



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.¹

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.² Since then, many agencies, including those that adjudicate other types
14 of matters, have implemented or considered implementing quality assurance systems, often to

¹ 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.).

² 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).



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15 supplement other internal review mechanisms such as agency appellate systems.³ 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.⁴

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

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

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



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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.⁵

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;

⁵ 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).



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- 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



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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



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- 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.



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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.