



Quality Assurance Systems in Agency Adjudication

Joint ad hoc Committee of the Committee on Adjudication and Committee on Administration and Management

Proposed Recommendation for Committee | November 17, 2021

1 A quality assurance system is an internal review mechanism that agencies use to detect
 2 and remedy both problems in individual adjudications and systemic problems in agency
 3 adjudicative programs. ~~Through well-designed and well-implemented quality assurance systems,~~
 4 ~~agencies can proactively identify issues ranging from incorrect case citations or misapplied legal~~
 5 ~~standards in individual cases to program-wide issues, such as inconsistent applications of the law~~
 6 ~~by different adjudicators or systemic barriers to participation in adjudicatory~~
 7 ~~proceedings.~~ Through well-designed and well-implemented quality assurance systems, agencies
 8 can proactively identify ~~issues/problems~~ in individual cases and on a systemic basis, including
 9 ~~misapplied legal standards, inconsistent applications of the law by different adjudicators, denials~~
 10 ~~of procedure required by law or regulation, incorrect or inadequate notice to claimants, and~~
 11 ~~systemic barriers to participation in adjudicatory proceedings (such as denials of reasonable~~
 12 ~~accommodation).~~ Identifying such problems enables agencies to improve the fairness (and
 13 perception of fairness), accuracy, inter-decisional consistency, timeliness, and efficiency of their
 14 adjudicative programs.

15 In 1973, the Administrative Conference recommended the use of quality assurance
 16 systems to evaluate the accuracy, timeliness, and fairness of adjudication of claims for public
 17 benefits or compensation.¹ Since then, many agencies, including those that adjudicate other types
 18 of matters, have implemented or considered implementing quality assurance systems, often to

¹ Admin. Conf. of the U.S., Recommendation 73-3, *Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation*, 38 Fed. Reg. 16,840 (June 27, 1973).

Commented [A1]: Comment from Public Member Russell Wheeler: The word “issues” appears five times in this eight-line paragraph. Consider changing “issues” on line 4 to “mistakes” and to “problems” at line 5.

Commented [A2R1]: For Committee Consideration: We propose referring throughout to “problems” as what a QA system will proactively identify.

Commented [A3]: Comment from Government Member Robert Girouard: I have a proposal to address Judge Manuel’s comment that we should amend the preamble to “appropriately insert the notion of compliance with procedural due process requirements,” and also to address the staff comment on line 6 (DAS 1) asking whether the preamble’s “mention of barriers in adjudicatory proceedings effectively address[es] the issue . . . concerning whether socioeconomic and other conditions affect access to justice.”

I would amend the text to read:

“Through well-designed and well-implemented quality assurance systems, agencies can proactively identify issues in individual cases and on a systemic basis, including misapplied legal standards, inconsistent applications of the law by different adjudicators, denials of procedure required by law or regulation, incorrect or inadequate notice to claimants, and systemic barriers to participation in adjudicatory proceedings (such as denials of reasonable accommodation).”



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19 supplement other internal review mechanisms such as agency appellate systems.² This
20 Recommendation accounts for these developments and provides further guidance for agencies
21 that may wish to implement new or improve existing quality assurance systems.

22 How agencies structure their quality assurance systems can have important consequences
23 for their success. **For example, quality assurance systems that overemphasize timeliness as a**
24 **measure of quality may overlook issues of decisional accuracy.** Quality assurance personnel
25 must have the expertise and judgment necessary to accurately and impartially perform their
26 responsibilities. Quality assurance personnel must use methods for selecting and reviewing cases
27 that allow them to effectively identify case-specific and systemic problems. Agencies must
28 determine how they will use information collected through quality assurance systems to address
29 issues that would otherwise affect the fairness (and perception of fairness), accuracy, inter-
30 decisional consistency, timeliness, and efficiency of their adjudicative programs. **Agencies also**
31 **must design quality assurance systems to comply with all applicable legal and ethical**
32 **requirements, such as the statutory prohibition against rating the job performance of or granting**
33 **any monetary or honorary award to an administrative law judge.**³

34 There are many methods of quality review that agencies can use, **independently or in**
35 **combination,** depending upon the needs and goals of their programs. For example, agencies can
36 adopt a peer review process by which adjudicators review other adjudicators' decisions and
37 provide feedback before decisions are issued. Agencies can prepare and circulate regular reports
38 for internal use that describe systemic trends identified by quality assurance personnel. Agencies
39 can also use information from quality assurance systems to identify training needs and clarify or
40 improve policies.

