

Comment from Government Member Adam Kress on *Participation of Senate-Confirmed Officials in Administrative Adjudication*
May 1, 2024

Page 11, Paragraph 16: could we consider expanding to recommend that agencies periodically review petitions for review/decisions rendered by PAS officials to “determine whether issues raised repeatedly indicate that the agency and/or lower-level adjudicators may benefit from notice-and-comment rulemaking or development of guidance.”

Page 11, Paragraph 17: following up on Russell’s comment, does it make sense to indicate here or later what we think are the “significant delegations of authority” that should be addressed in the agency’s regulations. See para. 21(m). I raise this because some of these items seem to be real delegations of PAS authority: dismissing, denying and granting petitions for review in routine circumstances, approving settlement agreements, staying decisions pending judicial review/reconsideration. But others seem to be assignments of the work that must be done to render a decision: initial evaluation of the petition for review, policy and legal research, recommending case disposition, preparing draft decisions. It would seem to make sense to address the first set of functions in the agency regulations, especially if it’s the lower-level adjudicator that’s taking the relevant public or party-facing action (e.g., dismissing a case under his or her name), but not the second set, which seem to be less delegations of authority than delegations of work responsibilities.