



Electronic Case Management in Federal Administrative Adjudication

Joint ad hoc Committee of the Committee on Adjudication and Committee on Administration and Management

Proposed Recommendation for Committee | April 16, 2018

1 Courts and adjudicative agencies have increasingly come to rely on technology to
2 manage various aspects of their adjudicative activities. Some of these federal agencies have
3 adopted and implemented a form of electronic management for their casework, but others have
4 not done so. Although practical considerations or resource constraints may sometimes weigh
5 against the use of an electronic case management system (“eCMS”), agencies can often realize
6 considerable efficiencies and reap other benefits by adopting such a system.

7 Benefits of an Electronic Case Management System

8 As referred to here, an electronic case management system includes the functions usually
9 associated with a paper-based case management system from the filing of a case to its resolution
10 and beyond, such as: the initial receipt of the claim, complaint, or petition; the receipt,
11 organization, and secure storage of evidence and briefs; the scheduling of hearings or other
12 proceedings; the maintenance of tools to facilitate the analysis and resolution of the case; and the
13 collection and reporting of data relating to the case, including when evidence was received, the
14 time the case has remained pending, employees who have processed the case, and the outcome of
15 the case, including any agency decision.



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16 An eCMS, properly implemented, may perform these functions in a more efficient and
17 cost-effective manner than a paper-based management system.¹ For example, maintaining paper
18 records can be costly with respect to storage space, mailing fees, and staff time for the relatively
19 large number of agency employees needed to receive, store, track, and retrieve records, and
20 locate lost or misfiled records. An eCMS may reduce these costs in addition to reducing
21 processing time and improving interactions with litigants and the public. In addition to
22 improving the traditional functions of a paper-based case management system, an eCMS may
23 also provide new functionalities, such as making structured data available for analysis that can be
24 used to improve an agency’s operations.

25 Perhaps more importantly, an eCMS can assist adjudicative agencies in fulfilling their
26 duties under various laws that impose requirements related to paperwork reduction, agency
27 efficiency, public access to records, and technology management. For example, the Government
28 Paperwork Elimination Act requires that federal agencies use electronic forms, electronic filing,
29 and electronic signatures to conduct official business with the public, where practicable.²
30 Further, the E-Government Act of 2002 directs agencies to establish “a broad framework of
31 measures that require using Internet-based information technology to improve citizen access to
32 government information and services.”³ And finally, beyond statutory requirements, an eCMS
33 can also assist an agency’s implementation of best practices for public access and participation,
34 consistent with the spirit of past ACUS recommendations relating to both adjudication and
35 rulemaking.⁴

¹ Felix F. Bajandas and Gerald K. Ray, Implementation and the Use of Electronic Case Management Systems in Federal Adjudication (February 23, 2018) (draft report to the Admin. Conf. of the U.S.), <https://www.acus.gov/sites/default/files/documents/ACUS%20eCMS%20Draft%20Report.pdf>.

² Government Paperwork Elimination Act, Pub. L. No. 105-277, 112 Stat. 2681-749 (1998) (codified at 44 U.S.C. § 3504 note).

³ E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (codified at 44 U.S.C. § 101 note).

⁴ See Admin Conf. of the U.S., Recommendation 2011-1, *Agency Innovations in E-Rulemaking*, 77 Fed. Reg. 2257, 2264 (Jan. 17, 2012); Admin Conf. of the U.S., Recommendation 2013-5, *Social Media in Rulemaking*, 78 Fed. Reg. 76269, 76269 (Dec. 17, 2013); and Admin. Conf. of the U.S., Recommendation 2017-1, *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31039, 31039 (Jul. 5, 2017).



