



Improving Timeliness in Agency Adjudication

Ad Hoc Committee

Draft Recommendation for Committee | October 18, 2023

1 It is often said of administrative adjudication that justice delayed is justice denied.
2 Indeed, one rationale underlying the adjudication of many types of cases by the executive branch
3 is that agencies can often decide them more quickly through administrative methods than
4 Congress or the courts can through legislative or judicial methods.

5 Federal agencies adjudicate millions of cases each year, including applications for
6 benefits and services, applications for licenses and permits, and enforcement actions against
7 persons suspected of violating the law. Members of the public depend on the timely adjudication
8 of their cases, and delayed adjudication can have significant consequences, particularly for
9 members of historically underserved communities.

10 The time it takes an agency to decide a case depends on, among other variables, the
11 evidentiary and procedural demands of the case, the volume of cases awaiting a final decision by
12 the agency, and the resources available to the agency to adjudicate cases. Many factors can affect
13 these variables, including the establishment and expansion of programs by Congress, the
14 resources that Congress makes available to agencies and that agencies allocate to adjudication,
15 economic and demographic trends, trends in federal employment, disruptions to agency
16 operations such as the COVID-19 pandemic, and agency organizational structures and
17 procedures.¹ When such factors arise, and caseloads increase or delays or backlogs result,

¹ Jeremy S. Graboyes & Jennifer L. Selin, Improving Timeliness in Agency Adjudication (Oct. 11, 2023) (draft report to the Admin. Conf. of the U.S.).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

18 agencies and agency officials frequently face pressure from parties, representatives, Congress,
19 the media, and others to process and decide cases more promptly.

20 Agencies rely on a wide range of procedural, organizational, personnel, technological,
21 and other initiatives to promote timeliness and to respond to concerns about timeliness when they
22 arise. The Administrative Conference has adopted many recommendations identifying specific
23 methods that agencies have used or might use to do so. One of its earliest recommendations
24 encourages agencies to collect and analyze case processing data to “develop improved
25 techniques fitted to its particular needs to reduce delays” and measure the effectiveness of those
26 techniques.² Later recommendations address options including the delegation of final decisional
27 authority subject to discretionary review by the agency head,³ the use of precedential decision
28 making by appellate decision makers,⁴ the adoption of procedures for summary judgment⁵ and
29 prehearing discovery,⁶ the use of a broad suite of active case management techniques,⁷ the
30 establishment of quality assurance systems,⁸ the development of reasonable time limits or step-
31 by-step time goals for agency action,⁹ the use of alternative dispute resolution (ADR)

² Admin. Conf. of the U.S., Recommendation 69-1, *Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies*, 38 Fed. Reg. 19,784 (July 23, 1973).

³ Admin. Conf. of the U.S., Recommendation 68-6, *Delegation of Final Decisional Authority Subject to Discretionary Review by the Agency*, 38 Fed. Reg. 19,783 (July 23, 1973); *see also* Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 83-3, *Agency Structures for Review of Decisions of Presiding Officers Under the Administrative Procedure Act*, 48 Fed. Reg. 57,461 (Dec. 30, 1983).

⁴ Admin. Conf. of the U.S., Recommendation 2022-4, *Precedential Decision Making in Agency Adjudication*, 88 Fed. Reg. 2312 (Jan. 13, 2023).

⁵ Admin. Conf. of the U.S., Recommendation 70-3, *Summary Decision in Agency Adjudication*, 38 Fed. Reg. 19,785 (July 23, 1973).

⁶ Admin. Conf. of the U.S., Recommendation 70-4, *Discovery in Agency Adjudication*, 38 Fed. Reg. 19,786 (July 23, 1973).

⁷ Admin. Conf. of the U.S., Recommendation 86-7, *Case Management as a Tool for Improving Agency Adjudication*, 51 Fed. Reg. 46,989 (Dec. 30, 1986).

⁸ 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); Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 Fed. Reg. 1722 (Jan. 12, 2022).

