

REPORT FOR THE  
ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

**ONLINE PROCESSES  
IN AGENCY ADJUDICATION**

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**Recommended Citation**

Matthew A. Gluth, Online Processes in Agency Adjudication (XXX. X, 2023) (draft report to the Admin. Conf. of the U.S.)

# ONLINE PROCESSES IN AGENCY ADJUDICATION

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## INTRODUCTION

Agencies that engage in adjudication face many significant challenges in discharging their obligations to parties that come before them, most significantly how to balance the efficiency of their adjudicative systems against the quality of the decisions issued. As one approach to improve efficiency and accuracy, agencies have developed electronic case management systems (eCMS) to help them organize evidence and other critical documents required for their adjudicative proceedings, and make them more accessible to their employees.

Some agencies have employed eCMSes for many years, others have developed them more recently, and some still have not adopted the technology.<sup>1</sup> Agencies who have employed eCMSes reported improved productivity, streamlined case flow, shortened processing times, improved consistency, and better quality.<sup>2</sup>

But internal productivity, case flow, consistency, and quality is only half of the adjudication system. In recent years, the annual paperwork burden imposed on members of the public engaged with executive agencies has been in excess of nine billion hours.<sup>3</sup> By opening their electronic case management systems to members of the public, their appointed representatives, and other persons involved in adjudications, agencies can improve productivity, shorten processing time, and improve consistency and quality of the adjudication experience beyond the agency itself.

Many agencies have already begun these processes. The Social Security Administration, Department of Veterans Affairs, and U.S. Citizenship and Immigration Services have launched robust customer service portals that provide a single, user-friendly website that parties can use to perform tasks at many stages of adjudication from case initiation through appeal.

But every agency was forced to confront these needs in the face of office closures during the COVID-19 pandemic, even agencies that lacked an eCMS. From 2020 until the present, agencies have worked tirelessly to continue to provide service to the public by developing, even sometimes cobbling together, systems that allowed parties to adjudications to apply for needed benefits or file complaints, submit evidence, and receive notice of final agency decisions. This work has never been easy, and the systems developed have never been perfect. But agency employees, representatives, and others to whom I have spoken in researching this report have universally reported improvement in efficiency, quality, and most importantly, the experience of engaging with agencies' adjudicative systems.

This Report attempts to provide a broad taxonomy of developments in building online processes during the preceding years and recommend best practices drawn from the lessons agencies have learned. It proceeds as follows. Part I provides necessary background for my findings. In Part I.A, I provide an overview of the broad types of online processes adjudicative agencies have developed. Part I.B then provides a brief review of prior ACUS recommendations and studies related to this subject. In Part I.C, I identify the various institutional concerns that can affect the development and deployment of online processes. Then, in Part I.D, I identify and discuss the objectives that these processes might serve in an agency's adjudicative system.

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<sup>1</sup> Felix F. Bajandas and Gerald K. Ray, *Implementation and Use of Electronic Case Management Systems in Federal Agency Adjudication*, 31-52 (Report to the Admin. Conf. of the U.S., May 23, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> Exec. Order No. 14,058, 86 FR 71357 (Dec. 16, 2021).

After explaining the study methodology in Part II, I turn in Part III to my findings. In Part III.A, I examine developments in electronic filing and service of documents and evidence in the course of adjudication, as well as the range of technologies and techniques agencies employ. In Part III.B, I examine customer portals for interfacing with the agency, monitoring cases, updating information, and providing other structured data. In Part III.C, I examine the use of digital forms and templates. Finally, in Part III.D I explore technologies not currently in use in agency adjudication but that have shown promise in other venues, such as the state courts.

In Part IV, I provide the case studies that supported the findings. And in the Appendix, I offer recommendations for ACUS's consideration. Each recommendation is grounded in findings addressed in Part III.

## **1. BACKGROUND**

### **1.1. The World of Online Processes in Agency Adjudication**

[To come.]

#### *1.1.1. Electronic Filing Systems*

[To come.]

#### *1.1.2. Customer Service Portals*

[To come.]

#### *1.1.3. Forms and Templates*

[To come.]

### **1.2. Prior ACUS Recommendations on Online Processes**

In Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, ACUS recommended that agencies consider how adoption of an electronic case management system (eCMS) could “foster greater accessibility and better public service” and “expand public access.”<sup>4</sup> Specifically, it recommended that agencies consider whether they should provide “web access . . . that allows parties the flexibility to file a claim, complaint, or petition; submit documents; and obtain case information at any time.”<sup>5</sup> It also emphasized that electronic case management is generally more efficient and cost-effective than a paper-based system.<sup>6</sup>

However, Recommendation 2018-3 focused primarily on the ways in which agency personnel could use an eCMS. It did not comprehensively address best practices for facilitating use of an eCMS by private parties and representatives. Nor did it examine options for digitizing public-facing processes that agencies without an eCMS could feasibly adopt.

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<sup>4</sup> Admin. Conf. of the U.S., Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 FR 30683 (June 29, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

This report builds on Recommendation 2018-3 by examining best practices for developing and implementing online processes by which public participants in agency adjudications can perform common adjudicative tasks.

In Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, ACUS recommended that agencies consider what data could be necessary to assess and improve the quality of decisions in their adjudicative systems.<sup>7</sup> Recommendation 2021-10 also recommended that agencies consider whether to use data analytics and artificial intelligence (AI) tools to help identify potential errors or other quality issues.<sup>8</sup>

This report builds on Recommendation 2021-10 by acknowledging the importance of accurate collection of data to ensuring quality in agency adjudication and identifies ways in which, by engaging with private parties and representatives to assist in the collection of such data, errors in data collection could be reduced. This report builds on Recommendation 2021-10 by considering ways in which, by allowing parties to adjudication and their representatives to provide structured data through online processes, agencies can further their goals of improving quality in their adjudicative systems.

### **1.3. Considerations in Designing Online Processes**

Agencies must make a number of choices, balancing multiple often conflicting agency goals, when designing their online processes. Most are outside the scope of this report, as each agency will answer them internally, based on the resources they can devote to these processes, and the needs of their individual constituencies. Nonetheless I briefly summarize some of the key concerns here, so readers can weigh them against the report's key findings.

#### *1.3.1. Budgetary Concerns*

[To come.]

#### *1.3.2. Privacy Issues*

[To come.]

#### *1.3.3. Security Concerns*

[To come.]

#### *1.3.4. Software Choices*

[To come.]

[Discuss agencies' technical capacities to develop a new system in-house, in cooperation with another government entity, or to procure off-the-shelf solutions from outside entities.]

[Discuss user verification and authentication – whether to use login.gov, another authenticator, or not to use such a system at all.]

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<sup>7</sup> Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 FR 1722 (Jan. 12, 2022).

<sup>8</sup> *Id.*

1.3.5. *Design and Accessibility*

[To come.]

[Discuss agencies' obligations under Section 508.]

1.3.6. *Supporting Online Processes*

[To come.]

**1.4. Objectives for Online Processes**

[To come.]

1.4.1. *Efficiency*

[To come.]

[Legal systems dealing with paper contracts have developed the ability to relax and suspend obligations in the face of a significant unanticipated event.<sup>9</sup>]

1.4.2. *Accessibility*

[To come.]

1.4.3. *Equity*

[To come.]

1.4.4. *Quality Assurance*

[To come.]

1.4.5. *Customer Experience*

[To come.]

**2. STUDY METHODOLOGY**

I began by reviewing the research materials underlying the report for *Electronic Case Management in Federal Administrative Adjudication*, including the ACUS database on adjudication maintained by Stanford Law School.<sup>10</sup> I then reviewed the limited academic literature on online processes in adjudication, and other ACUS recommendations that discuss online processes. (The relevant recommendations are discussed in Part I.B.)

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<sup>9</sup> Hilary J. Allen, *Driverless Finance: Fintech's Impact on Financial Stability*, 98 (2022). Allen was discussing the difference between financial contracts and self-executing smart contracts, but the observation I believe is transferable to the administrative context. When the COVID pandemic began, agencies with paper-based, non-electronic adjudicative systems were able to "cobble together" electronic systems using flexible adjudicative orders and buy-in from parties to adjudications. As automation permits agencies to self-execute more and more of the adjudicative process, and thereby increase volume and decrease monitoring by agency employees, it remains to be seen what result may come from the subsequent decrease in flexibility in terms of equity.

<sup>10</sup> See STAN. L. SCH., ADJUDICATION RESEARCH, <http://acus.law.stanford.edu>.

Based on this research, I selected as case studies five of the six adjudication systems used in *Electronic Case Management in Federal Administrative Adjudication*, plus seven others I thought would make the report more representative. A system may cover all the cases a particular agency may adjudicate or a subset of them. The twelve adjudication systems I studied are:

- Department of Agriculture
- Department of Education: Office of Hearings & Appeals
- Department of Homeland Security: U.S. Citizenship & Immigration Services
- Department of Transportation: Office of Hearings
- Department of Veterans Affairs: Board of Veterans Appeals
- Federal Maritime Commission
- Federal Mine Safety and Health Regulatory Commission
- Federal Trade Commission
- Merit Systems Protection Board
- National Labor Relations Board
- Occupational Safety and Health Review Commission
- Social Security Administration: Office of Hearings Operations and Office of Appellate Operations

In compiling this list, I sought to include a broad range of adjudicative systems, from low-volume systems that do not have electronic case management systems to large mass adjudication systems with extensive online processes. I also sought to include both formal adversarial adjudications under the Administrative Procedure Act as well as appeals of denied applications for benefits, and other systems. Some of the selected systems adjudicate a relatively large number of cases, and several of them (the Social Security Administration, Board of Veterans Appeals, and U.S. Citizenship and Immigration Service) are among the government's highest-volume adjudication systems.

For each system, I prepared a written overview that briefly describes the cases it adjudicates. The overview then addresses the kinds of online processes it uses, such as how it implements electronic filing of documents and evidence, whether it uses an online portal to provide users information about their case and allow them to complete common adjudicative tasks, and whether it provides any automated systems, such as online forms or templates, to streamline adjudicative tasks.

The case studies are based primarily on publicly available sources (regulations, posted orders, decisions, and explanatory materials on agency websites), as the citations reflect. I supplemented and modified the overviews after conducting the interviews noted below. This was mostly to correct errors and account for features of the system that were not explicit in or obvious from publicly available sources but are known to practitioners in the system. None of the case studies contains confidential information.

To better understand how these online processes operate in practice, I conducted semi-structured interviews with officials at each agency. I attempted to obtain a wide variety of officials to

understand how these systems operate for multiple types of users, including adjudicators, attorney advisors, general counsel, supervisors, and lead legal assistants. In total, I interviewed more than a dozen officials. I supplemented these interviews with interviews with nine representatives who practice before mass volume systems, including Social Security and the Veterans Administration, as well as officials exploring the use of technology to improve legal services in state courts.

To prepare for the interviews, I constructed a standard script that accounted for the topics and structure of Part III of this Report (Findings). I used the script during the interviews, but also asked numerous follow-up questions tailored to the particular system and the issues identified when I prepared a draft of the overview for the system. Many of those questions centered around why the subject agency made design choices for the kind of functionality it provides to users, and any best practices or particular challenges they could identify for their system.

I told interviewees that their specific responses would not be attributed to them or their agency. That means readers will find some unattributed comments in the Report.

This study is therefore a broad survey of current agency practices in online processes in adjudicative systems, but it is not an exhaustive survey. There may be other tools, systems, and techniques in the great number of adjudicative systems not included in this study. In addition, publicly available sources do not always provide a full picture of a system's capacities, strengths, or deficits. Further review of these systems, as they continue to develop, is surely warranted.

### **3. FINDINGS**

Based on my interviews with agency officials and review of publicly available sources on the more than a dozen agency adjudicative programs detailed in Part II, I found vast diversity among the use of online processes by adjudicative systems.