36 **Considerations in Adopting an Electronic Case Management System**

37 Despite the advantages of an eCMS, the decision to implement an eCMS must be
38 carefully considered. It may not be cost efficient for every adjudicative agency to implement an
39 eCMS given agency-specific factors such as caseload volume. For example, there may be
40 significant costs associated with the purchase and maintenance of new equipment. Further, the
41 need to train agency staff in new business processes associated with the eCMS may also be
42 significant, as the new operations may be substantially different. In addition, an agency may
43 need to allocate resources to ensure any new eCMS complies with existing legal requirements,
44 such as the protection of private information about individuals, as required by the Privacy Act.⁵

45 If, after considering the costs, an agency decides to implement an eCMS and partially or
46 fully replace a paper-based case management system, the agency must consider a number of
47 factors in deciding *what* particular eCMS functionalities are to be used and *how* they are to be
48 designed and implemented. Planning for an eCMS implementation thus requires a
49 comprehensive understanding of an agency's structure and business process. Agencies
50 considering implementing or enhancing an eCMS may find further benefit in studying the
51 experiences of other agencies' eCMS implementations due to the highly fact-specific nature of a
52 consideration of the costs and benefits of an eCMS.

53 The implementation or expansion of an eCMS deserves a full and careful consideration
54 by federal adjudicative agencies with an adjudicative function. In recognition that each agency
55 is unique in terms of its mission, caseload, and challenges, this Recommendation suggests that
56 agencies should implement or expand an eCMS only after conducting a thorough consideration
57 of the costs and benefits, and concluding that doing so would lead to benefits such as reduced
58 costs and improved efficiency, accuracy, public access, and transparency without impairing the
59 fairness of the proceedings.

⁵ Privacy Act of 1974 (codified at 5 U.S.C. § 552a), as amended by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (codified at 5 U.S.C. § 101 note).



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RECOMMENDATION

- 60 1. Federal adjudicative agencies should consider implementing electronic case management
61 systems (“eCMS”) in order to: honor statutory requirements such as the protection of
62 personally identifiable information, reduce costs, expand public access and transparency,
63 and improve both efficiency and accuracy in the processing of cases.
- 64 2. Federal adjudicative agencies should consider whether their adjudicatory proceedings are
65 conducive to an eCMS and whether their facilities and staff can support the eCMS
66 technology. If so, agencies should then consider the costs and benefits to determine
67 whether the implementation or expansion of an eCMS would promote the objectives
68 identified in Recommendation 1 as well as the agency’s statutory mission without
69 impairing the fairness of proceedings or the participants’ satisfaction with them. This
70 consideration of the costs and benefits should include the following non-exclusive
71 factors:
- 72 a. Whether the agency’s budget would allow for investment in appropriate and
73 secure technology as well as adequate training for agency staff.
 - 74 b. Whether the use of an eCMS would reduce case processing times and save costs,
75 including the costs associated with the printing of paper and the use of staff
76 resources to store, track, retrieve, and maintain paper records.
 - 77 c. Whether the use of an eCMS would foster greater accessibility and better public
78 service.
 - 79 d. Whether users of an eCMS, such as administrative law judges, other adjudicators,
80 hearing officers and other court staff, parties, witnesses, and attorneys (or other
81 party representatives), would find the eCMS beneficial.
- 82 3. The following possible eCMS features, currently implemented by some federal
83 adjudicative agencies, should be considered by other agencies for their potential benefits:
- 84 a. Web access to the eCMS that allows parties to file a case or claim, submit
85 documents, and obtain case information, largely without interaction with agency
86 personnel, and outside normal business hours.



