

Representation, Calibrated

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ABSTRACT

More people interact with administrative adjudications than with courts, and the lack of lawyers to assist people in these proceedings remains at crisis levels. Federal agencies have experimented with expanding nonlawyer representation and assistance for decades. To date, the regulatory structures governing nonlawyers have not been adequately studied. This project fills that gap. Relying on data collected through interviews, focus groups, requests for written comments, and a review of regulatory structures and procedures at fifteen federal agencies, a fuller picture emerges. The data provides important context for effective advocacy in support of these programs against political attacks.

The evidence reveals that nonlawyers perform crucial tasks, ranging from preliminary assistance gathering and filling out forms, all the way through full representation at hearings. This is true at all levels of formality, from formal trial-type hearings to very informal decision-making. This work is done by a variety of people, including some with substantive professional licensure in the particular subject area, others who work for nonprofits engaged with the client base, people who share lived experience with the clients they represent, or family members, friends, or other trusted sources with expertise in the particular matter through their relationship to the client. Regulations vary among agencies as to specific credentials, necessary training, and applicable ethics rules for nonlawyers. Agencies also vary in terms of oversight and discipline of nonlawyer representatives.

This study provides a comprehensive map of the various regulatory structures governing the work of nonlawyers in administrative adjudication. It addresses the main areas for agencies to consider when regulating nonlawyers, including valuing expertise beyond formal legal training, considering the role of community and trust in representation, incorporating ethics rules for nonlawyers, and navigating state regulatory reform issues that might conflict with federal

* Amy Widman is a professor at Rutgers Law School. This article was prepared for the Administrative Conference of the United States. The article does not necessarily reflect the views of the Conference (including its Council, committees, or members). Thank you to the many people who took time to speak with the author throughout the research period, including agency staff, nonprofit partners, lawyers and nonlawyer representatives, and other stakeholders. I have protected their anonymity throughout. Thank you also to ACUS staff for their excellent assistance throughout the project and the ACUS Adjudication Committee Members for feedback on the project. Special thanks to Chloe St. Etienne, Urvi Shukla, and Hannah Koller for excellent research assistance. © 2026, Amy Widman.

practice. There is no one-size-fits-all solution. Rather, agencies need to consider what sorts of expertise and training best fit the particular adjudication tasks and calibrate their requirements accordingly.

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INTRODUCTION

Millions of people each year engage with administrative programs or participate in administrative adjudicative processes to access federal resources and resolve legal issues.¹ But many people, particularly those with lower incomes and members of other underserved communities, are not always able to access assistance or other forms of representation that they may need to navigate administrative adjudications successfully.²

One barrier to accessing assistance or representation is the critical shortage of affordable legal services.³ To address this barrier, federal agencies have long innovated various ways to expand assistance and widen the pool of available representatives. For example, many agencies currently permit participants in agency adjudications to be represented by qualified or accredited nonlawyers. However, variation in requirements and oversight of such forms of representation at many agencies leads to less use of these options.

Another barrier is that nonlawyer practice is so highly discouraged by some state bars that potential nonlawyer representatives remain unaware of opportunities to practice and organizations that would provide them support. A 1986

1. WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES, at 3 (2023) [hereinafter WH-LAIR REPORT].

2. *Id.*

3. *Id.* at 19–20.

Administrative Conference of the United States (ACUS) recommendation urged agencies to make affirmative regulations that clearly describe the opportunities for nonlawyer representation.⁴ Even so, it is not clear that agencies have maximized their use of nonlawyers.

Most recently, the federal government has cut funding for many services that provide access to assistance and representation for people navigating federal agency decision-making.⁵ It is important that these programs, which in many cases offer life-sustaining support to people who do not have access to legal assistance, be understood and strengthened. This article maps and defines the spectrum of nonlawyer assistance and representation that parties to administrative proceedings have available to them today. It describes who is appearing in federal agency adjudications on behalf of parties, what nonlawyer representatives do on behalf of parties, the structure of the hearings where nonlawyers appear, and the regulatory scheme governing nonlawyers in various agency adjudications and processes. It then turns to the types of considerations that agencies must weigh to best calibrate their regulatory systems to encourage these expanded opportunities for representation and assistance. Finally, the article identifies areas in which certain forms of assistance and representation may still be underutilized in administrative proceedings and how agencies might continue to develop and expand such programs.

The information underlying this project was gained from a variety of sources, including: review of applicable statutes, data, and policies governing nonlawyer representation; review of the background scholarly literature; interviews with agency staff, adjudicators, legal service providers, nonlawyer representatives, and other professionals assisting the public in their interactions with government decision-makers; and public comments received through a Request for Comments published in the *Federal Register* on behalf of the ACUS.⁶ All interviews were premised as background only. Accordingly, information learned from these interviews, including any quotations, is included herein anonymously.

The guiding framework for representation before administrative agencies is broad. The Administrative Procedure Act (APA) contains general language recognizing the right of parties compelled to appear before an agency to be “accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative[s],” while the Agency Practice Act generally

4. Admin. Conf. of the U.S., Recommendation 86-1, Nonlawyer Assistance and Representation, 51 Fed. Reg. 25641 (July 16, 1986).

5. See, e.g., Noah Weiland, *Trump Shrinks Funds for Navigators Who Help Americans Enroll in Obamacare*, N.Y. TIMES (Feb. 14, 2025), <https://www.nytimes.com/2025/02/14/us/politics/trump-obamacare-navigators.html> [<https://perma.cc/956E-NPUA>]; Laura Romero, *DOJ Orders Federally Funded Legal Service Providers to Stop Providing Support at Immigration Courts*, ABC NEWS (Jan. 23, 2025), <https://abcnews.go.com/US/doj-orders-federally-funded-legal-service-providers-stop/story?id=118027656> [<https://perma.cc/P97E-KHVF>].

6. Nonlawyer Assistance and Representation, Request for Comments, 89 Fed. Reg. 55913 (July 8, 2024).

neither authorizes nor prohibits specific agency actions with respect to nonlawyer representation before it.⁷ In some cases, Congress has chosen to directly authorize or regulate representation in particular statutes governing specific proceedings.⁸ In the absence of specific Congressional regulation, courts have repeatedly found that regulating representation is part of agencies' inherent power to regulate their processes.⁹ Agencies are free to apply a range of considerations to nonlawyer representation, and they have.

Although the APA allows for nonlawyer representation at this very general level, research has uncovered statutory or regulatory authority specifically governing nonlawyer representation at roughly 20 agencies.¹⁰ This article focuses on a sampling of these regulatory schemes to explore the various models of nonlawyer participation throughout federal agency adjudication. The following considerations weighed on the choice of agencies and adjudications to research further: (1) the nature of the adjudication at issue (formal, "mass justice," informal); (2) the history and prevalence of nonlawyer representatives in that agency's proceedings; (3) the ability to observe proceedings and/or interview agency adjudicators, or both; and (4) innovations in expanding representation and assistance at the agency.¹¹ Additionally, effort was made to include various levels of formality and regulatory schemes in order to illustrate the range of existing models. Particular hearing and representation processes at the following fifteen agencies are explored in more depth:

- Department of Agriculture (USDA)
- Department of Education

7. 5 U.S.C. §§ 500, 555(b).

8. *See, e.g.*, 8 U.S.C. § 1229a(b) (immigration courts); 35 U.S.C. § 2(b)(2)(D) (Patent and Trademark Office); 38 U.S.C. § 5904(a)(2) (Department of Veterans Affairs); 42 U.S.C. § 406(a)(1) (Social Security Administration); 43 U.S.C. § 1464 (Department of the Interior).

9. George M. Cohen, *Rules of Conduct for Representatives*, in A GUIDE TO FEDERAL AGENCY ADJUDICATION 213 n.9 (Jeremy S. Graboyes, ed., AM. BAR ASS'N, 3d ed., 2023).

10. *See Agency Practice Act*, in ADMIN. CONF. OF THE U.S., FEDERAL ADMIN. PROC. SOURCEBOOK, https://sourcebook.acus.gov/wiki/Agency_Practice_Act [<https://perma.cc/4SUM-N7MF>] (last visited Nov. 22, 2024). *See generally* 5 U.S.C. § 500(d).

11. Other examples of nonlawyer representation exist throughout the federal apparatus. For example, the Department of Energy, Office of Hearings and Appeals, allows nonlawyer representatives in personnel security and whistleblower cases. *See* MICHAEL ASIMOW, FEDERAL ADMINISTRATIVE ADJUDICATION OUTSIDE THE ADMINISTRATIVE PROCEDURE ACT 127–28 (Sept. 11, 2019) (report to the Admin. Conf. of the U.S.) ("In initial hearings, DOE is represented by a lawyer. About half of respondents are represented . . . (some representatives are non-lawyers) The formality of DOE hearings varies by case type. About 20% are document-only hearings (meaning no live-witness testimony or cross-examination)."); *see also* 7 C.F.R. § 47.15(d)(1) (Department of Agriculture, Animal Welfare proceedings under the Perishable Agricultural Commodities Act). The regulations provide for disqualification of counsel or a lay representative because of unethical or unprofessional conduct. *See* 7 C.F.R. § 47.15(d)(3) (allowing Secretary to bar counsel or other representative from participating in other hearings after notice and hearing upon report by the examiner). About 75 percent of litigants before the USDA National Appeals Division represent themselves or are assisted by a family member or friend. Connie Vogelmann, SELF-REPRESENTED PARTIES IN ADMINISTRATIVE HEARINGS 46 (Oct. 28, 2016) (report to the Admin. Conf. of the U.S.).

- Department of Health and Human Services (HHS)
- Department of Homeland Security/U.S. Citizenship and Immigration Services (USCIS) and Federal Emergency Management Agency (FEMA)
- Department of Housing and Urban Development (HUD)
- Department of the Interior (DOI)
- Department of Justice (DOJ)/Executive Office for Immigration Review (EOIR)
- Department of Labor (DOL)
- Department of the Treasury/Internal Revenue Service (IRS)
- Department of Veterans Affairs (VA)
- Equal Employment Opportunity Commission (EEOC)
- Environmental Protection Agency (EPA)
- Patent and Trademark Office (USPTO)
- Social Security Administration (SSA)

I. BACKGROUND

Because there is so much variation throughout the federal statutory and regulatory landscape, including variations among state programs implementing federal statutes, this article begins by defining the terminology used within this landscape. It then provides a history of ACUS recommendations in this area and an overview of the relevant socio-legal scholarship on representation types and regulation more generally.

A. DEFINITIONS

1. NONLAWYER REPRESENTATION

The umbrella term “nonlawyer representation” is used here to encompass a variety of types of representation or performance of legal tasks by someone who is not licensed to practice law. Specific accreditation programs define the line between “practice” and other services within their particular programs. For example, the Department of Veterans Affairs (VA) defines practice before the agency (or representation) as “assist[ing] claimants in the preparation, presentation, and prosecution of claims for VA benefits.”¹² Examples of nonlawyers include other licensed professionals such as accountants, social workers, paralegals, law students, union representatives, human resources professionals, corporate officers, elected officials, tribal advocates, agency employees, community members, and family members.¹³

The term “nonlawyer representative” has recently been criticized for defining someone by the lack of a credential,¹⁴ but it is currently the term used throughout

12. See 38 C.F.R. § 14.627(a) (2017).

13. Various Interviews with Anonymous Sources (date redacted) (on file with author).

14. See, e.g., Olga V. Mack, *Petition for the American Bar Association (ABA) to Cease Using the Term “Nonlawyer,”* LINKEDIN (Apr. 3, 2024), <https://www.linkedin.com/pulse/petition-american-bar-association->

the federal government as well as in recent ACUS reports and recommendations.¹⁵ This article aligns itself with the *Model Rules of Representative Conduct*. These rules remind the reader that the

decision to use the term nonlawyer is not meant to suggest any deficiencies in representation offered by such individuals, nor should it deter an individual agency from adopting a different term regarding representatives without an active law license. The working group encourages agencies to remain attentive to the ongoing discussion within the legal community about terminology in this area and to consider updating their usage accordingly.¹⁶

2. ASSISTANCE

The line between representation and assistance is somewhat blurry when it comes to federal agency procedures, but generally this article considers assistance to be tasks such as: educating someone on process, counseling someone about rights and remedies generally, and in some cases helping someone navigate a benefits application. This work does not extend to preparing for or accompanying someone to a hearing, or counseling on specific applicability.

3. SELF-REPRESENTATION

Questions over the line between assistance and representation extend to situations involving self-representation. Some consider a party to be self-represented even when they are joined by family, friends, or other non-professional representation.¹⁷ In such situations, it is sometimes unclear whether the adjoining person is providing emotional support, technical or language assistance, or representation. However, for purposes of this article, all forms of assistance and support will be considered a form of nonlawyer representation and assistance. This article limits the term “self-representation” to situations where a person is unaccompanied and/or unassisted by any other person in their adjudications.¹⁸

aba-cause-using-term-olga-v-mack-h5upc/[https://perma.cc/G7RC-DU09]; Rebecca L. Sandefur & Matthew Burnett, Comment Letter on Recommendation on Nonlawyer Assistance and Representation (Sept. 6, 2024), <https://www.acus.gov/document/comment-rebecca-l-sandefur-and-matthew-burnett-nonlawyer-assistance-and-representation> [https://perma.cc/K89U-S8EZ].

15. It is also sometimes termed lay representation. *See, e.g.,* ASIMOW, *supra* note 11, at 71 (“Agencies should be permitted to license lay representatives (including requirements of an examination and experience), require them to be insured, make them subject to ethical conduct codes, and require the agency to protect the confidentiality of client-lay representative communications.”).