41 Agencies, particularly those with large caseloads, may also benefit from using data
42 captured in electronic case management systems. Through advanced data analytics and artificial

Commented [A4]: For Committee Consideration: this additional sentence addresses a concern raised at the last Committee meeting about emphasizing decisional accuracy.

Commented [A5]: Comment from Liaison Representative H. Alexander Manuel: If there is a way to appropriately insert the notion of compliance with procedural due process requirements? I think that would be helpful in reminding readers of the overarching consideration with administrative adjudication.

Commented [A6]: For Committee Consideration: We added this in response to Government Member Rob Girouard's suggestion to recommend a layered approach to quality assurance.

² Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021).

³ See, e.g., 5 U.S.C. § 4301; 5 C.F.R. § 930.206.



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43 intelligence techniques (e.g., machine-learning algorithms), agencies can use such data to rapidly
44 and efficiently identify anomalies and systemic trends.⁴

45 This Recommendation recognizes that agencies have different needs and available
46 resources when it comes to quality assurance. What works best for one agency may not work for
47 another. What quality assurance techniques agencies may use may also be constrained by law.
48 Agencies must take into account their own unique circumstances when implementing the best
49 practices that **follow**.

RECOMMENDATION

Review and Development of Quality Assurance Standards

- 50 1. Agencies with adjudicative programs that do not have quality assurance systems—that is,
51 practices for assessing and improving the quality of decisions in adjudicative programs—
52 should consider developing such systems to promote fairness, the perception of fairness,
53 accuracy, timeliness, efficiency, inter-decisional consistency, and other goals relevant to
54 their adjudicative programs.
- 55 2. Agencies with adjudicative programs that do have existing quality assurance systems
56 should review them in light of the recommendations below.
- 57 3. Agencies' quality assurance systems should assess whether decisions and decision-
58 making processes:
- 59 **a.** promote fairness and the appearance of fairness,
 - 60 **a-b.** accurately determine the facts of the individual matters,
 - 61 **b-c.** correctly apply the law to the facts of the individual matters,
 - 62 **e-d.** comply with all applicable requirements,
 - 63 **d-e.** are completed in a timely and efficient manner, and
 - 64 **f.** are consistent across all adjudications of the same type.

Commented [A7]: Comment from Public Member Russell Wheeler: Should the preamble answer this question, which might come, if not from an agency official, then from a reporter on the federal agency beat: "What happens if [just as an example] a QA person finds, in reviewing a final decision, that that a pro se claimant was entitled to \$725/month rather than \$275 as awarded?"

Commented [A8R7]: For Committee Consideration: We believe the Recommendations (see, e.g., Paragraph 22) address this issue.

⁴ Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence*, 86 Fed. Reg. 6616 (Jan. 22, 2021); Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30,686 (June 29, 2018).



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65 4. Agencies should consider both predictive reviews, to address decisions' likely outcomes
66 before reviewing tribunals, and reviews of adjudicators' decisional reasoning, which
67 address policy compliance, consistency, and fairness.

68 4.5.A quality assurance system should review the work of adjudicators and all related
69 personnel who have important roles in the adjudication of cases, such as attorneys who
70 assist in drafting decisions, interpreters who assist in hearings, and staff who assist with
71 development of evidence.

72 5.6.Reviewing decisions of agency appellate and judicial review bodies may help assess
73 whether the adjudicatory process is meeting the above goals. But agencies should not rely
74 solely on such decisions to set and assess standards of quality because appealed cases
75 may not be representative of all adjudications.

Quality Assurance Personnel

76 6.7.Agencies should ensure that quality assurance personnel can perform their assigned
77 functions in a manner that is, and is perceived as, impartial, including being able to
78 perform such functions without pressure, interference, or expectation of employment
79 consequences from the personnel whose work they review.

80 7.8.Agencies should ensure that quality assurance personnel understand all applicable
81 substantive and procedural requirements and have the expertise necessary to review the
82 work of all personnel who have important roles in adjudicating cases.

83 8.9.Agencies should ensure that quality assurance personnel have sufficient time to fully and
84 fairly perform their assigned functions.

85 9.10. Agencies should consider whether quality assurance systems should be staffed by
86 permanent or temporary personnel, or some combination of the two. Personnel who
87 perform quality assurance functions on a permanent basis may gain experience and
88 institutional knowledge over time. Personnel who perform on a temporary basis may
89 contribute different experiences and new perspectives.

