



Online Processes in Agency Adjudication

Committee on Adjudication

Proposed Recommendation for Plenary | June 15, 2023

1 Millions of people each year navigate adjudication systems administered by federal
2 agencies to, among other actions, access benefits and services, answer charges of legal
3 noncompliance, and settle disputes with third parties. Individuals participating in these systems
4 often expend substantial time and resources completing forms, submitting evidence and
5 arguments, and monitoring their cases, while agencies expend substantial time and resources
6 processing submissions, managing dockets, and providing case updates.

7 To improve accuracy, efficiency, and accessibility, and fulfill legal obligations to develop
8 electronic business processes,¹ agencies increasingly have deployed online processes by which
9 parties, their representatives, and other interested persons can perform routine tasks such as
10 filing, serving, and viewing forms, briefs, evidence, and other case records or materials.² These
11 processes range from simple email-based systems to robust online self-help portals that allow
12 users to update contact information, communicate with agencies, complete forms, submit and
13 view case records or materials, and perform other tasks. These processes ideally link with
14 agencies' own electronic case management systems,³ which serves also to reduce the time

¹ See, e.g., 21st Century Integrated Digital Experience Act, Pub. L. No. 115-336, 132 Stat. 5025 (2018); Exec. Order No. 14,058, 86 Fed. Reg. 71357 (Dec. 16, 2021); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-19-21, MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, TRANSITION TO ELECTRONIC RECORDS (June 28, 2019); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-23-07, MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, UPDATE TO TRANSITION TO ELECTRONIC RECORDS (December 23, 2022); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, CIRCULAR No. A-11, SEC. 280 (2020).

² Matthew A. Gluth, *Online Processes in Agency Adjudication* (April 16, 2023) (draft report to the Admin. Conf. of the U.S.).

³ See Admin. Conf. of the U.S., Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30,683 (June 29, 2018).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

15 agency staff spend receiving paper records, converting them into an electronic format, and
16 associating them with case files.

17 If properly deployed, these processes make adjudicative systems easier to use and more
18 accessible to the public, reduce the administrative burden on agency staff, and increase the
19 accuracy of information collected during adjudication. However, these processes can also pose
20 significant risks, including increased burdens due to poor design, exposure of agencies' computer
21 systems to malware and other security threats, and ongoing costs of maintenance and upgrades.
22 In designing and implementing online processes, agencies should not only address these risks but
23 also ensure that they meet all legal accessibility requirements.⁴ In addition, agencies should make
24 user resources available in languages other than English.⁵

25 Examples of agencies with online adjudication processes include the Social Security
26 Administration, Department of Veterans Affairs, and U.S. Citizenship and Immigration Services,
27 which have launched robust customer service portals that provide a single, user-friendly website
28 that let parties perform tasks at many stages of adjudication from case initiation through appeal.
29 Others have only recently begun to develop online processes, particularly in response to office
30 closures during the COVID-19 pandemic.

31 This Recommendation encourages agencies to develop online processes and provides
32 best practices for agencies to consider when doing so. Of course, agencies have different needs,
33 serve different communities, and have different resources available to them. Further, what works
34 best for one agency may not be appropriate for another. This Recommendation identifies steps

⁴ See, e.g., Rehabilitation Act of 1973, § 508, 29 U.S.C. § 794d; Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861; Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

⁵ See, e.g., Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

35 that agencies can consider at any stage of developing online processes to improve the accuracy,
36 efficiency, and accessibility of their adjudicative systems.

RECOMMENDATION

Accessing Online Processes in Adjudicative Systems

- 37 1. Agencies' online processes should work effectively with relevant electronic case
38 management systems (eCMS) and agency websites where adjudication materials are
39 made publicly available.
- 40 2. Agencies should develop online self-help portals that allow users, as applicable and when
41 feasible, to:
- 42 a. Update contact information, including email addresses, phone numbers, and
43 physical addresses;
 - 44 b. Complete and submit forms;
 - 45 c. File briefs, evidence, and other documents;
 - 46 d. Receive service of documents, including documents filed by other parties and
47 agency notices and orders;
 - 48 e. View and download case documents;
 - 49 f. Make payments (e.g., filing fees, application fees, civil penalties);
 - 50 g. Schedule meetings, conferences, hearings, and other appointments;
 - 51 h. Access virtual appointments;
 - 52 i. View case status information and information about deadlines, appointments, and
53 wait times, when agencies can reliably predict them;
 - 54 j. Receive reminders about upcoming deadlines and appointments; and
 - 55 k. Receive notifications about new documents, status changes, and other
56 developments in their cases.
- 57 3. Online self-help portals should allow different functionality, with appropriate
58 permissions, for different types of users, including agency staff and contractors, parties,
59 intervenors, representatives and their staff, amici curiae, and the public.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 60 4. Agencies should ensure online self-help portals employ security mechanisms, such as
61 firewalls and encryption, to protect sensitive user information and maintain the system's
62 integrity. Agencies should also ensure self-help portals employ mechanisms to
63 authenticate users when necessary. Agencies that authenticate users by requiring them to
64 register for and log in to online self-help portals should allow users to use Login.gov or
65 other universal logins used by government agencies. These security mechanisms should
66 not compromise the ability of non-authenticated users to access public documents.