Generally speaking, agencies were developing three broad categories of online processes. First, and most extensively, they created means for electronic filing of motions, evidence, and other documents necessary for adjudication. Every agency that I studied employed some form of electronic filing system. Second, most agencies had created customer portals. At the simplest levels, these were a way to file electronically, such as a web interface for submitting documents. But many agencies had developed additional functionality, such as case management, being able to see where in the process the case was, and in some cases estimated times until the next stage. Also, in many cases, the customer portals allowed users to change addresses, or for representatives to add or remove staff associated with the case, and to pay filing fees or provide direct-deposit information. Third, most agencies provided online forms and templates. Often these were downloadable, fillable PDFs, ranging from very simple templates for common filings, such as notices of appearance or requests for subpoena, to more elaborate forms used most commonly in benefits or immigration applications. But some agencies had begun converting their forms into online questionnaires, prepopulating answers when the agency already had the data, and using decision trees, so that early answers reduced the options of subsequent questions (ie, if you early on answer that you're married, you may be asked questions about your spouse, but if you answer that you're not, those questions are never presented to you). Others transformed what may have been a relatively complex form used to make a fairly simple request, such as for administrative review of an earlier decision, into something as simple as a button.

Broadly, also, agencies grouped themselves into three categories as to how they developed and used these processes. Systems without underlying, structured electronic case management systems

tended to simply adapt their prior paper mailing processes to an email filing and service system. Formal adjudicative systems with back-end eCMSes tended to operate customer portals that offered little functionality beyond electronic filing. In most (but not all) cases, users would register for the portal, then attach themselves to the case in which they were involved (either as parties, representatives, representatives' staff, or in some cases intervenors or other parties). The process for attaching themselves to a case often involved the filing of a notice of appearance or a response or some other formal document that might need agency receipt prior to acquiring permission to attach to the case. Users could then use the web portal to electronically submit documents to the file. Mass adjudication systems, such as those making determinations on benefits applications, offered the most robust of customer portals. Often they developed two, one for beneficiaries to apply, request review, submit forms and other evidence, and then monitor benefits by updating addresses and direct deposit information. Customer portals for representatives offered electronic filing and usually case management functionality.

I organize my findings into four main subparts. I first detail the use of electronic filing systems, followed by online portals for engaging with the adjudicative system. Then, I discuss systems agencies have developed to automate common adjudicative processes, such as online forms or templates. Finally, I discuss some new tools being piloted by only a few agencies, or by state courts and other venues that may be worth applying more broadly in the administrative context.

### **3.1. Electronic Filing Systems**

Every agency studied for this report employed some form of electronic process for filing and service in their adjudicative systems. But perhaps surprisingly, there was wide variance between systems, even between adjudicative systems that are superficially similar in their structures (for example, formal adversarial adjudication under the APA).

Some of these systems date back a decade or more, whereas others are recent constructions, in some cases cobbled together in response to pandemic protocols.

But broadly speaking, agencies without electronic case management systems have crafted systems based primarily through email technology, occasionally supplemented with “dropbox”-style file-sharing technology. These systems typically follow the procedures for the former, paper-based process, adapted to an email environment. Agencies using these systems have generally speaking identified best practices for maximizing functionality given the limitations of the system.

Agencies with electronic case management systems generally use a web-based “front-end” system for registered users to submit documents, evidence, and other required filings. Agencies using these systems generally confront both design and policy questions directly, such as how do users interact with the systems, how much the system automates the process, what security measures are employed on the front and back end, how privacy issues such as confidential documents are handled, and how agencies balance the requirements in their regulations with ever-evolving technological environments.

#### *3.1.1. E-Mail Filing and Service*

Agencies without electronic case management systems generally speaking have implemented e-mail filing and service as an online process for their adjudicative systems. In some cases, their regulations may include provisions for email filing and service. In other cases, regulations may not have been updated but adjudicators have been able to develop processes through the use of standing orders.

Processes in the agencies studied have been fairly consistent: After an adjudication commences, the adjudicator issues an initial order outlining the procedures, and parties may assent to service by email when filing their notices of appearance. Generally speaking, the ALJ sets forth certain restrictions as to file type (PDF is the most common, though some agencies have accepted Word documents for proposed orders, for document types; a variety of audio, video and image files are often usually accepted).

Agencies who have used this method reported general approval from all parties, that the system was easier, more flexible and more efficient than service by mail, in person, or by fax machine.

Agencies did report a few challenges with the system. First, it can be unclear whether the email itself constitutes a portion of the filing, or whether it simply serves to transmit the filing as an attachment. One agency reported preferring the latter approach while still applying discretion to admit something from the email, particularly if the party is pro se. Another agency reported treating the email as the equivalent of an electronic signature because it showed intent to submit the filing, and thus was part of the total submission.

Agencies also reported some difficulties with different email systems allowing for different size attachments, resulting in not all parties being able to file all documents electronically, or parties not being able to serve all other parties in an adjudication electronically, or having to break up a filing into multiple emails. Agencies reported that these kinds of difficulties, although rare, can occasionally make email filing and service more burdensome than sending a fax or mailing.

Agencies also raised a security concern, of how to ensure the privacy of sensitive or confidential documents or personal identifying information that may be intercepted as they travel over the email network, as by default emails are not encrypted as they travel.

Email filing, like electronic filing generally, also opens up all parties to the threat of receiving viruses or other malware. It may be appropriate therefore to either make service voluntary, either with an opt-in or opt-out contingency.

One solution that a number of agencies have employed that can resolve the size restrictions, and the confidentiality concerns, and partially resolve the concern over viruses or malware, is to use a secure File Transfer Protocol (FTP) system. These simple drop-box like systems would essentially create a shared folder that all parties could access, where they could place documents. Agencies have used these when accepting files too large for email transference, as well as when receiving private, sensitive, or confidential material that parties request be treated as in camera.

The level of security for such a system could vary depending upon the agency's needs. For fully public adjudications, a simple FTP can be built using SharePoint (as some agencies have done),<sup>11</sup> but other commercial options are readily available as well. For agencies that need more security, options are also available. The advantages of a system like this seem readily apparent for agencies currently employing electronic filing. Instead of sending multiple copies of a document to all parties, and filing it to the docket, parties would need upload only a single copy to the FTP, with

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<sup>11</sup> Although as stated above, specific product recommendations are outside the scope of this report, SharePoint offers the functionality of applying metadata to files, which would allow users and agencies to specify document types, establish dates, and make other key information immediately visible to users, in effect replicating much of the functionality of a more robust electronic case management system and electronic filing system in a simple, off-the-shelf solution more appropriate for agencies that do not have an electronic case management system.

only notification by email, and all parties could then view or download copies from the FTP. This would simplify the filing and serving process, reduce the chance of errors such as sending slightly different versions of a document to multiple parties, and reduce the threat of having private documents intercepted or viruses transmitted.

### *3.1.2. Web-Based Filing*

Agencies with electronic case management systems for their internal processes often develop front-end interfaces for these systems that allow parties or their representatives to directly file documents to the official docket.

The complexity of these systems ranges widely between agencies.

At the simplest level, they are not unlike the FTP systems sometimes used by agencies employing email-based systems, just native to the agency website. Users upload a file using the interface on the site, which enters a center reservoir in the agency's eCMS. Agency personnel then associate the file with the proper case. These systems require users to follow file naming conventions to associate the file with the proper case. The advantage of such a system is that it's inexpensive to build and maintain. The disadvantages are that every submission requires multiple steps: submission by the user, review by the agency personnel, association with the case, and then notification back to the user of acceptance. Many of these steps could be automated, but in a system that requires most if not all submissions to be reviewed prior to association with a case, the simplicity may be worth the tradeoff.

Other agencies have implemented more robust user interfaces to automate the identification of documents and association with the proper cases. These systems require filers to identify the case by a number or other designation and identify a document type. These systems do not require specific file names because the eCMS has already been provided sufficient metadata to identify the document (filer, party, case, document type). The disadvantages of these systems is that by outsourcing the identification of documents and association with cases allows the introduction of errors that could be caught by review by agency personnel. For example, if a user identifies the wrong case, a document could go missing, resulting in procedural challenges.

Agencies that implemented web-based filing systems reported several improvements over email-based systems. First, the system is more efficient because agency personnel do not need to monitor a filing email account and copy filings into the proper case files. Files are also less likely to be mislaid.

Secondly, by taking the transmission service internal and not relying on the email providers as an intermediary, they can allow for appropriate file sizes and file types for their adjudicative needs.

There are, however, some concerns as well. As noted above, user error can result in filings being associated with the wrong case file. Some agencies also reported that technical errors can result in files being associated with no case but going to other folders in the eCMS that agency personnel needed to periodically monitor. These design and structural issues can be of particular concern for agencies engaged in formal, adversarial adjudication, in which timeliness of filings is of paramount concern. Agencies that employ these systems will need to provide sufficient resources for ongoing monitoring and improvement of the underlying code to reduce such issues.

### 3.1.3. *Service*

Agencies also split on the decision of whether these systems would automatically serve all parties registered for the electronic system or also require separate service.

Some systems allow for automatic electronic service of documents filed (either immediately upon filing or, for systems that require agency personnel to review and associate files, upon association) to all parties registered for the electronic system. Others use these systems only for electronic filing into the agency docket but require service through other means (often including email service).

Systems that allow for automatic service offer several advantages. First, they reduce the administrative burden on all parties. Second, they reduce the chance of error, such as parties filing one version of a document and accidentally serving an earlier draft.

However, agencies that chose not to employ automatic service indicated that was an affirmative decision because they did not want to assume the responsibility and risk for what was an obligation of the parties in an adverse adjudication. The administrative burden on the agency increases to monitor and prevent technical or user errors from hampering automatic service.

### 3.1.4. *Electronic Signatures*

Agency approaches to the use (or requirement) of electronic signatures is perhaps the area of greatest divergence among the menu of online processes currently in use.

Some agencies do not even require a signature, as commonly understood, but consider submission through an electronic filing system or by email to constitute a “signature” for the purposes of their regulations.

Others accept a wide variety of kinds of electronic signatures, including a typed name with or without an “/s/” symbol, or a graphic representation of a signature, or other form of indicator of an intent to sign the document.

Still other agencies report great difficulty identifying an electronic signature system that serves their needs and that current commercial products are insufficient.

In particular, both agencies and users have reported particular difficulties with forms that require signatures from multiple parties. In some cases, agencies reported requiring multiple wet signatures from various parties. In practice, this was accomplished by downloading the form, signing it, scanning it back into the system, uploading it, then having each other party perform the same actions. They reported that by the end of the process, the scan of the early signatures could be quite degraded, resulting in potential legal ambiguity or the appearance of potential fraud or forgery. The solution here may be a robust electronic signature system such as that provided by DocuQuick or another commercial provider, but that may require a regulatory change to allow the electronic process. Representatives reported that forms requiring signatures by both the parties and their representatives<sup>12</sup> could linger in an incomplete status if either individual did not sign the form, resulting in the representative believing he or she was authorized to represent the party and performing work on their behalf when in fact the document was never finalized. The solution here

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<sup>12</sup> The Social Security Administration’s Form 1696, Appointment of Representative, is an example of this kind of form. It requires a signature by both the applicant and the representative.

may be for the system to send both the party and representative automated reminders while the document remains incomplete.

Agency needs in this area may be too variable, and too dependent upon regulatory or statutory requirements, to make broad recommendations in this area, at least at this stage. It may be appropriate for agencies to look at their own statutes and regulations, consider the most flexible way to interpret those sources to allow as many different forms of signatures currently in common usage. In the longer term, it may be appropriate to amend regulations or other guidance to remove problematic requirements such as “wet” or “handwritten” signatures from the governing procedural requirements.

### *3.1.5. Security Issues*

Agencies also split in how they handle internet security. As discussed above, inviting parties, representatives, intervenors, or amicus parties to submit electronic files directly into an agency’s electronic case management system creates significant internet security risks. Some agencies reported no additional security measures beyond their agency’s general security monitoring.<sup>13</sup> Others used systems that would scan incoming files for security threats and reject them if any are detected.

The advantages of such a system are clear, in that they reduce the threat to the agency’s digital infrastructure. But the downsides are also clear: This is the addition of a new security measure, on top of whatever other security measures the agency already takes, that must be constantly maintained and updated, at ongoing expense. If agencies use a contractor or buy an off-the-shelf electronic filing system, any security measures it employs must work with the agency’s general security measures. They also have to make sure the system does not erroneously reject clean filings.

### *3.1.6. Privacy Issues*

Agencies make different choices about handling personally identifiable information, classified or sensitive information, or anything else that should be redacted or that a party is requesting be viewed in camera. Some create a triage-style system, by which users can flag documents that should be redacted or kept in camera, and agency personnel will review and modify them before making the documents available in the online system. Others without the interim review option put this burden on the submitter to redact themselves, or require the document to be submitted nonelectronically.

