
- John Walke of NRDC (a public commenter) recalled that during consideration of the 2008 ozone standards under the Clean Air Act, EPA accused OIRA of "forcing a decision upon them that, quote, lacked scientific basis" in a high-level memo.[27]
- Dr. Tracey Woodruff of the University of California, San Francisco School of Medicine (a panelist) recalled that when she worked on a risk assessment for EPA's IRIS program, the peer review "charge" (instructing the peer reviewers on their task) had to be reviewed by OIRA. When it came back, it had been "changed pretty significantly" without any transparency.[28]
- Michael Fitzpatrick, former associate administrator of OIRA (a public commenter), insisted that OIRA does not ask agencies to change the underlying science upon which they rely. At the same time, he acknowledged that OIRA had "robust" discussions with agencies about which questions to ask peer review panels, how the agencies should respond to peer review comments, and which studies should be considered by the agencies.[29] Alan Morrison of George Washington University Law School (the moderator) suggested that these activities amount to OIRA questioning agency science.[30]

Despite these considerable examples of OIRA interference, the official ACUS summary included the astonishing conclusion that "the panel discussions and public comments revealed no hard evidence that the Office of Information and Regulatory Affairs (OIRA) or other components of the White House interfere with agencies' scientific factfindings."[31]

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[23] Symposium, *The Role of Science in Rulemaking* (May 9, 2006), *in* PROJECT INTERIM REPORT, *supra* note 16, app. at 1253, 1319-43. Several panelists discussed OIRA's capacity for reviewing the science behind agency rules, *id.* at 1321-28, while another argued that OIRA's use of cost-benefit analysis "hurts the scientific capabilities of regulatory agencies," *id*. at 1332-35.

[24] Workshop Transcript, *supra* note 18, at 35.

[25] Reeve T. Bull, Staff Counsel to ACUS, Overview of September 10, 2012 National Academies-ACUS Workshop on Improving the Use of Science in the Administrative Process (Sep. 18, 2012), *available at* http://www.acus.gov/wp-content/uploads/downloads/2012/09/Bull-Summary-of-9-10-12-NAS-Workshop.pdf.

[26] Workshop Transcript, *supra* note 18, at 99-100.

[27] *Id.* at 116-17.

[28] *Id.* at 213-14.

[29] *Id.* at 220-21.

[30] *Id.* at 223-24.

[31] Bull, *supra* note 25, at 1.

Evidence of OIRA's interference with science was never even solicited during the workshop, so to imply that insufficient evidence was offered is misleading at best. By disregarding the examples that were nevertheless presented, the summary conveyed the impression, perhaps intentionally, that the National Academy of Sciences agreed with ACUS that OIRA review poses no problems for scientific integrity. Fortunately, the NAS released a full transcript of the meeting.[32] We are nevertheless concerned that the ACUS staff's preoccupation with suppressing the information about OIRA revealed at the workshop could mislead observers who do not review the transcript into believing that the NAS has been co-opted by ACUS. As important, when panelists and members of the public take the time and effort to attend an open workshop, they should be able to feel confident that their contributions are at least being heard.

By undermining its public image as neutral and independent, ACUS jeopardizes its long-term viability.

Promoters of ACUS have said that agencies will be eager to cooperate in ACUS-sponsored research projects, providing access to a wealth of operational information that outside organizations like the Congressional Research Service and the American Bar Association have had difficulty obtaining, due to ACUS' "credibility and nonpartisan reputation" and the fact that the results of ACUS studies typically benefit the agencies.[33] All of the health, safety, and environmental agencies are under relentless attack by the ACC, the Chamber of Commerce, and allied organizations, as you must realize. By allying itself with these groups without displaying any interest in giving those who disagree equal time, ACUS runs the significant risk that agency officials will see the organization not as a neutral commentator on the administrative issues, but instead as a partner with the regulated industries fighting to impede their work and dismantle their programs. They will inevitably be reluctant to participate in studies that could be used against them.

Another reason advanced for ACUS' reemergence was the inability of existing institutions, such as OIRA itself, to be reliably neutral and independent in studying ways to improve the administrative process.[34] If ACUS comes to be seen as merely another vehicle for OIRA loyalists and their industry allies to press their agendas and drown out opposing voices, then ACUS will lose part of its distinctive *raison d'être*.

ACUS' governing body should represent an inclusive, balanced range of policy experts, not one that is lopsided in favor of OIRA partisans and industry advocates.