16. Louis J. Virelli III, *Preface*, MODEL RULES OF REPRESENTATIVE CONDUCT (ADMIN. CONF. OF THE U.S. 2024), <https://www.acus.gov/sites/default/files/documents/Model%20Rules%20of%20Representative%20Conduct.pdf>. [https://perma.cc/VQ98-ZP7V].

17. Interview with Anonymous Source (date redacted) (on file with author).

18. *See* ASIMOW, *supra* note 11, at 197 n.1 (“The term ‘self-represented’ is used to denote parties who do not have professional representation, provided by either a lawyer or an experienced nonlawyer. Representation by a non-expert family member or friend is included in this recommendation’s use of the term ‘self-represented.’”).

4. ADJUDICATION

This article incorporates the following practical definition of “adjudication” in the agency context: “a decision by government officials made through an administrative process to resolve a claim or dispute between a private party and the government or between two private parties arising out of a government program.”¹⁹ Administrative law divides adjudication into “formal” and “informal” categories; “formal” adjudication refers to those proceedings that are governed by the adjudication provisions of the APA, and “informal” adjudication refers to those proceedings that are not governed by those provisions.²⁰ However, more recent scholarship has recognized nuance to the varieties of adjudication at agencies. Stakeholders such as the American Bar Association (ABA) and ACUS repeatedly recognize distinctions which signify multiple levels of formality.²¹

5. MASS JUSTICE

As with ACUS reports and recommendations involving nonlawyer representation, “the term ‘mass justice’ is used here to categorize an agency program in which a large number of individual claims or disputes involving personal or family matters come before an agency; e.g., the Old Age Survivors and Disability Insurance administered by the Social Security Administration.”²² In keeping with previous uses of the term, this article uses it to refer to federal agency proceedings characterized by high volumes of decisions regarding benefits or some immigration matters.

6. FRONTLINE ADJUDICATION

Bureaucratic decision-making is “made by agency employees,” not administrative law judges (ALJs) or other forms of administrative judges and “follow[s] review of an administrative record, which could consist solely of an application but may also require inspections, conferences, and negotiations.”²³ Frontline decision-makers often make initial decisions in mass justice programs.²⁴

19. ASIMOW, *supra* note 11, at 8.

20. 5 U.S.C. §§ 554, 556–557.

21. *See id.* at 4–5, 12.

22. Admin. Conf. of the U.S., *supra* note 4, at 25641 n.1. Note that the quote does not include the Supplemental Security Income program that is also administered by SSA.

23. Matthew A. Gluth, *Frontline Decision-Making*, in A GUIDE TO FEDERAL AGENCY ADJUDICATION 259 (Jeremy S. Graboyes, ed., AM. BAR ASS’N, 3d ed., 2023).

24. There is often extensive development at these initial determinations. For example, at SSA, State agencies (also known as Disability Determination Services) conduct initial and reconsideration determinations under contract with SSA. The State agency develops the record in accordance with 20 C.F.R. 404.1512 and 416.912. This development includes requesting medical records from the claimant’s medical sources and, if warranted, a consultative physical and/or mental status examination. State agency medical consultants provide medical opinions regarding the claimant’s impairments at both the initial and reconsideration determinations.

B. PREVIOUS REPORTS AND RECOMMENDATIONS ADDRESSING NONLAWYER REPRESENTATION

Much of the foundational work on the use of nonlawyers in federal agency adjudication has been done through ACUS Reports and Recommendations. This section will summarize previous reports, findings, and recommendations as well as current initiatives by ACUS and partner agencies to address contemporary nonlawyer assistance.

Almost 40 years ago, ACUS undertook the first study of nonlawyer representatives in administrative adjudication, and recommended best practices to expand such opportunities, finding that “[f]ederal agency experience and statistics indicate that qualified persons who are not lawyers generally are capable of providing effective assistance to individuals in mass justice agency proceedings.”²⁵ And indeed, the federal government has some long-running programs to certify and oversee nonlawyer “accredited” or “authorized” representatives.²⁶

In 1986, responding to the substantial need for more assistance, ACUS recommended that agencies “take the steps necessary to encourage—as well as eliminate inappropriate barriers to—nonlawyer assistance and representation.”²⁷ Many of the agencies examined in this project heeded this first call from ACUS to encourage and expand opportunities for nonlawyer assistance. Again in 2016, while examining procedural rules for various types of agency adjudications, ACUS recommended that

[a]gencies should permit non-lawyer representation. Agencies should have the discretion to (a) establish criteria for appearances before the agency by non-lawyer representatives or (b) require approval on a case-by-case basis[. . .] Agencies should permit limited representation by lawyers or non-lawyers, when appropriate (i.e., representation of a party with respect to some issues or during some phases of the adjudication).²⁸

Additionally, a 2020 ACUS recommendation on regulation of representatives in agency adjudicative proceedings led to the formation of a working group to

25. A substantial number of individuals involved in federal ‘mass justice’ agency proceedings need and desire assistance in filling out forms, filing claims, and appearing in agency proceedings, but are unable to afford assistance or representation by lawyers. A lack of assistance or representation reduces the probability that an individual will obtain favorable results in dealing with an agency. Further, unassisted individuals are more likely than those who are assisted to cause a loss of agency efficiency by requiring more time, effort, and help from the agency. Federal agencies currently provide help to persons involved in agency proceedings through information given by agency personnel and through funding of legal aid programs and approval or payment of attorney fee awards. . . . This recommendation focuses on the potential for increasing the availability of assistance by nonlawyers.

Admin. Conf. of the U.S., *supra* note 4, at 25641–42.

26. *See infra* Part II.

27. Admin. Conf. of the U.S., *supra* note 4, at 25642; *see also* Jonathan Rose, *Nonlawyer Practice Before Federal Agencies Should Be Encouraged*, 37 ADMIN. L. REV. 363 (1985).

28. Admin. Conf. of the U.S., Recommendation 2016-4, Evidentiary Hearings Not Required by the Administrative Procedure Act, ¶ 14-15, 81 Fed. Reg. 94314, 94316 (Dec. 23, 2016).

develop a model code for representation, including by nonlawyers.²⁹ And in 2023, ACUS recommended that agencies allow participants in many adjudications “to be represented by a lawyer or a lay person with relevant expertise” and to establish “rules authorizing accredited or qualified nonlawyer representatives to practice before the agency.”³⁰

Yet there is still much more to understand about the extent and character of representation by associated professionals and others who are not lawyers, as well as the models of accreditation and oversight undertaken by different agencies in various types of adjudicatory settings.³¹ Responding to the clear trajectory toward recommending more assistance and representation by nonlawyers in federal agency adjudications, this article describes and analyzes what is working, and what needs more work, throughout the programs in order to fully realize their potentials.

C. OTHER STUDIES AND DATA

In addition to the foundational work by ACUS and other federal agencies, various organizations and scholars have studied nonlawyer assistance and representation in federal adjudication. ACUS also requested information from the public to facilitate data collection for this article. This section reviews the information gathered through these sources.

Research establishes that legal advice provided by nonlawyers in particular situations is effective and beneficial.³² In a study based in England and Wales, researchers found that in cases similar to the types of administrative adjudications described in this report, nonlawyers actually outperformed lawyers.³³ Additionally, evaluation of a three-year pilot “navigator” program at the Department of Labor

29. Admin. Conf. of the U.S., Recommendation 2021-9, Regulation of Representatives in Agency Adjudicative Proceedings, 87 Fed. Reg. 1721 (Jan. 12, 2022); see also MODEL RULES OF REPRESENTATIVE CONDUCT, ADMIN. CONF. OF THE U.S., <https://www.acus.gov/research-projects/working-group-model-rules-representative-conduct> [<https://perma.cc/M8CT-CTYL>] (last visited Sept. 23, 2024).

30. Admin. Conf. of the U.S., Recommendation 2023-5, Best Practices for Adjudication Not Involving an Evidentiary Hearing, ¶ 5, 89 Fed. Reg. 1509, 1510 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2023-6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings*, ¶ 14.b, 89 Fed. Reg. 1511, 1513 (Jan. 10, 2024).

31. In 2023, a report by the White House Legal Aid Interagency Roundtable found that many people still “need assistance to access and obtain fair outcomes” in administrative adjudications and promoted expanding the availability of nonlawyers in federal agency adjudications. WH-LAIR REPORT, *supra* note 1, at 19. This assistance remains out of reach for many.

32. See Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality and Public Harms*, 16 STAN. J. C.R. & C.L. 283 (2020); see also HERBERT M. KRITZER, *LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK* (1998); but see Anna E. Carpenter, Alyx Mark & Colleen F. Shanahan, *Trial and Error: Lawyers and Nonlawyer Advocates*, 42 L. & SOC. INQUIRY 1023 (2017) (assessing findings from lawyer and nonlawyer representation in one administrative tribunal and concluding that nonlawyers are trained by the ALJs through practice and can offer successful outcomes to routine matters but due to that on-the-job training, these nonlawyer representatives are less suited to challenge law).

33. See Richard Moorhead, Ayrom Sherr & Alan Peterson, *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 L. & SOC'Y REV. 765, 795 (2003).

(DOL) revealed that navigators improved the likelihood that workers received unemployment benefits and found new jobs.³⁴ Clients who worked with navigators were more likely to report an easy Unemployment Insurance (UI) application experience, timelier benefits, and less stress in the application process.³⁵ Evaluation of the use of accredited representatives in immigration proceedings, through interviews with accredited representatives at five California nonprofits, similarly concluded that accredited representatives “provide a key service to the non-citizen community, but greater collaboration between accredited representatives and attorneys would nevertheless better optimize the legal resources available for immigrants.”³⁶

While many agencies do not track or make accessible data regarding types of representation, a few agencies with long-standing programs overseeing nonlawyer representatives do make some basic data on nonlawyer representation available. For example, the Social Security Administration (SSA) published a breakdown of representation at Social Security hearings from 1979–2015 illustrating nonlawyer representation at the hearings vacillating between a low of nine percent of representation to a high of twenty-one percent.³⁷ Other agencies make available the names of authorized nonlawyer representatives and, in some cases, lists of disqualified representatives (including both lawyers and nonlawyers).³⁸

State court experiences further support these findings. State programs have expanded representation by developing community justice workers to advocate in state agencies implementing federal benefits.³⁹ The Alaska Legal Aid community justice worker program, for example, trains community members to advocate in Supplemental Nutrition Assistance Program (SNAP) benefit cases.⁴⁰ The data

34. Michele Evermore, Alexander Hertel-Fernandez & David Madland, *Community Navigators Can Increase Access to Unemployment Benefits and New Jobs While Building Worker Power*, CTR. FOR AM. PROGRESS (Oct. 22, 2024) <https://www.americanprogress.org/article/community-navigators-can-increase-access-to-unemployment-benefits-and-new-jobs-while-building-worker-power/> [<https://perma.cc/NC8H-CQQX>].

35. *Id.*

36. Brittany Benjamin, Note, *Accredited Representatives and the Non-Citizen Access to Justice Crisis: Informational Interviews with Californian Recognized Organizations to Better Understand the Work and Role of Non-Lawyer Accredited Representatives*, 30 STAN. L. & POL’Y REV. 263, 270 (2019); see also Stefanie K. Davis, *Access to Justice*, in A GUIDE TO FEDERAL AGENCY ADJUDICATION 237–38 (Jeremy S. Graboyes, ed., AM. BAR ASS’N, 3d ed., 2023) (reviewing similar reports of the competency of nonlawyer representation).

37. See *Social Security Administration (SSA) Annual Data for Representation at Social Security Hearings*, SOC. SEC. ADMIN., <https://www.ssa.gov/open/data/representation-at-ssa-hearings.html> [<https://perma.cc/58KE-RC5L>] (last visited May 23, 2018). Data from the Appeals Council for 2023 reflects roughly 70 percent lawyer representation and 10 percent non-attorney representation. The remaining 20 percent of cases before the Appeals Council in 2023 were unrepresented.

38. SOCIAL SECURITY ADMINISTRATION, LIST OF SANCTIONED REPRESENTATIVES—SEPTEMBER 10, 2018 (2018), https://www.ssa.gov/foia/OGC_SanctionedReps_current.pdf

39. *Community Justice Worker Program*, ALASKA LEGAL SERVS. CORP., <https://www.alsc-law.org/cjw/> [<https://perma.cc/WLD6-2H8L>] (last visited Sept. 18, 2024).

40. Joy Anderson, Sarah Carver & Robert Onders, *Community Justice Workers: Part of the Solution to Alaska’s Legal Deserts*, 41 ALASKA L. REV. 9 (2024).

generated from this program shows its effectiveness, reporting a “100% success rate in resolving SNAP delay issues for clients,” as well as “recover[ing] \$1.43 million in food security benefit[s] on behalf of clients.”⁴¹

Alongside the research for this article, ACUS published a Request for Comments in the *Federal Register*. A total of fourteen responses were received from a variety of stakeholders, including legal aid and other nonprofits providing nonlawyer representation services, nonlawyer representatives, scholars, and people navigating federal processes on their own.⁴² These responses supported much of the research and data examined above, including additional support for the finding that nonlawyers provide skilled representation. One response included the acknowledgement that

[w]hile most of our lawyers are generalists, our paralegals concentrate almost exclusively on Social Security disability applications and overpayment cases. Some of our paralegals, particularly those with decades of experience, are highly familiar with the system and can be even more effective advocates than many of our attorneys—at least, that is the general consensus among the attorneys who work with them[. . .].⁴³

However, responses also described situations where nonlawyer representatives were treated differently from lawyer representatives by various decision-makers, for example, being challenged about their qualifications.⁴⁴ One response included the following quote from an experienced nonlawyer representative: “For the most part, I feel like I am treated professionally but not necessarily equally.”⁴⁵ Responses also shared challenges with various regulatory schemes governing nonlawyer practice, describing issues such as delays in certification due to agency backlog and a lack of data illustrating aspects of these programs.⁴⁶

Finally, to accommodate as many potential stakeholders as possible, focus groups were held with all types of representatives to discuss their experiences in more detail. Similar themes emerged from the focus group discussions, including: the need for more specific, centralized, and digital trainings for nonlawyer representatives; the importance of the portability of credentials for nonlawyer representatives; a need for more agency outreach and support for alternative forms of

41. SNAP Advocate Data (on file with author); *see also id.*

42. Nonlawyer Assistance and Representation; Request for Comments, 89 Fed. Reg. 55,913 (July 8, 2024). All comments are published on the ACUS website at <https://www.acus.gov/projects/nonlawyer-assistance-and-representation> [<https://perma.cc/85Q7-JPWU>] (last visited Nov. 15, 2025).