## **3.2. Customer Service Portals**

### *3.2.1. Functionality*

Customer portals vary significantly. Some solely allow for the raw submission of files to the agency and leave everything else up to the parties. Some operate as outward facing electronic case management systems, allowing representatives or parties to monitor the statuses of all the cases in which they’re involved, view documents in any of them and histories of actions, and attach different staff with different levels of permission to participate in filing.

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<sup>13</sup> These agencies did, however, in their guidance documents for the electronic filing systems instruct users to ensure they did not transmit viruses or other malware.

The mass adjudication systems, usually involving applications for benefits, offer by far the most robust of customer portals. Generally, these agencies develop two separate customer portals: one for beneficiaries to apply, request review, submit forms and other evidence, and then monitor benefits after being granted through changing addresses, providing direct deposit information, and the like; and one for representatives, which offers functionality similar to the more robust electronic filing systems, with case management elements included.

Many portals allow parties to maintain and change contact information such as physical addresses, email addresses, and phone numbers. Some agencies and users have reported difficulties in properly maintaining addresses using these systems. In some cases, this is due to issues with the back-end electronic case management system and legacy systems that cannot be unified without significant effort. But there are front-end issues as well: Most systems allow parties and representatives to have a single address, but this is not reflective of users' reported experiences. Many parties may prefer, for various reasons, to employ different addresses for different aspects of their adjudication.<sup>14</sup>

Users of systems that have documented estimated wait-times for cases to progress to the next status reported significant inaccuracies in the reports, causing aggravation and stress. Agencies may find providing such information causes more of a burden than it reduces unless they can ensure that information is reliable.

### 3.2.2. *Security*

Agencies are naturally concerned at ensuring the identity of people who submit files, or other data, into their electronic case management systems. Most (but not all) requiring users of these systems to register for user profiles, and protect those profiles with a password.

Beyond that, many require passwords to be changed regularly, and some use two-factor authentication to further protect access to the system.

Some users, particularly of mid- to low-volume adjudicative systems reported that these measures can be overly burdensome, with the need to change passwords occurring almost as often as the system is accessed. Agencies should, therefore, attempt to balance their interests in securing the portal with the burden those security measures impose.

## 3.3. **Forms and Templates**

Many agencies have identified ways to streamline common adjudicative tasks through the use of downloadable templates or forms, often in PDF format, or turning their forms into native, online interfaces.

### 3.3.1 *PDF Templates*

Agencies that use significant numbers of forms in their processes have, particularly in the past three years, increasingly converted many of them into PDFs that users can download, complete electronically, and then submit through the agency's electronic filing system.

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<sup>14</sup> Anecdotal examples I have heard during the course of researching this report were benefit seekers who prefer medical information to be sent to one address but legal or payment information to another, or parties who may live in different homes seasonally.

As above, electronic signatures remain an undecided point for many agencies, with some allowing for graphical replications of a signature or the writing of “/s/” before a typed name. None that I identified utilized Adobe’s digital signature system.

Some agencies that do not utilize forms in their adjudicative systems still achieved similar goals through applying these techniques to commonly filed motions. The most common I saw replicated and made available to parties were notices of appearance and requests for subpoenas, but agencies may find similar efficiencies could be possible with other common motions.

### 3.3.2 *Native Forms*

Agencies, particularly mass-adjudication systems for claims of benefits or citizenship, or other issues, have in recent years been developing “native forms” to collect the same information formerly collected via a paper form, then subsequently on an electronic PDF version of the paper form, through a native interface through their customer portals.

This design offers multiple advantages over a PDF version of a paper form. First, because it can sync with other information already contained by the customer portal, such as the user’s name, address, phone number, and other data, it can be automatically completed with information that would otherwise be duplicative, reducing the burden on the user. Agencies may need to decide whether these already-known elements should be presented again to the user and request them to confirm the data or not even be asked, but either is an improvement over having users re-provide data the system already contains.

A further development, which a few agencies have already begun to employ, is the ability to use a decision-tree structure to reduce formerly very long and complex forms into a streamlined questionnaire that asks only those questions that apply to the user. For example, if the claimant answers in an earlier question that she is married, subsequent questions about her spouse will be presented, but if she answers that she is not married, those questions will not be presented.

In addition to burden reduction for the user, however, this kind of form offers significant burden reduction for agency employees. Because the native form directly collects structured data, it reduces the amount of time agency personnel must spend converting information from a paper form or static digital image of a form into data the agency can use in its adjudication, quality assurance systems, or for other purposes.

However, users of some systems have identified areas for improvement. In one system, users reported that the form would allow submission even if legally incomplete. To be considered a valid submission it had to be accompanied by either a legal argument or additional evidence, but if neither attachment was included the submission, the system would still accept the submission. By the time agency employees had reviewed and denied the submission on technical grounds, the time for filing may have elapsed.

There are also technical considerations for designing forms in-house over using a PDF form. Adobe PDF makes Section 508 compliance relatively easy, but agencies that custom-design online forms would have to take into consideration Section 508 technical standards.<sup>15</sup>

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<sup>15</sup> Section 508 technical standards are also a consideration for customer portals and all other online tools the agency deploys and will be a consideration when agencies make the decision to purchase an off-the-shelf process compared with working with contractors or designing a process internally.

### 3.4. Additional Online Processes

Some agencies had developed additional tools not well represented across the range of adjudicative systems studied but still worth consideration. I also uncovered some promising new processes being piloted in state courts that agencies may want to consider incorporating into their systems.

#### 3.4.1. Notifications and Scheduling

State courts have begun exploring the use of online notifications and scheduling for communicating with parties. At the simpler levels, these systems provide notifications through text message, emails, calls, or through a web portal itself that remind parties of upcoming deadlines or appointments. Agencies could use processes such as this to remind parties of deadlines to file motions, request review, or attend conferences or hearings. Agencies should, however, consider the risk of users' reliance on these reminders and should not employ them if they cannot ensure their accuracy.<sup>16</sup>

At least one legal aid has integrated an appointment scheduling system into their online application, which allows users to book an appointment for an intake interview. Agencies that require interviews, examinations, or other meetings could employ a similar system to more efficiently schedule such meetings and to reduce the burden on parties, who currently have to schedule their lives around appointments unilaterally scheduled by agencies. Agencies that have multi-party meetings, such as pre-adjudication conferences or hearings, could use more robust systems to find appropriate times for multiple parties.

#### 3.4.2. Application Programming Interfaces

At least one agency has begun developing application programming interfaces (API) for use in their adjudication systems, which are sets of defined rules that enable different applications to communicate with each other.<sup>17</sup> Many agencies already use these tools to share data with other government agencies.<sup>18</sup>

These systems are particularly useful when agencies interact with the same users on a regular basis, and those users have their own eCMS. The API would then allow the users, be they law firms, service providers, companies, or other groups, to directly link their eCMS with the agency's eCMS and push documents or data directly to the agency. These systems would reduce the burden of using an intermediary web-based process for filing, updating addresses, or other common adjudication tasks.

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<sup>16</sup> For more information on this topic, see Admin. Conf. of the U.S., Recommendation 2022-3, *Automated Legal Guidance at Federal Agencies*, 87 FR 39798 (July 5, 2022).

<sup>17</sup> *Introduction to APIs in Government*, API Resources for Federal Agencies, [http://18f.github.io/API-All-the-X/pages/introduction\\_to\\_APIs\\_in\\_government/](http://18f.github.io/API-All-the-X/pages/introduction_to_APIs_in_government/) (last visited Apr. 6, 2023).

<sup>18</sup> *Id.*

### 3.5. General Issues

#### 3.5.1. Representatives

Representatives I spoke with in researching this report were universally enthusiastic about the processes agencies have already implemented, but they did indicate some areas of potential improvement in regards to how the systems related to their own internal business processes.

They indicated that there was often a disconnect between how they structured and organized their firms and business processes and how the agencies operated their online processes.

In particular, they expressed that many portals limited access to a single attorney per case, which caused logistical challenges in their workflows, where much of the work was performed by paralegals or support staff, or occasionally other attorneys in the same firm assisting the primary attorney.

They also expressed concern about systems that created separate portals for parties and their representatives because it was difficult to know what their clients were seeing or doing, which led to communication difficulties.

#### 3.5.2. Instructions and Guidance

Both agency employees and outside users reported the importance of proper guidance and training. For agency employees, providing clear instructions for how to use e-filing programs and other online processes reduce the time they must devote to responding to user queries.

Users, particularly representative firms, not unlike agencies, have long-established business processes trained into their employees, for how to practice before a particular agency. Those users reported that clear instructions and training outreach efforts helped alleviate some of the burden of developing new internal business processes. It may also be advisable to develop online processes so that as additional functionality is added, the system evolves, as opposed to discarding an old system and restarting with a new. Designing a system from the outset with expansion in mind would also provide a side benefit of reducing program proliferation — many of the agencies studied had multiple legacy systems working together, but not always seamlessly. Learning multiple systems also creates a burden for users. That said, because of the acclimation time for outside firms to learn new business processes, it may be beneficial to maintain a long “tail” prior to sunsetting an old system or process.

Agencies designing systems for parties, particularly parties that may appear *pro se*, should ensure that all instructions and training materials are clearly labeled, presented in plain language, and easily accessible from the part of the portal, form, or e-filing system that the party is trying to use.<sup>19</sup> Agencies have tried multiple techniques for providing instructions, including downloadable, printable instruction manuals, FAQs, training videos, or instructions embedded in the process of a structured digital form. None provided any opinion on which methods might be particularly

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<sup>19</sup> For example, the VA provides instructional videos on YouTube for how to file the new disability form online (see [https://www.youtube.com/playlist?list=PLt\\_058CfeU2oqhqiCbbYPgWPOY5fucl-](https://www.youtube.com/playlist?list=PLt_058CfeU2oqhqiCbbYPgWPOY5fucl-)). These videos, however, are not linked from the page on VA.gov for how to file for disability using the form (see <https://www.va.gov/disability/file-disability-claim-form-21-526ez/>). If a user goes to YouTube and searches “how to file for VA disability” the videos uploaded by the Dept. of Veterans Affairs in many cases have fewer views than videos created by third parties. Users or algorithms may rank those views above the official videos (as of publication, the official videos were pinned to the top of the search results as ads, but many people skip ads), leading to users receiving unreliable guidance.

successful, or particularly appropriate for any given system. As a result, this report can only conclude that further engagement with users and potential users, as well as agency employees tasked with providing support for online processes, to obtain feedback on the success of instructional materials is appropriate.

### 3.5.3. Regulatory Issues

In general, few agencies reported significant issues caused by their statutes or regulations in developing and deploying these processes.

Agencies did raise the issue that during the COVID pandemic, the need to deploy these processes immediately often required them to take action prior to changing their rules of practice. In many cases, they were able to circumvent this issue by special order, by party agreement, or by creating other online tools that would comply with the regulations.

Although agencies likely would not need to go through full notice-and-comment rulemaking to adjust their rules of procedure to comply with any technological development, revising regulations still entails significant costs in terms of time spent drafting, internal agency review and clearance, and publication in the Federal Register. It might, therefore, be advisable for agencies to avoid referring to specific technologies or methods in their regulations for their adjudicative processes but instead describe the end goal (i.e., refer to “filing” and “service” and not by a specific electronic process such as e-mail).

## 4. CASE STUDIES

### 4.1 Department of Agriculture

The National Appeals Division, Office of Administrative Law Judges, and Office of the Judicial Officer conduct proceedings at the U.S. Dept. of Agriculture (USDA). The Office of Administrative Law Judges issue initial decisions and orders in adjudicatory proceedings, approve consent decisions entered into by parties, and decide appeals of debarments and suspensions.<sup>20</sup> The National Appeals Division conducts administrative appeals hearings of adverse program decisions by USDA agencies.<sup>21</sup> The Office of the Judicial Officer issues final USDA decisions.<sup>22</sup>

#### 4.1.1 Electronic Filing

The rules of practice do not include provisions for electronic filing.<sup>23</sup>

#### 4.1.2 Customer Portals

USDA has no designated portal for case management.

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<sup>20</sup> *Office of Administrative Law Judges (OALJ)*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.usda.gov/oha/oalj> (last visited Apr. 6, 2023).

<sup>21</sup> *National Appeals Division (NAD)*, U.S. DA. U.S. DEPARTMENT OF AGRICULTURE, <https://www.usda.gov/oha/nad> (last visited Apr. 6, 2023).

