



## Quality Assurance Systems in Agency Adjudication

### Joint Ad Hoc Committee of the Committee on Adjudication and Committee on Administration and Management

#### Proposed Recommendation from Committee | November 17, 2021

1           A quality assurance system is an internal review mechanism that agencies use to detect  
2 and remedy both problems in individual adjudications and systemic problems in agency  
3 adjudicative programs. Through well-designed and well-implemented quality assurance systems,  
4 agencies can proactively identify both problems in individual cases and systemic problems,  
5 including misapplied legal standards, inconsistent applications of the law by different  
6 adjudicators, procedural violations, and systemic barriers to participation in adjudicatory  
7 proceedings (such as denials of reasonable accommodation). Identifying such problems enables  
8 agencies to ensure adherence to their own policies and improve the fairness (and perception of  
9 fairness), accuracy, inter-decisional consistency, timeliness, and efficiency of their adjudicative  
10 programs.<sup>1</sup>

11           In 1973, the Administrative Conference recommended the use of quality assurance  
12 systems to evaluate the accuracy, timeliness, and fairness of adjudication of claims for public  
13 benefits or compensation.<sup>2</sup> Since then, many agencies, including those that adjudicate other types  
14 of matters, have implemented or considered implementing quality assurance systems, often to

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<sup>1</sup> Daniel E. Ho, David Marcus & Gerald K. Ray, Quality Assurance Systems in Agency Adjudication (Nov. 15, 2021) (draft report to the Admin. Conf. of the U.S.).

<sup>2</sup> 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. 16840 (June 27, 1973).



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

15 supplement other internal review mechanisms such as agency appellate systems.<sup>3</sup> Unlike  
16 agencies' appellate systems, quality assurance systems are not primarily concerned with error  
17 correction in individual cases, and they may assess numerous adjudicatory characteristics that are  
18 not typically subject to appellate review, such as effective case management. Nor are they  
19 avenues for collateral attack on individual adjudicatory dispositions. Also, quality assurance  
20 systems are distinct from agencies' procedures that deal with allegation of judicial misconduct.  
21 This Recommendation accounts for these developments and provides further guidance for  
22 agencies that may wish to implement new or to improve existing quality assurance systems.

23         How agencies structure their quality assurance systems can have important consequences  
24 for their success. For example, quality assurance systems that overemphasize timeliness as a  
25 measure of quality may overlook problems of decisional accuracy. Quality assurance personnel  
26 must have the expertise and judgment necessary to accurately and impartially perform their  
27 responsibilities. Quality assurance personnel must use methods for selecting and reviewing cases  
28 that allow them to effectively identify case-specific and systemic problems. Agencies must  
29 determine how they will use information collected through quality assurance systems to correct  
30 problems that threaten the fairness (and perception of fairness), accuracy, inter-decisional  
31 consistency, timeliness, and efficiency of their adjudicative programs. Agencies also must design  
32 quality assurance systems to comply with all applicable requirements, such as the statutory  
33 prohibition against rating the job performance of or granting any monetary or honorary award to  
34 an administrative law judge.<sup>4</sup>

35         There are many methods of quality review that agencies can use, independently or in  
36 combination, depending upon the needs and goals of their adjudicative programs. For example,  
37 agencies can adopt a peer review process by which adjudicators review other adjudicators'  
38 decisions and provide feedback before decisions are issued. Agencies can prepare and circulate  
39 regular reports for internal use that describe systemic trends identified by quality assurance

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<sup>3</sup> Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021).

<sup>4</sup> See, e.g., 5 U.S.C. § 4301; 5 C.F.R. § 930.206.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

40 personnel. Agencies can also use information from quality assurance systems to identify training  
41 needs and clarify or improve policies.

42 Agencies, particularly those with large caseloads, may also benefit from using data  
43 captured in electronic case management systems. Through advanced data analytics and artificial  
44 intelligence techniques (e.g., machine-learning algorithms), agencies can use such data to rapidly  
45 and efficiently identify anomalies and systemic trends.<sup>5</sup>

46 This Recommendation recognizes that agencies have different quality assurance needs  
47 and available resources. What works best for one agency may not work for another. What quality  
48 assurance techniques agencies may use may also be constrained by law. Agencies must take into  
49 account their own unique circumstances when implementing the best practices that follow.