⁹ Recommendation 86-7, *supra* note 7, ¶ 7; Admin. Conf. of the U.S., Recommendation 78-3, *Time Limits on Agency Actions*, 43 Fed. Reg. 27,509 (June 26, 1978).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

32 techniques,¹⁰ the use of simplified or expedited procedures in appropriate cases,¹¹ the use of
33 remote hearings,¹² the aggregation of similar claims,¹³ the use of personnel management
34 devices,¹⁴ and the implementation of electronic case management and publicly accessible online
35 processes.¹⁵ Policymakers are also increasingly looking to artificial intelligence and other
36 advanced algorithmic tools to promote timeliness in adjudication.¹⁶

37 These recommendations remain valuable resources for policymakers charged with
38 promoting and improving timeliness in agency adjudication. At the same time, it is clear that no
39 single method will promote timeliness at all agencies in all circumstances. Each agency has its
40 own mission, serves different communities, adjudicates according to a distinct set of legal
41 requirements, has different resources available to it, and faces different operational realities.
42 Moreover, in promoting timely adjudication, agencies must remain sensitive to other values of
43 administrative adjudication such as decisional quality; due process and procedural fairness,
44 including the decisional independence of agency adjudicators; and program integrity. Building
45 on earlier recommendations, this Recommendation provides a general framework that Congress

¹⁰ Admin. Conf. of the U.S., Recommendation 86-3, *Agencies' Use of Alternative Means of Dispute Resolution*, 51 Fed. Reg. 25,643 (July 16, 1986); *see also* Admin. Conf. of the U.S., Recommendation 88-5, *Agency Use of Settlement Judges*, 53 Fed. Reg. 26,030 (July 11, 1988); Admin. Conf. of the U.S., Recommendation 87-5, *Arbitration in Federal Programs*, 52 Fed. Reg. 23,635 (June 24, 1987);

¹¹ Admin. Conf. of the U.S., Recommendation 90-6, *Use of Simplified Proceedings in Enforcement Actions Before the Occupational Safety and Health Review Commission*, 55 Fed. Reg. 53,271 (Dec. 28, 1990); Recommendation 86-7, *supra* note 7, ¶ 3.

¹² Admin. Conf. of the U.S., Recommendation 2021-4, *Virtual Hearings in Agency Adjudication*, 86 Fed. Reg. 36,083 (July 8, 2021); Admin. Conf. of the U.S., Recommendation 2014-7, *Best Practices for Using Video Conferencing for Hearings*, 79 Fed. Reg. 75,114 (Dec. 17, 2014); Admin. Conf. of the U.S., Recommendation 2011-4, *Agency Use of Video Hearings: Best Practices and Possibilities for Expansion*, 76 Fed. Reg. 48,795 (Aug. 9, 2011); Admin. Conf. of the U.S., Recommendation 86-7, *Case Management as a Tool for Improving Agency Adjudication*, 51 Fed. Reg. 46,989 (Dec. 30, 1986).

¹³ Admin. Conf. of the U.S., Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, 81 Fed. Reg. 40,260 (June 21, 2016); Recommendation 86-7, *supra* note 7, ¶ 9.

¹⁴ Recommendation 86-7, *supra* note 7, ¶ 1.

¹⁵ Admin. Conf. of the U.S., Recommendation 2023-4, *Online Processes in Agency Adjudication*, 88 Fed. Reg. 42,681 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30,686 (June 29, 2018).

¹⁶ *Cf.* David Freeman Engstrom et al., *Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies* 38, 45 (2020) (report to the Admin. Conf. of the U.S.); Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence*, 86 Fed. Reg. 6616 (Jan. 22, 2021).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

46 and agencies can use to foster an organizational culture of timeliness in agency adjudication in
47 accord with principles of fairness, accuracy, and efficiency and devise plans to address increased
48 caseloads, delays, backlogs, and other timeliness concerns when they arise.