43. *See* LEGAL AID OF W. VA., Comment Letter for Nonlawyer Assistance and Representation; Request for Comments 2–3 (Sept. 6, 2024), <https://www.acus.gov/sites/default/files/documents/Nonlawyer%20Assistance%20and%20Representation%20Comment%20from%20Legal%20Aid%20of%20West%20Virginia%202024.08.30.pdf> [<https://perma.cc/9D29-CW5Z>] (last visited Nov. 15, 2025).

44. ADMIN. CONF. OF THE U.S., Nonlawyer Assistance and Representation in Agency Adjudications, <https://www.acus.gov/projects/nonlawyer-assistance-and-representation-agency-adjudications> (last visited Nov. 9, 2025).

45. LEGAL AID OF W. VA., *supra* note 43, at 2.

46. ADMIN. CONF. OF THE U.S., *supra* note 43.

representation as a career path; underutilization of some programs; and an overall need for more transparency and awareness.⁴⁷

II. THE AGENCIES

This section introduces the agencies studied, describing how both the formality of the adjudication system at issue, as well as the model of nonlawyer representation, varies across federal agencies. Agency adjudications range from highly formal trial-type adversarial procedures before ALJs to informal inquisitorial procedures before hearing officers or other decision-makers.⁴⁸ Technically, even highly atomized decision-making by agency employees can be considered adjudications.⁴⁹ Logically then, what it means to represent someone in an agency decision-making procedure also varies widely. In order to better understand how nonlawyer representatives function in these adjudicatory settings, this part contextualizes the nonlawyer practice within the particular type of adjudication in which the representation occurs. The following section first examines nonlawyer roles in relation to the variable formality of agency proceedings using a common typology and then develops a novel typology of regulatory models seen throughout the agencies.⁵⁰

A. NONLAWYER REPRESENTATION IN VARIOUS TYPES OF ADJUDICATIONS

1. FORMAL ADJUDICATIONS (TYPE A)

Type A proceedings follow all APA formal adjudication procedures.⁵¹ Hearings are adversarial, based on an exclusive record, and take place before an administrative law judge. Nonlawyer representation is less common in formal adjudications, though this may also be due to less clear criteria governing the roles of nonlawyers in formal proceedings. Even so, there are specific examples of nonlawyer representation in these types of adjudications. The examples from the agencies and adjudications studied in this project include: black lung benefits cases at the Department of Labor, civil penalty cases before the Environmental Protection Agency (EPA), and probate matters at the Board of Indian Appeals within the Department of the Interior (DOI). Although not a federal agency, there are also nonlawyers appearing at Financial Industry Regulatory Authority (FINRA) arbitrations.⁵²

47. See *infra* Sections III, IV.

48. See *supra* Part I.A.4.

49. ASIMOW, *supra* note 11 at 89.

50. For background on the genesis of the A, B, and C typology in terms of formality adjudications, see *generally* ASIMOW, *supra* note 11.

51. 5 U.S.C. §§ 554, 556–57.

52. FINRA differs from many of the other examples in that it is not a federal agency but is a self-regulatory organization subject to oversight by the Securities and Exchange Commission. It is included as a potentially useful agency-like paradigm for incorporating nonlawyer representatives into decision-making. Fin. Indus. Regul. Auth. R. 9141(b) (2025).

Each of these hearings follows the APA procedures for formal adjudication.⁵³ Each hearing also allows for nonlawyer representation through its agency regulations.⁵⁴ None of these entities or their ALJs, however, take an active role in certifying or supervising nonlawyer representation. The type of nonlawyer representation in these matters varies, from staff at community-based health clinics for miners in black lung cases, to students from law school clinics supervised by faculty attorneys in FINRA arbitrations, to family and other community members in probate matters in tribal communities. Overall, nonlawyer representation in the four Type A hearings studied is a small percentage of the representation for those adjudications.

Although formal APA-style hearings resemble court trials, there are important differences that should allow for expanding nonlawyer representation. For example, in many administrative adjudications, the exchange of all relevant documentary evidence and witness testimony is often automatic and facilitated by the ALJ. Additionally, the rules of evidence are relaxed as compared to the Federal Rules of Evidence (due, in part, to the lack of factfinding by lay jurors). These procedural flexibilities benefit nonlawyer representatives who may not have been exposed to the Federal Rules of Evidence or have not otherwise trained on trial advocacy skills in as much detail as a lawyer. Thus, while Type A agency adjudications are considered the most formal due to their adherence to the statutory procedures in the APA, even these hearings are not as procedurally complex as a full court trial and would therefore benefit from increasing opportunities for representation by nonlawyers in some situations.

2. INFORMAL EVIDENTIARY ADJUDICATIONS THAT LEAN FORMAL (TYPE B)

Type B proceedings include a legally required opportunity for an evidentiary hearing, but the procedures for such hearings are not governed by the formal hearing procedures in the APA. While often trial-like in nature, the specific procedures governing these hearings derive from statutes other than the APA and from agency rules. Hearings are held before a non-ALJ adjudicator, such as an immigration judge or a patent judge. Some of the most well-known “mass justice” hearings fall under this category.⁵⁵ It is within these types of statutory-specific procedures that we see the most robust regulatory structure governing nonlawyer representation.

The agencies and adjudications studied that represent this type of informal evidentiary adjudication include adversarial adjudications, like patent prosecutions before the U.S. Patent and Trademark Office (USPTO)⁵⁶ and claims of

53. See 5 U.S.C. §§ 554, 556–57.

54. See Fin. Indus. Regul. Auth. R. 12208(b) (2025).

55. See, e.g., 38 C.F.R. § 3.103 (2025).

56. According to the Congressional Research Service, many consider PTAB adjudications to be informal, in part because patent judges are non-ALJ decision-makers. See BEN HARRINGTON & DANIEL J. SHEFFNER,

employment discrimination by employees of certain federal agencies before the Equal Employment Opportunity Commission (EEOC).⁵⁷ Patent prosecutions closely resemble formal APA hearings, except that they are before patent judges rather than ALJs. Likewise, EEOC hearings take place before administrative judges (AJs) rather than ALJs but in other respects resemble trials. In both programs, nonlawyer representatives tend to be subject-matter experts. In both cases, judges interviewed for this project felt that expanding the available pool of nonlawyer representatives could be useful.

Immigration adjudications in immigration courts and the Board of Immigration Appeals also fit this model. The Department of Justice (DOJ) authorizes certain nonlawyers to represent noncitizens in these and other adjudications.⁵⁸ Hearings before immigration judges also resemble courtroom trials, with the full range of motion practice and witness examination. As of early 2025, there are more than 200 immigration judges in over fifty immigration courts nationwide. Administrative appeals can be made to the Board of Immigration Appeals only for certain case types, including removal cases, removal rescission cases, asylum-only proceedings, and withholding-only proceedings.⁵⁹ Appeals at the Board of Immigration Appeals are generally on paper, without argument. There are roughly 400 fully accredited nonlawyers representing people in these hearings.⁶⁰

Much of the previous research involving nonlawyers has been in the area of “mass justice.”⁶¹ These hearings are a form of non-adversarial Type B hearings and sometimes involve initial determinations that are better categorized as Type C frontline adjudication. Mass justice hearings are also characterized by very high volume and low representation rates. These hearings generally relate to large benefits programs and, as such, were originally designed to be more claimant-friendly and accessible by a person without representation.

Cong. Rsch. Serv., R46930, *Informal Administrative Adjudication: An Overview* 9 N.75 (2021). HOWEVER, THE FEDERAL CIRCUIT HAS APPLIED APA PROCEDURES TO PTAB HEARINGS. *SEE, E.G., ID.* (CITING *NOVARTIS AG V. TORRENT PHARMS. LTD.*, 853 F.3d 1316, 1324 (FED. CIR. 2017)).

57. *See* 29 C.F.R. § 1614.605 (2025).

58. For a summary of the removal process, *see* LENNI B. BENSON & RUSSELL R. WHEELER, *ENHANCING QUALITY AND TIMELINESS IN IMMIGRATION REMOVAL ADJUDICATION* 9–12 (2012) (report to the Admin. Conf. of the U.S.). Also, note that the DOJ accreditation also extends to more informal, non-adversarial adjudications at the Defense Health Agency (DHA).

59. BOARD OF IMMIGRATION APPEALS PRACTICE MANUAL § 1.4 (rev. 2022) [hereinafter BIA PRACTICE MANUAL].

60. This number is roughly estimated from the overall number of 2500 accredited representatives and agency estimates that about 85 percent of those are partially accredited (and appear only before DHS, *see* below). For a California-specific study of accredited representatives, *see Accredited Representatives: Bridging California's Immigration Legal Services Gap*, State Bar of Cal., Off. of Access and Inclusion (May 2024) (reporting a similar 15 percent of California Accredited Representatives as fully accredited).

61. *See, e.g.,* Zona Fairbanks Hostetler, *Nonlawyer Assistance to Individuals in Federal Mass Justice Agencies: The Need for Improved Guidelines*, 2 ADMIN. L.J. AM. U. 85 (1988).

This project reviewed two mass justice agency hearings: Social Security disability and veteran's benefits. Although there is disagreement as to whether SSA adjudications are formal adjudications under the APA,⁶² they are treated here as Type B adjudications because of the significant differences between an informal, non-adversarial Social Security disability hearing and the type of formal, adversarial adjudication to which the APA applies. Both Social Security disability and veteran's benefits hearings are evidentiary in nature and contain hallmarks of formal procedure regulated by their governing statutes. In addition to the hearing stage, mass justice hearings contain multiple interactions between claimant and agency at the pre-hearing stages. Previous ACUS studies have confirmed that many people involved in these types of adjudications "have certain unmet needs for assistance at all levels of agency process. Particularly needed is assistance with filling out forms and attending informal interviews and conferences prior to commencement of any formal proceeding. A high volume of agency decisions affecting ordinary citizens is made at these early nonadversarial stages."⁶³

The SSA is perhaps the most well-known mass justice agency. At the initial application stage, the majority of people are unrepresented. The second stage in the process, reconsideration, has a higher rate of representation.⁶⁴ Both of these proceedings involve extensive development of the medical evidence.⁶⁵ The third level of review is a hearing before an ALJ; however, these hearings are non-adversarial by design, and the ALJ may take a very active role in developing the record.⁶⁶

The final stage of agency adjudication is an appeal of the ALJ decision to the Appeals Council. The SSA authorizes qualifying nonlawyer individuals to assist clients with their claims for benefits.⁶⁷ At the Appeals Council level, most claimants are represented by a lawyer. Claimants are slightly more likely to be

62. Compare Hearings Held by Administrative Appeals Judges of the Appeals Council, 85 Fed. Reg. 73138–39 (Nov. 16, 2020), with MICHAEL ASIMOW, FEDERAL ADMINISTRATIVE ADJUDICATION OUTSIDE THE ADMINISTRATIVE PROCEDURE ACT 5-6, 26 (Sept. 11, 2019) (report to the Admin. Conf. of the U.S.).

63. See, e.g., Hostetler, *supra* note 63, at 87.

64. The relevant data does not distinguish between types of representation. See *Representative Rates by Adjudicative Level FY 2014 – FY 2023*, SOC. SEC. ADMIN., <https://www.ssa.gov/foia/resources/proactivedisclosure/2023/Representative%20Rates%20by%20Adjudicative%20Level%20FY%202014%20-%20FY%202023.pdf> [<https://perma.cc/656F-TSJ7>] (last visited Sept. 18, 2024).

65. In accordance with the requirements of 20 C.F.R. §§ 404.1512 and 416.912, this development includes requesting medical records from the claimant's medical sources and, if warranted, a consultative physical and/or mental status examination. State agency medical consultants provide opinions regarding the claimant's impairments at both the initial and reconsideration levels. For certain disability claims, the reconsideration process includes a hearing by a disability hearing officer. See 20 C.F.R. § 404.915 (2025). The initial and reconsideration levels are administered largely by state agencies under agreements with SSA.

66. For example, the ALJ may order a consultative examination, and the Hearing Office staff usually obtains new evidence after the reconsideration determination. The representatives may and often do submit medical evidence to the ALJ. The ALJ may also obtain evidence from a medical expert who will provide a medical opinion on the claimant's impairments. The ALJ may also obtain vocational expert evidence regarding the claimant's past relevant work or the existence of jobs in the national economy.

67. See 20 C.F.R. § 404.1710 (2025); see also 20 C.F.R. § 416.1540 (2025).

unrepresented as opposed to represented by a nonlawyer at the Appeals Council level.⁶⁸ At none of these stages does the SSA have a lawyer on its side. Claimants can appeal a decision to a federal district court, at which point the SSA is represented by a lawyer.

