



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Recommendation 2023-7

Improving Timeliness in Agency Adjudication

Adopted December 14, 2023

It is often said that justice delayed is justice denied. Indeed, one rationale underlying the adjudication of many types of cases by executive branch agencies is that they often can decide them more quickly through administrative methods than the courts can through judicial methods.

Federal agencies adjudicate millions of cases each year, including applications for benefits and services, applications for licenses and permits, and enforcement actions against persons suspected of violating the law. Members of the public depend on the timely adjudication of their cases. Delayed adjudication, especially given the possible added time of judicial review, can have significant consequences, particularly for members of historically underserved communities.

The time it takes an agency to decide a case depends on, among other variables, the evidentiary and procedural demands of the case, the volume of cases pending before the agency, and the resources available to the agency to adjudicate cases. Many factors can affect these variables, such as the funds appropriated by Congress, which directly impact the resources that agencies can allocate to adjudication. Other factors include the establishment and expansion of programs by Congress, economic and demographic changes, trends in federal employment affecting agencies' ability to recruit and retain personnel involved in adjudication, disruptions to agency operations, such as the COVID-19 pandemic, and agency organizational structures and procedures.¹ When delays or backlogs increase, agencies frequently face pressure from parties, representatives, Congress, the media, and others to process and decide cases more promptly.

¹ Jeremy S. Graboyes & Jennifer L. Selin, *Improving Timeliness in Agency Adjudication* (Dec. 11, 2023) (report to the Admin. Conf. of the U.S.).



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Agencies rely on a wide range of procedural, organizational, personnel, technological, and other initiatives to promote timeliness and to respond to concerns about timeliness when they arise. The Administrative Conference has adopted many recommendations identifying specific methods that agencies have used or might use to improve timeliness. One of its earliest recommendations encourages agencies to collect and analyze case processing data to “develop improved techniques fitted to [their] particular needs to reduce delays” and measure the effectiveness of those techniques.² Later recommendations address options including:

- Delegation of final decisional authority subject to discretionary review by the agency head;³
- Use of precedential decision making by appellate decision makers;⁴
- Adoption of procedures for summary judgment⁵ and prehearing discovery;⁶
- Use of a broad suite of active case management techniques;⁷
- Implementation of electronic case management and publicly accessible online processes;⁸

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 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).



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- Establishment of quality assurance systems;⁹
- Development of reasonable time limits or step-by-step time goals for agency action;¹⁰
- Use of alternative dispute resolution (ADR) techniques;¹¹
- Use of simplified or expedited procedures in appropriate cases;¹²
- Use of remote hearings;¹³
- Aggregation of similar claims;¹⁴ and
- Use of personnel management strategies.¹⁵

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

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² 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.

¹³ 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 Conferencing 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, *supra* note 7.

¹⁴ 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.

¹⁵ Recommendation 86-7, *supra* note 7, ¶ 1.

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); *see also* Exec. Order No. 14,110, 88 Fed. Reg. 75,191 (Nov. 1, 2023).



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At the same time, no single method will promote timeliness at all agencies in all circumstances. Each agency has its own mission, serves different communities, adjudicates according to a distinct set of legal requirements, has different resources available to it, and faces different operational realities. Moreover, in promoting timely adjudication, agencies must remain sensitive to other values of administrative adjudication such as decisional quality, procedural fairness, consistency, transparency, customer service, and equitable treatment. Building on earlier recommendations, this Recommendation provides a general framework that agencies and Congress can use to both foster an organizational culture of timeliness in agency adjudication in accord with principles of fairness, accuracy, and efficiency and devise plans to address increased caseloads, delays, backlogs, and other timeliness concerns when they arise.

RECOMMENDATION

Information Collection

1. Agencies should ensure their electronic or other case management systems are collecting data necessary for accuracy in monitoring and detecting changes in case processing times at all levels of their adjudication systems (e.g., initial level, hearing level, appellate review level), identify the causes of changes in case processing times, and devise methods to promote or improve timeliness without adversely affecting decisional quality, procedural fairness, or other objectives. Agencies should identify the kinds of data or records that Congress, media representatives, researchers, or other interested persons frequently request to ensure that agency personnel responsible for responding to such requests can do so in an efficient manner. Agencies should ensure that electronic or other case management systems track the following information:
 - a. The number of proceedings of each type pending, commenced, and concluded during a standard reporting period (e.g., week, month, quarter, year) within and across different levels of their adjudication systems;
 - b. The current status of each case pending at every level of their adjudication systems; and



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- c. For each case, the number of days required to meet critical case processing milestones within and across different levels of their adjudication systems.
2. To meet organizational goals and obtain information about expectations for adjudication timelines, agencies should communicate regularly with interested persons within and outside the agency. In addition to formal engagements, agencies should provide ongoing opportunities for interested persons within and outside the agency to provide feedback and suggestions. Methods for obtaining such information include:
 - a. Surveys of interested persons within and outside the agency;
 - b. Listening sessions and other meetings;
 - c. Requests for information published in the *Federal Register*;
 - d. Online feedback forms; and
 - e. Use of ombuds.

