



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ANDREW FOIS
Chair

April 8, 2024

The Honorable Morgan Luttrell
Chairman
Subcommittee on Disability Assistance
and Memorial Affairs
Committee on Veterans' Affairs
1320 Longworth House Office Building
Washington, D.C. 20515

The Honorable Chris Pappas
Ranking Member
Subcommittee on Disability Assistance
and Memorial Affairs
Committee on Veterans' Affairs
452 Cannon House Office Building
Washington, DC 20515

Dear Chairman Luttrell and Ranking Member Pappas:

The Office of the Chair of the Administrative Conference of the United States (ACUS) is pleased to submit this letter for the record of the Subcommittee's April 10, 2024, legislative hearing. We appreciate the opportunity to provide the Subcommittee information about ACUS resources related to improving the efficiency and quality of adjudications and appeals of claims for benefits under laws administered by the Secretary of Veterans Affairs.

ACUS is a nonpartisan, independent agency in the executive branch charged by statute with making recommendations to the President, federal agencies, Congress, and the Judicial Conference to improve adjudication, rulemaking, and other administrative processes (*see* 5 U.S.C. § 594). ACUS consists of up to 101 members drawn from federal agencies, the practicing bar, scholars in the field of administrative law or government, and others specially informed by knowledge and experience with respect to federal administrative procedure. A presidentially appointed, Senate-confirmed Chair serves as chief executive of the agency and oversees staff within the Office of the Chair. The Office of the Chair supports the work of the membership and undertakes other activities to study and improve federal administrative processes.

ACUS has adopted dozens of recommendations, and the Office of the Chair has produced many additional resources that address federal administrative adjudication. This letter highlights a selection of these materials which you may find helpful in assessing issues of timeliness and quality in adjudications and appeals of claims in programs that experience particularly high caseloads. For a comprehensive list of all ACUS recommendations and resources on administrative adjudication generally, please visit <http://www.acus.gov/adjudication>.

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Timeliness in Administrative Adjudication

Over its long history, ACUS has adopted many recommendations identifying specific methods that agencies have used or might use to improve timeliness and reduce backlogs in administrative adjudication programs.¹

In [Recommendation 2023-7, *Improving Timeliness in Agency Adjudication*](#),² ACUS built upon this body of earlier recommendations, in part to account for advances in technology. It provides a general framework that agencies and Congress can use to both foster an organizational culture of timeliness in agency adjudication—consistent with principles of fairness, accuracy, and efficiency—and devise plans to address increased caseloads, delays, backlogs, and other timeliness concerns when they arise.

While I commend the recommendation to you in its entirety, I believe certain elements may be of particular interest to the Subcommittee as it considers the draft bill entitled, the “Veterans Appeals Efficiency Act of 2024.” For example, Section 2(b)(1) of the draft bill would require that the Secretary of Veterans’ Affairs (hereinafter, Secretary) use technology to track and maintain information (including information with respect to timeliness) on the Department’s adjudication of claims for benefits. Similarly, in paragraph 1 of Recommendation 2023-7, ACUS recommends that agencies collect the data necessary to monitor and detect accurately changes in case processing times at all levels of their adjudication systems (e.g., at the Veterans Benefits Administration (hereinafter, VBA) and Board of Veterans’ Appeals (hereinafter, BVA)), identify the cause(s) of changes in case processing times, and devise methods to promote or improve timeliness without adversely affecting decisional quality, procedural fairness, or other objectives. Paragraph 1 further specifies that agencies should track, both within and across the different levels of their adjudication systems, the number of proceedings of each type pending, commenced, and concluded during a standard reporting period (e.g., week, month, quarter, year); the current status of each pending case; and, for each case, the number of days required to meet critical case processing milestones.

To capitalize on the improved situational awareness that these case tracking practices confer, paragraph 3 of Recommendation 2023-7 further recommends that agencies utilize the data they collect to adopt organizational performance goals that encourage and provide clear expectations for timeliness. These self-imposed performance goals could take several forms, as appropriate, including goals contained in agency strategic plans, agency guidelines establishing time limits for concluding cases, and agency policies instituting step-by-step time goals.