RECOMMENDATION

Information Collection

- 49 1. Agencies should ensure their electronic or other case management systems are collecting
50 data necessary to accurately monitor and detect changes in case processing times at all
51 levels of their adjudication systems (e.g., initial level, hearing level, appellate review
52 level), identify the causes of changes in case processing times, and devise methods to
53 promote or improve timeliness without adversely affecting decisional quality, procedural
54 fairness, or other objectives. At a minimum, agencies should ensure that an electronic or
55 other case management system allows managers to readily access the following
56 information:
- 57 a. The number of proceedings of each type commenced and concluded during a
58 standard reporting period (e.g., week, month, quarter, year) systemwide and at
59 each level and within each organizational unit at each level of their adjudication
60 systems;
 - 61 b. The number of proceedings of each type pending at the beginning and end of each
62 reporting period systemwide and at each level and within each organizational unit
63 at each level of their adjudication systems;
 - 64 c. The current status of each case pending at every level of their adjudication
65 systems; and
 - 66 d. For each pending and completed case, the number of days required to conclude
67 the case and meet other critical case processing milestones systemwide and at
68 each level and within each organizational unit at each level of their adjudication
69 systems.
- 70 2. Agencies should regularly engage with parties, representatives, members of Congress and
71 their staff, and other interested persons outside the agency—as well as managers,



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

72 adjudicators, and support staff within the agency—to obtain information about
73 expectations for and concerns about timeliness and suggestions for promoting or
74 improving timeliness without adversely affecting decisional quality, procedural fairness,
75 or other objectives. In addition to formal engagements, agencies should provide open
76 channels for interested persons within and outside the agency to provide feedback and
77 suggestions on an ongoing basis. Methods for obtaining information may include:

- 78 a. Customer and employee surveys;
- 79 b. Listening sessions and other meetings;
- 80 c. Requests for information published in the *Federal Register*;
- 81 d. Online feedback forms;
- 82 e. Ombuds; and
- 83 f. Other formal and informal communications.

Performance Goals and Standards

- 84 3. Congress should not impose statutory time limits on agency adjudications unless the
85 benefits clearly outweigh the costs of doing so. (As an alternative, Congress may
86 consider requiring agencies to adopt reasonable time limits for adjudication.) If Congress
87 does establish a time limit for adjudication by statute, it should:
 - 88 a. Recognize that special circumstances (e.g., a sudden substantial increase in an
89 agency’s caseload or the complexity of the issues in a particular case) may justify
90 an agency’s failure to conclude a case within the statutory time limit;
 - 91 b. Require an agency in cases when it does not meet the time limit to provide an
92 explanation or set an alternative time limit; and
 - 93 c. State expressly whether affected persons may enforce the time limit through
94 judicial action and, if so, the nature of the relief available for this purpose.
- 95 4. Agencies should adopt and publicly disclose organizational performance goals that
96 encourage and provide clear expectations for timeliness. Performance goals may take
97 several forms, including goals included in agency strategic plans, rules establishing time



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 98 limits for concluding cases, or policies establishing step-by-step time goals. In
99 developing organizational performance goals for timeliness, agencies should:
- 100 a. Use the information described in Paragraphs 1–2 to develop goals that are
101 reasonable and objective;
 - 102 b. Encourage interested persons within and outside the agency to participate in
103 the development of such goals; and
 - 104 c. Periodically reevaluate such goals to ensure they continue to be reasonable,
105 encourage and provide clear expectations for timeliness, and do not adversely
106 affect decisional quality or the fairness or integrity of proceedings.
- 107 5. When agencies consider timeliness or productivity in appraising the performance of
108 employees, as defined in 5 U.S.C. § 4301, or members of the Senior Executive Service,
109 they should:
- 110 a. Use the information described in Paragraphs 1–2 to develop expectations that are
111 reasonable and objective and encourage and provide clear expectations for
112 timeliness;
 - 113 b. Encourage interested persons within and outside the agency, including employees
114 and senior executives, to participate in the development of such expectations;
 - 115 c. Align expectations for individual employees and senior executives with
116 organizational performance goals;
 - 117 d. Ensure expectations reflect tasks within the control of individual employees and
118 senior executives and that employees and senior executives are not penalized for
119 circumstances beyond their control;
 - 120 e. Ensure expectations take into account the range of case types and tasks performed
121 by individual employees and senior executives as well as resources (e.g., staff
122 support, technology) at their disposal;
 - 123 f. Ensure expectations do not inadvertently lead employees or senior executives to
124 decide cases in a particular way or take other actions that would adversely affect
125 decisional quality or the fairness or integrity of proceedings;



