

Comment from Government Member Robert Girouard on *Quality Assurance Systems in Agency Adjudication*
November 3, 2021

Hello, Aaron. In yesterday's committee meeting you asked me for some draft text to present to the committee, related to my 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."

In addition, 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."

Finally, 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 current text on lines 3-6, which currently reads:

"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."

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).”

In addition to the concerns noted above, the amendment also recognizes that any of these concerns can appear in individual cases or on a system-wide basis.

Thanks,
Rob