Timing of and Process for Quality Assurance Review

90 10.11. Agencies should consider at what point in the adjudication process quality
91 assurance review should occur. In some cases, review that occurs before adjudicators

Commented [A9]: Comment from Government Member Robert Girouard: I do not think the recommendation captures an important point that the consultants addressed on pages 14-16 of the report, related to the pros and cons of taking a "predictive" approach to quality assurance vs. a review of "decisional reasoning." I think a good spot for this would be after paragraph 3 (formerly paragraph 4):

"Agencies should consider both predictive reviews, to address decisions' likely outcomes before reviewing tribunals; and reviews of adjudicators' decisional reasoning, which address policy compliance, consistency, and fairness."

Commented [A10]: Comment from Liaison Representative H. Alexander Manuel: add compliance with the agency's diversity and inclusion goals.

Commented [A11R10]: Comment from Chai Feldblum: We should consider pinning this issue as a broader issue relevant to quality assurance personnel.



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92 issue their decisions, or during a period when agency appellate review is available, could
93 allow errors to be corrected before decisions take effect. However, agencies that utilize
94 review for such these purposes should ensure that such this review does not interfere with
95 adjudicators’ qualified decisional independence and comports with applicable restrictions
96 governing ex parte communications, internal separation of decisional and adversarial
97 personnel, and decision making based on an exclusive record. ~~However, agencies that~~
98 ~~utilize review for such purposes should ensure that such review comports with applicable~~
99 ~~restrictions governing ex parte communications, internal separation of decisional and~~
100 ~~adversarial personnel, and decision making based on an exclusive record.~~

101 12. Agencies should consider a layered approach to quality assurance that employs more than
102 one methodology. As resources allow, this may include formal quality assessments and
103 informal peer review on an individual basis, sampling and targeted case selection on a
104 systemic basis, and case management systems with automated adjudication support tools.

105 11.13. Agencies should consider implementing peer review programs in which
106 adjudicators can provide feedback to other adjudicators.

107 12.14. In selecting cases for quality assurance review, agencies should consider the
108 following methods:

- 109 a. Review of every case, which may be useful for agencies that adjudicate a small
- 110 number of cases but impractical for agencies that decide a high volume of cases;
- 111 b. Random sampling, which can be more efficient for agencies that decide a high
- 112 volume of cases but may cause quality assurance personnel to spend too much
- 113 time reviewing cases that are unlikely to present issues of concern;
- 114 c. Stratified random sampling, a type of random sampling that over-samples cases
- 115 based on chosen characteristics, which may help quality assurance personnel
- 116 focus on specific legal issues or factual circumstances associated with known
- 117 problems, but may systematically miss certain types of problems; and
- 118 ~~d.~~ Targeted selection of cases, which allows agencies to directly select decisions that
- 119 contain specific case characteristics and may help agencies study known problems
- 120 but may miss identifying other possible problems.

Commented [A12]: Comment from Government Member Tristan L. Leavitt: My recommendation for the language: “However, agencies that utilize review for such purposes should ensure that such review does not interfere with adjudicators’ qualified decisional independence and comports with applicable restrictions governing ex parte communications, internal separation of decisional and adversarial personnel, and decisionmaking based on an exclusive record.”

Commented [A13R12]: For Committee Consideration: We’ve offered a few Committee on Style edits to this addition.

Commented [A14]: Comment from Government Member Robert Girouard: Suggestion to add a new paragraph 12 or 13 to the recommendation. By way of background, I think the consultants’ report shows the importance of a layered approach to quality assurance, with its findings related to individual quality assessments and peer review (pages 9-10), sampling and targeted case selection (pages 11-13), and real-time quality assurance through adjudication support tools (pages 18-19). Yet I don’t think any one paragraph of the recommendation captures the value of employing more than one methodology. I’d like to suggest the following:

“Agencies should consider a layered approach to quality assurance that employs more than one methodology. As resources allow, this may include formal quality assessments and informal peer review on an individual basis, sampling and targeted case selection on a systemic basis, and case management systems with automated adjudication support tools.”

Commented [A15R14]: For Committee Consideration: We also offer additional language to address this point in the preamble on lines 30-31.

Commented [A16]: Comment from Liaison Representative H. Alexander Manuel: This could benefit from an “e.g.,” or illustration.

Commented [A17R16]: For Committee Consideration: A draft potential illustration could be something such as, “e.g., a targeted selection could identify cases involving a specific allegation, benefit type, or procedural issue.”



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Data Collection and Analysis

121 ~~13~~15. Agencies, particularly those with large caseloads, should consider how they can
122 use data for quality assurance purposes. Agencies should ensure that, for each case,
123 electronic case management or other systems record:

- 124 a. The identities of adjudicators and any personnel who assisted in evaluating
125 evidence, writing decisions, or performing other case-processing tasks;
- 126 b. The procedural history of the case, including any actions and outcomes on
127 administrative or judicial review;
- 128 c. The issues presented in the case and how they are resolved; and
- 129 d. Any other data the agency determines to be helpful.