The VA also conducts mass justice adjudications that, like the SSA's, lean more inquisitorial. The process begins when a veteran files a claim. At this stage, the VA has a "duty to assist" and takes responsibility for making sure the application is complete, assisting with evidence gathering and scheduling a physical exam with a qualified medical professional.⁶⁹ If this initial decision is unfavorable, the veteran has three options: either submit new evidence; request review of the original evidence by a higher-level review officer; or appeal to the Board of Veterans' Appeals (BVA). If the veteran appeals to the BVA, that level could involve a review of the evidence or submission of new evidence with or without a request for hearing. Nonlawyer representation is common at all these levels, and the VA does not have a lawyer on the government side. The final review stage is at the U.S. Court of Appeals for Veterans Claims, and at this point the VA is represented by a lawyer.

The VA authorizes and encourages nonlawyers to assist veterans. At the initial claims level, the vast majority of claimants are represented by nonlawyer representatives, and specifically those connected through Veteran Service Organizations (VSOs). VSOs are explicitly prohibited from receiving fees related to providing services to claimants. Separate from VSO representatives, nonlawyer claims agents accredited by the VA may charge reasonable fees for representation, but only for services provided after the initial VA decision on the claim.⁷⁰ The success rate of lawyers and nonlawyer representatives before the BVA is higher than the success rate with no representation.⁷¹

3. INFORMAL (TYPE C)

Type C proceedings are true informal proceedings, and there is no legally required opportunity for an evidentiary hearing.⁷² These proceedings take the

68. See charts provided by AC for fiscal years 2022 and 2023, on file with the author; *see also Social Security Administration Annual Data for Representation at Social Security Hearings*, SOC. SEC. ADMIN., <https://www.ssa.gov/open/data/representation-at-ssa-hearings.html> [<https://perma.cc/9CAS-4YV2>] (last visited Nov. 22, 2024).

69. 38 U.S.C. § 5103A; 38 C.F.R. § 3.159 (2025).

70. 38 C.F.R. § 14.636(b)–(c) (2024).

71. According to BVA's 2022 Annual Report, attorneys were successful in 42.1 percent of their cases, agents in 34.6 percent (non-lawyer "agents" must pass an examination and take CLE courses), others in 35.7 percent, and those with no representation in 29.2 percent. Bd. of Veterans' Appeals, ANNUAL REPORT 49 (2022). The various VSOs fell within a range of 32.5 percent (American Legion) to 35.7 percent (Military Order of the Purple Heart). *Id.* 2022 BVA ANN REP. 49. These statistics do not cover success rates at the VA Regional Office level, only the BVA level. *Id.*

72. MICHAEL ASIMOW, FAIR PROCEDURE IN INFORMAL ADJUDICATION (Dec. 7, 2023) (report to the Admin. Conf. of the U.S.).

form of decisions that affect individual legal rights through written documents, conferences, or other settings that do not resemble trials. The procedures are regulated by the governing statute and agency rules, subject only to due process minimums, although general neutrality and representation principles apply.

Type C proceedings make up the bulk of administrative adjudication.⁷³ Though informal in terms of APA or other statutorily required procedure, these hearings range from low stakes, for example obtaining a campground permit, to very high stakes, for example renewing a national bank charter. The majority of these informal adjudications involve unrepresented parties.⁷⁴ As such, these hearings tend to have longstanding programs incorporating nonlawyer representation, as well as the most variety in regulatory structures for nonlawyers.

Many of the agency hearings studied herein exemplify these types of informal proceedings, including: some removal⁷⁵ and other naturalization-related decisions made by the Department of Homeland Security (DHS) through the office of United States Citizenship and Immigration Services (USCIS); collection due process hearings through the Internal Revenue Service (IRS) of the United States Treasury; and debt recoupment hearings through the Federal Emergency Management Agency (FEMA), also under DHS.

Hearings by DHS personnel at USCIS consist of paper hearings, interviews with staff, or both, in order to gather information needed for the decision. Similarly, collection due process hearings at the IRS resemble a discussion between the taxpayer and an Appeals Settlement Officer. This interview-type setting is emblematic of the very informal Type C adjudications that incorporate frontline decision-making.

Debt recoupment hearings at FEMA tend to come to the agency from the Department of Treasury, the agency that activates a collection. While these hearings look a bit more like the typical lawyer-driven process than the interviews above, the general hallmarks of an inquisitorial non-evidentiary hearing remain. There are no lawyers representing FEMA on the agency side. Few people are represented before the agency, although nonlawyer representation is allowed under the regulations.⁷⁶ When a person is represented by someone other than a lawyer, it tends to be a family member or friend who is offering support and guidance.

73. See ASIMOW, *supra* note 11, at 89. <https://www.acus.gov/sites/default/files/documents/Federal%20Administrative%20Adj%20Outside%20the%20APA%20-%20Final.pdf> [<https://perma.cc/C6YU-AWKP>].

74. ASIMOW, *supra* note 11, at 101 (“Although § 555(b) takes no position on whether there is a right to lay representation, lay representation is a practical necessity in most cases of Type C adjudication where the relatively low monetary stakes and the party’s likely inability to pay preclude hiring a lawyer.”).

75. “Numerous adjudicatory decisions by immigration personnel do not trigger adjudicatory hearings and thus should be considered Type C adjudication. For example, there is no right to an adjudicatory hearing in connection with expedited removal by a DHS officer at ports of entry of an alien who makes no claim to refugee status. 8 U.S.C. § 1225(b)(1)(A)(i).” *Id.* at 151 n.714 (citing ASIMOW, *supra* note 74); Jennifer Lee Koh, REMOVAL IN INFORMAL ADJUDICATION (2023) (report to the Admin. Conf. *Shadows of the U. Immigration Courts*, 90 S.). CAL. L. REV. 181 (2017)) (discussing EOIR).

76. 44 C.F.R. § 206.115(b) (2024).

B. MODELS OF NONLAWYER PRACTICE

As the previous section illustrates, federal agency adjudication includes an immense variety of adjudicatory schemes, ranging in formality. And throughout each type of adjudication, nonlawyer representatives exist. But the level of detail the agency has prescribed regarding the qualifications, accreditation, training, and supervision of such nonlawyer representatives also varies immensely. The variation in models reflects a variety of factors, including volume of claims; type of claimant (institutional, corporate, or individual); access to representation among claimants; complexity of matter; formality of hearing; statutory design; agency resources; federalism concerns; and nonprofit engagement. This section will map out the various models of nonlawyer practice and its regulation.

Also related to the development of nonlawyer practice before the agency is the power differential among parties and the resulting signaling effects.⁷⁷

Variables related to power differentials include: whether the hearing is one in which the government is enforcing an action against an individual party or someone is attempting to claim benefits; whether a lawyer appears on behalf of the government; and whether the nonlawyers are representing individuals or larger institutions and corporations.

1. DETAILED REGULATORY SCHEMES

The model first in mind when discussing nonlawyer representation tends to be the detailed regulatory schemes, often including accreditation, training, and oversight components. These schemes tend to be found in long-standing programs affecting high-volume adjudications. Perhaps because these models have been around for a long time and affect so many people, they also are the most heavily studied.⁷⁸ The nonlawyer representatives are professionalized and most often embedded in, or trained by, nonprofit organizations. These programs tend to be most developed where the adjudication is less adversarial in theory, meaning the agency design was meant to be inquisitorial and, in some cases the agency does not have a lawyer on its side. The main exception is the DOJ accredited representative program, which covers the adversarial immigration adjudications before immigration judges and the Board of Immigration Appeals.⁷⁹

There are two types of nonlawyer representatives who appear at various levels of agency adjudication at the SSA. The first is a trained and registered representative entered into the direct payment process, who must meet eligibility criteria, pass a written examination, and complete continuing education courses.⁸⁰ These

77. See Victor D. Quintanilla, Rachel A. Allen & Edward R. Hart, *The Signaling Effect of Pro se Status*, 42 L. & SOC. INQUIRY 1091 (2017).

78. See *supra*, Part I(C).

79. See, e.g., Beth K. Zilberman, *The Non-Adversarial Fiction of Immigration Adjudication*, 2020 WIS. L. REV. 708 (2020).

80. See 20 C.F.R. §§ 404.1717, 416.1517. See also Changes to the Administrative Rules for Claimant

representatives are referred to as Eligible for Direct Pay Non-Attorneys (EDPNAs).⁸¹ Alternatively, a claimant can be represented by a family member or other representative of their choosing, and these representatives are not part of the direct payment process.⁸² If the claimant appears for an SSA ALJ hearing without a representative (except in a few specific situations), the ALJ will advise the claimant of the right to representation.⁸³ At times, ALJs might recommend that a family member is actually a witness rather than a representative. All representatives must abide by rules of conduct.⁸⁴

The claimant must also file a written notice of representation, signed by the prospective representative for consideration.⁸⁵ SSA representatives may help clients navigate administrative processes, including filing initial claims for benefits, obtaining medical evidence from the claimant's medical sources, post-denial appeals, and non-adversarial hearing presentations before ALJs to support claims.⁸⁶ Internal statistics show that the vast majority of representatives, however, are lawyers.⁸⁷

The SSA's Office of the General Counsel (OGC) oversees representatives. Appointed representatives are bound by specific ethical standards and affirmative duties, including: competence and diligent client representation; maintaining confidentiality; prompt communication; and fair dealing with clients, the SSA, and third parties.⁸⁸ SSA's OGC ensures that representatives adhere to SSA regulations and ethical standards, providing oversight and disciplinary actions when necessary.⁸⁹ Additionally, the agency publishes resources for nonlawyer representatives on its website, providing guidance on tasks such as submitting evidence and asking for a favorable decision from the ALJ in the course of the proceedings.⁹⁰ Representatives may be disqualified or face disciplinary actions for misconduct. Examples of such misconduct include: engaging in deceitful

Representation and Provisions for Direct Payment to Entities, 89 Fed. Reg. 67,542 (Aug. 21, 2024) (clarifying relationships between representatives and entities with respect to direct pay arrangements).

81. See *Direct Payment to Eligible Non-Attorney Representatives*, SOC. SEC. ADMIN., <https://www.ssa.gov/representation/nonattyprep.htm> [<https://perma.cc/VRX6-JMLK>] (last visited Nov. 25, 2024).

82. 20 C.F.R. §§ 404.1705, 416.1505 (2025). These representatives are usually not eligible for direct payment. *Id.*

83. See *Program Operations Manual System* HA 01210.080 The Right to Representation, SOC. SEC. ADMIN (Dec. 10 2024), <https://secure.ssa.gov/apps10/poms.nsf/lnx/2501210080> [<https://perma.cc/R3DL-A5EY>] [hereinafter *Program Operations HA*]; see also 20 C.F.R. § 416.1507 (2025).

84. 20 C.F.R. §§ 404.1740, 416.1540 (2025).

85. See 20 C.F.R. § 404.1707 (2025).

86. *Program Operations Manual System* GN 03970.010 Rules of Conduct and Standards of Responsibility for Representatives, SOC. SEC. ADMIN (Dec. 10 2024), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203970010> [<https://perma.cc/G76J-J6YG>].

87. See charts provided by AC for fiscal years 2022 and 2023 (on file with the author); see also 20 C.F.R. § 416.1540.

88. See 20 C.F.R. § 404.1740 (2025).

89. See 20 C.F.R. § 404.1750 (2025).

90. *Information for Representatives*, SOC. SEC. ADMIN., https://www.ssa.gov/appeals/rep_info.html [<https://perma.cc/AEE8-QZKF>] (last visited Sept. 23, 2024).

practices, misrepresenting material facts to prospective claimants or the SSA, and demanding or charging a fee outside of the reasonable past-due benefits amount.⁹¹ Such misconduct reflects adversely on their fitness to represent clients before the SSA.⁹²

The VA also accredits two types of nonlawyer representatives. The first type, representatives of VA-recognized VSOs, must be certified by the VSO, which will attest to the representative's character, competency, and training, and must be recertified at least every five years.⁹³ Representatives of VSOs may never charge a fee for their services.⁹⁴ For the second type, claims agents, the VA conducts its own character and fitness investigation, which includes a background check, character references, and a written examination.⁹⁵ Claims agents may charge a reasonable fee, but only for work done after the initial decision on a benefits claim.⁹⁶ In addition to those two types, VA statute and regulation provide that any person may be authorized to act as a representative on one particular claim, thus allowing a family member or friend to serve in that role for a specific claim without being accredited as a VSO representative or claims agent.⁹⁷

The VA's OGC oversees accredited representatives, ensuring compliance with VA standards as well as handling complaints and disciplinary actions.⁹⁸ Representative qualification may be suspended or canceled for misconduct including charging and accepting unlawful compensation in the assistance of a claim, knowingly presenting fraudulent information, and any "other unlawful or unethical practice adversely affecting an individual's fitness for practice before VA."⁹⁹ Individuals accredited by the VA must adhere to ethical standards, including faithfully executing claimant representation, providing competent representation, and engaging in honest dealings with veterans and the VA.¹⁰⁰

The DOJ provides a pathway for law students,¹⁰¹ law graduates not yet admitted to the Bar,¹⁰² reputable individuals with a pre-existing relationship to the

91. Interview with Anonymous Source (date redacted) (on file with author).

92. 42 U.S.C. § 406.

93. 38 C.F.R. § 14.629(a) (2025).

94. 38 U.S.C. § 5902(b)(1)(A).

95. 38 C.F.R. § 14.629(b) (2025).

96. 38 C.F.R. § 14.636(b)–(c) (2025).

97. 38 U.S.C. § 5903; 38 C.F.R. § 14.630 (2025).

98. 38 U.S.C. §§ 5902, 5904; 38 C.F.R. §§ 14.631, 14.633 (2025).