Performance Goals and Standards

3. Agencies should adopt organizational performance goals that encourage and provide clear expectations for timeliness. Performance goals may take several forms, including goals contained in agency strategic plans, guidelines establishing time limits for concluding cases, and policies instituting step-by-step time goals. In developing organizational performance goals for timeliness, agencies should:
 - a. Use the information described in Paragraphs 1 and 2 to develop goals that are reasonable and objective;
 - b. Encourage interested persons within and outside the agency to participate in the development of such goals; and
 - c. Periodically reevaluate such goals to ensure they (i) continue to be reasonable; (ii) encourage and provide clear expectations for timeliness; and (iii) do not adversely affect decisional quality or the fairness or integrity of proceedings.
4. When agencies use timeliness or productivity measures in appraising the performance of employees, as defined in 5 U.S.C. § 4301, and members of the Senior Executive Service,



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or in setting timeliness or productivity expectations for administrative law judges, who are not subject to performance appraisals, agencies should:

- a. Use the information described in Paragraphs 1 and 2 to develop measures or expectations that are reasonable and objective and provide clear expectations for timeliness;
- b. Encourage interested persons within and outside the agency, including employees to whom the measures or expectations apply, to participate in the development of such measures or expectations;
- c. Ensure measures or expectations reflect tasks within the control of individual employees;
- d. Ensure measures or expectations take into account the range of case types and tasks performed by individual employees as well as resources (e.g., staff support, technology) at their disposal;
- e. For employees who decide cases, ensure measures or expectations do not lead them to decide cases in a particular way;
- f. For all employees, ensure measures or expectations do not lead them to take actions that would adversely affect decisional quality or the fairness or integrity of proceedings; and
- g. Periodically reevaluate such measures or expectations.

Organizational, Procedural, Technological, and Case Management Techniques

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

5. Agencies should narrow disputes and resolve cases at the lowest possible level of their adjudication systems and, at each level, use the least time- and resource-intensive processes available and appropriate to the circumstances, such as informal prehearing



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procedures, alternative dispute resolution, streamlined procedures, or decision making on the written record.

6. As appropriate, agencies should adopt procedures for (i) resolving multiple cases in a single proceeding, such as the aggregation of similar claims; and (ii) resolving recurring legal or factual issues, such as precedential decision making or substantive rulemaking.
7. Agencies should adopt processes for screening cases at intake to (i) resolve procedural issues as early as possible; (ii) identify cases that may be appropriate for less time- and resource-intensive processes, such as those described in Paragraphs 5 and 6; (iii) identify cases that can be resolved quickly because they are legally and factually straightforward; and (iv) identify cases that should be prioritized or expedited.
8. Agencies should adopt procedures that standardize the allocation of tasks among adjudicators, managers, staff attorneys, and paralegal support staff.
9. Agencies should review and update as necessary their Human Capital Operating Plans (5 C.F.R. pt. 250) to ensure their hiring and position management needs are aligned properly with their operational goals for adjudication.
10. Agencies should automate routine tasks that do not require a significant exercise of discretion when automation will not adversely affect quality or program integrity. Such tasks may include receiving filings and evidence, establishing new case files, associating records with case files, de-duplicating records, assigning cases to agency personnel for action, screening cases as described in Paragraph 7, and generating and releasing standardized correspondence.
11. Agencies should outsource routine tasks that do not require a significant exercise of discretion—such as transcribing, scanning records, or mailing correspondence—when it would be more efficient and cost-effective for a contractor to perform them and there are no legal or policy reasons to assign the tasks to agency personnel (e.g., restrictions on access to sensitive personal or national security information).
12. Agencies should adopt rules and policies that reflect best practices for case management, including evidentiary development, motions practice, intervention, extensions of time, decision writing, and methods for encouraging prompt action and discouraging undue delay by parties. At the same time, agencies should ensure that adjudicators, managers,



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and support staff have sufficient flexibility to manage individual cases fairly, accurately, and efficiently, and test alternative case management techniques that may reveal new best practices. Agencies should periodically reevaluate such rules and policies, using the information described in Paragraphs 1 and 2, to ensure they continue to reflect best practices for case management and provide relevant personnel with sufficient flexibility to manage individual cases and test alternative case management techniques.

13. Agencies should establish organizational units, supervisory structures, and central and field operations that reinforce timeliness and facilitate appropriate communication among agency personnel involved in adjudication at all levels of an adjudication system.
14. Agencies should update public websites and electronic case management systems so that they are able to handle the volume of current and future cases efficiently and effectively.

