



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

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

9 In 1973, the Administrative Conference endorsed the use of quality assurance systems to
10 evaluate the accuracy, timeliness, and fairness of adjudication of claims for public benefits or
11 compensation¹ Since then, many agencies, including those that adjudicate other types of matters,
12 have implemented or considered implementing quality assurance systems, often to supplement
13 other internal review mechanisms such as agency appellate systems.² This Recommendation
14 accounts for these developments and provides further guidance for agencies that may wish to
15 implement new or improve existing quality assurance systems.

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

Commented [DAS1]: For Committee consideration: does this mention of barriers in adjudicatory proceedings effectively address the issue raised last Committee meeting concerning whether socioeconomic and other conditions affect access to justice?

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)..

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



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19 personnel must use methods for selecting and reviewing cases that allow them to effectively
20 identify case-specific and systemic issues. Agencies must determine how they will use
21 information collected through quality assurance systems to address issues that would otherwise
22 affect the fairness (and perception of fairness), accuracy, inter-decisional consistency, timeliness,
23 and efficiency of their adjudicative programs.³ Agencies also must design quality assurance
24 systems to comply with all applicable legal requirements.⁴

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

31 Agencies, particularly those with large caseloads, may also benefit from using data
32 captured in electronic case management systems. Through advanced data analytics and artificial
33 intelligence techniques (e.g., machine-learning algorithms), agencies can use such data to rapidly
34 and efficiently identify anomalies and systemic trends.⁵

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

³ See generally Daniel Ho, David Marcus, & Gerald Ray, Quality Assurance Systems in Agency Adjudication: Emerging Practices and Insights (Oct. 24, 2021).

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.

⁵ Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30,686 (June 29, 2018); Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence*, 86 Fed. Reg. 6616 (Jan. 22, 2021).



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, ~~in evaluating quality,~~ 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, and is perceived as, impartial, including being able to

Commented [DAS2]: For Committee consideration: ACUS Project Consultants suggested including the following recommendation about decisional accuracy:

“An agency may appropriately use a quality assurance program to determine if its decision-making meets a number of goals. But decisional accuracy should always remain as a core focus of any such program.”

Commented [DAS3]: For Committee consideration: Should Paragraph 1 and 2 be combined into one recommendation?

Commented [DAS4]: For Committee consideration: Is the phrase “in evaluating quality” redundant? If so, consider deleting.

Commented [DAS5]: For Committee consideration: we added this language to address the Committee’s suggestion to include examples.

Commented [DAS6]: For Committee consideration: This language was added to address the issue, raised at the last Committee meeting, that agencies should pay attention to both the data they collect as well as the data they do not collect.



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- 65 perform such functions without pressure, interference, or expectation of employment
- 66 consequences from the personnel whose work they review
- 67 7. Agencies should ensure that quality assurance personnel understand all applicable
- 68 substantive and procedural requirements and have the expertise necessary to review the
- 69 work of all personnel who have important roles in adjudicating cases.
- 70 8. Agencies should ensure that quality assurance personnel have sufficient time to fully and
- 71 fairly perform their assigned functions.
- 72 9. Agencies should consider whether to assign personnel to perform quality assurance
- 73 functions on a permanent or temporary basis. Agencies that assign personnel to perform
- 74 quality assurance functions on a permanent basis may benefit from personnel gaining
- 75 experience and institutional knowledge over time. Agencies that assign personnel to
- 76 perform on a temporary basis may benefit from such personnel’s different experiences
- 77 and new perspectives.