99. 101. 38 C.F.R. § 14.633 (2025).

100. 38 C.F.R. § 14.632 (2025).

101. "The student must file a statement that he or she is participating under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or clinic conducted by the law school or non-profit organization and is appearing without remuneration from the respondent." ASIMOW, *supra* note 11, at 153 n.727.

102. "The law graduate must file a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative without remuneration. In the case of law students or graduates, the IJ (or other official before whom he or she wishes to appear) has discretion not to permit such appearance or to require the presence of the supervising faculty member, attorney, or accredited representative." *Id.* at 153 n.728.

person represented, accredited representatives, and accredited officials of a foreign government to represent people in more formal hearings before immigration courts and the Board of Immigration Appeals.¹⁰³ The “accredited representative” category is the largest source of nonlawyer representatives before immigration judges. The DOJ also operates the Recognition and Accreditation program, which recognizes nonprofit organizations to provide such services through accredited representatives.¹⁰⁴ According to the last available numbers from the White House, there are roughly 2,300 accredited representatives providing such services.¹⁰⁵

Adjudicators who work in these systems and were interviewed for this project tended to agree that the quality of representation is similar between lawyers and nonlawyers in these hearings. However, interviews with various stakeholders noted that these agency accreditation programs can sometimes suffer from unstable funding and backlog. The accreditation process itself may be vulnerable to politicization. These issues can result in partner nonprofits facing hurdles in their own planning, which ultimately leads to fewer nonlawyers available to fulfill the opportunity envisioned by the accreditation program.

Because these programs cover such a high volume of adjudications and tend to involve vulnerable populations and claims of benefits with monetary remedies, there is a potential that bad actors might enter the market without proper credentials. Interviewees mentioned examples of disbarred attorneys or otherwise unqualified people attempting to receive certification under these programs. In other cases, bad actors operate outside of the accreditation process entirely to fill a need that is not being met when accreditation processes for new nonlawyers are backlogged.

2. SPECIALIZED EXPERTISE

Another model of nonlawyer representation is seen with agencies and claims that involve highly technical expertise.¹⁰⁶ Because of this specialization, nonlawyer representatives here tend to be professionals in other fields that undertake this work as an extension of their expertise. Qualifications for these sorts of programs rely heavily on examinations or other professional licensing schemes to ascertain the particular subject-matter expertise required for representation.

103. *Id.* at 72 n.320.

104. *Recognition & Accreditation (R&A) Program*, U.S. DEP’T OF JUST., EXEC. OFF. IMMIGR. REV. (Sept. 2, 2025), <https://www.justice.gov/eoir/recognition-and-accreditation-program> [<https://perma.cc/USV6-WDFL>]; 8 C.F.R. § 1292.1(a)(4) (2025); U.S. Dep’t of Just., Exec. Off. for Immigr. Rev., *BIA Practice Manual*, § 2.4 – Accredited Representatives, <https://www.justice.gov/eoir/reference-materials/bia/chapter-2/4> [<https://perma.cc/MJB6-JZY3>]. Nonlawyer representation before DHS on immigration-related matters, discussed in more detail below, is done through partial accreditation under the DOJ accredited representation program.

105. WH-LAIR REPORT, *supra* note 1, at 30.

106. For more on the role of specialized expertise in agency adjudications, see Jonathan Rose, *Nonlawyer Practice Before Federal Agencies Should Be Encouraged*, 37 ADMIN. L. REV. 363 (1985).

To become a patent agent, for example, one must possess a degree which qualifies them to understand the technical aspects of inventions, and must pass the USPTO registration examination, which tests knowledge of patent law and USPTO procedures.¹⁰⁷ The Office of Enrollment and Discipline (OED) oversees patent agent conduct and ensures compliance with USPTO regulations, including review and tracking of registration examination applicants.¹⁰⁸ The OED has the authority to investigate complaints and impose sanctions for misconduct, which can include suspension or discipline before the USPTO.¹⁰⁹

A patent agent may be disqualified or disciplined for various reasons, including misrepresentation or fraud of material facts, conflicts of interest adversely affecting a client, negligence in handling patent applications or related matters, and commingling of funds.¹¹⁰ Patent agents are bound by the USPTO's Code of Professional Responsibility, which mandates competence and diligence to clients with necessary legal and technical expertise, confidentiality with client information, communication informing clients about the status of cases or inquiries, and fair dealing with clients, the USPTO, and third parties.¹¹¹

The IRS authorizes qualified professionals to assist clients with their federal tax matters, including certain types of tax preparation (for example, responses to IRS-issued Information Document Requests) and representation before the IRS. Aside from lawyers, representatives can be Enrolled Agents (EAs) or Certified Public Accountants (CPAs).¹¹² Other categories of people may perform limited representation or tax preparation duties on behalf of taxpayers, including enrolled actuaries and enrolled retirement plan agents.¹¹³ To become an IRS representative, EAs must pass the special enrollment examination ("SEE") and undergo a background check through the IRS, while CPAs must maintain their professional licensing. The regulations provide extensive ethical obligations to clients for all nonlawyer representatives, similar to those imposed on lawyers.¹¹⁴

107. See *Becoming a Patent Practitioner*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/learning-and-resources/patent-and-trademark-practitioners/becoming-patent-practitioner> [<https://perma.cc/JGZ6-TTR4>] (last visited Sept. 23, 2024).

108. See *Information for Current Practitioners*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/learning-and-resources/patent-practitioners/current-practitioners> [<https://perma.cc/EB6Z-QJ8U>] (last visited Sept. 23, 2024).

109. *Id.*

110. See Will Covey, *Professional Responsibility for IP Practitioners*, U.S. PAT. & TRADEMARK OFF., https://www.aipla.org/docs/default-source/committee-documents/bcp-files/wcovey_pripp.pdf [<https://perma.cc/M3PC-RCRF>] (last visited Sept. 23, 2024).

111. See 37 C.F.R. § 11.100–901 (2025).

112. 31 C.F.R. § 10.3 (2025). Third Party Designees perform a different function: post-preparation and filing of the return. The current (2023) Form 1040 Instructions describe Third Party Designees. See *1040 (and 1040-SR) Instructions*, INTERNAL REVENUE SERV., <https://www.irs.gov/pub/irs-prior/f1040gi-2023.pdf> [<https://perma.cc/N88S-BXH4>] (last visited Oct. 6, 2025).

113. 31 C.F.R. § 10.3 (2025).

114. 31 C.F.R. §§ 10.20–37 (2025).

The IRS Office of Professional Responsibility (OPR) ensures that representatives comply with IRS regulations and ethical standards.¹¹⁵ The OPR investigates conduct complaints and can impose disciplinary actions, including suspension or disbarment from practice before the IRS.¹¹⁶ Main grounds for disqualification from practice include engaging in disreputable conduct and unethical practices before the IRS such as misrepresentation, failure to exercise due diligence, and failure to disclose and resolve conflicts of interest in handling tax matters.¹¹⁷

Yet another form of the specialized expertise model is seen at the DOL.¹¹⁸ According to the DOL's Office of Administrative Law Judges (OALJ), the majority of nonlawyer representation is seen with black lung benefits cases.¹¹⁹ In these cases, the employers are generally represented by large law firms. The claimants, however, are represented by nonlawyers in roughly a quarter of cases.¹²⁰ The ALJ is given discretion to decide qualifications.¹²¹ The nonlawyer representatives tend to be employed by clinics; the largest such clinic is Stone Mountain Health Services, which operates its Lay Advocacy Program.¹²² These nonprofits' employees are experts in the health issues encountered by miners, and the nonlawyer representatives rely on that specialized knowledge to represent claimants.¹²³

115. *Office of Professional Responsibility and Circular 230*, INTERNAL REVENUE SERV. (Aug. 26, 2025), <https://www.irs.gov/tax-professionals/office-of-professional-responsibility-and-circular-230> [<https://perma.cc/7RRD-LS6V>]; 31 C.F.R. § 10.1. (2025).

116. *Id.*

117. 31 C.F.R. §§ 10.22, 10.29, 10.51–.52 (2025).

118. 29 C.F.R. § 18.22 (2025).

119. Roughly 15 percent of these cases have lay representatives.

120. According to ALJs, a very small percentage are self-represented, estimated at or below 5 percent of claimants.

121. 29 C.F.R. § 18.22(b)(2) (2025) (“An individual who is not an attorney . . . may represent a party or subpoenaed witness upon the judge’s approval. The individual must file a written request to serve as a non-attorney representative that sets forth the name of the party or subpoenaed witness represented and certifies that the party or subpoenaed witness desires the representation. The judge may require that the representative establish that he or she is subject to the laws of the United States and possesses communication skills, knowledge, character, thoroughness and preparation reasonably necessary to render appropriate assistance. The judge may inquire as to the qualification or ability of a non-attorney representative to render assistance at any time. The judge may deny the request to serve as non-attorney representative after providing the party or subpoenaed witness with notice and an opportunity to be heard.”).

122. Stone Mountain cites the following outcomes on their website: “From July 1, 2016, to June 30, 2017, SMHS lay advocates were involved in a total of 317 awards from the Department of Labor District Director’s Offices and the Office of Administrative Law Judges from around the country. This generated \$4,345,897.39 in backpay benefits monies to the miners and their families, in addition to \$226,388.19 in monthly benefits. This does not include medical benefits. Over the course of four years (7/1/13 – 6/30/17), SMHS assisted with 1058 Federal Black Lung Claims that received favorable decisions for monetary awards. The total amount of backpay benefits monies to the miners and their families was \$10,968,928.32. Even though we are allowed to collect a percentage of the money awarded to the miners, we do not do so.” *Black Lung Program Services*, STONE MOUNTAIN HEALTH SERVS., <https://www.stonemountainhealthservices.org/black-lung-program-services.html> [<https://perma.cc/4GY4-PKW6>] (last visited Sept. 23, 2024).

123. Interview with Anonymous Source (date redacted) (on file with author).

In the DOL cases, a respondent defending against a violation might receive representation from someone within an industry group or guild that knows the particular industry and relevant regulations.¹²⁴ Unlike the patent and tax representation, the agency does not certify or oversee the representatives and there are no specific qualifications required.¹²⁵ But the groups offering representation have industry or substantive expertise due to their related work.¹²⁶

The law student representative is a slightly different form of specialized expertise model that appears in some regulatory schemes. In these cases, agencies and related entities work with law school clinics, for example low-income taxpayer clinics and FINRA investor advocacy clinics, to specifically allow law students to represent people under the supervision of an attorney, often a faculty member, at the clinic.¹²⁷ There is evidence that these programs expand competent representation for people who otherwise could not afford representation.¹²⁸

3. INSTITUTIONAL/FAMILIAL PRO SE

Some agencies allow for representation by a nonlawyer but only where there is a specific type of connection to the matter. This could encompass, for example, a family member of the claimant or a corporate officer of an institutional claimant. The DOI allows the following nonlawyers to practice before the agency:

An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) A member of his family; (ii) A partnership of which he is a member; (iii) A corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) A receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (v) The lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) A Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) An association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter.¹²⁹

124. Interview with Anonymous Source (date redacted) (on file with author).

125. Interview with Anonymous Source (date redacted) (on file with author).

126. Interview with Anonymous Source (date redacted) (on file with author).

127. See TAXPAYER ADVOC. SERV., *Low Income Taxpayer Clinics (LITC)*, <https://www.taxpayeradvocate.irs.gov/about-us/low-income-taxpayer-clinics-litc/> (last visited Jan. 30, 2026).

128. See, e.g., Jane H. Aiken & Stephen Wizner, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *Fordham L. Rev.* 997, 1003 (2004).

129. 43 C.F.R. § 1.3(b)(3)(i)–(vii) (2025).

There is no formal certification process for appearance at the DOI.¹³⁰ Once a representative signs a paper in a proceeding, that signature functions as certification that the individual is authorized to practice before the Department.¹³¹

Representatives in arbitrations before FINRA are governed by the rules of FINRA Dispute Resolution Services.¹³² FINRA rules also follow the institutional pro se model, allowing a member of a partnership and a bona fide officer of a corporation, trust, or association to represent those institutions as a nonlawyer representative before an adjudicator.¹³³

Finally, the EPA also reported institutional pro se representation for civil penalty cases involving smaller businesses. In these cases, the head of the business or another officer might represent the business. The ALJ practice manual for the EPA allows for nonlawyer representation, specifically naming corporate officers or partners.¹³⁴ The manual further acknowledges a role for specialized expertise, noting that “such representatives can be useful if they have had substantial prior experience in administrative litigation proceedings or have significant expertise in the particularities of the disputed issues.”¹³⁵

Similar institutional pro se models show up elsewhere, but without the regulatory structure specifically codifying certain corporate, business, or family representatives. At some agencies, additional provisions like this exist alongside more explicit representation models. At the IRS, for example, Section 10.7(c) of Circular 230 authorizes “non-practitioner” representatives and representation based on relationship to a taxpayer, including an immediate family member; a general partner of a partnership; a fulltime employee of an individual or entity employer; and a bona fide officer of a corporation, association, or “organized group.”¹³⁶

4. INDIVIDUAL CHOICE

In addition to the regulatory schemes described above, there is a “catch-all” model of nonlawyer representation that is actually under-regulated and under-developed. In these cases, regulations allow for a claimant to have a lawyer or authorized representative but do not mandate any criteria. Often the only

130. See generally 43 C.F.R. § 1.3 (2025).

131. 43 C.F.R. § 1.5 (2025).

132. See *FINRA Dispute Resolution Services Arbitrator's Guide*, (Mar. 2025), <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf> [<https://perma.cc/EJ92-VB78>].

