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 2, 2021

A quality assurance system is an internal review mechanism that agencies use to detect
and remedy both issues in individual adjudications and systemic issues in agency adjudicative
programs. Through well-designed and well-implemented quality assurance systems, agencies can
proactively identify issues ranging from incorrect case citations or misapplied legal standards in
individual cases to program-wide issues, such as inconsistent applications of the law by different
adjudicators or systemic barriers to participation in adjudicatory proceedings. Identifying such
issues enables agencies to improve the fairness (and perception of fairness), accuracy, inter-
decisional consistency, timeliness, and efficiency of their adjudicative programs.

In 1973, the Administrative Conference endorsed the use of quality assurance systems to
evaluate the accuracy, timeliness, and fairness of adjudication of claims for public benefits or
compensation. Since then, many agencies, including those that adjudicate other types of matters,
have implemented or considered implementing quality assurance systems, often to supplement
other internal review mechanisms such as agency appellate systems. This Recommendation
accounts for these developments and provides further guidance for agencies that may wish to
implement new or improve existing quality assurance systems.

How agencies structure their quality assurance systems can have important consequences
for their success. Among other things, quality assurance personnel must have the expertise
necessary to accurately and impartially perform their responsibilities. Quality assurance

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1 Admin. Conf. of the U.S., Recommendation 73-3, Quality Assurance Systems in the Adjudication of Claims of
personnel must use methods for selecting and reviewing cases that allow them to effectively identify case-specific and systemic issues. Agencies must determine how they will use information collected through quality assurance systems to address issues that would otherwise affect the fairness (and perception of fairness), accuracy, inter-decisional consistency, timeliness, and efficiency of their adjudicative programs. Agencies also must design quality assurance systems to comply with all applicable legal requirements.

There are many methods of quality review that agencies can use depending upon the needs and goals of their programs. For example, agencies can adopt a peer review process by which adjudicators review other adjudicators’ decisions and provide feedback before decisions are issued. Agencies can issue regular reports that describe systemic trends identified by quality assurance personnel. Agencies can also use information from quality assurance systems to identify training needs and clarify or improve policies.

Agencies, particularly those with large caseloads, may also benefit from using data captured in electronic case management systems. Through advanced data analytics and artificial intelligence techniques (e.g., machine-learning algorithms), agencies can use such data to rapidly and efficiently identify anomalies and systemic trends.

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

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4 For example, federal law prohibits agencies from rating the job performance of an administrative law judge or granting an administrative law judge any monetary or honorary award or incentive. 5 U.S.C. § 4301; 5 C.F.R § 930.206.

RECOMMENDATION

**Review and Development of Quality Assurance Standards**

1. Agencies with adjudicative programs should review their existing quality assurance systems—that is, practices for assessing and improving the quality of decisions in adjudicative programs—in light of the recommendations below.

2. Agencies with adjudicative programs that do not have quality assurance systems should consider implementing quality assurance systems to promote fairness, the perception of fairness, accuracy, timeliness, efficiency, inter-decisional consistency, and other goals relevant to their adjudication programs.

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

4. Agencies’ quality assurance systems should assess whether decisions and decision-making processes:
   a. promote fairness and the appearance of fairness,
   b. accurately address the facts of the individual matters,
   c. comply with all applicable legal requirements,
   d. are completed in a timely and efficient manner, and
   e. are consistent across all adjudications of the same type.

5. Reviewing the outcomes of decisions subject to administrative and judicial review may help assess whether the adjudicatory process is meeting the above goals. But agencies should not rely solely on these outcomes to set and assess standards of quality because appealed cases may not be representative of issues across the adjudicatory program as a whole.

**Quality Assurance Personnel**

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

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

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

9. Agencies should consider whether to assign personnel to perform quality assurance functions on a permanent or temporary basis. Agencies that assign personnel to perform quality assurance functions on a permanent basis may benefit from personnel gaining experience and institutional knowledge over time. Agencies that assign personnel to perform on a temporary basis may benefit from such personnel’s different experiences and new perspectives.

Timing of and Process for Quality Assurance Review

10. Agencies should consider at what point in the adjudication process quality assurance review should occur. In certain types of appropriate cases, review that occurs before adjudicators issue their decisions, or during a period when agency appellate review is available, would allow errors to be corrected before decisions take effect but, in some cases, could improperly influence adjudicators’ decision making or violate specific legal prohibitions governing ex parte communications, internal separation of decisional and adversarial personnel, and decision making based on an exclusive record.

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

   a. Review of every case, which may be useful for agencies that adjudicate a small number of cases but inefficient for agencies that decide a high volume of cases;

   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;
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; and
d. Targeted selection of cases, which allows agencies to directly select decisions that contain specific case characteristics and may help agencies study known issues but may miss identifying other possible errors;

12. Among other processes for quality assurance system review, agencies should consider implementing peer review programs in which adjudicators can provide feedback to other adjudicators before decisions are issued.

Data Collection and Analysis

13. 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 performing 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.

14. Agencies that capture data in electronic case management systems should regularly evaluate the scope and quality of the data they collect to ensure that it continues to achieve the goals for which the systems were designed.

15. Agencies, particularly those with large caseloads, should consider whether to use data analytics and 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 such tools; that any data analytics or AI tools the agencies use support, but do not displace, decision making by quality assurance personnel; and that such 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

16. For adjudicators and related personnel who receive performance appraisals, agencies should not use information gathered through quality assurance systems in ways that could improperly influence decision making. In making this recommendation, the Conference recognizes that federal law prohibits agencies from rating the job performance of an administrative law judge or granting an administrative law judge any monetary or honorary award or incentive (5 U.S.C. § 4301; 5 C.F.R § 930.206).

17. Agencies should consider whether quality assurance personnel should present feedback to adjudicators and other personnel who assist in evaluating evidence, writing decisions, or performing other case-processing tasks. If agencies do provide feedback to adjudicators and other personnel, they generally should do so within a reasonable amount of time and include any relevant positive and negative feedback.

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

19. As appropriate, quality assurance personnel should communicate with agency rule-writers and other agency policymakers—and institutionalize communication mechanisms—to address whether recurring issues should be addressed or clarified by rule.

20. Agencies should consider whether quality assurance personnel should communicate information about issues identified in particular cases to appellate adjudicators.

Assessment and Oversight

21. Agencies with quality assurance systems should periodically assess whether those systems achieve the goals they were intended to accomplish.

22. Agencies should affirmatively solicit feedback from the public, adjudicators, and other agency personnel concerning the functioning of their quality assurance systems.

Commented [DAS13]: 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."

This issue has not yet been addressed.

Commented [DAS14]: For Committee consideration from ACUS Project Consultants: Agencies should also formulate and be transparent about their standards of review.
Public Disclosure and Transparency

23. Agencies should provide access on their websites to all sources of procedural rules and related guidance documents (including explanatory materials) that apply to quality assurance systems.

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