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August 24, 1979

The Honorable John C. Culver
United States Senate

Dear Senator Culver:

This refers to your request for my comments on S. 262, S. 299, S. 755 and S. 1291, the major regulatory reform legislation currently under consideration by the Subcommittee on Administrative Practice and Procedure.

At the request of your staff, we have already sent testimony by the Comptroller General and various General Accounting Office (GAO) officials on S. 262, S. 755, and S. 3330, 95th Congress, the predecessor to S. 299. Although we have not previously testified on S. 1291, the comments we have made on the related bills would be applicable to the Administrative Practice and Regulatory Control Act of 1979 as well. Since I have nothing to add to these statements, I will limit my comments to the specific questions you raised on the proposed changes to the Administrative Conference of the United States (ACUS).

I do not favor the restructuring of ACUS to become an executive agency with full executive powers, as proposed in S. 262. ACUS now offers a unique resource to the executive branch and Congress by providing a forum in which representatives of Federal agencies, with the assistance of a broad range of outside experts, can study mutual problems, exchange ideas, and formulate recommendations to promote greater efficiency and fairness in Federal regulatory activities. The proposed nine-member advisory commission could probably not offer the wide range of experience and perspectives now available to the Government through the 91-member ACUS Assembly. Furthermore, the Director of the Office of Management and Budget (OMB) would probably be in a better position than the Administrator of ACUS to serve as the focal point for determining and enforcing executive department implementation of Conference recommendations. Also, as the Comptroller General noted in his testimony before the Senate Committee on Governmental Affairs, S. 262 includes in the oversight responsibilities of ACUS areas already assigned in the bill to the Congressional Budget Office and which we recommended be assigned to GAO.

I would favor giving ACUS additional responsibilities consistent with its areas of expertise and current advisory status. Therefore, while the issuing of advisory guidelines and monitoring compliance with the Sunshine Act appears to be desirable because of ACUS's current responsibilities under that Act, the assigning of similar responsibilities for the Privacy and the Freedom of Information Acts would duplicate the oversight responsibility of OMB and the Department of Justice. We favor continuation of the latter agencies' responsibilities since they have considerably greater leverage in enforcing their views than would ACUS, even as expanded by S. 262.

Of the additional functions proposed for ACUS and listed in your questions, the following appear to be desirable since they are consistent with ACUS's expertise and advisory status:

Analyzing agencies' annual reports on reform to Congress and recommending additional legislation;

Studying methods to increase incentives for completing regulatory proceedings quickly and making recommendations for such studies; and

Commenting on agency procedures and, when requested, on agency rules to determine if the rules conflict with, overlap or duplicate other agency rules or reporting requirements.

We would also have no objection to requiring ACUS to propose uniform rules of administrative procedure to Congress but do not feel that any power to approve such rules would be consistent with the "research and recommend" structure of ACUS which we favor.

I hope that these comments will be of some assistance to you and the Subcommittee.

Sincerely yours,

for *Harry R. Van Cleave*
Milton J. Socolar
General Counsel