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 126 g. Publicly identify expectations and explain how they were developed, how agency
127 managers use such expectations to appraise individuals' performance, and
128 whether the agency provides incentive awards or takes disciplinary actions based
129 on such appraisals;
- 130 h. Periodically reevaluate such goals to ensure they continue to be reasonable,
131 encourage and provide clear expectations for timeliness, and do not adversely
132 affect decisional quality or the fairness or integrity of proceedings.
- 133 6. If agencies adopt timeliness or productivity measures for officials who are not subject to
134 performance appraisal, including administrative law judges, they should publicly disclose
135 such measures and explain how they were developed; encourage the participation of
136 interested persons within and outside the agency in their development; and periodically
137 reevaluate them to ensure they remain reasonable and do not adversely affect decisional
138 quality or the fairness or integrity of proceedings, including any decisional independence
139 requirements.

Organizational, Procedural, Technological, and Case Management Techniques

- 140 The Administrative Conference has adopted many recommendations, listed in the Preamble,
141 that identify organizational, procedural, technological, and case management techniques that
142 agencies should consider using, in appropriate circumstances, to promote timeliness in
143 adjudication or respond to increased caseloads, delays, backlogs, and other timeliness
144 concerns. Agencies should also implement the following best practices, as appropriate.
- 145 7. Agencies should seek to narrow disputes and resolve cases at the earliest possible level of
146 their adjudication systems and, at each level, through the least time- and resource-
147 intensive process available and appropriate to the circumstances, such as informal
148 prehearing procedures, alternative dispute resolution, streamlined procedures, or decision
149 making on the written record.
- 150 8. Agencies, if appropriate, should adopt and publicly disclose procedures for resolving
151 multiple cases in a single proceeding, such as the aggregation of similar claims, or



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 152 efficiently resolving recurring legal or factual issues, such as precedential decision
153 making or substantive rulemaking.
- 154 9. Agencies should adopt and, when appropriate, publicly disclose processes for screening
155 cases at intake to resolve procedural issues as early as possible; identify cases that may be
156 appropriate for less time- and resource-intensive processes such as those listed in
157 Paragraphs 7 and 8; identify cases that can be resolved quickly because they are legally
158 and factually straightforward; and identify cases that should be prioritized or expedited.
- 159 10. Agencies should adopt and publicly disclose procedures that standardize the allocation of
160 tasks among adjudicators, managers, and legal and paralegal support staff and assign each
161 task to the lowest-graded position that has the legal authority and professional
162 qualifications to perform it.
- 163 11. Agencies should automate routine tasks that do not require a significant exercise of
164 discretion when automation will not adversely affect quality or program integrity. Such
165 tasks may include receiving filings and evidence, establishing new case files, associating
166 records with case files, deduplicating records, assigning cases to agency personnel for
167 action, screening cases as described in Paragraph 9, and generating and releasing
168 standardized correspondence. Agencies should consider outsourcing nondiscretionary
169 tasks—such as transcription, scanning records, or mailing correspondence—when it
170 would be more efficient and cost-effective for a contractor to perform them.
- 171 12. Agencies should adopt and make publicly available rules and policies that reflect best
172 practices for case management—including evidentiary development, motions practice,
173 methods for encouraging prompt action and discouraging undue delay by parties,
174 intervention, extensions of time, and decision writing. At the same time, agencies should
175 ensure that adjudicators, managers, and support staff have sufficient flexibility to manage
176 individual cases fairly, accurately, and efficiently and test alternative case management
177 techniques that may reveal new best practices. Agencies should periodically reevaluate
178 such rules and policies, using the information described in Paragraphs 1 and 2, to ensure
179 they continue to reflect best practices for case management and provide relevant



