



Improving Timeliness in Agency Adjudication

Ad Hoc Committee

Draft Recommendation for Committee | October 25, 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. Funds appropriated by Congress directly impact the resources that agencies can
14 allocate to adjudication. Other factors include the establishment and expansion of programs by
15 Congress, economic and demographic changes, trends in federal employment, disruptions to
16 agency 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.).



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18 agencies frequently face pressure from parties, representatives, Congress, the media, and others
19 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 improve timeliness. One of its earliest
24 recommendations encourages agencies to collect and analyze case processing data to “develop
25 improved techniques fitted to [their] particular needs to reduce delays” and measure the
26 effectiveness of those techniques.² Later recommendations address options including the
27 delegation of final decisional authority subject to discretionary review by the agency head,³ the
28 use of precedential decision making by appellate decision makers,⁴ the adoption of procedures
29 for summary judgment⁵ and prehearing discovery,⁶ the use of a broad suite of active case
30 management techniques,⁷ the establishment of quality assurance systems,⁸ the development of
31 reasonable time limits or step-by-step time goals for agency action,⁹ the use of alternative dispute

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).



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32 resolution (ADR) techniques,¹⁰ the use of simplified or expedited procedures in appropriate
33 cases,¹¹ the use of remote hearings,¹² the aggregation of similar claims,¹³ the use of personnel
34 management devices,¹⁴ and the implementation of electronic case management and publicly
35 accessible online processes.¹⁵

36 These recommendations remain valuable resources for policymakers charged with
37 promoting and improving timeliness in agency adjudication. As technologies develop,
38 policymakers are also increasingly looking to artificial intelligence and other advanced
39 algorithmic tools to streamline or automate time-consuming, error-prone, or resource-intensive
40 processes.¹⁶

41 At the same time, no single method will promote timeliness at all agencies in all
42 circumstances. Each agency has its own mission, serves different communities, adjudicates
43 according to a distinct set of legal requirements, has different resources available to it, and faces
44 different operational realities. Moreover, in promoting timely adjudication, agencies must remain

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 Teleconferencing 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).



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45 sensitive to other values of administrative adjudication such as decisional quality; procedural
46 fairness; consistency; transparency; customer service; and equitable treatment. Building on
47 earlier recommendations, this Recommendation provides a general framework that Congress and
48 agencies can use to foster an organizational culture of timeliness in agency adjudication in
49 accord with principles of fairness, accuracy, and efficiency and devise plans to address increased
50 caseloads, delays, backlogs, and other timeliness concerns when they arise.

RECOMMENDATION

Information Collection

- 51 1. Agencies should ensure their electronic or other case management systems are collecting
52 data necessary to accurately monitor and detect changes in case processing times at all
53 levels of their adjudication systems (e.g., initial level, hearing level, appellate review
54 level), identify the causes of changes in case processing times, and devise methods to
55 promote or improve timeliness without adversely affecting decisional quality, procedural
56 fairness, or other objectives. Agencies should also be mindful of often requested media or
57 Freedom of Information Act data to ensure timely responses as appropriate. At a
58 minimum, agencies should ensure that electronic or other case management systems track
59 the following information:
- 60 a. The number of proceedings of each type pending, commenced, and concluded
61 during a standard reporting period (e.g., week, month, quarter, year) systemwide
62 and at each level and within each organizational unit at each level of their
63 adjudication systems;
 - 64 b. The current status of each case pending at every level of their adjudication
65 systems; and
 - 66 c. 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. To meet organizational goals and clarify stakeholder expectations, agencies should also
71 communicate regularly with internal and external stakeholders. In addition to formal
72 engagements, agencies should provide open channels for interested persons within and
73 outside the agency to provide feedback and suggestions on an ongoing basis. Methods for
74 obtaining information may include:
- 75 a. Stakeholder surveys;
 - 76 b. Listening sessions and other meetings;
 - 77 c. Requests for information published in the *Federal Register*;
 - 78 d. Online feedback forms; and
 - 79 e. Ombuds.

80

81 **Performance Goals and Standards**

- 82 3. If Congress decides statutory time limits on agency adjudication are beneficial (or
83 warranted), it should seek testimony from the agency and its stakeholders to adopt
84 reasonable time limits. In its assessment, Congress should:
- 85 a. Recognize that special circumstances (e.g., a sudden substantial increase in an
86 agency’s caseload or the complexity of the issues in a particular case) may justify
87 an agency’s failure to conclude a case within the statutory time limit;
 - 88 b. Require an agency in cases when it does not meet the time limit to provide an
89 explanation or set an alternative time limit; and
 - 90 c. State expressly whether affected persons may or may not enforce the time limit
91 through judicial action and, if so, the nature of the relief available for this
92 purpose.
- 93 4. Agencies should adopt organizational performance goals that encourage and provide
94 clear expectations for timeliness. Performance goals may take several forms, including
95 goals contained in agency strategic plans, rules establishing time limits for concluding
96 cases, or policies instituting step-by-step time goals. In developing organizational
97 performance goals for timeliness, agencies should:



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



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- 127 6. If agencies adopt timeliness or productivity measures for employees who are not subject
128 to performance appraisal, including administrative law judges, they should:
- 129 a. Use the information described in Paragraphs 1–2 to develop measures that are
130 reasonable and objective and encourage and provide clear expectations for
131 timeliness;
 - 132 b. Encourage interested persons within and outside the agency, including employees
133 to whom the measures apply, to participate in the development of such measures;
 - 134 c. Ensure measures reflect tasks within the control of individual employees;
 - 135 d. Ensure measures take into account the range of case types and tasks performed by
136 individual employees as well as resources (e.g., staff support, technology) at their
137 disposal;
 - 138 e. Ensure expectations do not inadvertently lead employees to decide cases in a
139 particular way or take other actions that would adversely affect decisional quality
140 or the fairness or integrity of proceedings, including any decisional independence
141 requirements;
 - 142 6.f. Periodically reevaluate such goals to ensure they continue to be reasonable,
143 encourage and provide clear expectations for timeliness, and do not adversely
144 affect decisional quality or the fairness or integrity of proceedings. encourage the
145 participation of interested persons within and outside the agency in their
146 development; and periodically reevaluate them to ensure they remain reasonable
147 and do not adversely affect decisional quality or the fairness or integrity of
148 proceedings, including any decisional independence requirements.

Organizational, Procedural, Technological, and Case Management Techniques

149 The Administrative Conference has adopted many recommendations, listed in the Preamble,
150 that identify organizational, procedural, technological, and case management techniques that
151 agencies should consider using, in appropriate circumstances, to promote timeliness in
152 adjudication or respond to increased caseloads, delays, backlogs, and other timeliness
153 concerns. Agencies should also implement the following best practices, as appropriate.



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- 154 7. Agencies should narrow disputes and resolve cases at the earliest possible level of their
155 adjudication systems and, at each level, through the least time- and resource-intensive
156 process available and appropriate to the circumstances, such as informal prehearing
157 procedures, alternative dispute resolution, streamlined procedures, or decision making on
158 the written record.
- 159 8. Agencies, if appropriate, should adopt procedures for resolving multiple cases in a single
160 proceeding, such as the aggregation of similar claims, or efficiently resolving recurring
161 legal or factual issues, such as precedential decision making or substantive rulemaking.
- 162 9. Agencies should adopt processes for screening cases at intake to resolve procedural
163 issues as early as possible; identify cases that may be appropriate for less time- and
164 resource-intensive processes such as those listed in Paragraphs 7 and 8; identify cases
165 that can be resolved quickly because they are legally and factually straightforward; and
166 identify cases that should be prioritized or expedited.
- 167 10. Agencies should adopt procedures that standardize the allocation of tasks among
168 adjudicators, managers, and legal and paralegal support staff.
- 169 11. Agencies should review and update as necessary their Strategic Human Capital Operating
170 Plans (see 5 CFR 250) to ensure their hiring and position management needs are properly
171 aligned with their adjudication operational goals.~~assign each task to the lowest-graded~~
172 ~~position that has the legal authority and professional qualifications to perform it.~~
- 173 12. Agencies should automate—using artificial intelligence, for example—routine tasks that
174 do not require a significant exercise of discretion when automation will not adversely
175 affect quality or program integrity. Such tasks may include receiving filings and
176 evidence, establishing new case files, associating records with case files, deduplicating
177 records, assigning cases to agency personnel for action, screening cases as described in
178 Paragraph 9, and generating and releasing standardized correspondence.
- 179 13. Agencies should outsource nondiscretionary tasks—such as transcription, scanning
180 records, or mailing correspondence—when it would be more efficient and cost-effective
181 for a contractor to perform them.



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- 182 14. Agencies should adopt rules and policies that reflect best practices for case
183 management—including evidentiary development, motions practice, methods for
184 encouraging prompt action and discouraging undue delay by parties, intervention,
185 extensions of time, and decision writing. At the same time, agencies should ensure that
186 adjudicators, managers, and support staff have sufficient flexibility to manage individual
187 cases fairly, accurately, and efficiently and test alternative case management techniques
188 that may reveal new best practices. Agencies should periodically reevaluate such rules
189 and policies, using the information described in Paragraphs 1 and 2, to ensure they
190 continue to reflect best practices for case management and provide relevant personnel
191 with sufficient flexibility to manage individual cases and test alternative case
192 management techniques.
- 193 15. Agencies should establish organizational units, supervisory structures, and central and
194 field operations that reinforce timeliness and facilitate appropriate communication among
195 agency personnel involved in adjudication at all levels of an adjudication system.
- 196 16. Agencies should update external-facing websites and electronic case management
197 systems so that they are able to handle the volume of current and future cases efficiently
198 and effectively.