<sup>22</sup> *Office of the Judicial Officer (OJO)*, U.S. DA. U.S. DEPARTMENT OF AGRICULTURE, <https://www.usda.gov/oha/ojo> (last visited Apr. 6, 2023).

<sup>23</sup> Submission of an apparent violation of a USDA statute or regulation may be submitted by telegram or by letter. *See* 7 CFR 1.133(a)(2).

### 4.1.3 Forms and Templates

The Office of Administrative Law Judges provides downloadable, completable PDFs for common administrative actions, including a notice of appearance, requests for subpoena, and subpoenas.<sup>24</sup>

## 4.2 Department of Education: Office of Hearings & Appeals

The Office of Hearings and Appeals (OHA) provides independent forums for the resolution of disputes involving the U.S. Department of Education and recipients of federal education funds.<sup>25</sup>

### 4.2.1. Electronic Filing

OHA's E-filing System (OES) provides administrative litigants with a process to submit documents via a web-based interface accessible 24 hours every day in lieu of submitting paper documents.<sup>26</sup> The OES also provides litigants with an acknowledgement receipt of filings and records the time of submission.<sup>27</sup>

A user's technical problems such as a lack of internet access will not excuse an untimely filing.<sup>28</sup> If a user waits until after close of business to attempt to e-file and encounter problems, no one will be available to assist them.<sup>29</sup>

Acceptance of an e-filing will constitute service to the other party(ies) in the case if these parties are registered users of OES.<sup>30</sup> In that instance, parties will not need to file a certificate of service. However, parties should still submit a service page listing the other parties in the case.<sup>31</sup> If a party is not a registered e-filer, service must be made via traditional means such as hard copy via U.S. mail, hand-delivery, private courier, or facsimile transmission.<sup>32</sup>

There is no limit on the number of documents that may be uploaded in a case.<sup>33</sup> The maximum file size is 50 MB (smaller files are preferred whenever possible).<sup>34</sup> A file that exceeds 50 MB should be optimized to reduce the size or separated into parts and uploaded as multiple e-filings.<sup>35</sup> Files must be filed in PDF format only.<sup>36</sup>

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<sup>24</sup> *Forms and Information*, U.S.D.A. U.S. DEPARTMENT OF AGRICULTURE, <https://www.usda.gov/oha/oalj/forms-and-information> (last visited Apr. 6, 2023).

<sup>25</sup> *About OHA*, U.S. DEPARTMENT OF EDUCATION, <https://oha.ed.gov/about-oha/> (last visited Apr. 6, 2023).

<sup>26</sup> *Online Filing*, U.S. DEPARTMENT OF EDUCATION, <https://oha.ed.gov/online-filing/> (last visited Apr. 6, 2023).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> U.S. DEP'T. OF EDUC., OFF. OF HEARINGS & APPEALS, FILING USER GUIDE 1 (2019), available at <https://oha.ed.gov/oha/files/2019/03/OHA-filing-guide.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

OHA recommends PDFs be 508 compliant.<sup>37</sup> OHA also recommends using file name conventions that properly identify the exhibits in the PDF.<sup>38</sup>

Users are responsible for taking all reasonable steps to prevent sending any material that contains computer viruses.<sup>39</sup> Any submission using OES determined to contain a virus will be automatically deleted by the system and the E-filer notified.<sup>40</sup> Rejection of a filing because it contains a virus will not excuse a late filing and is considered to be a user problem, not a technical failure of OHA's system.<sup>41</sup>

#### 4.2.2 *Customer Portals*

OHA has an online electronic filing system, but not a fully developed portal. The electronic filing system does require users to select document types to identify their filing.<sup>42</sup>

Passwords will auto-expire after 90 days and must be changed at that time.<sup>43</sup>

#### 4.2.3 *Forms and Templates*

OHA does not provide online forms.

### **4.3. Department of Homeland Security: U.S. Citizenship & Immigration Services Administrative Appeals Office**

Adjudication at the U.S. Citizenship & Immigration Service takes place at the Administrative Appeals Office, where petitioners and applicants for certain categories of immigration benefits may appeal an unfavorable application or petition for immigration benefits.<sup>44</sup> The office conducts administrative review of those appeals to ensure consistency and accuracy in the interpretation of immigration law and policy.<sup>45</sup>

#### 4.3.1 *Electronic Filing*

Although the portal will track case statuses from initial application to an appeal before the Administrative Appeals office, the electronic filing system is only used during initial determinations.

At the initial level, petitioners and applicants, with or without assistance of their representatives, can complete basic forms and attach supporting evidence.<sup>46</sup> File formats are limited to JPG, JPEG,

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<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Online Filing*, *supra* note 26.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *The Administrative Appeals Office (AAO)*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/the-administrative-appeals-office-ao> (last visited Apr. 6, 2023).

<sup>45</sup> *Id.*

<sup>46</sup> *How to File Your Application for Naturalization Online Video*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/file-online/how-to-file-your-application-for-naturalization-online-video> (last visited Apr. 6, 2023).

PDF, TIF, or TIFF.<sup>47</sup> Documents not in English must be accompanied by a translation.<sup>48</sup> The system requires users to identify the category of evidence when uploaded.<sup>49</sup>

The Form I-290B, used to request an appeal before an Administrative Appeals Officer, must be filed by mail,<sup>50</sup> and any additional evidence or subsequent filings are completed by mail to the same address. In some cases, this can create a hybrid case file, with both paper and electronic portions constituting the official record.

#### 4.3.2. *Customer Portals*

The U.S. Citizenship and Immigration Service has an online portal that allows users to monitor case statuses, check average processing times, change addresses, file forms, respond to requests for evidence, and pay filing fees.<sup>51</sup>

Attorneys and accredited nonattorney representatives can also access the portal and track all cases, view notices, and upload evidence.<sup>52</sup> The portal also allows secure messaging between the representative and the agency, with additional notification by text or email.<sup>53</sup>

#### 4.3.3. *Forms and Templates*

The forms used for initial application discussed above employ internal logic, such that a user's answers to questions determine future questions required for completion of the form.<sup>54</sup> Unfinished forms will save for 30 days but then are deleted to protect private information.<sup>55</sup>

Forms are completed with an electronic signature, internal to the form system.<sup>56</sup>

### 4.4. **Department of Transportation: Office of Hearings**

The Administrative Law Judges in the Office of Hearings conduct official hearings under the Administrative Procedure Act within the U.S. Department of Transportation where formal APA hearings are required, including air carrier citizenship determinations and fairness of airport landing rates and charges.<sup>57</sup>

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/i-290b-addresses> (last visited Apr. 6, 2023).

<sup>51</sup> *Benefits of a USCIS Online Account*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/file-online/benefits-of-a-uscis-online-account> (last visited Apr. 6, 2023).

<sup>52</sup> *Online Filing for Attorneys and Accredited Representatives*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/file-online/online-filing-for-attorneys-and-accredited-representatives> (last visited Apr. 6, 2023).

<sup>53</sup> *Id.*

<sup>54</sup> *How to File Your Application for Naturalization Online Video*, *supra* note 46.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Office of Hearings*, U.S. DEPARTMENT OF TRANSPORTATION, <https://www.transportation.gov/mission/administrations/administration/hearings> (last visited Apr. 6, 2023).

Office of Hearings ALJs also conduct hearings in civil penalty proceedings in cases including discrimination against passengers, violation of travel agent regulations, improper shipment of hazardous materials, passenger misconduct on airlines, and airlines' and motor carriers' failure to comply with regulations concerning inspection, maintenance, and hours of service.<sup>58</sup>

#### 4.4.1. *Electronic Filing*

The Department of Transportation requires all documents to be filed by submitting them to the hearing docket, as well as served on all parties, witnesses, and others. Documents may be filed and served by email, but it is voluntary.<sup>59</sup>

The document must be attached to the email as a PDF. The email itself is not considered part of the record but only serves to convey the document.<sup>60</sup>

The Department also uses SharePoint-based drop boxes called the Knowledge System Network to file documents too large to email. Use of this system requires affirmative consent by the parties.

Any party that files a document by email implicitly accepts service by email of all subsequent documents from the adjudicator and other parties.<sup>61</sup>

Parties are responsible for the security of all electronic transmissions.<sup>62</sup>

#### 4.4.2. *Customer Portals*

The Office of Hearings has no online portal.

#### 4.4.3. *Forms and Templates*

The Department of Transportation provides fillable PDF templates for basic motions, but these are provided directly by the judge and not independently available on the agency's website.

### **4.5. Department of Veterans Affairs: Board of Veterans Appeals**

Adjudication at the Department of Veterans Affairs takes place at the Board of Veterans Appeals (Board).<sup>63</sup> The Board adjudicates appeals from decisions made by one of the VA Agencies of Original Jurisdiction (AOJ): the Veterans Benefits Administration, the Veterans Health Administration, the National Cemetery Administration, or the Office of General Counsel.

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<sup>58</sup> *Id.*

<sup>59</sup> *FAA Hearing Docket for Subpart D, Subpart G, and Related Appeals*, FEDERAL AVIATION ADMINISTRATION, [https://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/adjudication/hearing\\_docket\\_services](https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/hearing_docket_services) (last visited Apr. 6, 2023); *Filing by Email in Adversarial Proceedings and Alternative Dispute Resolution Matters, Standing Order 2021-5* (June 29, 2021), available at <https://www.faa.gov/sites/faa.gov/files/2021-11/Standing%20Order%202021-5%20-%20E-filing%20%28revised%29%206.29.21.pdf>.

<sup>60</sup> *FAA Hearing Docket for Subpart D, Subpart G, and Related Appeals*, *supra* note 51.

<sup>61</sup> *Filing by Email in Adversarial Proceedings and Alternative Dispute Resolution Matters*, *supra* note 59.

<sup>62</sup> *Id.*

<sup>63</sup> Board of Veterans' Appeals, U.S. Department of Veterans Affairs, <https://www.bva.va.gov/> (last visited Apr. 6, 2023).

#### 4.5.1. *Electronic Filing*

Veterans can upload evidence through My VA, the agency’s customer portal for veterans.<sup>64</sup> The system allows the following file formats: PDF, GIF, JPEG, BMP, and TXT, with a maximum file size of 25 MB.<sup>65</sup>

Accredited representatives<sup>66</sup> have access to QuickSubmit, a customer portal for representatives that allows them to upload evidence and other documents into the case file.<sup>67</sup> Submissions through QuickSubmit require a triage process by agency personnel, to review for personally identifiable information or other classified information, prior to release to the case file.

#### 4.5.2. *Customer Portals*

The VA provides multiple portals for use by veterans and their representatives. Veterans have access to My VA, which provides the ability to track claims, get an estimate of processing time, and monitor appeals.<sup>68</sup> My VA also displays supporting evidence provided, the claim type, and other claim details.<sup>69</sup> It also provides current status of all claims.<sup>70</sup> It also allows veterans to change their addresses and provide direct-deposit information for benefit payments.

My VA allows login using multiple registrations, including DS Logon, My HealthVet, and ID.me, the last of which includes two-factor authentication.<sup>71</sup> My VA uses two-factor authentication to protect personal information.<sup>72</sup>

Representatives also have access to two portals, Caseflow, which provides access to case statuses,<sup>73</sup> and the Veterans Benefits Management System (VBMS), which is a direct link to the agency’s

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<sup>64</sup> *Claim Status Tool FAQs*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/resources/claim-status-tool-faqs/> (last visited Apr. 6, 2023).

<sup>65</sup> *Id.*

<sup>66</sup> To assist claimants with claims for VA benefits, individuals—representatives of veterans service organizations, attorneys, and claims agents—generally must be “accredited,” which means the individual has demonstrated fitness to represent veterans before the VA. Of note, application for accreditation must be submitted by mail or fax (*see VA Accreditation Program*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/OGC/docs/Accred/HowtoApplyforAccreditation.pdf> (last visited Apr. 10, 2023)).

<sup>67</sup> Franscino Crowelle, *Quick Submit Is the New Evidence Intake Tool for VA Claims*, VA News (July 29, 2022), available at <https://news.va.gov/106283/quicks-submit-new-evidence-intake-tool-claims/> (last visited Apr. 10, 2023). Quick Submit is also used by veterans, through My VA, to submit evidence, but the My VA portal is not available to representatives.