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 180 personnel with sufficient flexibility to manage individual cases and test alternative case
181 management techniques.
- 182 13. Agencies should make informational materials and regular training sessions on best
183 practices for fair, accurate, and efficient case management available to adjudicators,
184 managers, and legal and paralegal support staff.
- 185 14. Agencies should provide parties and representatives with resources to help them navigate
186 their adjudication systems, understand procedural alternatives that may expedite decision
187 making in appropriate cases, and learn about best practices for efficient and effective
188 advocacy before the agency. Such resources may include informational materials (e.g.,
189 documents written in plain language and available in languages other than English, short
190 videos, decision trees, and visualizations), navigator programs, and counseling for self-
191 represented parties.
- 192 15. Agencies should establish organizational units, supervisory structures, and central and
193 field operations that reinforce timeliness and facilitate communication among agency
194 personnel involved in adjudication at all levels of an adjudication system.
- 195 16. Agencies should update external-facing websites and electronic case management
196 systems so that they are able to handle the volume of current and future cases efficiently
197 and effectively.
- 198 17. Agencies should identify and implement strategies to expand parties' access to
199 representation by lawyers and qualified nonlawyer legal service providers and encourage
200 parties to seek representation when doing so would promote timely adjudication.

Strategic Planning

- 201 18. Agencies should engage in prompt, evidence-based, and transparent strategic planning to
202 anticipate future and address ongoing concerns about timeliness, including increased
203 caseloads, delays, and backlogs. In undertaking such strategic planning, agencies should:
- 204 a. Use the information described in Paragraphs 1 and 2 to identify case processing
205 trends such as geographical or temporal variations in case receipts or case



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 206 processing times, assess the causes of timeliness concerns, and identify points at
207 all levels of their adjudication systems adversely affected by such causes;
- 208 b. Review previous efforts to address timeliness concerns to understand what
209 initiatives have been attempted and which have been effective;
- 210 c. Consider a wide range of options for improving timeliness at adversely affected
211 points in the adjudication process without adversely affecting decisional quality,
212 procedural fairness, program integrity, or other objectives. Options may include
213 organizational, procedural, technological, case management, and other techniques,
214 including those identified in previous Conference recommendations and
215 Paragraphs 7–16;
- 216 d. Engage in candid discussions with adjudicators, managers, and support staff at all
217 levels of their adjudication systems, as well as interested persons outside the
218 agency, regarding the benefits, costs, and risks associated with different options
219 for improving timeliness;
- 220 e. Develop and make publicly available a plan for addressing timeliness concerns,
221 and solicit feedback on the plan from interested persons within and outside the
222 agency;
- 223 f. Provide regular public update on their plans for and progress in addressing
224 timeliness concerns;
- 225 g. Use pilot studies and demonstration projects before implementing interventions
226 broadly, to test the effectiveness of different interventions and identify unintended
227 consequences; and
- 228 h. Designate a senior official responsible for coordinating strategic planning.

Coordination and Collaboration

- 229 19. Agencies should enhance communication between components involved in adjudication
230 and other components that carry out functions necessary for timely adjudication, such as
231 those that oversee information technology, human resources, budget planning, office
232 space, and procurement.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 233 20. Agencies should coordinate with the President, when required, and with Congress by
234 providing information on recommended legislative changes and appropriations that
235 would promote timeliness generally or address ongoing timeliness concerns.
- 236 21. Agencies should partner with federal entities such as the Chief Information Officers
237 Council, the U.S. Digital Service, the General Services Administration, and the Office of
238 Personnel Management to develop and implement best practices for leveraging
239 information technology, human capital, and other resources to promote or improve
240 timeliness.
- 241 22. Agencies should share information with each other about their experiences with and
242 practices for promoting timeliness generally and addressing ongoing timeliness concerns.
243 The Office of the Chair of the Administrative Conference should provide for the
244 interchange of such information, as authorized by 5 U.S.C. § 594(2).
- 245 23. Agencies should institutionalize partnerships with relevant legal service providers, other
246 nongovernmental organizations, and state and local government agencies that advocate
247 for or provide assistance to individuals who participate as parties in agency adjudications.