133. FINRA Rule 9141(b) (2025).

134. U.S. Env't Prot. Agency, *Office of Administrative Law Judges Practice Manual: A Guide to Frequently Asked Practice Questions* 6, (Aug. 2022), https://www.epa.gov/sites/default/files/2013-09/documents/alj-practice-manual_0.pdf [<https://perma.cc/QS9Y-4LHS>].

135. *Id.* at 6.

136. Treasury Department Circular No. 230, *Regulations Governing Practice Before the Internal Revenue Service*, 31 C.F.R. § 10.7 (2025), <https://www.irs.gov/pub/irs-pdf/pcir230.pdf> [<https://perma.cc/P8MN-XZGM>].

requirement is an appearance sheet or individual claimant/respondent consent to representation.¹³⁷

There is very little information about this model, but data gathered for this article reveal that these opportunities, even when they are codified, are not widely used. In some cases, statutory constraints on fees and settlements may disincentivize lawyers and others from taking these cases. The same statutory constraints may also disincentivize robust investment in alternative forms of representation. In other cases, such as FEMA debt recoupment claims, the need is sporadic, which makes it harder to develop and implement a resourced training scheme.¹³⁸ Notably, this “catch-all” model is most correlated with high numbers of unrepresented people. In these cases, adjudicators often saw their roles as very active and, because of this active participation in fact development, felt that representation was less necessary.

The procedures at the EEOC allow a complainant “the right to be accompanied, represented, and advised by a representative of the complainant’s choice.”¹³⁹ There is no regulation governing certification or qualifications for nonlawyer representatives. Informal estimates from adjudicators are that roughly half of complainants are unrepresented, and another ten to fifteen percent have nonlawyer representation. Nonlawyer representatives in these hearings have included paralegals, union representatives, former employees from the same agency, and family members.¹⁴⁰ There is no training or qualifications requirement.¹⁴¹ There have also been instances of disbarred attorneys representing claimants. Although the agency has procedures to remove a representative, use of such procedures is extremely rare.¹⁴²

At FEMA, the vast majority of people are unrepresented, even though nonlawyer representatives are allowed and there are no qualification or training requirements. Even so, nonlawyer representation occurs infrequently. The only requirements are that the representative fills out a form and the claimant agrees to release information.¹⁴³ Nonlawyer representatives in past years have been legal aid staff or friends and family members of the claimant.

5. ASSISTANCE

In addition to nonlawyer representation, there are various forms of nonlawyer assistance that occur in agency proceedings that are not adjudicatory hearings.

137. Interview with Anonymous Source (date redacted) (on file with author).

138. Interview with Anonymous Source (date redacted) (on file with author).

139. 29 C.F.R. § 1614.605 (2025).

140. Interview with Anonymous Source (date redacted) (on file with author).

141. Interview with Anonymous Source (date redacted) (on file with author).

142. Interview with Anonymous Source (date redacted) (on file with author).

143. . FED. EMERGENCY MGMT. AGENCY, Form FF-104-FY-21-118, *Authorization for the Release of Information under the Privacy Act*, https://www.fema.gov/sites/default/files/documents/fema_authorization-release-information-under-privacy-act-form.pdf [<https://perma.cc/ZHV8-VNK9>] (last visited Sept. 23, 2024).

The assistance model leans more toward providing information and support, rather than appearing before a decision-maker in a tribunal alongside an individual. Because this type of assistance is not considered representation, there are constraints on the agency in terms of communicating with individuals providing assistance and/or offering access to file materials.

One well-known example of this model is the Navigator program through the Department of Health & Human Services (HHS).¹⁴⁴ This program allows individuals to assist clients with issues related to establishing eligibility for and enrolling in coverage for health benefits, including insurance affordability programs such as Medicare and Medicaid, through a funding opportunity known as a Federally-facilitated Exchange (FFE).¹⁴⁵

To become an HHS Navigator, eligible individuals and entities such as non-profit groups and small business resource partners must apply with a funding request annually, and ensure each participating Navigator is prepared through training approved by the Centers for Medicare & Medicaid Services (CMS) and a federally certified exam.¹⁴⁶ An approved Navigator may serve in more than one FFE state.¹⁴⁷

HHS representatives are overseen by CMS and other relevant HHS agencies.¹⁴⁸ These bodies ensure that representatives remain compliant with agency regulations and standards. Representatives must demonstrate that they meet licensing standards under the Affordable Care Act, maintain program expertise, assist clients by providing fair, accurate, and impartial services, and prepare clients for hearings without providing tax or legal advice to support their claims.¹⁴⁹ Navigators are also required to “serve underserved or vulnerable populations” within the service area in FFE states.¹⁵⁰

In a similar model, the Department of Housing and Urban Development (HUD) authorizes qualified individuals to assist clients with housing law issues,

144. The Patient Navigator Program was created in the Patient Protection and Affordable Care Act. *See* Pub. L. No. 111-148, Sec. 3510, 124 Stat 119 (2010).

145. *External Frequently Asked Questions for the Navigator FOA*, CTRS. FOR MEDICARE & MEDICAID SERVS., <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Navigator-FOA-External-FAQs-FINAL-508-MM.PDF> [<https://perma.cc/4738-7P2L>] (last visited Sept. 23, 2024) [hereinafter NAVIGATORS FAQ].

146. For more on how to become a Navigator under this program, see information on CMS website, *In-Person Assistance in the Health Insurance Marketplaces*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Sept. 19, 2025), <https://www.cms.gov/marketplace/in-person-assisters/programs-procedures/in-person-assistance#Navigators> [<https://perma.cc/SVP6-UXB2>].

147. *See id.*

148. *Biden-Harris Administration Makes Largest Investment Ever in Navigators Ahead of HealthCare.gov Open Enrollment Period*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (Aug. 26, 2022), <https://www.hhs.gov/about/news/2022/08/26/biden-harris-administration-makes-largest-investment-ever-in-navigators-ahead-of-healthcare-gov-open-enrollment-period.html> [<https://perma.cc/9KVM-W3ME>].

149. 45 C.F.R. § 155.210 (2025); Katie Keith, *Navigator Funding Opportunity Departs From Trump Priorities*, HEALTH AFFS. (June 8, 2021), <https://www.healthaffairs.org/content/forefront/navigator-funding-opportunity-departs-trump-priorities> [<https://perma.cc/AR9W-9W59>].

150. *See* 45 C.F.R. § 155.210(e)(8) (2025).

including applications for housing assistance, disputes with landlords, and navigating housing regulations including foreclosure.¹⁵¹ To become HUD-certified counselors, individuals must have experience and undergo HUD-approved training, then take and pass the certification exam.¹⁵² Additionally, HUD-certified counselors deliver services at HUD-approved housing counseling agencies (HCAs).¹⁵³ HUD's Housing Counseling program aims to support a wide network of HCAs.¹⁵⁴

HUD's Office of Housing Counseling oversees housing counselors and HCAs to ensure compliance with HUD regulations and ethical standards, and is a part of the Office of Housing/Federal Housing Administration (FHA).¹⁵⁵ HUD investigates complaints and can impose disciplinary actions, including removal, for inactivity or performance issues.¹⁵⁶ Counselors must maintain updated codes of conduct, comply with conflict-of-interest requirements, and remain in compliance with all regulations.¹⁵⁷

A related model of assistance is seen at the EPA Office of Administrative Law Judges, where staff attorneys assist respondents. Staff attorneys do not represent respondents, but provide dedicated assistance to assigned respondents and their representatives.¹⁵⁸

6. STATE PROGRAMS

State providers and regulators are working together to develop and oversee models of nonlawyer representation in and around federal agency adjudications through, for example, legal services organizations interacting with federal agencies through their programs implemented by the states. Alaska Legal Services developed a model of community justice workers who represent people in SNAP benefits hearings at state administrative agencies implementing the Federal Food

151. U.S. DEP'T OF HOUS. & URBAN DEV., Housing Counseling Program Description, HUD EXCHANGE, <https://www.hudexchange.info/programs/housing-counseling/program-description/> (last visited Nov. 9, 2025).

152. See *About the Counselor Program*, HUD HOUS. COUNSELORS, <https://hudhousingcounselors.hud.gov/become-hud-housing-counselor> [<https://perma.cc/TH68-GHUU>] (last visited Oct. 5, 2025).

153. See *Housing Counseling*, HUD EXCH., <https://www.hudexchange.info/programs/housing-counseling/> [<https://perma.cc/7AJS-SUQX>] (last visited Sept. 23, 2024); see also U.S. DEP'T OF HOUS. & URB. DEV., HOUSING COUNSELING PROGRAM HANDBOOK 7610.1 (2024).

154. See *Housing Counseling Program Overview*, HUD EXCH., <https://www.hudexchange.info/programs/housing-counseling/program-description/> [<https://perma.cc/G54F-FGWD>] (last visited Sept. 23, 2024).

155. HUD Office of Housing Counseling, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/housing/hsg_counseling [<https://perma.cc/4MHN-S4V4>] (last visited Sept. 23, 2024).

156. 24 C.F.R. § 214 (2025).

157. *Code of Conduct for HUD Grant Programs*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/conductgrants [<https://perma.cc/8E8Y-2N7X>] (last visited Sept. 23, 2024).

158. ENV'T PROT. AGENCY OFF. ADMIN. L. JUDGES, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ADMINISTRATIVE LAW JUDGES: CITIZEN'S GUIDE 28 (2010), <https://www.epa.gov/sites/default/files/2013-09/documents/citizens-guide.pdf>

Stamp Act.¹⁵⁹ Collaboration between legal aid and the state bar was integral to the development of this program. The Alaska State Bar provides the regulatory authority, while Alaska Legal Aid provides training.¹⁶⁰

Other legal services offices are expanding on this model to provide a larger scope of services through community justice workers. In both examples, the underlying federal regulatory structure follows the claimant choice model discussed above. Although Alaska worked together across various institutions to codify their program, constitutional due process principles viewed alongside the federal statutory language in relevant programs appear to support the right to be represented by a community justice worker, even where state laws may regulate representation in state courts.

III. CONSIDERATIONS FOR NONLAWYER PRACTICE

This section synthesizes the various programs discussed above to illustrate the range of policies governing the accreditation of nonlawyers and considerations of agency organization. It also addresses the underlying federalism issue that arises as these programs connect to state and federal court jurisdictions.

A. PROGRAM EVALUATION

At the outset, it is clear that agencies are generally not tracking nonlawyer representation. The 2023 WH-LAIR report notes that “our current understanding of people’s experiences and challenges navigating federal administrative proceedings is limited by the lack of rigorous data collection and research looking across federal programs from an access to justice lens.”¹⁶¹ Repeated comments received from the public and interviews with stakeholders back up this lack of data.

Of the fifteen programs studied for this project, only the SSA offered accessible percentages of nonlawyer representative appearances at each stage of the process. This data was collected at the broadest categorization, offering representation rates for three categories: lawyer, nonlawyer, and self-representation.¹⁶² The DOJ has also published data about the number of people who have been accredited under its program, although these numbers do not adequately portray current representation rates.¹⁶³ No agency is keeping data on the outcomes obtained by nonlawyer

159. For more on this program, see Joy Anderson, Sarah Carver & Dr. Robert Onders, *Community Justice Workers: Part of the Solution to Alaska’s Legal Deserts*, 41 ALASKA L. REV. 9 (2024).

160. Nikole Nelson, *Alaska Legal Services Corporation: Moving Beyond Lawyer-Based Solutions with Community Justice Workers*, LEGAL SERV. CORP., <https://lsc-live.app.box.com/s/4m9rcenmeu46uxvqe4d4gko0s528pu3t> (last visited Nov. 10, 2025).

161. WH-LAIR REPORT, *supra* note 1, at 6.

162. *Social Security Administration (SSA) Annual Data for Representation at Social Security Hearings*, SOC. SEC. ADMIN, <https://www.ssa.gov/data/representation-at-ssa-hearings.html> [<https://perma.cc/P899-WZQS>] (last visited Sept. 25, 2025).

163. The DOJ publishes rosters of accredited organizations and representatives. See *Recognition & Accreditation (R&A) Program*, EXEC. OFF. FOR IMMIGR. REV. (April 28, 2025), <https://www.justice.gov/eoir/recognition-accreditation-roster-reports> [<https://perma.cc/422Y-HV66>]. Interviewees stated that the number of people on the roster does not necessarily equal the number of people available. *Id.*

representatives. Without data on the frequency and characteristics of nonlawyer representation, it is impossible to understand the impact of this work and move toward more opportunities that adequately meet the need.

B. ACCREDITATION

Although only a handful of agencies currently take on an accreditation role, doing so can increase transparency and awareness while offering added protection against fraud. Interviewees and commenters reported that agency-run accreditation programs play an important role in expanding access to justice and are designed to ensure that representatives adhere to high standards of professionalism and accountability. Agency accreditation programs can also address federalism tensions for programs implemented through state systems with strong attorney regulations.¹⁶⁴ Agencies that are taking on accreditation roles either specify certain qualifications and certification mechanisms for the individual representative, or in some cases the nonprofit or other institution that will employ the nonlawyer representatives. Other agencies do not perform accreditation roles and either rely on clients or the market to regulate their choice of representative.¹⁶⁵ Some programs provide a menu of nonlawyer representation pathways. For example, the SSA has a detailed regulatory scheme for nonlawyers who enter the direct payment program and a more diffuse claimant choice model for nonlawyers who do not receive direct payment.¹⁶⁶

Accreditation programs run through the agency offer benefits, but stakeholders reported backlogs because underfunding hinders the full realization of the mission of these programs. In one case, a single attorney with two assistants was tasked with adjudicating a backlog of 697 pending applications.¹⁶⁷ The accreditation timeline varies between agencies, with the shortest time between application and accreditation being under two months at some agencies, and longer times of over six months to a year at other agencies. Slow accreditation processes can have serious implications, including nonprofits losing their grant funding or otherwise needing to shutter programs. Moreover, agencies do not always publicly

164. See ASIMOW, *supra* note 11, at 71 (“A major advantage of adopting procedural regulations that recognize a right to lay representation is to preempt state unauthorized practice laws that may prohibit or otherwise regulate lay representation in civil and criminal cases.”). For an example of an accreditation process for nonlawyer representatives, see the system adopted by the VA. 38 C.F.R. § 14.629(b). The USPTO also has a process for registering nonlawyer agents to serve as representatives in patent adjudications. See 37 C.F.R. §§ 11.6–7 (2025).