<sup>68</sup> *Check Your VA Claim or Appeal Status*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/claim-or-appeal-status/> (last visited Apr. 6, 2023).

<sup>69</sup> It does not, however, provide full access to the claims file or copies of medical examination records.

<sup>70</sup> *How to Check Your VA Claim, Appeal, or Decision Review Status Online*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/resources/how-to-check-your-va-claim-appeal-or-decision-review-status-online/> (last visited Apr. 6, 2023).

<sup>71</sup> *Getting Started: Section 1 of the Digital 526 Disability Compensation Tool at VA.gov*, YouTube, [https://www.youtube.com/watch?v=yzG0qVYITq4&list=PLt\\_058CfeU2oqhqiIcbbYPgWPOY5fucI-&index=2](https://www.youtube.com/watch?v=yzG0qVYITq4&list=PLt_058CfeU2oqhqiIcbbYPgWPOY5fucI-&index=2) (last visited Apr. 6, 2023).

<sup>72</sup> *How to Check Your VA Claim, Appeal, or Decision Review Status Online*, *supra* note 70.

<sup>73</sup> *New Tool Launches to Improve the Benefits Claim Appeals Process at the VA*, VA News (Apr. 21, 2016), <https://news.va.gov/27107/new-tool-launches-improve-benefits-claim-appeals-process-va/>.

electronic case management system.<sup>74</sup> Accredited representatives<sup>75</sup> obtain a personal identity verification card that allows them access to the system. The system enables real-time access to the claim file and submit evidence directly through the system.

The VA also gives approved individuals and organizations direct access to VA data through application programming interfaces (API), which allow applications to send and retrieve data without having to build functionality from scratch.<sup>76</sup> Some of the current APIs available include an appeals API, which enables managing benefit decision appeals, a forms API, which allows users to look up VA forms and check for new versions, and a benefits API, which allows users to submit benefits-related documents and access information on a veterans behalf.<sup>77</sup> These APIs are in use by law firms, veterans service organizations, and other organizations, to directly connect those organizations' internal electronic case management systems with the VA's, without having to use the intermediary interface of My VA, VBMS, QuickSubmit or Caseflow. They do not yet, however, enable full case management by all users.<sup>78</sup>

#### 4.5.3. *Forms and Templates*

The VA provides a number of forms online. Some, such as the initial application<sup>79</sup> and requests for review by higher-level adjudicators,<sup>80</sup> are fully native to the portal. Others are downloadable and completable PDFs.<sup>81</sup>

The native online form combines multiple distinct forms into one online questionnaire.<sup>82</sup> The questionnaire operates in a decision-tree format, wherein answers to earlier questions determine the range of subsequent questions, thereby simplifying the form and directing it specifically to the intentions and concerns of the applying veteran.<sup>83</sup> However, the form is not usable by first-time filers.<sup>84</sup>

The questionnaire pre-populates data the system already has on the veteran, such as name, date of birth, gender, and service history, and requests the veteran affirm the data.<sup>85</sup> The questionnaire allows the veteran to identify the kinds of evidence they would like VA to review in evaluating

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<sup>74</sup> *VBMS Explained: Veterans Benefits Management System!*, Hill & Ponton Disability Attorneys, <https://www.hillandponton.com/vbms-explained-veterans-benefits-management-system/> (last visited Apr. 6, 2023).

<sup>75</sup> Attorneys and veterans advocates who have undergone a special screening.

<sup>76</sup> *About*, VA Lighthouse APIs, <https://developer.va.gov/about> (last visited Apr. 6, 2023).

<sup>77</sup> *Release Notes*, VA Lighthouse APIs, <https://developer.va.gov/release-notes> (last visited Apr. 6, 2023).

<sup>78</sup> For example, the VA Lighthouse API website indicates appeals APIs are currently available only internally. *See Release Notes*, *supra* note 77.

<sup>79</sup> *File for Disability Compensation With VA Form 21-526EZ*, U.S. Department of Veterans Affairs, <https://www.va.gov/disability/file-disability-claim-form-21-526ez/> (last visited Apr. 6, 2023).

<sup>80</sup> *Choosing a Decision Review Option*, U.S. Department of Veterans Affairs, <https://www.va.gov/resources/choosing-a-decision-review-option/> (last visited Apr. 6, 2023).

<sup>81</sup> *File Additional Forms for Your Disability Claim*, U.S. Department of Veterans Affairs, <https://www.va.gov/disability/how-to-file-claim/additional-forms/> (last visited Apr. 6, 2023).

<sup>82</sup> *Getting Started: Section 1 of the Digital 526 Disability Compensation Tool at VA.gov*, *supra* note 71.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* Online instructions will direct the veteran to go to a separate e-filing system, eBenefits.

<sup>85</sup> *Id.*

their claim.<sup>86</sup> If the veteran chooses not to upload private medical records themselves, they must check a box authorizing the VA to obtain the records.<sup>87</sup> If they choose to upload evidence themselves (either medical evidence or nonmedical evidence), they can do so as a .pdf, .jpeg, or .png format with a maximum file size of 25 megabytes.<sup>88</sup> Upon successful submission, the veteran receives a receipt with claim number and link to track the status of the claim on the portal.<sup>89</sup>

The VA consulted with veterans in designing its native online forms.<sup>90</sup>

The VA provides instructions for using these forms in online videos.

#### **4.6. Federal Maritime Commission**

The Federal Maritime Commission regulates common carriers by water and other oceanborne foreign commerce.<sup>91</sup> Formal adjudication is delegated to administrative law judges,<sup>92</sup> who conduct formal adjudication proceedings pursuant to the APA.

If a person or company is unable to settle a dispute that involves a possible violation of the Shipping Act, that person or company may file a complaint.<sup>93</sup> The complaint will be referred to the Office of Administrative Law Judges (OALJ).<sup>94</sup> A complaint involving claims of \$50,000 or less may be handled by a settlement officer for resolution using informal procedures.<sup>95</sup> Formal complaints are generally heard by an Administrative Law Judge.

##### *4.6.1. Electronic Filing*

The Federal Maritime Commission's Rules of Practice and Procedure do not permit filing or service of initial complaints by email.<sup>96</sup> The Rules do allow filing and service of subsequent documents by email and specify that service should be in the same manner as filing.<sup>97</sup>

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<sup>86</sup> *Add Evidence: Section 3 of the Digital 526 Disability Compensation Tool*, YouTube, [https://www.youtube.com/watch?v=cvU4yK\\_p9Nk&list=PLt\\_058CfeU2oqhqiIcbbYPgWPOY5fucl-&index=4](https://www.youtube.com/watch?v=cvU4yK_p9Nk&list=PLt_058CfeU2oqhqiIcbbYPgWPOY5fucl-&index=4) (last visited Apr. 6, 2023).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Getting Started: Sections 4 and 5 of the Digital 526 Disability Compensation Tool*, YouTube, [https://www.youtube.com/watch?v=JB6iWoELtlo&list=PLt\\_058CfeU2oqhqiIcbbYPgWPOY5fucl-&index=5](https://www.youtube.com/watch?v=JB6iWoELtlo&list=PLt_058CfeU2oqhqiIcbbYPgWPOY5fucl-&index=5) (last visited Apr. 6, 2023).

<sup>90</sup> *The New 526 Disability Form on VA.gov*, YouTube, [https://www.youtube.com/watch?v=dPuBrD-OniU&list=PLt\\_058CfeU2oqhqiIcbbYPgWPOY5fucl-&index=1](https://www.youtube.com/watch?v=dPuBrD-OniU&list=PLt_058CfeU2oqhqiIcbbYPgWPOY5fucl-&index=1) (last visited Apr. 6, 2023).

<sup>91</sup> 46 CFR 501.2(a).

<sup>92</sup> 46 CFR 501.11(a).

<sup>93</sup> *Office of the Administrative Law Judges*, FEDERAL MARITIME COMMISSION, <https://www.fmc.gov/about-the-fmc/bureaus-offices/administrative-law-judges/> (last visited Apr. 12, 2023).

<sup>94</sup> *Id.*

<sup>95</sup> 46 CFR Part 502 Subpart S.

<sup>96</sup> See 46 CFR 502.113, which indicates complaints must be served by first class mail or express mail service.

<sup>97</sup> 46 CFR 502.114(a). There are two other exceptions, including confidential filings and subpoenas. Confidential filings must be filed and served in the same manner as traditional complaints. See 46 CFR 502.2(f)(2). Requests for subpoenas must be filed in writing. See 46 CFR 502.131. Subpoenas must be served in person. See 46 CFR 502.134.

The Rules of Practice do not, however, contain specific instructions for how to file or serve documents in adjudications by email. These are transmitted from the presiding administrative law judge to the parties in the initial order.<sup>98</sup> The order provides specific instructions, such as consolidating multiple exhibits into a single PDF, consecutively paginated, and procedures for marking confidential material. It also provides an email for filing. Subsequent notices of appearance provide email addresses for the parties.

#### 4.6.2. *Customer Portals*

The Federal Maritime Commission has no online portal.

#### 4.6.3. *Forms and Templates*

The Federal Maritime Commission provides no downloadable forms for use in adjudication, though it does provide sample text for certain motions in the Rules of Practice.<sup>99</sup> Subpart S of their Regulations, which governs informal proceedings, contains two forms for use in those proceedings, but they also do not appear online.<sup>100</sup>

### 4.7. **Federal Mine Safety and Health Regulatory Commission**

The Federal Mine Safety and Health Review Commission (FMSHRC) is an independent adjudicatory agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977.<sup>101</sup>

#### 4.7.1. *Electronic Filing*

Electronic filing takes place on a portal accessible from the FMHRC home page.<sup>102</sup> Users can file documents into an existing docket, start a new docket, file a motion to reopen, or file for appellate review by the Commission.<sup>103</sup> Users must provide a title for the document according to a naming convention included in the Commission's instructions and select a document type from a pull-down menu.<sup>104</sup> Any file format appears to be allowed, but instructions encourage PDFs,<sup>105</sup> except for settlement motions, which must be filed as PDFs, and proposed settlement orders, which must be filed as Word documents.<sup>106</sup>

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<sup>98</sup> See, e.g., SeaFair USA LLC, Docket No. 22-34 (Fed. Mar. Comm'n Dec. 16, 2022) (initial order).

<sup>99</sup> See 46 CFR Subpart B, Exhibit No. 1, for a Notice of Appearance and 46 CFR 502.117 for a Certificate of Service

<sup>100</sup> 46 CFR Part 502 Subpart S, Exhibits 1 and 2. The Small Claim Form for Informal Adjudication is available at <https://www.fmc.gov/wp-content/uploads/2019/04/SmallClaimsComplaintFormat.pdf>, but it cannot be edited.

<sup>101</sup> FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION, <https://www.fmshrc.gov/>

<sup>102</sup> FMSHRC-eCMS, ENTELLITRAK, <https://fmshrc-ecms.entellitrak.com/etk-fmshrc-ecms-prod/login.request.do> (last visited Apr. 12, 2023).

<sup>103</sup> *Instructions for Online Filing*, FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION, <https://www.fmshrc.gov/guides/Instructions%2520for%2520Electronic%2520Filing%2520%2528002%2529.pdf> (last visited Apr. 23, 2023).

<sup>104</sup> *Id.*

<sup>105</sup> *Instructions for Electronic Filing*, FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION, <https://www.fmshrc.gov/guides/instructions-electronic-filing> (last visited Apr. 23, 2023).

<sup>106</sup> *Id.*

Documents filed by electronic transmission may be signed by either a “/s/” notation followed by the typewritten name of the filer or by including a graphical duplicate of a handwritten signature.<sup>107</sup>

All documents filed must also be served on all of the parties, but service may be completed by email.<sup>108</sup>

Users are responsible for proper redaction of personally identifiable information and other privacy concerns.<sup>109</sup>

Users receive an automatic notice when their document has been uploaded.<sup>110</sup> They then either receive a second notification after it has been reviewed and received, in which case the date of initial upload is considered the date of receipt, or they receive a notification that it has been rejected for an error and must be uploaded again.<sup>111</sup>

#### 4.7.2. *Customer Portals*

FMSHRC has an electronic portal that allows electronic filing directly into its electronic case management system but currently has no other functionality.<sup>112</sup> The portal requires a username and password but not two-factor authentication or other additional security measures.

#### 4.7.33. *Forms and Templates*

FMSHRC neither provides online forms or downloadable forms for use in its adjudications.

