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

A quality assurance system is an internal review mechanism that agencies use to detect
and remedy both problems in individual adjudications and systemic problems 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. Through well-designed and well-implemented quality assurance systems, agencies
can proactively identify issues/problems 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). Identifying such problems 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 recommended the use of quality assurance
systems to evaluate the accuracy, timeliness, and fairness of adjudication of claims for public
benefits or compensation.1 Since then, many agencies, including those that adjudicate other types
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
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. For example, quality assurance systems that overemphasize timeliness as a measure of quality may overlook issues of decisional accuracy. Quality assurance personnel must have the expertise and judgment necessary to accurately and impartially perform their responsibilities. Quality assurance personnel must use methods for selecting and reviewing cases that allow them to effectively identify case-specific and systemic problems. 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 and ethical requirements, such as the statutory prohibition against rating the job performance of or granting any monetary or honorary award to an administrative law judge. There are many methods of quality review that agencies can use, independently or in combination, 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 prepare and circulate regular reports for internal use 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 (AI), agencies can gain insights into patterns and trends that might not be apparent through manual review.

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.

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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.

RECOMMENDATION

Review and Development of Quality Assurance Standards

1. Agencies with adjudicative programs that do not have quality assurance systems—that is, practices for assessing and improving the quality of decisions in adjudicative programs—should consider developing such systems to promote fairness, the perception of fairness, accuracy, timeliness, efficiency, inter-decisional consistency, and other goals relevant to their adjudicative programs.

2. Agencies with adjudicative programs that do have existing quality assurance systems should review them in light of the recommendations below.

3. Agencies’ quality assurance systems should assess whether decisions and decision-making processes:

   a. promote fairness and the appearance of fairness,
   b. accurately determine the facts of the individual matters,
   c. correctly apply the law to the facts of the individual matters,
   d. comply with all applicable requirements,
   e. are completed in a timely and efficient manner, and
   f. are consistent across all adjudications of the same type.

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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.

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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.

5. 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.

6-6. Reviewing decisions of agency appellate and judicial review bodies may help assess whether the adjudicatory process is meeting the above goals. But agencies should not rely solely on such decisions to set and assess standards of quality because appealed cases may not be representative of all adjudications.

Quality Assurance Personnel

6-7. 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 perform such functions without pressure, interference, or expectation of employment consequences from the personnel whose work they review.

6-8. 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.

6-9. Agencies should ensure that quality assurance personnel have sufficient time to fully and fairly perform their assigned functions.

6-10. Agencies should consider whether quality assurance systems should be staffed by permanent or temporary personnel, or some combination of the two. Personnel who perform quality assurance functions on a permanent basis may gain experience and institutional knowledge over time. Personnel who perform on a temporary basis may contribute different experiences and new perspectives.

Timing of and Process for Quality Assurance Review

4-11. Agencies should consider at what point in the adjudication process quality 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.
issue their decisions, or during a period when agency appellate review is available, could
allow errors to be corrected before decisions take effect. 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 decision making based on an exclusive record. However, agencies that
utilize review for such purposes should ensure that such review comports with applicable
restrictions governing ex parte communications, internal separation of decisional and
adversarial personnel, and decision making based on an exclusive record.

12. 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.

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

14. 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 impractical 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
problems, but may systematically miss certain types of problems; and
- d. Targeted selection of cases, which allows agencies to directly select decisions that
contain specific case characteristics and may help agencies study known problems
but may miss identifying other possible problems.
Data Collection and Analysis

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

a. The identities of 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.

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

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, evaluation and judgment 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

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

18. Agencies should communicate information about systemic recurring or emerging problems 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 operations support personnel—and institutionalize communication mechanisms—to allow them to consider whether recurring issues should be addressed or clarified by rules, operational guidance, or decision support tools.

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

Public Disclosure and Transparency

21. 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, including standards for evaluating the quality of agency decisions and decision-making processes.

22. 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.

Assessment and Oversight

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