¹ See Jeremy S. Graboyes & Jennifer L. Selin, *Improving Timeliness in Agency Adjudication*, pp. 3–6 (Dec. 11, 2023) (report to the Admin. Conf. of the U.S.) (available at <https://www.acus.gov/sites/default/files/documents/Improving-Timeliness-Agency-Adjudication-121223.pdf>).

² Admin. Conf. of the U.S., Recommendation 2023-7, *Improving Timeliness in Agency Adjudication*, 89 Fed. Reg. 1513 (Jan. 10, 2024) (available at <https://www.acus.gov/document/improving-timeliness-agency-adjudication>).

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In light of the mandate contained in Section 2(a) of the draft bill, which would require the Secretary to submit annual reports to Congress on the average length of time a claim (or issue within a claim) is pending before the Secretary following remand from the BVA, I also direct your attention to paragraph 25 of Recommendation 2023-7. Paragraph 25 recommends that agencies publicly disclose key metrics and goals concerning their adjudication programs, including average processing times and aggregate processing data for claims pending, commenced, and concluded during a standard reporting period; any deadlines or processing goals for adjudicating cases; and information about the agency's plans for and progress in addressing timeliness concerns.

Section 2(c)(1) of the draft bill, which would empower the Chairman of the BVA to aggregate appeals that involve substantially similar questions of law or fact, is also well aligned with Recommendation 2023-7. Indeed, in paragraph 6, ACUS recommends that agencies, as appropriate, adopt procedures for aggregating similar claims as a means of improving timeliness. I further direct your attention to [Recommendation 2016-2](#), *Aggregation of Similar Claims in Agency Adjudication*,³ which provides additional guidance and best practices for the use of case aggregation in the context of administrative adjudication.

With respect to Section 2(f) of the “Veterans Appeals Efficiency Act of 2024,” which instructs the Secretary to seek to enter into an agreement with an FFRDC for an assessment of the feasibility of permitting the Board to issue precedential decisions, [Recommendation 2022-4](#), *Precedential Decision Making in Agency Adjudication*,⁴ may be of particular interest to the Subcommittee. In that recommendation, ACUS provides best practices for agencies to employ when considering whether and how to use precedential decisions in their adjudicative systems, including criteria that agencies should consider when determining whether to treat a particular decision or class of decisions as precedential and appropriate processes and procedures for designating decisions as precedential.

Paragraph 15 of Recommendation 2023-7 may also prove instructive as the Subcommittee considers Section 2(g) of the “Veterans Appeals Efficiency Act of 2024.” Through that section, the draft bill would require the Secretary to develop and submit to Congress a plan to ensure that claims for benefits are assigned to a Veterans Benefits Administration adjudicator in a timely manner. In paragraph 15, Recommendation 2023-7 similarly urges agencies to engage in evidence-based, transparent strategic planning to better enable them to anticipate and address concerns about efficiency and timeliness in

³ Admin. Conf. of the U.S., Recommendation 2016-2, *Aggregation of Similar Claims in Agency Adjudication*, 81 Fed. Reg. 40260 (June 21, 2016) (available at <https://www.acus.gov/document/aggregation-similar-claims-agency-adjudication>).

⁴ Admin. Conf. of the U.S., Recommendation 2022-4, *Precedential Decision Making in Agency Adjudication*, 88 Fed. Reg. 2312 (Jan. 13, 2023) (available at <https://www.acus.gov/document/precedential-decision-making-agency-adjudication>). See also Christopher J. Walker, Melissa Wasserman & Matthew Lee Wiener, *Precedential Decision Making in Agency Adjudication* (Dec. 6, 2022) (report to the Admin. Conf. of the U.S.) (available at <https://www.acus.gov/document/precedential-decision-making-agency-adjudication-final-report>).

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their adjudication programs. It also identifies relevant factors and best practices that agencies should consider during their strategic planning processes, ranging from reviews of prior efforts to address timeliness concerns and solicitation of feedback on draft or proposed plans, to the use of pilot studies and demonstration projects to test the effectiveness of different policy solutions prior to their full-scale implementation.