### 4.8. **Federal Trade Commission**

At the Federal Trade Commission (FTC), ALJs (or, alternatively, one or more Commission members) serve as presiding officers.<sup>113</sup> Substantive matters heard include: (a) administrative enforcement actions under a variety of federal trade laws within the Commission's jurisdiction; and (b) adjudicative hearings in rulemaking proceedings under the Fair Packaging and Labeling Act for receipt of evidence in certain circumstances.<sup>114</sup> A proceeding commences when Commission affirmatively votes to issue a complaint.<sup>115</sup> FTC-style adjudication is trial-like, with rules of practice and procedure akin to those in federal district court.<sup>116</sup>

#### 4.8.1. *Electronic Filing*

The FTC provides for two ways to file electronically: through their Administrative E-File System (AEFS) at <https://adminefiling.ftc.gov/ftcefile> that is available to anyone who registers for the

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<sup>107</sup> 29 CFR 2700.6(a)(2).

<sup>108</sup> 27 CFR 2700.7©(1).

<sup>109</sup> 27 CFR 2700.5(e).

<sup>110</sup> *Instructions for Electronic Filing*, *supra* note 105.

<sup>111</sup> *Id.*

<sup>112</sup> 84 FR 59931.

<sup>113</sup> *FTCAADJU0001*, STAN. L. SCH., ADJUDICATION RESEARCH, <http://acus.law.stanford.edu/scheme/ftcaadju0001> (last visited Apr. 12, 2023).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

portal and via the Accellion file transfer protocol (FTP) encryption system that the agency makes available upon request.<sup>117</sup> Requests to use the FTP can take up to 24 hours to be granted.<sup>118</sup>

All documents submitted through AEFS must be in PDF format.<sup>119</sup> Notwithstanding the filing, parties are expected to send courtesy copies to the ALJ and Secretary by email and serve the document on opposing counsel.<sup>120</sup>

Documents submitted through the FTP may be in any format, though no larger than 12 gigabytes.<sup>121</sup> In camera and confidential filings may not be filed through the electronic filing system but only through the FTP system.<sup>122</sup> Courtesy copies must still be sent to the ALJ and Secretary.<sup>123</sup>

#### 4.8.2. *Online Portals*

FTC has an electronic portal that allows electronic filing directly into its electronic case management system but currently has no other functionality.<sup>124</sup> The portal requires a username and password and for users to agree to Rules of Behavior including not sharing or recording passwords and locking the computer when the user steps away. It also requires all users to consent to the use of electronic signatures and to receive email notifications. The system also uses two-factor authentication but requires users either to install a separate authentication app to their mobile device or to opt for voice call authentication.<sup>125</sup> Authentication by email or text message does not appear to be possible. Accounts are deactivated after 90 days of inactivity.<sup>126</sup>

#### 4.8.3. *Forms and Templates*

The FTC provides downloadable, completable PDF forms for Notice of Appearance<sup>127</sup> and Requests for Subpoenas.<sup>128</sup>

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<sup>117</sup> 16 CFR 4.4(e).

<sup>118</sup> *Generic Letter to Counsel for Respondent*, FEDERAL TRADE COMMISSION, [https://www.ftc.gov/system/files/attachments/file-documents-adjudicative-proceedings/generic\\_letter\\_to\\_counsel\\_for\\_respondent\\_1.pdf](https://www.ftc.gov/system/files/attachments/file-documents-adjudicative-proceedings/generic_letter_to_counsel_for_respondent_1.pdf) (last visited Apr. 12, 2023).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> 16 CFR 4.4.(e)(1).

<sup>123</sup> *Generic Letter to Counsel for Respondent*, *supra* note 118.

<sup>124</sup> *Administrative E-Filing System*, FEDERAL TRADE COMMISSION, <https://adminefiling.ftc.gov/ftcefile> (last visited Apr. 12, 2023).

<sup>125</sup> FTC Administrative E-Filing System External User Registration Guide (Filer), FEDERAL TRADE COMMISSION, [https://www.ftc.gov/system/files/attachments/file-documents-adjudicative-proceedings/aefts\\_user\\_manual\\_external\\_registration\\_guide\\_filer\\_february\\_2021\\_.pdf](https://www.ftc.gov/system/files/attachments/file-documents-adjudicative-proceedings/aefts_user_manual_external_registration_guide_filer_february_2021_.pdf) (last visited Apr. 12, 2023).

<sup>126</sup> *Id.*

<sup>127</sup> *Notice of Appearance*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/system/files/attachments/file-documents-adjudicative-proceedings/ftc-232.pdf> (last visited Apr. 12, 2023).

<sup>128</sup> *Generic Letter to Counsel for Respondent*, *supra* note 118.

## 4.9. Merit Systems Protection Board

The Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems.<sup>129</sup> One of the MSPB's primary statutory functions is to protect Federal merit systems against partisan political and other prohibited personnel practices by adjudicating employee appeals over which the Board has been given jurisdiction.<sup>130</sup> The Office of Special Counsel functions independently as a prosecutor of cases before the board.<sup>131</sup>

### 4.9.1. Electronic Filing

Parties and representatives may use the MSPB's electronic filing system to file any pleading, including a new appeal, in any matter; file a petition for enforcement of a final MSPB decision; file a motion for an attorney fee award; file a motion for compensatory or consequential damages; designate a representative or revoke said designation; and notify the MSPB of a change in contact information.<sup>132</sup> Certain other motions cannot be filed electronically, including filing a request to hear a case as a class appeal, service of a subpoena, filing a pleading that contains sensitive security information or classified information, or filing a request to participate as an *amicus curiae*.<sup>133</sup>

The MSPB's electronic filing system, e-Appeal Online website is the only method allowed for online filing of an appeal.<sup>134</sup> As the proceeding progresses, pleadings may be filed on the e-Appeal website (as well as traditional methods). Parties who are dissatisfied with the decision may appeal to the Clerk of the Board, also via the e-Appeal website.<sup>135</sup>

Registering as an electronic filer constitutes acceptance of service electronically.<sup>136</sup> Service is complete by e-mail notifications to e-filers that contain links to the e-filing system where the documents can be viewed and downloaded.<sup>137</sup>

Registering as an electronic filer is not mandatory, and a party and representative may choose different means for filing and receiving documents, but if a party has more than one representative all representatives must choose the same process.<sup>138</sup>

Appeals must be signed by the party or his or her representative.<sup>139</sup> The date of appeal is the date of electronic submission.<sup>140</sup>

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<sup>129</sup> *About MSPB*, U.S. MERIT SYSTEMS PROTECTION BOARD, <https://www.mspb.gov/about/about.htm> (last visited Apr. 12, 2023).

<sup>130</sup> *How to File an Appeal*, U.S. MERIT SYSTEMS PROTECTION BOARD, <https://www.mspb.gov/appeals/appeals.htm> (last visited Apr. 12, 2023).

<sup>131</sup> *About MSPB*, *supra* note 129.

<sup>132</sup> 5 CFR 1201.14(b).

<sup>133</sup> 5 CFR 1201.14(c).

<sup>134</sup> 5 CFR 1201.14(e).

<sup>135</sup> *How to File an Appeal*, *supra* note 130.

<sup>136</sup> 5 CFR 1201.14(e)(1).

<sup>137</sup> 5 CFR 1201.14(j)(1).

<sup>138</sup> 5 CFR 1201.14(e)(3).

<sup>139</sup> *MSPB Initial Appeals Frequently Asked Questions*, U.S. MERIT SYSTEMS PROTECTION BOARD E-APPEAL ONLINE, <https://e-appeal.mspb.gov/faq.aspx#10> (last visited Apr. 12, 2023).

<sup>140</sup> *Id.*

The system allows word-processing and spreadsheet formats, PDF, and image files, but all must be formatted so that they will print on a standard 8½-by-11 paper.

The total size of a filing that may be uploaded is 20 megabytes.<sup>141</sup>

Instructions are provided in a FAQ with links to video tutorials.<sup>142</sup>

#### 4.9.2. Customer Portals

MSPB's customer portal offers some functionality beyond filing appeals and pleadings. In addition to filing an appeal, filing pleadings in an ongoing appeal, and filing motions, parties can register as an e-filer, withdraw registration as an e-filer, updated telephone numbers or addresses, and view case information and documents.<sup>143</sup>

#### 4.9.3. Forms and Templates

MSPB's customer portal offers a native form for completion of an appeal, which follows a structured-interview format.<sup>144</sup> Other downloadable PDFs are available for appeals, designation of a representative, and agreement to mediation.<sup>145</sup> The PDF versions of the forms do not allow for electronic signatures,<sup>146</sup> however electronic documents filed by a party registered as an electronic filer are deemed signed per the agency's regulations.<sup>147</sup>

### 4.10. National Labor Relations Board

After a Regional Director issues a complaint in an unfair labor practice case, a National Labor Relations Board (NLRB) Administrative Law Judge hears the case and issues a decision and recommended order, which can then be appealed to the Board in Washington.<sup>148</sup> If no exceptions are filed, the judge's order becomes the order of the Board.<sup>149</sup>

#### 4.10.1. Electronic Filing

Unless an exception under the NLRB's regulations applies, all documents must be filed electronically.<sup>150</sup> The NLRB encourages users to file all briefs, pleadings, and nonconfidential

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<sup>141</sup> U.S. MERIT SYSTEMS PROTECTION BOARD E-APPEAL ONLINE, <https://e-appeal.mspb.gov/default.aspx> (last visited Apr. 12, 2023).

<sup>142</sup> *MSPB Initial Appeals Frequently Asked Questions*, *supra* note 139, at <https://e-appeal.mspb.gov/faq.aspx#21> (last visited Apr. 12, 2023).

<sup>143</sup> U.S. MERIT SYSTEMS PROTECTION BOARD E-APPEAL ONLINE, *supra* note 141. The MSPB is currently developing a more robust customer portal, but development is still in the planning stages.

<sup>144</sup> 5 CFR 1201.14(g)(1).

<sup>145</sup> MSPB Appeal Forms, U.S. MERIT SYSTEMS PROTECTION BOARD E-APPEAL ONLINE, <https://www.mspb.gov/appeals/forms.htm> (last visited Apr. 12, 2023).

<sup>146</sup> *See, e.g., Merit Systems Protection Board Appeal Form (MSPB Form 185)*, U.S. MERIT SYSTEMS PROTECTION BOARD E-APPEAL ONLINE, [https://www.mspb.gov/appeals/forms/Initial\\_Appeal\\_Form.pdf](https://www.mspb.gov/appeals/forms/Initial_Appeal_Form.pdf) (last visited Apr. 12, 2023).

<sup>147</sup> 5 CFR 1201.14(k).

<sup>148</sup> *Administrative Law Judge Decisions*, NATIONAL LABOR RELATIONS BOARD, <https://www.nlr.gov/cases-decisions/decisions/administrative-law-judge-decisions> (last visited Apr. 12, 2023).

<sup>149</sup> *Id.*

<sup>150</sup> 29 CFR 102.5(c).

documents as PDFs but will accept documents as Word documents.<sup>151</sup> Evidentiary documents should be submitted in their native format.<sup>152</sup> The NLRB currently accepts documents in .doc, .docx, .pdf, .txt, .xls, .xlsx, .csv, .wav, .mp3, .jpg, .jpeg, .png, .tif, .bmp, .mpg, or .html formats, but must be less than 100 megabytes.<sup>153</sup> Media files can be submitted in .mp4, .mov, .avi, .wav, .wmv, .mts, and .m4a formats but must be less than 10 gigabytes.<sup>154</sup> All documents must be submitted in a “read only” format.<sup>155</sup>

The NLRB does not automatically serve electronically filed documents on the other parties, so all filings must also be transmitted to the other parties in the case (email is acceptable).<sup>156</sup>

Users designate documents containing sensitive personally identifiable information or are covered by a protective order or under seal, and they are reviewed by staff for redactions.<sup>157</sup>

Users receive an automatic confirmation email.<sup>158</sup>

Users are responsible for ensuring submitted files do not contain viruses.<sup>159</sup>

#### 4.10.2. *Customer Portals*

The NLRB has an online portal, called My Account Portal, that allows users to view cases to which they are a party, electronically file documents in those cases, and view a history of electronic filing.<sup>160</sup> Users may gain access using a login.gov identity but also must accept terms and conditions including that electronic filings should not contain sensitive personally identifiable information and that “under seal” documents be identified as such.<sup>161</sup> The user is then granted access to his or her cases, which are tied to a unique identifier.<sup>162</sup> This allows employees who work for an attorney to submit filings on his or her behalf.