165. Examples of this are regulations only providing the bare minimum such as a requirement that a client must certify a person who represents them.

166. The SSA has regulatory standards of conduct that are applicable to all representatives so that a claimant is not left with the impression that a non-certified, nonlawyer representative can act without any standards. See 20 C.F.R. §§ 404.1740(a)(1), 416.1540(a)(1) (2025).

167. See Karen Sullivan, *The Severely Under-Resourced R&A Program is an Essential Tool to Meet Growing Needs for Affordable Immigration Legal Services*, CATH. LEGAL IMMIGR. NETWORK 7 (Sept. 29, 2021), <https://www.cliniclegal.org/resources/federal-administrative-advocacy/policy-brief-severely-under-resourced-ra-program> [<https://perma.cc/T3F8-UELY>].

release information on pending applications and timelines, which makes it hard for partner nonprofits to staff and plan adequately.

Stakeholders mentioned that the placement of an accreditation office within the agency organizational structure was a potential barrier to timely accreditation, suggesting the importance of locating these agency roles in non-political units. When accreditation becomes subject to political directives, advocates are left responding to uncertainty as to requirements, which can create problems for nonprofits in planning their capacity as well as making it harder for applicants to prepare for success.

Agencies vary immensely in the specificity and depth of the qualifications necessary to represent someone before them. ACUS's *Model Rules of Representative Conduct* lists the following factors that may be considered by agencies when determining qualifications for nonlawyer representation:

[T]he representative's relationship to the represented participant; (2) the representative's knowledge of the relevant subject matter; (3) the representative's experience, if any, relating to the subject matter of the adjudication; (4) the representative's education or training in matters relevant to the adjudication; (5) the representative's expertise or skills in relation to the adjudication; (6) whether there is any indication that the representative will not be willing or able to act in the best interests of the represented participant; (7) whether the representative has a pending charge or has been convicted of a crime that reflects adversely on the representative's fitness to serve as a representative before the agency; and (8) whether the representative has knowingly disobeyed or attempted to disobey agency rules or adjudicator directions, or has assisted others in doing so.¹⁶⁸

This list mirrors the variety of models in this article. Factors one through five connect to the various existing models of nonlawyer practice reviewed above, some of which focus more heavily on relationship and community expertise, while others tend toward specialized knowledge or skill or training in the particular subject matter. Factors six through eight relate loosely to a form of "character and fitness" requirement seen with law licensure generally and to varying levels of specificity in agency nonlawyer representation. Stakeholders spoke of uncertainty around character and fitness requirements as a barrier, and in some instances where there is no agency accreditation role, the adjudicators have discretion to decide whether the nonlawyer representative is competent.

Adjudicator discretion introduces more uncertainty for standardizing nonlawyer representation because adjudicators can have varied views as to the role and value of representation. For example, some adjudicators felt that in a non-adversarial hearing it was less helpful to have representation at all because

168. MODEL RULES OF REPRESENTATIVE CONDUCT § 204(A) (ADMIN. CONF. OF THE U.S., 2024) <https://www.acus.gov/sites/default/files/documents/Model%20Rules%20of%20Representative%20Conduct.pdf> [<https://perma.cc/5B87-2X69>].

representatives (both lawyers and nonlawyers) could make the proceeding lean more adversarial, adding procedures and time. Other adjudicators found that in cases where arguments are not required, lawyers might send in brief statements while nonlawyer representatives were more likely to make full arguments. At least one adjudicator stated that this more thorough argumentation was persuasive and saw nonlawyer representation as a value added in this situation. Adjudicators also sometimes encouraged family members to appear as witnesses rather than representatives.

The models of nonlawyer representation reveal the following correlations between qualifications and adjudication characteristics: The most transparent certification programs are seen where specialized knowledge is at its height, as with patent agents at the USPTO or enrolled agents at the IRS. In these programs, barriers to entry are high, but qualifications are objectively stated: professional licensing, mandatory training, and exams.¹⁶⁹ Mass justice agencies tend to also have very detailed regulations, but here the focus is on training and compensation. The assistance programs, like the HHS Navigators and HUD housing counselors, also have both strong individual and institutional regulatory requirements.

Ensuring the quality of accreditation has other key elements, namely training and oversight. When training is mandated by the regulatory structure, there is also a spectrum of training models. For the highly regulated accreditation programs at the DOJ, the SSA, and the VA, the training consists of mandatory benchmarks that nonprofits have developed into comprehensive training modules.¹⁷⁰ The programs vary in the specificity of training components.¹⁷¹ There can be value in this flexibility, allowing for nonprofits to expand programs and try new training materials over time. However, stakeholders repeatedly wanted some centralization to the process because this model of training requires organized, recognized, and funded nonprofit stakeholders to take on the training.

Other sites for training nonlawyers include law schools and their clinical faculty, community organizers, or the agency itself. One particularly successful training model example is the Villanova Interdisciplinary Immigration Studies Training for Advocates (VIISTA) program, which combines the law school clinic route with the nonprofit delivery model, allowing for a much more scalable program.¹⁷²

169. *See supra* Part II.B.2.

170. “Through its Office of Legal Access Programs (OLAP), EOIR operates the Legal Orientation Program (LOP) which funds nonprofit organizations that provide services to litigants, including training of attorneys and lay representatives.” ASIMOW, *supra* note 11, at 154.

171. *Id.*

172. *See* DAVID FREEMAN ENGSTROM ET AL., RE: PUBLIC INPUT ON NONLAWYER ASSISTANCE/ REPRESENTATION IN AGENCY PROCEEDINGS 3 (Aug. 30, 2024), <https://www.acus.gov/sites/default/files/documents/Nonlawyer%20Assistance%20and%20Representation%20Comment%20from%20Deborah%20L%20Rhode%20Center%20on%20the%20Legal%20Profession%202024.08.30.pdf> [<https://perma.cc/JQL9-7BMY>].

Although programs and clinics are providing these training outlets, more could be done to develop and grow these opportunities. The EEOC recently started issuing procedural guidance specifically intended for complainants not represented by attorneys.¹⁷³ The guidance currently covers the discovery process, motion practice, and filing and responding to motions for summary judgment—sample documents are also provided.¹⁷⁴ Additional procedural guidance is expected to follow. Adjudicators spoke of opportunities to train union representatives, who appear as nonlawyer representatives on behalf of federal workers and could be organized to represent more employees before the EEOC, where currently roughly half of federal employee complainants are unrepresented. Focus group participants echoed this need and pointed to changing guidance as one problem that made it particularly hard to develop and update necessary trainings.

Accreditation also requires oversight, and most agencies have some sort of procedure for sanctioning representatives for unethical behavior; however, these procedures are rarely used. Some procedures lack enforcement mechanisms, requiring agencies to refer egregious behavior to another enforcement agency, including state attorneys general.¹⁷⁵ Many of the nonlawyer representative programs studied do not require direct lawyer supervision.¹⁷⁶ Some do require institutional oversight by a recognized nonprofit, and those institutions are also subject to sanctions for any unethical behavior by individual representatives.

This failure to employ oversight procedures has real consequences. According to interviews in the selected case studies, disbarred lawyers continue to appear as nonlawyer representatives in various areas. Agency staff described situations where the relevant regulations disqualify disbarred lawyers, but the agency was unaware of the disqualification because state bars do not always track whether the lawyer is inactive, retired, or disbarred. Many stakeholders agreed that disbarred attorneys should not be eligible to represent anyone as a nonlawyer representative, and some, but not all, regulations specifically noted this prohibition.

Even where regulations permit sanctions, common regulatory language tends to focus on the representative's duty to provide accurate information rather than ethical duties to clients, such as conflicts and confidentiality. For example, SSA regulations allow for sanctions for deceitful practices or misrepresenting material facts to prospective claimants or the SSA.¹⁷⁷ The DOL also focuses on a representative's

173. See *Information for Complainants Who are Not Represented by Attorneys*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, (last visited Nov. 25, 2024) <https://www.eeoc.gov/federal-sector/information-complainants-who-are-not-represented-attorneys> [https://perma.cc/8KWM-PEDH].

174. See *id.*

175. Interview with Anonymous Source (date redacted) (on file with author).

176. See, e.g., 8 C.F.R. 1292.11(e) (2025).

177. *Program Operations HA*, *supra* note 85; 20 C.F.R. § 404.1740 (2025); 20 C.F.R. § 416.1540 (2025); SSA, HALLEX I-1-1-40, C (2024).

duty to the tribunal rather than aspects of client confidentiality.¹⁷⁸ A few agencies specifically reference ABA ethics rules, which are broader and do incorporate the duties to clients.¹⁷⁹

C. DEDICATED FUNDING/RESOURCES

Accreditation programs and program evaluation take resources. Agencies need and do not always have dedicated budget lines to properly manage nonlawyer representation, particularly agencies running detailed or specialized accreditation programs.¹⁸⁰ Shifting or under-resourced agency budgets also make it harder for partnering nonprofits to plan out their own capacity. Commenters suggested that when allocating resources agencies should be sure to account for the offsetting benefit that expanding representation offers both to claimants and to program implementation.¹⁸¹ Repeated commenters also highlighted the expansion of accreditation opportunities as an antidote to fraudulent and predatory behavior, which offers yet another benefit to the calculation and should be factored into assessments of cost.

Agencies also offer financial support to partner nonprofits through grant funding opportunities to cover the work provided by nonlawyer representatives. The nonprofit organizations that will train and support expanded nonlawyer representatives need more access to federal support and grants. For example, HHS recently amended a rule to allow administrative costs of foster care legal representation in Indian tribal child welfare cases for any representative of an Indian tribe, lawyer or nonlawyer, to be claimed in providing services.¹⁸²

D. INTERAGENCY COORDINATION

Due to the resources required to develop and implement accreditation programs, and the immense variation currently scattered across agencies, there is opportunity for expanded interagency coordination. The most prominent example of this coordination is the accreditation done by DOJ for representatives before DHS and EOIR.¹⁸³ Combining functions across agencies can make sense for those agencies with overlapping subject matters. Beyond combining accreditation

178. *See* 29 C.F.R. § 18.23 (2025).

179. 43 C.F.R. § 1.6(a) (2025).

180. Interview with Anonymous Source (date redacted) (on file with author).

181. *See, e.g.*, Laura Vazquez, Comment Letter on Recommendation for Nonlawyer Assistance and Representation (Sept. 6, 2024), <https://www.acus.gov/sites/default/files/documents/Nonlawyer%20Assistance%20and%20Representation%20Comment%20from%20UnidosUS%202024.08.30.pdf> [<https://perma.cc/V9VA-F5JD>]; Anna Gallagher, Comment Letter on Recommendation for Nonlawyer Assistance and Representation (Sept. 6, 2024), <https://www.acus.gov/sites/default/files/documents/Nonlawyer%20Assistance%20and%20Representation%20Comment%20from%20CLINIC%202024.08.29.pdf> [<https://perma.cc/75DR-XF27>].

182. Foster Care Legal Representation, 89 Fed. Reg. 40400 (May 10, 2024) (amending 34 C.F.R. § 1356.60(c)(4)(iii)) (to be codified at 45 C.F.R. § 1356).

183. 8 C.F.R. § 1292(a)(4) (2025).

roles, agencies can coordinate to create consistency in their nonlawyer representation regulations within similar models. Finally, nonlawyer roles are referred to throughout federal statutes and regulations by varying terminology, which creates confusion and hinders uptake of opportunities. Coordination in the language used to capture various tasks done by nonlawyer representatives could also help to publicize and grow these opportunities.

Expanding and coordinating representation should also be aligned with the interagency work currently being done on process simplification and burden reduction.¹⁸⁴ For example, many agency stakeholders spoke of the connection between building out support for self-represented people as integral to the resources provided for their nonlawyer representatives as well. All of these components of access to justice ideally are working toward the same goal of providing a scaffolded and satisfactory experience for people navigating agency decision-making processes.

E. FEDERALISM

Although the Supreme Court has made clear that the federal government is free to regulate representation before its agencies,¹⁸⁵ a potential for conflict remains between rules for representation before federal agencies and state bar regulations prohibiting the unauthorized practice of law. This is particularly relevant when a state agency is adjudicating a matter governed by federal law.¹⁸⁶

As the Congressional Research Service explained:

There may be potential federal preemption issues with regard to some state UPL [unauthorized practice of law] laws that may conflict with federal immigration regulations permitting non-attorneys to represent persons free of charge in proceedings before the DHS/USCIS and the EOIR. The federal regulations do not permit representatives to engage in a for-profit business providing immigration legal services. They define “preparation” in the context of legal practice as meaning the study of the fact and law of a case and preparation of auxiliary documents in a proceeding coupled with legal advice, but not as including assistance in completing a form where the person providing such assistance does not purport to be qualified in legal matters and receives nominal remuneration. Federal laws and regulations may preempt state laws permitting immigration consultants/assistants to engage in activities for a fee when federal law limits those activities to attorneys and fee-free accredited/qualified representatives.¹⁸⁷

184. WH-LAIR REPORT, *supra* note 1, at 13–17; PAMELA HERD ET AL., IDENTIFYING AND REDUCING BURDENS IN ADMINISTRATIVE PROCESS 40–42 (2023) (report to the Admin. Conf. of the U.S.).