### RECOMMENDATION

#### Review and Development of Quality Assurance Standards

- 50 1. Agencies with adjudicative programs that do not have quality assurance systems—that is,  
51 practices for assessing and improving the quality of decisions in adjudicative programs—  
52 should consider developing such systems to promote fairness, the perception of fairness,  
53 accuracy, inter-decisional consistency, timeliness, efficiency, and other goals relevant to  
54 their adjudicative programs.
- 55 2. Agencies with adjudicative programs that have quality assurance systems should review  
56 them in light of the recommendations below.
- 57 3. Agencies' quality assurance systems should assess whether decisions and decision-  
58 making processes:
- 59 a. Promote fairness and the appearance of fairness;
- 60 b. Accurately determine the facts of the individual matters;

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<sup>5</sup> Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence*, 86 Fed. Reg. 6616 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30686 (June 29, 2018).



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 61 c. Correctly apply the law to the facts of the individual matters;  
62 d. Comply with all applicable requirements;  
63 e. Are completed in a timely and efficient manner; and  
64 f. Are consistent across all adjudications of the same type.
- 65 4. Agencies should consider both reviews that address decisions' likely outcomes before  
66 reviewing tribunals, and reviews of adjudicators' decisional reasoning, which address  
67 policy compliance, consistency, and fairness.
- 68 5. A quality assurance system should review the work of adjudicators and all related  
69 personnel who have important roles in the adjudication of cases, such as attorneys who  
70 assist in drafting decisions, interpreters who assist in hearings, and staff who assist with  
71 development of evidence.
- 72 6. Analyzing decisions of agency appellate and judicial review bodies may help quality  
73 assurance personnel assess whether the adjudicatory process is meeting the goals outlined  
74 in Paragraph 3. But agencies should not rely solely on such decisions to set and assess  
75 standards of quality because appealed cases may not be representative of all  
76 adjudications.

### **Quality Assurance Personnel**

- 77 7. Agencies should ensure that quality assurance personnel can perform their functions in a  
78 manner that is, and is perceived as, impartial, including being able to perform such  
79 functions without pressure, interference, or expectation of employment consequences  
80 from the personnel whose work they review.
- 81 8. Agencies should ensure that quality assurance personnel understand all applicable  
82 substantive and procedural requirements and have the expertise necessary to review the  
83 work of all personnel who have important roles in adjudicating cases.
- 84 9. Agencies should ensure that quality assurance personnel have sufficient time to fully and  
85 fairly perform their assigned functions.
- 86 10. Agencies should consider whether quality assurance systems should be staffed by  
87 permanent or temporary personnel, or some combination of the two. Personnel who



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

88 perform quality assurance functions on a permanent basis may gain more experience and  
89 institutional knowledge over time than will personnel who perform on a temporary basis.  
90 Personnel who perform quality assurance on a temporary basis, however, may be more  
91 likely to contribute different experiences and new perspectives.

### **Timing of and Process for Quality Assurance Review**

- 92 11. Agencies should consider at what points in the adjudication process quality assurance  
93 review should occur. In some cases, review that occurs before adjudicators issue their  
94 decisions, or during a period when agency appellate review is available, could allow  
95 errors to be corrected before decisions take effect. However, agencies should take care  
96 that pre-disposition review does not interfere with adjudicators' qualified decisional  
97 independence and comports with applicable restrictions governing ex parte  
98 communications, internal separation of decisional and adversarial personnel, and decision  
99 making based on an exclusive record.
- 100 12. Agencies should consider implementing peer review programs in which adjudicators can  
101 provide feedback to other adjudicators.
- 102 13. Agencies should consider a layered approach to quality assurance that employs more than  
103 one methodology. As resources allow, this may include formal quality assessments and  
104 informal peer review on an individual basis, sampling and targeted case selection on a  
105 systemic basis, and case management systems with automated adjudication support tools.
- 106 14. In selecting cases for quality assurance review, agencies should consider the following  
107 methods:
- 108 a. Review of every case, which may be useful for agencies that adjudicate a small  
109 number of cases but impractical for agencies that decide a high volume of cases;
  - 110 b. Random sampling, which can be more efficient for agencies that decide a high  
111 volume of cases but may cause quality assurance personnel to spend too much  
112 time reviewing cases that are unlikely to present issues of concern;
  - 113 c. Stratified random sampling, a type of random sampling that over-samples cases  
114 based on chosen characteristics, which may help quality assurance personnel