#### 4.10.3. *Forms and Templates*

The NLRB allows users to file a Charge or Petition through a direct, online form.<sup>163</sup> The NLRB also provides multiple other forms available for download in completable PDF (the Charge or

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<sup>151</sup> *Welcome to NLRB E-Filing*, NATIONAL LABOR RELATIONS BOARD, <https://apps.nlr.gov/MyAccount/#/FileCaseDocument/TermsConditions?type=pdfForm%2F> (last visited Apr. 12, 2023).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> 29 CFR 102.5(f).

<sup>157</sup> <https://apps.nlr.gov/MyAccount/assets/E-Filing-System-User-Guide.pdf>

<sup>158</sup> *Welcome to NLRB E-Filing*, *supra* note 151.

<sup>159</sup> *Id.*

<sup>160</sup> *Welcome to the NLRB Account Portal*, NATIONAL LABOR RELATIONS BOARD, <https://apps.nlr.gov/myAccount/#/MyAccount/Login> (last visited Apr. 12, 2023).

<sup>161</sup> *Id.*

<sup>162</sup> *E-Filing System User Guide*, NATIONAL LABOR RELATIONS BOARD, available at <https://apps.nlr.gov/myAccount/assets/E-Filing-System-User-Guide.pdf>.

<sup>163</sup> *Welcome to E-File New Charge/Petition*, NATIONAL LABOR RELATIONS BOARD, <https://apps.nlr.gov/myAccount/#/ChargeAndPetition/TermsConditions> (last visited Apr. 12, 2023).

Petition is also downloadable, but the agency encourages completion online).<sup>164</sup> Some forms allow the signature space to be completed electronically, though others do not. Regulations indicate that documents filed electronically (forms or other) may contain an electronic signature, meaning “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the document.”<sup>165</sup>

Certain documents, such as a request for an extension of time, have been converted entirely to native online forms.<sup>166</sup>

## 4.11. Occupational Safety and Health Review Commission

The Occupational Safety and Health Review Commission is an independent federal agency that is not part of the Department of Labor or OSHA.<sup>167</sup> The Review Commission was created by Congress to decide contests of citations or penalties that OSHA issues to employers following inspections of American work places. The Review Commission functions as a two-tiered administrative court, with established procedures for (1) conducting hearings, receiving evidence, and rendering decisions by its Administrative Law Judges (ALJs) and (2) discretionary review of ALJ decisions by a panel of Commissioners.

### 4.11.1. Electronic Filing

Filing electronically is mandatory, unless an exception is granted due to undue burden.<sup>168</sup> Parties represented by attorneys or nonattorney representatives are not eligible for an exception.<sup>169</sup>

Users are required to use a naming technique for files, spelled out in the user guide.<sup>170</sup> Attachments and exhibits are also required to come with separate cover pages stating identifiable information such as case name, docket number, title of the document they’re attached to, the attachment number, a document description, and the filing party.<sup>171</sup>

Documents must be submitted as PDFs, and each document must be submitted as a separate PDF.<sup>172</sup> Audio files must be .mp3s and video files .mp4s, neither exceeding 50 megabytes.<sup>173</sup>

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<sup>164</sup> *Fillable Forms*, NATIONAL LABOR RELATIONS BOARD, <https://www.nlr.gov/guidance/fillable-forms> (last visited Apr. 12, 2023).

<sup>165</sup> 29 CFR 102.7.

<sup>166</sup> *E-Filing System User Guide*, *supra* note 162.

<sup>167</sup> OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, <https://www.oshrc.gov> (last visited Apr. 12, 2023).

<sup>168</sup> 29 CFR 2200.8(c). The initial opening of the case, when the OSHA office submits an employer’s notice of contest, together with the OSHA citation, to the OSHA Office of the Executive Secretary also is not required to be filed electronically.

<sup>169</sup> *Commission E-File System Electronic Case Filing – Policy and Procedure Guide*, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, 9, available at <https://www.oshrc.gov/guides/electronic-case-file-guide/>.

<sup>170</sup> *Id.* at 17.

<sup>171</sup> *Id.* at 19.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 22.

Confidential and privileged documents are not filed electronically,<sup>174</sup> and users are responsible for redacting documents containing sensitive information prior to electronic filing.<sup>175</sup>

Users receive an automated acknowledgment when an upload is successfully submitted.<sup>176</sup> They do not receive notice of a technical failure (absence of acknowledgment is treated as notice of failure), but will receive notice if a document is not accepted.<sup>177</sup> Submissions are reviewed by OSHRC staff for compliance with the procedural rules and E-File system requirements, which can take a day or more, and then accepted or rejected.<sup>178</sup>

Service by email on all parties not excepted from electronic filing is automatic through the electronic filing system after acceptance.<sup>179</sup> Notification is by email.<sup>180</sup>

The system scans for viruses and rejects documents containing any.<sup>181</sup>

#### 4.11.2. *Customer Portals*

OSHRC uses an electronic case management system, the Commission E-File System, (1) for accepting case documents for filing; (2) for entering and issuing orders, notices, and decisions from the Commission and Commission Judges; and (3) for Commission electronic case docket management.<sup>182</sup>

Parties with cases before OSHRC must register at least one active contact in the Commission E-File System.

#### 4.11.3. *Forms and Templates*

OSHRC provides a series of sample legal filings in PDF and Word format (the PDF documents are not completable).<sup>183</sup>

### 4.12. **Social Security Administration**

The Social Security Administration's Office of Hearings Operations and Office of Appellate Operations hear appeals of denied claims for disability and other disputes over Social Security benefits.<sup>184</sup>

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<sup>174</sup> 29 CFR 2200.8(c)(5).

<sup>175</sup> 29 CFR 2200.8(c)(6).

<sup>176</sup> *Commission E-File System Electronic Case Filing – Policy and Procedure Guide*, *supra* note 169.

<sup>177</sup> *Commission E-File System Electronic Case Filing – Policy and Procedure Guide*, *supra* note 169.

<sup>178</sup> *Commission E-File System Electronic Case Filing – Policy and Procedure Guide*, *supra* note 169.

<sup>179</sup> 2200.7(c). *See also Commission E-File System Electronic Case Filing – Policy and Procedure Guide*, *supra* note 169.

<sup>180</sup> *Commission E-File System Electronic Case Filing – Policy and Procedure Guide*, *supra* note 169.

<sup>181</sup> Service on all parties not excepted from electronic filing is automatic through the electronic filing system. Notification is by email.

<sup>182</sup> *Commission E-File System Electronic Case Filing – Policy and Procedure Guide*, *supra* note 169.

<sup>183</sup> *Sample Documents*, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, <https://www.oshrc.gov/sample-documents/> (last visited Apr. 12, 2023).

<sup>184</sup> *Disability Benefits*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/benefits/disability/> (last visited Apr. 12, 2023).

#### 4.12.1. Electronic Filing

Representatives have access to an electronic filing system called Electronic Records Express (ERE), as part of a customer portal, Appointed Representative Services (ARS).<sup>185</sup>

Representatives can upload documents directly into the case file, and are asked to select a document type and provide any appropriate descriptive notes.<sup>186</sup> Available file types are .wpd, .doc., .docx, .jpg, .bmp, .mdi, .txt, .rtf, .xls, .xlsx, .pdf, .tiff, and .tif.<sup>187</sup> Representatives cannot submit more than 10 files at a time, with a total of less than 50 megabytes.<sup>188</sup> The system provides an immediate confirmation with a tracking number.<sup>189</sup>

Representatives can get the status of submissions using the tracking number.<sup>190</sup>

SSA converts documents to PDF files, and supports TRM or OGG for audio files.<sup>191</sup>

#### 4.12.2. Customer Portals

Representatives using ERE can see the level that the case is at (hearings or appeals), the date of last status change, and other pertinent case data.<sup>192</sup> They can also review all case documents to which they have access,<sup>193</sup> and download documents to their own networks, though it takes up to 48 hours to download documents.<sup>194</sup>

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<sup>185</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, SOCIAL SECURITY ADMINISTRATION 2 (2019), available at [https://www.ssa.gov/ar/docs/AR\\_eFolder\\_Access\\_UserGuide-508.pdf](https://www.ssa.gov/ar/docs/AR_eFolder_Access_UserGuide-508.pdf).

<sup>186</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185 at 17.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at 18.

<sup>190</sup> *Electronic Records Express (ERE) User Guide for Track Status of Submissions*, SOCIAL SECURITY ADMINISTRATION, 4, available at [https://www.ssa.gov/ar/docs/AR\\_Track\\_Status\\_of\\_Submissions\\_UserGuide-508.pdf](https://www.ssa.gov/ar/docs/AR_Track_Status_of_Submissions_UserGuide-508.pdf).

<sup>191</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 8 and 11. ERE allows users to download a player for TRM files. The instruction manual provides a link to a site where representatives can download a player for OGG files.

<sup>192</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 5.

<sup>193</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 5. SSA includes certain documents in the case file for internal use and review that are not part of the official case file.

<sup>194</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 8.

In addition to accessing ERE, ARS allows representatives to edit their account info<sup>195</sup> and manage email notifications.<sup>196</sup> They can also obtain case status reports, and download a report on all case statuses as an Excel document.<sup>197</sup>

Representatives using ARS must create a user ID and password unique from any other user ID or password they use for other SSA website login pages.<sup>198</sup> ERE also requires two-factor authentication.<sup>199</sup>

Instructions for using the portal and electronic filing system are provided in downloadable PDFs.

#### 4.12.3. *Forms and Templates*

SSA makes many of its forms available for download in PDF format.<sup>200</sup> SSA also provides a native, online form for applying for benefits.<sup>201</sup> The online form operates as a decision-tree questionnaire. Users must log in either through MySSA.gov, login.gov, or ID.me.

### 4.13. **Innovations in the State Courts**

State courts and state administrative agencies have also developed notable innovations in online processes, and in many cases are more innovative than federal agencies have been to date.

#### 4.13.1. *Case Management Systems*

Generally, state courts are embracing “user-centered case management” that encompasses court rules, business practices, culture and governance, and staffing and technology infrastructure.<sup>202</sup>

The Maryland Justice Passport, an app designed to help people without lawyers and the organizations that serve them navigate the legal system, helps individuals keep track of programs they visited; next steps they will need to take; where they have been referred; and important paperwork.<sup>203</sup> The Passport is accessible via computer or mobile device. Information about their case is transmitted securely to referral resources via the app. The system does rely on court help

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<sup>195</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 3. Notably this does not include changing addresses, for which representatives are instructed to use the portal’s messaging function to communicate with an OHO office. *See Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 20.

<sup>196</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 20.

<sup>197</sup> Electronic Records Express (ERE) User Guide for Get Status Reports, SOCIAL SECURITY ADMINISTRATION, available at [https://www.ssa.gov/ere/ere\\_demo\\_public/html/EREAR/userInstructions/PDF/AR%20Status%20Reports%20User%20Guide.pdf](https://www.ssa.gov/ere/ere_demo_public/html/EREAR/userInstructions/PDF/AR%20Status%20Reports%20User%20Guide.pdf).

<sup>198</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 2.

<sup>199</sup> *Appointed Representative User Guide for Access to the Electronic Folder*, *supra* note 185, at 4.

<sup>200</sup> *Forms*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/forms/> (last visited Apr. 12, 2023).

<sup>201</sup> Apply for Social Security Benefits, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/apply> (last visited Apr. 12, 2023).

<sup>202</sup> Paula Hannaford-Agor, *Reimagining Civil Case Management*, TRENDS IN STATE COURTS 2022, at 80 (2022).

