



## 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 | October 26, 2021

1 [PLACEHOLDER FOR PREAMBLE]

#### RECOMMENDATION

##### Development of Quality Assurance Standards

- 2 1. Agencies should consider implementing quality assurance systems—that is, practices for  
3 assessing and improving the quality of decisions in adjudicative programs—when doing  
4 so would promote fairness, the perception of fairness, accuracy, inter-decisional  
5 consistency, timeliness, efficiency, and other goals relevant to their adjudication  
6 programs.
- 7 2. A quality assurance system should review the work of adjudicators and related personnel  
8 who have important roles in the adjudication of cases, including those who assist in  
9 evaluating evidence, writing decisions, or other case-processing tasks.
- 10 3. Agencies' quality assurance systems should assess whether decision making:  
11 a. is accurate given the facts of the individual matters,  
12 b. complies with all applicable substantive and procedural requirements,  
13 c. is completed in a timely manner, and  
14 d. is consistent across all adjudications.

15 Although outcomes on administrative and judicial review may be helpful in assessing  
16 whether decision making is factually accurate, legally compliant, timely, and consistent,



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17 agencies should be mindful that appealed cases and issues decided on appeal may not  
18 reflect a representative sample of all adjudications.

### Quality Assurance Personnel

- 19 4. Agencies should ensure that quality assurance personnel understand all applicable  
20 substantive and procedural requirements and have the expertise necessary to review the  
21 work of all personnel who have important roles in adjudicating cases.
- 22 5. Agencies should ensure that quality assurance personnel can perform their assigned  
23 functions in a manner that is, and is perceived as, impartial, including being able to  
24 perform such functions without pressure, interference, or expectation of employment  
25 consequences from the personnel whose work they review.
- 26 6. Agencies should ensure that quality assurance personnel have sufficient time to fully and  
27 fairly perform their assigned functions.
- 28 7. Agencies should consider whether they assign personnel to perform quality assurance  
29 functions on a permanent or temporary basis. Personnel who perform quality assurance  
30 functions on a permanent basis may gain experience and institutional knowledge over  
31 time. Personnel who perform quality assurance functions on a temporary basis may bring  
32 different experiences and new perspectives to the review process.

### Timing of and Process for Quality Assurance Review

- 33 8. Agencies should consider at what point in the adjudication process quality assurance  
34 review should occur. Review that occurs before adjudicators issue their decisions, or  
35 during a period when agency appellate review is available, allows errors to be corrected  
36 before decisions take effect but, in some cases, could have the effect of improperly  
37 influencing adjudicators' decision making.
- 38 9. In selecting cases for quality assurance review, agencies should consider the following  
39 methods:
  - 40 a. Reviewing every case, which may be useful for agencies that decide a small  
41 number of cases but inefficient for agencies that decide a high volume of cases;

**Commented [DAS1]:** As the preamble will explain, the decision to appeal a case may be based on factors that are unrelated to the quality of the decision. For example, parties may be more likely to appeal cases that are more likely to succeed, statutes or regulations may restrict which parties can appeal decisions, and parties may lack resources or access to sufficient representation to effectively appeal a decision.



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- b. Random sampling, which can be more efficient for agencies that decide a high volume of cases but may cause quality assurance personnel to spend too much time reviewing cases that are unlikely to present issues of concern; and
- c. Stratified random sampling, a type of random sampling that over-samples cases based on chosen characteristics, which may help quality assurance personnel focus on specific legal issues or factual circumstances associated with known errors, but may systematically miss certain types of errors.

Agencies should ensure that case selection does not have the effect of improperly influencing adjudicators' decision making.

- 10. Agencies, particularly those with large caseloads, should consider how they can use data captured by electronic case management systems for quality assurance purposes.

Agencies should ensure that, for each case, electronic case management systems record:

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

- 11. Agencies, particularly those with large caseloads, should consider whether to use artificial intelligence (AI) tools to help quality assurance personnel identify potential errors or other quality issues. Agencies should ensure that they have the technical capacity, expertise, and data infrastructure necessary to build and deploy AI tools; that any AI tools the agencies use support but do not displace decision making by quality assurance personnel; and that AI systems comply with legal requirements for privacy and security and do not unintentionally create or exacerbate harmful biases.

### Use of Quality Assurance Data and Findings

- 12. For adjudicators and related personnel who receive performance appraisals, agencies should not use information gathered through quality assurance systems in ways that could have the effect of improperly influencing decision making. In making this

**Commented [DAS2]:** For Committee Discussion: Should this recommendation elaborate on what an agency can do to avoid improperly influencing adjudicators' decision making?



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- 70 Recommendation, the Conference recognizes that federal law prohibits agencies from  
71 rating the job performance of an administrative law judge or granting an administrative  
72 law judge any monetary or honorary award or incentive (5 U.S.C. § 4301; 5 C.F.R.  
73 § 930.206).
- 74 13. Agencies should consider whether quality assurance personnel should present feedback to  
75 adjudicators and other personnel who assist in evaluating evidence, writing decisions, or  
76 other case-processing tasks. If agencies do provide feedback to adjudicators and related  
77 personnel, they generally should transmit feedback within a reasonable amount of time  
78 and include any relevant positive and negative feedback.
- 79 14. Agencies should communicate information about recurring or emerging issues identified  
80 by quality assurance systems to all personnel who participate in the decision-making  
81 process and to training personnel.
- 82 15. As appropriate, quality assurance personnel should communicate with agency rule-  
83 writers and other agency policymakers—and institutionalize communication  
84 mechanisms—to address whether recurring issues should be addressed or clarified by  
85 rule.
- 86 16. Agencies should consider whether quality assurance personnel should communicate  
87 information about issues identified in particular cases to appellate adjudicators.

### **Assessment and Oversight**

- 88 17. Agencies with quality assurance systems should periodically assess whether those  
89 systems achieve the goals they were intended to accomplish.
- 90 18. Agencies should affirmatively solicit feedback from the public, adjudicators, and other  
91 agency personnel concerning the functioning of their quality assurance systems and  
92 provide a means for doing so.

### **Public Disclosure and Transparency**

- 93 19. Agencies should provide access on their websites to all sources of procedural rules and  
94 related guidance documents and other explanatory materials that apply to quality  
95 assurance systems.



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96 20. Agencies should consider whether to publicly disclose data in case management systems  
97 in a de-identified form (i.e., with all identifiable information removed) to enable  
98 continued research by independent organizations to further develop best practices in this  
99 area.