Timing of and Process for Quality Assurance Review

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

- 85 11. In selecting cases for quality assurance review, agencies should consider the following
- 86 methods:
- 87 a. Review of every case, which may be useful for agencies that adjudicate a small
- 88 number of cases but inefficient for agencies that decide a high volume of cases;
- 89 b. Random sampling, which can be more efficient for agencies that decide a high
- 90 volume of cases but may cause quality assurance personnel to spend too much
- 91 time reviewing cases that are unlikely to present issues of concern;

Commented [DAS7]: Comment from ACUS Project Consultants: It might be helpful if there was a recommendation entirely devoted to peer review, given that this is a significant point of difference between this report and Mashaw’s original take. Perhaps something like:

“Agencies should investigate whether formal or informal models will help improve quality review and enhance collaborative learning within the agency. In particular, agencies should explore how adjudicators can help their peers with ongoing cases and how line-level decision-makers can provide feedback to the quality review team.”

Commented [DAS8]: Comment from ACUS Project Consultants: We aren’t entirely sure what the posited risk in recommendation 8 is. Pre-decisional review (or pre-effectuation review) would still be looking for legal/factual issues.

Commented [DAS9]: For Committee consideration: The Committee suggested adding a reference to legal prohibitions in the APA and other relevant statutes. We’ve included specific legal prohibitions here (with language from Recommendation 2016-4, *Evidentiary Hearings Not Required by the Administrative Procedure Act*).



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- 92 c. Stratified random sampling, a type of random sampling that over-samples cases
93 based on chosen characteristics, which may help quality assurance personnel
94 focus on specific legal issues or factual circumstances associated with known
95 errors, but may systematically miss certain types of errors; and
96 d. Targeted selection of cases, which allows agencies to directly select decisions that
97 contain specific case characteristics and may help agencies study known issues
98 but may miss identifying other possible errors.
- 99 12. Among other processes for quality assurance system review, agencies should consider
100 implementing peer review programs in which adjudicators can provide feedback to other
101 adjudicators before decisions are issued.

Commented [DAS10]: For Committee consideration: This list item is based off a suggestion, raised at the last Committee meeting, from ACUS Project Consultants about targeted reviews.

Commented [DAS11]: For Committee consideration: Same as above.

Data Collection and Analysis

- 102 13. Agencies, particularly those with large caseloads, should consider how they can use data
103 captured by electronic case management systems for quality assurance purposes.
104 Agencies should ensure that, for each case, electronic case management systems record:
105 a. The adjudicators and any personnel who assisted in evaluating evidence, writing
106 decisions, or performing other case-processing tasks;
107 b. The procedural history of the case, including any actions and outcomes on
108 administrative or judicial review;
109 c. The issues presented in the case and how they are resolved; and
110 d. Any other data the agency determines to be helpful.
- 111 14. Agencies that capture data in electronic case management systems should regularly
112 evaluate the scope and quality of the data they collect to ensure that it continues to
113 achieve the goals for which the systems were designed.
- 114 15. Agencies, particularly those with large caseloads, should consider whether to use data
115 analytics and artificial intelligence (AI) tools to help quality assurance personnel identify
116 potential errors or other quality issues. Agencies should ensure that they have the
117 technical capacity, expertise, and data infrastructure necessary to build and deploy such
118 tools; that any data analytics or AI tools the agencies use support, but do not displace,
119 decision making by quality assurance personnel; and that such systems comply with legal

Commented [DAS12]: For Committee consideration: This Paragraph was added to address the observation made at the last Committee meeting that agencies should consider not just what data they collect but also what data they do not collect.



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120 requirements for privacy and security and do not unintentionally create or exacerbate
121 harmful biases.

Use of Quality Assurance Data and Findings

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

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

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

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

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

Assessment and Oversight

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

144 22. Agencies should affirmatively solicit feedback from the public, adjudicators, and other
145 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.



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Public Disclosure and Transparency

- 146 23. Agencies should provide access on their websites to all sources of procedural rules and
147 related guidance documents (including explanatory materials) that apply to quality
148 assurance systems.
- 149 24. Agencies should consider whether to publicly disclose data in case management systems
150 in a de-identified form (i.e., with all personally identifiable information removed) to
151 enable continued research by independent organizations to further develop best practices
152 in this area.