Strategic Planning

- 199 17. Agencies should engage in evidence-based, and transparent strategic planning to
200 anticipate future and address ongoing concerns about timeliness, including increased
201 caseloads, delays, and backlogs. In undertaking such strategic planning, agencies should:
- 202 a. Use the information described in Paragraphs 1 and 2 to identify case processing
203 trends such as geographical or temporal variations in case receipts or case
204 processing times, assess the causes of timeliness concerns, and identify points at
205 all levels of their adjudication systems that are causing delays;
 - 206 b. Review previous efforts to address timeliness concerns to understand what
207 initiatives have been attempted and which have been effective;



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- 208 c. Consider a wide range of options for improving timeliness in the adjudication
209 process without adversely affecting decisional quality, procedural fairness,
210 program integrity, or other objectives. Options may include organizational,
211 procedural, technological, case management, and other techniques, including
212 those identified in previous Conference recommendations and Paragraphs 7–16;
- 213 d. Engage in candid discussions with adjudicators, managers, and support staff at all
214 levels of their adjudication systems, as well as interested persons outside the
215 agency, regarding the benefits, costs, and risks associated with different options
216 for improving timeliness;
- 217 e. Develop proposed plans for addressing timeliness concerns, and solicit feedback
218 on the plan from interested persons within and outside the agency;
- 219 f. Consider pilot studies and demonstration projects before implementing
220 interventions broadly, to test the effectiveness of different interventions and
221 identify unintended consequences; and
- 222 g. Designate a senior official responsible for coordinating the activities described in
223 this Paragraph.

Communication, Coordination, and Collaboration

- 224 18. Agencies should enhance communication between components involved in adjudication
225 and other components that carry out functions necessary for timely adjudication, such as
226 those that oversee information technology, human resources, budget planning, office
227 space, and procurement.
- 228 19. Agencies should coordinate with the President, when required, and with Congress by
229 providing information on recommended legislative changes and appropriations that
230 would promote timeliness generally or address ongoing timeliness concerns.
- 231 20. Agencies should partner with federal entities such as the Chief Information Officers
232 Council, the U.S. Digital Service, the General Services Administration, and the Office of
233 Personnel Management to develop and implement best practices for leveraging



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- 234 information technology, human capital, and other resources to promote or improve
235 timeliness.
- 236 21. Agencies should share information with each other about their experiences with and
237 practices for promoting timeliness generally and addressing ongoing timeliness concerns.
238 The Office of the Chair of the Administrative Conference should provide for the
239 interchange of such information, as authorized by 5 U.S.C. § 594(2).
- 240 22. Agencies should institutionalize partnerships with relevant legal service providers, other
241 nongovernmental organizations, and state and local government agencies that advocate
242 for or provide assistance to individuals who participate as parties in agency adjudications.
- 243 23. Agencies should make informational materials and regular training sessions on best
244 practices for fair, accurate, and efficient case management available to adjudicators,
245 managers, and legal and paralegal support staff.
- 246 24. Agencies should provide parties and representatives with resources to help them navigate
247 their adjudication systems, understand procedural alternatives that may expedite decision
248 making in appropriate cases, and learn about best practices for efficient and effective
249 advocacy before the agency. Such resources may include informational materials (e.g.,
250 documents written in plain language and available in languages other than English, short
251 videos, decision trees, and visualizations), navigator programs, and counseling for self-
252 represented parties.
- 253 25. Agencies should provide self-represented parties early in and at key points throughout the
254 adjudication process with plain-language materials informing them of their right to be
255 represented by an attorney or qualified nonlawyer legal service provider, the potential
256 benefits of representation, and options for obtaining representation.
- 257 26. Agencies should publicly identify case management priorities and procedures adopted to
258 improve timeliness that also may result in a parties' cases being identified for
259 aggregation, expedition, or similar alternative techniques.
- 260 27. Agencies should proactively disclose certain information and data to the public, such as
261 aggregate processing data for claims pending, commenced, and concluded during a
262 standard reporting period including average processing times; any deadlines or



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263 processing goals for adjudicating cases; and information about the agency's plans for and
264 progress in addressing timeliness concerns.

265 22.28. Agencies should proactively disclose any performance measures or expectations
266 based on timeliness or productivity that are used in appraising the performance of
267 employees, members of the Senior Executive Service, or employees not subject to
268 performance appraisal, including administrative law judges, and how such performance
269 measures or expectations were developed, how they are used to appraise individuals'
270 performance, and whether the agency provides incentive awards or takes disciplinary
271 actions based on such appraisals.