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- 87 b. Automation of agency tasks in maintaining a case file, such as sorting and
88 organizing case files, providing simultaneous access to files and documents by
89 authorized users, tracking deadlines and elapsed age of a case, notifying parties of
90 new activity in a case, and pre-populating forms with data from the case file.
- 91 c. The comprehensive capture of structured and unstructured data that allows for
92 robust data analysis to identify opportunities for improving an agency's
93 operations.
- 94 4. Federal adjudicative agencies that decide to implement or expand an eCMS should plan
95 and manage their budgets in a way that balances the needs of a sustainable eCMS with
96 the possibility of future funding limitations. Agencies should:
- 97 a. Consider and plan for the costs associated with building, maintaining, and
98 improving the eCMS.
- 99 b. Consider the experiences of other agencies in order to learn from their
100 experiences in deciding how to implement an eCMS.
- 101 c. Consider and address the implications of an eCMS on an agency's procedural
102 rules, including but not limited to what medium will constitute the official record
103 of a case and whether procedural rules are different if a case file is electronic
104 rather than in paper.
- 105 d. Create a map or flow chart of their adjudicative processes in order to identify the
106 needs of an eCMS. This involves listing the tasks performed by employees at each
107 step in the process to ensure the eCMS captures all of the activities that occur
108 while the case is pending, from initial filing to final resolution. It also includes
109 identifying how members of the public or other non-agency users will access and
110 interact with the eCMS. To the extent possible, this effort should also involve
111 mapping or flow-charting the legal and policy requirements to decisional
112 outcomes.
- 113 e. Put in place a management structure capable of: (1) restoring normal operations
114 after a system goes down (incident management); (2) eliminating recurring
115 problems and minimizing the impact of problems that cannot be prevented



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- 116 (problem management); (3) overseeing a new release of an eCMS with multiple
117 technical or functional changes (release management); (4) handling modifications,
118 improvements, and repairs to the eCMS to minimize service interruptions (change
119 management); and (5) identifying, controlling, and maintaining the versions of all
120 of the components of the eCMS (configuration management).
- 121 f. Establish a “service desk” or central hub for reporting issues with the eCMS and
122 providing support to eCMS users, including providing feedback on the resolution
123 of problems. A service desk should gather statistics of eCMS issues in order to
124 help guide future improvements of the eCMS. A service desk could also enable
125 eCMS users to offer suggestions for improving the eCMS.
- 126 g. Plan adequate and timely training for staff on the use of the eCMS.
- 127 5. Federal adjudicative agencies that decide to implement or expand an eCMS should do so
128 in such a way that appropriate protections for privacy, transparency, and security are
129 preserved by:
- 130 a. Ensuring that the agency’s compliance with the Privacy Act, other statutes
131 protecting privacy, and the agency’s own privacy regulations and policies remains
132 unchanged by the implementation or expansion of an eCMS.
- 133 b. To the extent it is consistent with Recommendation 5(a) above, making case
134 information available online to parties and, where appropriate, the public, taking
135 into account affirmative disclosure requirements in the Freedom of Information
136 Act and ensuring that important adjudicative documents are publicly available in
137 the interest of transparency.
- 138 c. Adopting security measures, such as encryption, to ensure that information held in
139 an eCMS cannot be accessed or changed by unauthorized persons.
- 140 d. Ensuring that sensitive information is not inadvertently provided to unintended
141 third parties through private email services, unsecured data transmission, or
142 otherwise.
- 143 e. Keeping track of the evolution of security technologies and considering the
144 adoption of those technologies as they mature.



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- 145 6. Federal adjudicative agencies that decide to implement or expand an eCMS should
146 consider how to analyze and leverage data that is captured by the eCMS to improve their
147 adjudicative processes, including through the use of natural language processing,
148 machine learning, and predictive algorithms. Agencies should consider:
- 149 a. Evaluating how eCMS features could generate the types of data that would be
150 useful for evaluating the effectiveness of their adjudicative processes and policies.
 - 151 b. Capturing and analyzing such data about adjudicative processes and policies to
152 detect and define problem areas that present opportunities for improvement.
 - 153 c. Upon identification of areas for improvement in the adjudication process, taking
154 corrective action, refining performance goals, and measuring performance under
155 the newly improved process.
 - 156 d. Hiring staff trained in data science to facilitate data analysis and giving that staff
157 access to subject matter experts within agencies.
 - 158 e. Collaborating with other agencies over best practices for data analytics.