The ten-member ACUS Council is composed of four government members and five public members (there is one vacancy at this time), each member being appointed by the President for three-year terms. Sitting among the government members is the current acting Administrator of OIRA, and *all but one* of the five public members represent the interests of OIRA and industry groups hostile to

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[32] Workshop Transcript, *supra* note 18.

[33] 2007 Hearing, *supra* note 16, at 12-13 (statement of Morton Rosenberg, Specialist in Am. Pub. Law, Cong. Research Serv.). *See also Reauthorization of the Administrative Conference of the United States: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 108th Cong. 10, 19 (2004), *available at* http://judiciary.house.gov/Legacy/93774.pdf (statements of Justice Scalia and Justice Breyer).

[34] *See* 2007 Hearing, *supra* note 16, at 47-48 (2007) (statement of Curtis Copeland, Specialist in Am. Nat'l Gov't, Cong. Research Serv.); Symposium, *Presidential, Congressional, and Judicial Control of Rulemaking* (Sep. 11, 2006), *in* PROJECT INTERIM REPORT, *supra* note 16, app. at 1345, 1422 (statement of Neil Eisner, Assistant Gen. Counsel for Regulation & Enforcement, U.S. Dep't of Transp.).

government regulation, including: a former senior official at OMB,[35] two high-profile lawyers active in the Federalist Society,[36] and an executive at a multinational banking corporation.[37]

Given a limited number of Council slots for public members, it is troubling that nearly all of them are occupied by opponents of regulatory agencies, while public interest groups are denied a seat at the table. Among its other functions, the Council is responsible for approving the appointment of public members and the conduct of research studies,[38] so an imbalanced Council has serious implications for the diversity of ACUS' membership and the objectivity of its work.

It is worth noting that the EPA does not have a single representative on the ACUS Committee on Regulation, despite the fact that debates about regulatory policy—not to mention OIRA's review activities—are often fixated on EPA rules and programs. You yourself have written that "[n]o agency's activities have occupied the Conference as much as EPA's, except perhaps the Social Security disability program…. It is very likely that the reborn Conference will continue to keep EPA and environmental law high on its agenda."[39] Surely given EPA's prominence in the regulatory discourse, the agency should have a presence on this committee.

ACUS has long enjoyed the support of a "broad, bipartisan political spectrum of interests," including public interest organizations like the Public Citizen Litigation Group and the Natural Resources Defense Council.[40] Indeed, this broad, inclusive support base was an important factor in ACUS' recent revival. If ACUS is to fulfill the high hopes of those who champion its value, we urge you to ensure greater balance and fairness in the organization's activities.

Thank you for considering these views.

Sincerely,

Thomas O. McGarity
CPR Board Member
Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law, University of Texas School of Law

Rena Steinzor
President, Center for Progressive Reform
Professor of Law, University of Maryland School of Law

cc: Members of the ACUS Council, Members of the ACUS Assembly, Members of the ACUS Committee on Regulation, and ACUS Senior Fellows Neil Eisner, E. Donald Elliott, Sally Katzen, Alan Morrison, Jonathan Rose, Peter Strauss, David Vladeck, and Richard Wiley

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[35] *See* Preeta D. Bansal | ACUS, http://www.acus.gov/about/the-council/preeta-bansal.
[36] *See* Ronald A. Cass | ACUS, http://www.acus.gov/about/the-council/ronald-a-cass, *and* Theodore Olson | ACUS, http://www.acus.gov/about/the-council/theodore-b-olson. Cass is also President of a consulting firm that assists industry clients in regulatory matters. *See* Cass & Associates, PC, http://cassassociates.net.
[37] *See* Jane C. Sherburne | ACUS, http://www.acus.gov/about/the-council/jane-c-sherburne.
[38] The Council | ACUS, http://www.acus.gov/about/the-council.
[39] Paul R. Verkuil, *What the Return of the Administrative Conference of the United States Means for Administrative Law*, 1 MICH. J. ENVTL. & ADMIN. L. 17, 28-29 (2012), *available at* http://www.acus.gov/wp-content/uploads/downloads/2012/03/Verkuil_final_clean.pdf.
[40] H.R. REP. NO. 110-390, at 10 (2007), *available at* http://www.gpo.gov/fdsys/pkg/CRPT-110hrpt390/pdf/CRPT-110hrpt390.pdf.