Electronic Filing and Forms

- 67 5. Agencies should permit, and consider requiring, parties to file documents electronically.
68 If agencies require electronic filing, they should implement exceptions for when
69 electronic filing would be impossible or impracticable or a party has demonstrated good
70 cause for using an alternative means of submission.
- 71 6. Agencies should ensure that their processes for electronic filing allow users, as applicable
72 and when feasible, to:
- 73 a. File documents in batches;
 - 74 b. File documents of a large enough size to encompass common filings;
 - 75 c. File documents in multiple file formats, except that users should be required to
76 file documents in a format that cannot be edited, such as Portable Document
77 Format (PDF), unless a specific procedure requires parties to submit documents
78 that can be edited (e.g., a proposed order);
 - 79 d. Notify the agency that documents being filed contain legally protected or other
80 sensitive information; and
 - 81 e. Notify the agency that documents are being filed under seal or in camera.
- 82 7. Agencies without an eCMS should allow participants in an adjudication to file briefs,
83 exhibits, and other documents electronically by emailing them to a designated agency
84 email address, uploading them to a web-accessible file-hosting service, or transferring
85 them to the agency using a secure file transfer protocol (SFTP).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 86 8. Agencies with an eCMS should develop tools that can be used to submit documents
87 directly into the eCMS. These tools should require users to provide, or allow the system
88 to capture, information about their submission, such as document type, purpose, or date,
89 which would be stored as structured metadata in the eCMS, so long as it would not be
90 confusing or burdensome for users.
- 91 9. Agencies with an eCMS should consider developing application programming interfaces
92 (APIs) that allow users, such as representatives, who use their own eCMS to directly and
93 securely transfer data between a user's eCMS and the agency's eCMS, without needing
94 to use a self-help portal as an intermediary.
- 95 10. Agencies that have forms or templates for use in adjudications (e.g., applications,
96 appointment of representative, hearing requests, requests for agency appellate review,
97 subpoena requests) should post PDF versions of the forms or templates on their websites
98 and allow users to complete, sign, and submit them electronically. Agencies should adapt
99 frequently used forms as web-based forms that users can complete and submit using a
100 web browser. When feasible, web-based forms should:
- 101 a. Be prepopulated with information about a user or case that the agency already has
102 collected in an eCMS or other database; and
 - 103 b. Be based on prepopulated data and previous responses, requiring users to answer
104 only questions that are relevant to them.
- 105 11. Except when explicitly prohibited by statute, agencies should allow participants in
106 adjudications to sign documents electronically and, as applicable, should accept as valid
107 electronic signatures:
- 108 a. A form or document submitted through an agency's online self-help portal while
109 registered for and logged in to the portal;
 - 110 b. A cryptographic digital signature;
 - 111 c. A scanned or other graphical representation of a handwritten signature;
 - 112 d. A conformed signature (e.g., "/s/ Jane Doe"); and
 - 113 e. An email used to transmit the document.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

114 12. Agencies should consider whether to review some or all electronically filed documents
115 before associating them with a case file. For example, agencies should ensure that
116 documents are associated with the correct case file, that they comport with agency rules,
117 and that they do not disclose legally protected or other sensitive information, such as
118 when a party files or requests to file a document under seal or in camera.

Electronic Service

119 13. Agencies should allow electronic service, except when electronic service would be
120 impossible or impracticable or a party has good cause for needing alternative means of
121 delivery.

122 14. Agencies with an eCMS should provide automated service through notice when a
123 document has been filed through the web portal.

124 15. Agencies without an eCMS should allow parties to serve documents to other parties
125 electronically, by emailing documents to other parties. Agencies that allow parties to
126 submit documents using a file-hosting service or SFTP should ensure that all parties are
127 notified when new documents become available.

Management of Sensitive Documents

128 16. Agencies that redact legally protected or other sensitive information from documents
129 before making them available to other parties or publicly available should clarify whether
130 parties should submit redacted versions of documents or whether the agency will make
131 the necessary redactions.

Fees and Other Payments

132 17. Agencies that require filing fees, application fees, payment of civil penalties, or other
133 payments should accept electronic payments.



Scheduling, Notifications, and Reminders

- 134 18. Agencies should provide an online tool for parties to schedule meetings, conferences,
135 hearings, and other appointments efficiently and at times that are reasonably convenient
136 for all participants.
- 137 19. Agencies with an eCMS should provide automatic notifications or reminders to users
138 about important events and developments, such as when (a) a new document has been
139 submitted and is available to view; (b) an agency notice or order is available to view; (c)
140 the case status changes; (d) a meeting, conference, hearing, or other appointment is
141 scheduled or upcoming; and (e) a filing deadline is approaching. Notifications and
142 reminders should be available in an online self-service portal and sent by email and/or by
143 text message, according to user preferences.

Developing and Improving Online Processes

- 144 20. When designing and implementing online processes, agencies should consult potential
145 users and relevant stakeholders, including parties, representatives, adjudicators and
146 adjudicative staff, agency personnel who represent the government in adjudicative
147 proceedings, and personnel who provide customer service or oversee customer
148 experience functions for the agency. Agencies should also continuously solicit feedback
149 from users on their online processes, for example through online surveys and listening
150 sessions, and should use that feedback to identify and prioritize improvements.
- 151 21. When designing or working with a contractor to design their online processes, agencies
152 should create systems that can be expanded to incorporate new technologies without
153 requiring replacement.
- 154 22. Agencies should ensure that their online processes function on multiple platforms
155 including, when practicable, on mobile devices.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Guidance, Training, and Outreach

- 156 23. Agencies should update their rules of practice to permit or, when appropriate, require the
157 use of online processes.
- 158 24. Agencies should develop self-help materials (e.g., instruction manuals, reference guides,
159 instructional videos) and, if needed, hold training sessions to help agency personnel and
160 the public understand how to use the agency's online processes. Materials intended for
161 the public should be posted in an appropriate location on the agency's website and made
162 accessible through any online self-help portal.
- 163 25. Agencies should conduct public outreach if needed to encourage parties and
164 representatives to adopt their online processes, in particular prior to making an online
165 process mandatory.
- 166 26. Agencies should make staff available to assist all users of the agency's online processes,
167 including agency personnel, and should inform users when such assistance is available
168 (e.g., during normal business hours).