Finally, I refer you to paragraph 27 of Recommendation 2023-7, which sets forth general considerations to assist Congress when drafting legislation to address timeliness in administrative adjudication.

Quality in Administrative Adjudication

In 1973, ACUS [recommended](#) that agencies employ quality assurance systems—internal review mechanisms used to detect and remedy both problems in individual adjudications and systemic problems in agency adjudicative programs—to evaluate the accuracy, timeliness, and fairness of their adjudication of claims for public benefits or compensation.⁵ Since that time, many agencies have successfully implemented quality assurance systems.

In [Recommendation 2021-10](#), *Quality Assurance Systems in Agency Adjudication*,⁶ ACUS identifies best practices for quality assurance systems drawn from an extensive study⁷ of systems implemented since our 1973 recommendation. It provides valuable guidance for agencies on developing and implementing quality assurance systems to proactively identify problems, including misapplication or inconsistent application of the law, procedural violations, and systemic barriers to participation in their adjudication programs. The recommendation also offers many strategies, tools, and techniques that can be implemented to improve quality in adjudication, particularly in systems that experience high caseloads.

While I commend the recommendation to you in its entirety, I direct your attention to elements of the recommendation that might contribute to the draft bill entitled, the “Veterans Claims Quality Improvement Act of 2024.” Paragraph 15 of Recommendation 2021-10, in particular, may be of interest to the Subcommittee as it considers Section 3(1) of the draft bill, which would require the Chairman of the BVA to develop policies and procedures for measuring decisional quality and maintaining data on errors. In paragraph 15 of Recommendation 2021-10, ACUS recommends that agencies, particularly those with large caseloads, collect data on, at a minimum, the identities of adjudicators and any

⁵ 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) (Available at <https://www.acus.gov/sites/default/files/documents/73-3.pdf>).

⁶ Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 Fed. Reg. 1722 (Jan. 12, 2022) (available at <https://www.acus.gov/document/quality-assurance-systems-agency-adjudication>).

⁷ See Daniel E. Ho, David Marcus, & Gerald K. Ray, *Quality Assurance Systems in Agency Adjudication* (Nov. 30, 2021) (report to the Admin. Conf. of the U.S.) (available at <https://www.acus.gov/document/quality-assurance-systems-agency-adjudication-final-report>).

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personnel who assisted in evaluating evidence, writing decisions, or performing other case-processing tasks; the procedural history of the case, including any actions and outcomes on administrative appeals or judicial review; and the issues presented in the case and how they were resolved.

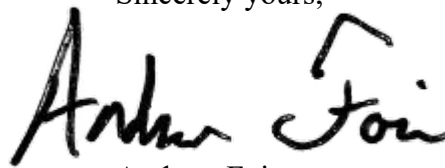
I further direct you to paragraph 17 of Recommendation 2021-10, which recommends that agencies, particularly those with high caseloads, consider leveraging technology, including data analytics and artificial intelligence tools, where appropriate, to help identify errors and other quality issues. These tools can help agencies rapidly and efficiently identify anomalies and systemic trends in their adjudication programs in a more efficient and cost-effective manner.

Finally, paragraph 22 of Recommendation 2021-10 may also be of interest, as it recommends that agencies consider whether to publicly disclose data collected by quality assurance systems in a de-identified form (i.e., with all personally identifiable information removed). Such proactive disclosure would enable continued research and study by individuals outside of the agency, which would promote improvements in both quality assurance systems and, more broadly, the programs in which they are employed.

* * *

I welcome any questions the Subcommittee may have about these or other ACUS materials on timeliness or quality in administrative adjudication. I encourage your staff to contact Conrad Dryland, Attorney Advisor and Special Counsel to the Chair, at cdryland@acus.gov if we can be of assistance on this or any other matter.

Sincerely yours,

A handwritten signature in black ink that reads "Andrew Foiss". The signature is written in a cursive style with a large, stylized initial "A".

Andrew Foiss
Chair