Strategic Planning

15. Agencies should engage in evidence-based and transparent strategic planning to anticipate and address concerns about timeliness, including increased caseloads, delays, and backlogs. In undertaking such strategic planning, agencies should:
 - a. Use the information described in Paragraphs 1 and 2 to identify case processing trends such as geographical or temporal variations in case intake or case processing times, assess the causes of timeliness concerns, and identify points at all levels of their adjudication systems that are causing delays;
 - b. Review previous efforts to address timeliness concerns to understand what initiatives have been attempted and which have been effective;
 - c. Consider a wide range of options for improving timeliness in the adjudication process without adversely affecting decisional quality, procedural fairness, program integrity, or other objectives. Options may include organizational, procedural, technological, case management, and other techniques, including those identified in previous Conference recommendations and Paragraphs 5–14;
 - d. Engage in candid discussions with adjudicators, managers, and support staff at all levels of their adjudication systems, as well as interested persons outside the



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agency, regarding the benefits, costs, and risks associated with different options for improving timeliness;

- e. Develop proposed plans for addressing timeliness concerns, and solicit feedback on the plans from interested persons within and outside of the agency;
- f. Consider pilot studies and demonstration projects before implementing interventions broadly to test the effectiveness of different interventions and identify unintended consequences; and
- g. Designate a senior official responsible for coordinating the activities described in this Paragraph.

Coordination and Collaboration

16. Agencies should facilitate communication between components involved in their adjudication systems and other components that carry out functions necessary for timely adjudication, such as those that oversee information technology, human resources, budget planning, office space, and procurement.
17. Agencies should coordinate, as appropriate, with the President and Congress by providing information on recommended legislative changes and appropriations that would promote timeliness generally or address ongoing timeliness concerns.
18. Agencies should partner with federal entities such as the Chief Information Officers Council, the U.S. Digital Service, the General Services Administration, and the Office of Personnel Management to develop and implement best practices for leveraging information technology, human capital, and other resources to promote or improve timeliness.
19. Unless precluded by law or otherwise inappropriate, agencies should share information with each other about their experiences with and practices for promoting timeliness generally and addressing ongoing timeliness concerns. The Office of the Chair of the Administrative Conference should provide for the interchange of such information, as authorized by 5 U.S.C. § 594(2).



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20. Agencies should develop partnerships with relevant legal service providers, other nongovernmental organizations, and state and local government agencies that advocate for or provide assistance to individuals who participate as parties in agency adjudications.
21. Agencies should make informational materials available to adjudicators, managers, staff attorneys, and paralegal support staff. Agencies should conduct regular training sessions for such personnel on best practices for fair, accurate, and efficient case management.

Communication and Transparency

22. Agencies should provide parties and representatives with resources to help them navigate their adjudication systems, understand procedural alternatives that may expedite decision making in appropriate cases, and learn about best practices for efficient and effective advocacy before the agency. Such resources may include informational materials (e.g., documents written in plain language and available in languages other than English, short videos, decision trees, and visualizations), navigator programs, and counseling for self-represented parties.
23. As early as possible and at key points throughout the adjudication process, agencies should provide self-represented parties with plain-language materials informing them of (i) their right to be represented by an attorney or qualified nonlawyer legal service provider; (ii) potential benefits of representation; and (iii) options for obtaining representation.
24. Agencies should publicly identify case management priorities and procedures that have been adopted to improve timeliness and may result in parties' cases being identified for aggregation, expedition, or similar alternative techniques.
25. Agencies should publicly disclose (i) average processing times and aggregate processing data for claims pending, commenced, and concluded during a standard reporting period; (ii) any deadlines or processing goals for adjudicating cases; and (iii) information about the agency's plans for and progress in addressing timeliness concerns. Agencies should consider whether and to what extent they should disclose such information pertaining to agency subcomponents.



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26. When agencies use timeliness or productivity measures in appraising the performance of employees, as defined in 5 U.S.C. § 4301, and members of the Senior Executive Service, or in setting timeliness or productivity expectations for administrative law judges, who are not subject to performance appraisals, they should disclose such measures or expectations publicly and explain how they were developed. For employees who are subject to performance appraisal, agencies should disclose publicly (i) how they use such measures to appraise employees, and (ii) whether employees are eligible for incentive awards based on timeliness or productivity.

Consideration for Congress

27. As set forth in Recommendation 78-3, *Time Limits on Agency Actions*, Congress ordinarily should not impose statutory time limits on agency adjudication. If Congress does consider imposing time limits on adjudication by a particular agency, it should first seek information from the agency and interested persons. If Congress does decide to impose time limits, it should do so only after determining that the benefits of such limits outweigh the costs. If Congress then decides time limits are necessary or warranted, it should require agencies to adopt reasonable time limits or, in rare circumstances, impose such limits itself. In setting any statutory time limits, Congress should:

- a. Recognize that preexisting statutory or regulatory frameworks or special circumstances (e.g., a sudden substantial increase in an agency's caseload or the complexity of the issues in a particular case) may justify an agency's failure to conclude a case within the proposed statutory time limit;
- b. State expressly what should occur if the agency does not meet its statutory deadline;
- c. State expressly whether affected persons may or may not enforce the time limit through judicial action and, if so, the nature of the relief available for this purpose; and
- d. Consider the need to increase agency resources to enable the agency to meet its statutory deadline.