130 ~~14~~16. Agencies should regularly evaluate their electronic case management or other
131 systems to ensure they are collecting the data necessary to assess and improve the quality
132 of decisions in their programs.

133 ~~15~~17. Agencies, particularly those with large caseloads, should consider whether to use
134 data analytics and artificial intelligence (AI) tools to help quality assurance personnel
135 identify potential errors or other quality issues. Agencies should ensure that they have the
136 technical capacity, expertise, and data infrastructure necessary to build and deploy such
137 tools; that any data analytics or AI tools the agencies use support, but do not displace,
138 evaluation and judgment by quality assurance personnel; and that such systems comply
139 with legal requirements for privacy and security and do not unintentionally create or
140 exacerbate harmful biases.

Use of Quality Assurance Data and Findings

141 ~~16~~18. For adjudicators and related personnel who receive performance appraisals,
142 agencies should not use information gathered through quality assurance systems in ways
143 that could improperly influence decision making. In making this recommendation, the
144 Conference recognizes that federal law prohibits agencies from rating the job
145 performance of an administrative law judge or granting an administrative law judge any
146 monetary or honorary award or incentive.



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147 17-19. Agencies should provide, consistent with Paragraph 110, individualized feedback
148 for adjudicators and other personnel who assist in evaluating evidence, writing decisions,
149 or performing other case-processing tasks within a reasonable amount of time and include
150 any relevant positive and negative feedback.

151 18-20. Agencies should communicate information about systemic recurring or emerging
152 problems identified by quality assurance systems to all personnel who participate in the
153 decision-making process and to training personnel.

154 19-21. As appropriate, quality assurance personnel should communicate with agency
155 rule-writers and operations support personnel—and institutionalize communication
156 mechanisms—to allow them to consider whether recurring issues should be addressed or
157 clarified by rules, operational guidance, or decision support tools.

158 20-22. Agencies should consider whether quality assurance personnel should
159 communicate information about problems identified in issued decisions to appellate
160 adjudicators or other agency officials who are authorized to remedy the problems.

Public Disclosure and Transparency

162 21-23. Agencies should provide access on their websites to all sources of procedural
163 rules and related guidance documents (including explanatory materials) that apply to
164 quality assurance systems, including standards for evaluating the quality of agency
165 decisions and decision-making processes.

166 24. Agencies should consider whether to publicly disclose data in case management systems
167 in a de-identified form (i.e., with all personally identifiable information removed) to
168 enable continued research by independent organizations to further develop best practices
169 in this area.

Assessment and Oversight

170 22-25. Agencies with quality assurance systems should periodically assess whether those
171 systems achieve the goals they were intended to accomplish, including by affirmatively
172 soliciting feedback from the public, adjudicators, and other agency personnel concerning
173 the functioning of their quality assurance systems.

Commented [A18]: Comment from Government Member Tristan L. Leavitt: Whatever the proposed language ends up being, this would be clearer if it read “communication information TO APPELLATE ADJUDICATORS about ...” Having that bolded phrase at the end makes it more confusing.

Commented [A19R18]: For Committee Consideration: New language added to clarify this recommendation based on Government Member Tristan Leavitt’s concern noted above.

Commented [A20]: For Committee Consideration: This addition addresses an issue raised by ACUS Project Consultants that agencies should also formulate and be transparent about their standards of review.

Commented [A21]: Comment from Public Member Russell Wheeler: Is this basically a recommendation to release aggregate case filing/processing/disposition data? That’s a good idea but the paragraph is unclear as to how making that information would facilitate QA analysis. The reference to “best practices in this area” is ambiguous. I suspect the idea is that outside organizations could use case processing data to evaluate one aspect of quality, i.e., quality docket management.

Commented [A22]: For Committee Consideration: The Committee moved these two Paragraphs but they have not yet been reviewed.

Commented [A23]: For Committee Consideration: Jeff Lubbers raised including a version of the following recommendation from the 1973 report:

“Agencies should employ such other techniques for gathering information on their adjudication process, including field investigations and special studies, as are required for the evaluation of accuracy, timeliness and fairness. Agencies should be particularly sensitive to the need for better information on the extent to which claimants’ personal resources, social status and access to representation or other assistance may affect the adjudication of claims.”

Commented [A24R23]: For Committee Consideration: This issue has not yet been addressed. If the committee wants to adopt this paragraph, discussion is needed for where to include it.