185. *Sperry v. Florida*, 373 U.S. 379, 442 (1963).

186. See GEORGE M. COHEN, *Regulation of Representatives*, in AGENCY ADJUDICATIVE PROCEEDINGS 8 (2021) (report to the Admin. Conf. of the U.S.); Admin. Conf. of the U.S., *supra* note 4, at 3.

187. MARGARET MIKYUNG LEE, CONG. RSCH. SERV., R40822 11, *Legal Ethics in Immigration Matters: Legal Representation and Unauthorized Practice of Law* (2009). Note that state agencies and state bars vary as to whether nonlawyer representation before the agency violates unauthorized practice of law.

Previous reports have also noted the potential friction between federally sanctioned nonlawyer programs and differing state licensing requirements.¹⁸⁸

Some agencies are actively exploring ways to address potential conflicts, as illustrated by the current rule discussions at FINRA regarding law student practice.¹⁸⁹ Other agencies, like the VA, make clear that representing someone outside of the agency's detailed regulatory scheme, particularly with respect to charging for a service without authorization, is the unauthorized practice of law.¹⁹⁰

IV. KEY OBSERVATIONS ON THE CONTRIBUTIONS OF NONLAWYERS

Given the variation of agencies and the immense spectrum of both substance and procedure that occurs under the broad umbrella of "agency adjudication," it is impossible to generalize who exactly is appearing in federal agency adjudications on behalf of individuals when these representatives are not lawyers. The above agency case studies, and the regulatory models they illustrate, are meant to provide context for this variation, while also exploring how representation works in specific settings. Taking those examples as a starting point and zooming out illustrates the following recurring themes that agencies and policy-makers should keep in mind when assessing regulatory structures for nonlawyer representation: community expertise and trust, collaboration opportunities, connection to burden reduction efforts generally, and the need for model ethics rules.

A. THE ROLE OF COMMUNITY

Throughout the research and interview process, both agency staff and advocates mentioned the importance of community ties for many nonlawyer representatives. The importance of community expertise is baked into the VA program and the representatives that work for the VSOs mentioned it often. In this case, the representatives are also veterans and share this experience with the people they represent. This shared experience creates a foundation of trust.¹⁹¹ An example building on the need for community expertise is seen with the VA's Tribal Representation Expansion Project, which granted General Counsel authorization for tribal-identified representatives to represent Native American veterans.¹⁹²

188. COHEN, *supra* note 216, at 10–13.

189. See Notice of Proposed Rule Change Relating to Qualifications for Representatives in FINRA Arbitrations and Mediations, 88 Fed. Reg. 71051 (Oct. 13, 2023).

190. 38 U.S.C. § 5901.

191. So strong is the trust between VSO and the claimant, that it was not until 1988 that attorneys were allowed to charge for services. There had been decades of belief that attorneys preyed upon veterans, and VSOs were the antidote to this predatory behavior. See Stacey-Rae Simcox, *Thirty Years of Veterans Law: Welcome to the Wild West*, 67 KAN. L. REV. 514, 519 (2019); 38 U.S.C. § 7263(c)–(d).

192. See, e.g., Department of Veterans' Affairs Tribal Representation Expansion Project, 87 Fed. Reg. 8342 (Feb. 14, 2022); 38 C.F.R. § 14.630 (2022).

As of 2023, there were two Tribal VSOs recognized by the VA to provide services to Native American veterans.¹⁹³

Community ties and the associated trust that comes with these ties were repeated themes in the immigration area as well. One organization commented that without “direct ties or trust in a community, it is often difficult to connect non-citizens with attorneys and legal representatives.”¹⁹⁴ Probate matters at the Department of the Interior provide yet another example of the strong role of community ties in nonlawyer representation. Members of the community often have a deeper understanding around probate issues specific to tribal land and tribal members.¹⁹⁵ Community ties function not only as a source of trust, but also a deep source of expertise built from shared experience that can bear on representation tasks. An expertise based on shared experience is on display in EEOC hearings as well, where other employees can represent certain federal employees with discrimination claims. In this case, the community knowledge is one of workplace colleagues placed in a similar environment and knowledgeable about that particular culture.

Recognition of community expertise can help build programs that reach many more people, particularly in rural areas or areas otherwise not as well-served by lawyers. And in many cases, the type of knowledge that comes from community expertise allows for better understanding of the facts of a particular matter. In all of these cases, the trust formed by a shared community increases access to legal representation, which can encourage trust in public institutions and adjudications more generally.¹⁹⁶

B. THE NEED FOR COLLABORATION

Collaboration is often a key to unlocking increased access to justice. One theme that ran throughout interviews and comments was the need for agencies to collaborate with nonprofits, higher education institutions, academics, and states for these programs to realize their fullest potential. There are both nonprofit organizations and law school clinics that are doing the implementation work of training and mentoring nonlawyer representatives, and more support from the federal government can help these groups meet the vast need.

Collaboration with state bars also plays an important role. Lawyer mentors, required in immigration matters, were mentioned by stakeholders as vital to the

193. Shondin Silversmith, *Gila River Indian Community Finds New Way to Support its Military Veterans*, SOURCE N.M. (Jul. 27, 2023), <https://sourcenm.com/2023/07/27/gila-river-indian-community-finds-new-way-to-support-its-military-veterans/> [https://perma.cc/DAN3-EM89].

194. Anna Gallagher, Comment Letter on Nonlawyer Assistance and Representation; Request for Comments 2 (Cath. Legal Immigr. Network 2024), <https://www.acus.gov/sites/default/files/documents/Nonlawyer%20Assistance%20and%20Representation%20Comment%20from%20CLINIC%202024.08.29.pdf> [https://perma.cc/Q9UN-DHHV].

195. Interview with Anonymous Source (date redacted) (on file with author).

196. WH-LAIR REPORT, *supra* note 1, at 25.

success of the DOJ accreditation program. Other responses mentioned that because of the collaboration between nonlawyers and lawyers in Social Security matters, and the need for a warm handoff on matters that continue on appeal to a court, it would be helpful for regulations to allow representation by an organization rather than only an individual, particularly where no fees are requested.

A recent Institute for the Advancement of the American Legal System (IAALS) report further recommends federal agencies collaborate with states on continuing to expand representation, pointing out that:

Up to this point, no state has included a representative from a federal agency on a task force or working group, but at least one state engaged federal agencies in other ways. For example, advocates from North Carolina met with the Department of Justice Antitrust Division and the Federal Trade Commission to review their 2023 legislative proposal and to provide feedback on their recommendations for the community justice worker model and limited licensing model, as well as to seek letters of support. Bringing federal agencies into the regulatory innovation fold could be a logical step.¹⁹⁷

Finally, collaborations with academic researchers are necessary in order to generate evidence-based policy on expanding representation. Researchers can help to evaluate program outcomes, particularly if the agency collects and shares the necessary information. Facilitating these connections and information-sharing can increase empirical study of nonlawyer representation, which will help agencies to increase access to representation and assistance.

C. THE CONNECTION TO BURDEN REDUCTION EFFORTS

Multiple interviews covered simplification and burden reduction efforts as part of expanding nonlawyer representation. This connection came up in two different ways: (1) agencies taking an active role publicizing nonlawyer representation and communicating opportunities for people to receive assistance and representation beyond hiring a lawyer; and (2) simplifying processes for all, which has the added benefit of creating an adjudicatory process that lends itself to training and professionalizing multiple types of representatives and assistance. Particularly for the institutional/familial pro se and individual choice models, where there is no training or qualifications required, simplification processes such as checklists could help nonlawyer representatives marshal the nonlegal expertise they bring to the adjudication.

Burden reduction efforts can work symbiotically with an expansion of nonlawyer representation. Consideration of burdens faced by representatives is a necessary component. As an aspect of burden reduction, stakeholders noted that some

197. Jessica Bednarz, *Unlocking Legal Regulation: Lessons Learned and Recommendations for the Future*, INST. FOR THE ADV. OF THE AM. LEGAL SYS. 5 (Aug. 2024), https://iaals.du.edu/sites/default/files/documents/publications/ulr_lessons_learned.pdf [<https://perma.cc/KZ4C-UWHH>].

agencies have processes that create access hurdles for authorized nonlawyers to adequately represent their clients. For example, repeated commenters alluded to nonlawyer representatives having trouble accessing client files and needing to go through cumbersome phone procedures in order to obtain information needed for representation.¹⁹⁸ Other commenters noted that lack of transparency around nonlawyer representatives and their contact information makes it harder for nonlawyer representatives to organize professionally.

D. ETHICAL CONCERNS

Increasing the focus on ethics through affirmative rules for all representatives is important. And some agencies do indeed have professional conduct rules that, in many cases, mimic lawyer-client protections or even incorporate the *ABA Model Rules of Professional Conduct*.¹⁹⁹

The recently developed *ACUS Model Rules of Representative Conduct* take on many of these concerns, including how to best regulate confidentiality and conflicts of interest with nonlawyer representatives who are not currently regulated by ABA ethics codes. Many of the regulations studied include language about ethical practice. But as mentioned above, this language is often tailored toward truth to the tribunal and avoiding outright illegal behavior. Agencies need more guidance as to nonlawyer and client interactions, particularly with respect to advertising, conflicts of interest, and confidentiality. Interviewees mentioned vulnerable populations, particularly children, where ethical codes focused on client interactions are vital.

Protecting the public from fraudulent or predatory behavior is a recurring ethical issue. Some of this behavior could be ameliorated through ethics rules more clearly addressing advertising and conflicts of interest in the realm of nonlawyer representation.²⁰⁰ In one specific example, for-profit agents took large cuts of veteran awards in exchange for assistance with filing medical claims, quickly derailing a law meant to increase benefits for veterans.²⁰¹ Since the agents claim to be educating, not representing, veterans, they operate outside the accreditation

198. See, e.g., TAYLOR C. LODISE, NONLAWYER ASSISTANCE AND REPRESENTATION IN SOCIAL SECURITY DISABILITY PROCEEDINGS: OBSERVATIONS AND SUGGESTIONS FOR IMPROVEMENT 3–4 (Aug. 31, 2024), <https://www.acus.gov/sites/default/files/documents/Nonlawyer%20Assistance%20and%20Representation%20Comment%20from%20Taylor%20Lodise%202024.08.31.pdf> [<https://perma.cc/6SP9-RVXR>] (discussing SSA).

199. See 43 C.F.R. § 1.6(a) (2025). For more on developing ethical rules tailored to nonlawyer representation, see Bruce A. Green & M. Ellen Murphy, *Replacing This Old House: Certifying and Regulating New Legal Services Providers*, 76 WASH. UNIV. J.L. & POL'Y 45 (2025).

200. See Lisa Rein, *Veterans Became Eligible for Billions. These Firms Saw a Chance to Profit.*, WASH. POST (May 23, 2024, 5:00 AM), <https://www.washingtonpost.com/politics/2024/05/23/va-benefits-for-profit-companies-pact-act/> [<https://perma.cc/9KYF-9ABK>].

201. *Id.*

scheme entirely.²⁰² According to one news article, “VA officials said there is little they can do, thanks in part to a decision by Congress in 2006 to remove criminal charges from the law forbidding entities from charging veterans for claims help.”²⁰³

In other cases, there is a separate problem of people outside the regulatory scheme entirely posing as credentialed, such as with notario fraud.²⁰⁴ This is less a problem with nonlawyer representation and more a problem of people not having access to credible representatives. In these cases, some advocates felt that increasing skilled nonlawyer representation would combat any market for fraudulent actors who may prey on potential clients.²⁰⁵ Other advocates recommended the agencies include, and oversee, in their nonlawyer regulations certain types of particular matters where fraud is prevalent and which currently exist outside regulatory structures, for example, tax return preparers.²⁰⁶

CONCLUSION

Too many people are still unable to secure legal representation in federal administrative adjudications, either because it is too expensive, unavailable or otherwise inaccessible. Even so, federal agencies have for decades led the way to increasing nonlawyer representation. In many cases, these programs have provided people with life-altering representation and assistance when navigating various administrative adjudications. This article reports on a study of fifteen such programs in order to develop a template of the various models of such representation. The goal is that by understanding the possible menu of regulatory structures for nonlawyer representation, and how they work in various types of adjudication settings, agencies and stakeholders can better consider how and where agencies can expand and strengthen opportunities for such representation.

202. Joshua Friedman and Krystle Good, *WARNO: They Call Themselves “Coaches” or “Consultants” and Advertise Their Ability to Assist You with Your VA Benefits Claim but May not Be Accredited to Practice Before the VA*, CFBP BLOG (Feb. 15, 2023), <https://www.consumerfinance.gov/about-us/blog/coaches-consultants-advertise-ability-to-assist-with-va-benefits-claim-but-may-not-be-accredited/> [<https://perma.cc/KP2C-2BQC>].

203. Rein, *supra* note 233.

204. See *About Notario Fraud*, AM. BAR ASS. (Dec. 12, 2024), https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud/ [<https://perma.cc/JA2K-FXES>] for more information on Notario Fraud.

205. See Emily A. Unger, *Solving Immigration Consultant Fraud Through Expanded Federal Accreditation*, 29 L. & INEQ. 425, 428 (2011).

206. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105217, *IRS EFFORTS TO OVERSEE REFUNDABLE CREDITS HELP PROTECT TAXPAYERS BUT ADDITIONAL ACTIONS AND AUTHORITY ARE NEEDED* 35 (2022).