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 115 focus on specific legal issues or factual circumstances associated with known  
116 problems, but may systematically miss certain types of problems; and  
117 d. Targeted selection of cases, which allows agencies to directly select decisions that  
118 contain specific case characteristics and may help agencies study known problems  
119 but may miss identifying other possible problems.

### **Data Collection and Analysis**

- 120 15. Agencies, particularly those with large caseloads, should consider what data would be  
121 useful and how it could be used for quality assurance purposes. Agencies should ensure  
122 that, for each case, an electronic case management or other system includes the following  
123 information:
- 124 a. The identities of adjudicators and any personnel who assisted in evaluating  
125 evidence, writing decisions, or performing other case-processing tasks;
  - 126 b. The procedural history of the case, including any actions and outcomes on  
127 administrative or judicial review;
  - 128 c. The issues presented in the case and how they were resolved; and
  - 129 d. Any other data the agency determines to be helpful.
- 130 16. Agencies should regularly evaluate their electronic case management or other systems to  
131 ensure they are collecting the data necessary to assess and improve the quality of  
132 decisions in their programs.
- 133 17. Agencies, particularly those with large caseloads, should consider whether to use data  
134 analytics and artificial intelligence (AI) tools to help quality assurance personnel identify  
135 potential errors or other quality issues. Agencies should ensure that they have the  
136 technical capacity, expertise, and data infrastructure necessary to build and deploy such  
137 tools; that any data analytics or AI tools the agencies use support, but do not displace,  
138 evaluation and judgment by quality assurance personnel; and that such systems comply  
139 with legal requirements for privacy and security and do not unintentionally create or  
140 exacerbate harmful biases.



### **Use of Quality Assurance Data and Findings**

- 141 18. Agencies should not use information gathered through quality assurance systems in ways  
142 that could improperly influence decision making or personnel matters.
- 143 19. Agencies should provide, consistent with Paragraph 11, individualized feedback for  
144 adjudicators and other personnel who assist in evaluating evidence, writing decisions, or  
145 performing other case-processing tasks within a reasonable amount of time and include  
146 any relevant positive and negative feedback.
- 147 20. Agencies should establish regular communications mechanisms to facilitate the  
148 dissemination of various types of quality assurance information within the agency.  
149 Agencies should:
- 150 a. Communicate information about systemic recurring or emerging problems  
151 identified by quality assurance systems to all personnel who participate in the  
152 decision-making process and to training personnel;
  - 153 b. Communicate, as appropriate, with agency rule-writers and operations support  
154 personnel to allow them to consider whether recurring problems identified by  
155 quality assurance systems should be addressed or clarified by rules, operational  
156 guidance, or decision support tools; and
  - 157 c. Consider whether to communicate information to appellate adjudicators or other  
158 agency officials who are authorized to remedy problems identified by quality  
159 assurance systems in issued decisions.

### **Public Disclosure and Transparency**

- 160 21. Agencies should provide access on their websites to all rules and any associated  
161 explanatory materials that apply to quality assurance systems, including standards for  
162 evaluating the quality of agency decisions and decision-making processes.
- 163 22. Agencies should consider whether to publicly disclose data in case management systems  
164 in a de-identified form (i.e., with all personally identifiable information removed) to  
165 enable continued research by individuals outside of the agency.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### **Assessment and Oversight**

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