<sup>203</sup> *See Sarah Coffey Bowes and Pamela Ortiz, The Maryland Justice Passport: Making Effective Referrals from Court Help Centers*, TRENDS IN STATE COURTS 2022, at 20 (2022); *see also* Civil Justice, Inc., *How It Works*, Md. Just. Passport, <https://perma.cc/SB32-VFXX> (last visited Mar. 27, 2023).

center staff and a program administrator to support litigants to develop their case summary, upload case documents, and navigate the legal services delivery system.<sup>204</sup>

Courts adjudicating guardianship or conservatorship cases have an ongoing duty to monitor the status of wards and conservatees.<sup>205</sup> Different states have implemented a number of online processes to aid this process. Idaho and New Mexico provide standard fillable forms in English and Spanish on the courts' website for guardians and conservators to file reports required by the court.<sup>206</sup> Minnesota courts provide customer portals that allow guardians and conservators to file these reports.<sup>207</sup> Clark County, Nevada, and the state of Oregon have developed dashboards that pull data from the electronic case management system and allow real-time tracking of compliance and court review of required report.<sup>208</sup>

#### 4.13.2. Notification Systems

State courts have found electronic notification systems especially useful for communicating upcoming deadlines, informing court users of the consequences of failure to comply with court rules and orders, and alerting them to necessary next steps.

One recent innovation is eCourtDate—a cloud-based platform enabling courts to communicate with case stakeholders via multilingual texts, emails, calls, and self-service web portals.<sup>209</sup> Uptrust—a similar platform—uses two-way text messaging to simplify the communication process in the criminal legal system so that fewer individuals are jailed due to technical violations.<sup>210</sup> Several other SMS-reminder projects have received funding from Legal Services Corporation in Northern Virginia and Montana.

Legal Aid of Western Missouri launched an online intake system, including an integrated appointment scheduling application, to address the frequent “phone tag” issue they experienced with callbacks. Once an individual completes an online application, the applicant uses an online tool to book an appointment for a callback. This system also includes automated text appointment

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<sup>204</sup> Bowes and Ortiz, *supra* note 4, at 21.

<sup>205</sup> State courts have also developed online processes to mitigate the risk of fraud, abuse, or neglect present in the guardianship and conservatorship context. To address this concern, Pennsylvania's Guardianship Tracking System automatically notifies all courts using a particular guardian when wrongdoing is found. Idaho uses its Differentiated Case Management Tool to determine the level of monitoring required for each case—and even if evidence of abuse, neglect, or fraud is absent, the tool accounts for additional concerns that may warrant increased monitoring or other safeguards.

<sup>206</sup> See Diane Robinson et al., *Effective Monitoring of Guardianship and Conservatorship Cases*, TRENDS IN STATE COURTS 2022, at 72 (2022); *Adult Guardianship Forms*, N.M. Courts, <https://adultguardianship.nmcourts.gov/forms/> (last visited Mar. 27, 2023).

<sup>207</sup> See, e.g., *MyMNConservator*, MINN. JUD. BRANCH, <https://mncourts.gov/Help-Topics/MyMNConservator.aspx> (Mar. 27, 2023).

<sup>208</sup> See Diane Robinson et al., *supra* note 6.

<sup>209</sup> See *Communication Platforms for the Justice System*, ECOURTDATE, <https://ecourtdate.com> (last visited Mar. 27, 2023).

<sup>210</sup> See *How a Two-Way Text Messaging System Keeps People Out of Jail*, THE CRIME REP. (Feb. 11, 2022), <https://thecrimereport.org/2022/02/11/how-a-two-way-text-messaging-system-keeps-people-out-of-jail/>; see also *How It Works*, UPTRUST, <https://uptrust.co/how-it-works/> (last visited Mar. 27, 2023).

reminders and functionality which allows applicants to cancel or reschedule their appointment on their own.<sup>211</sup>

#### 4.13.3. Structured Data Collection

National Open Court Data Standards (“NODS”) are an effort of the Conference of State Court Administrators (“COSCA”) and the National Center for State Courts (“NCSC”) seeking to “mak[e] court data more accessible, reduc[e] the burden on court staff to respond to data requests, and to reduce the potential misinterpretation of court data by researchers, journalists, and others.”<sup>212</sup> States and local courts are not required to adopt all NODS data definitions or report on all NODS data elements to participate. Once a state court system determines the extent it will adopt and report on NODS data fields and definitions, initial implementation requires state courts to match the data fields and values definition from their existing case management systems to NODS fields and data value definitions. Data requesters can formulate standardized data requests that enable courts to respond efficiently by using established scripts and/or standardized data sets.<sup>213</sup>

The extent of adoption and degree of implementation of NODS varies between states. The Georgia state court system is currently evaluating which NODS data standards the state will adopt given state-specific concerns regarding counting cases accurately, data quality, and the ability to share information with justice partners.<sup>214</sup> Arizona already requires its courts to record and report on every NODS data field and definition adopted by the Judicial Branch of the state. The state is now developing a state court implementation plan and compliance checklist for the selected data elements and conducting integration projects with justice partners to increase data availability, consistency, and quality.<sup>215</sup> Pennsylvania and Indiana are using NODS to create and share business intelligence. By partnering with a case management system vendor serving multiple counties to create data exchange protocols for civil and family law case data, Pennsylvania is using NODS to provide data dashboards to local courts and facilitate information sharing for more effective case management.<sup>216</sup> Indiana is focusing on using NODS expand data analytics capabilities to support the efforts of the state’s Coalition for Court Access and Innovation initiative. Seeking to first understand in detail the extent to which parties are represented by counsel in civil cases, the state is building a NODS data warehouse to integrate data from diverse sources, enable data visualization, and share lessons learned with other jurisdictions considering applying NODS.<sup>217</sup>

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<sup>211</sup> See Email from David Bonebrake, Program Counsel, Legal Servs. Corp. to Matthew Gluth, Attorney Advisor, Admin. Conf. of U.S. (Mar. 7, 2023, 10:01 EST) (on file with author).

<sup>212</sup> Diane Robinson et al., *National Open Court Data Standards (NODS)*, TRENDS IN STATE COURTS 2022, at 104 (2022).

<sup>213</sup> See *id.*; see also *National Open Court Data Standards (NODS)*, NAT’L CTR FOR STATE CTS., [www.ncsc.org/nods](http://www.ncsc.org/nods) (last visited Mar. 27, 2023).

<sup>214</sup> See Robinson et al., *supra* note 14, at 105; see also *Standing Committee on Judicial Workload Assessment*, JUD. COUNCIL OF GA. ADMIN. OFF. OF THE CTS., <https://perma.cc/BBT2-LS7A> (last visited Mar. 27, 2023).

<sup>215</sup> See *Steering Committee on Data-Based Court Performance and Data Standards*, ARIZ. JUD. BRANCH, <https://perma.cc/ZW8A-RFQH> (last visited Mar. 27, 2023).

<sup>216</sup> See Robinson et al., *supra* note 14, at 106 (noting this is a particularly valuable resource for many local courts because most do not have data analysts to do this work).

<sup>217</sup> See *id.*

These are examples, like VA’s use of APIs, of ways state courts are using structured data to link directly with end users, without requiring web interfaces or other data intermediaries.

#### 4.13.4. *Online Dispute Resolution*

Online Dispute Resolution (ODR) is a public-facing digital space for parties to resolve their dispute or case. Court-implemented ODR is hosted or supported by the judicial branch and designed specifically to meet the needs of the public. ODR can include tools for gathering legal information, exploring options, and managing a case from start to finish without setting foot in a courthouse.<sup>218</sup>

For small claims cases in Franklin County, Ohio, including city tax issues, small claims, credit card debt, landlord-tenant issues, and other disputes under \$6,000, potential users are invited by mail and must opt in. Once they have opted in, the parties can access the Negotiation Space—a web page only accessible by the two parties and a qualified, professional court mediator—where parties can send messages and files asynchronously around the clock, and make and accept offers, including payment arrangements. If the parties come to agreement, they sign electronically, and the agreement may be submitted to the court if an active lawsuit is pending. Utah has implemented a similar system.<sup>219</sup>

Washtenaw County, Michigan, implemented an Online Traffic Pleading to address the high volume of civil traffic infractions. In comparison with the Ohio example, ODR is the default choice, and users must opt out of the system. Users may plead their traffic violation cases. For cases that qualify, mediation is offered, adjusting the charge to “impeding traffic,” which does not negatively impact the individual’s driving record and auto insurance. The process takes less than 15 minutes. The court reported benefiting from a lower administrative cost per case tied to reductions in the need for courtroom space, court dockets, and magistrate time. Cases are resolved more quickly, and parties pay their fines faster and far more consistently leading to fewer default judgments. The program has been so successful in Washtenaw County that 30 more counties are moving forward with similar initiatives. ODR is also being used in Michigan for family court compliance, small claims, parking tickets, and outstanding warrants.<sup>220</sup>

#### 4.13.5. *Artificial Intelligence*

Many state court technology systems today are leveraging some forms of AI.<sup>221</sup>

In New Jersey, a chatbot named JIA responds to public inquiries. As the volume of text inquiries has increased, the court has seen a roughly corresponding decrease in the number of call center calls.<sup>222</sup>

Courts are also using Symbolic AI in guided questionnaires for document generation (decision trees based upon business rules), workflow engines for automating case management, most risk/needs instruments, and new legal navigators like Florida Law Help and Colorado Resource

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<sup>218</sup> See *What is ODR?*, NAT’L CTR. FOR STATE CTS., <https://www.ncsc.org/odr/guidance-and-tools> (last visited Mar. 27, 2023).

<sup>219</sup> See Paula Hannaford-Agor et al., *Impact of Utah Online Dispute (ODR) Pilot Program: Final Report 2–4* (2020), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0025/57823/NCSC-UT-final-2020.pdf](https://www.ncsc.org/_data/assets/pdf_file/0025/57823/NCSC-UT-final-2020.pdf).

<sup>220</sup> See *id.* at 4–5.

<sup>221</sup> Joint Tech. Comm., *Introduction to AI for Courts* at vi (2020), <https://perma.cc/4PCH-MHSZ>.

<sup>222</sup> See *id.* at 7–8.

Network for senior citizens.<sup>223</sup> Agencies may find similar technology can assist them in converting forms to online questionnaires. Symbolic AI uses algorithms—step-by-step procedures for arriving at an answer—to apply rules deductively to new cases. Symbolic AI is the most familiar and therefore comfortable to the judicial branch because it closely reflects classic legal reasoning: step 1, write down all the rules; step 2, apply relevant rules to individual fact patterns to reach a conclusion.

## CONCLUSION

Relying on case studies and interviews of agency officials at more than a dozen agency adjudication systems, this report documents a current taxonomy of agency efforts to develop online processes to increase efficiency and quality of their adjudicative systems and reduce the administrative burden on participants in those processes. Based on findings derived from those case studies and interviews, I have made a number of recommendations for how agencies can develop or improve their online processes. A recurring theme is that this has been an area of extremely rapid development, and nearly every agency studied reported that their processes were growing.

This is an area of administrative procedure that is developing particularly rapidly, and further attention and study is warranted. There are ongoing questions of how to balance issues of information security and privacy against efficiency, as well as how to distribute the burden of participation between the agencies and parties. Much more work needs to be done to study the specific effects of any individual decision, be it toward maintaining privacy of personal or sensitive data, how to most efficiently transmit data between the parties and the agency, or how to employ data sharing, structured data collection, or machine learning to reduce the burdens on participants, particularly benefit seekers. Continued attention in this area is warranted, as new technologies are developed and deployed in adjacent areas be they state courts, state adjudicative systems, commercial products, or other technologies that may bear fruit for improving adjudicative processes.

The opportunities for improvement in efficiency, quality, and accuracy, and reduction in the burden on all parties, are significant. Agency adjudicators hear the vast majority of federal adjudications, collectively issuing millions of decisions per year. The effective use of technology in these adjudication systems can advance the core aims of adjudication. I hope the findings in this report encourage further consideration.

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<sup>223</sup> *See id.* at 4.

**APPENDIX:  
PROPOSED RECOMMENDATION FOR THE ACUS ASSEMBLY**

[Preamble To Come]

**Recommendation**

*Accessing Online Processes*

1. Agencies should ensure that online processes used by members of the public work effectively with any electronic case management system (eCMS) and any website where agency adjudication materials are made publicly available.
2. Agencies should develop online self-help portals that allow users to, as applicable:
  - a. Update contact information, including email addresses, phone numbers, and physical addresses;
  - b. Complete and submit forms;
  - c. File briefs, evidence, and other documents;
  - d. Receive service of documents, including documents filed by other parties and agency notices and orders;
  - e. View and download case documents;
  - f. Make payments (e.g., filing fees, application fees, civil penalties);
  - g. Schedule meetings, conferences, hearings, and other appointments;
  - h. Access virtual appointments;
  - i. View case status information and information about deadlines, appointments, and wait times, but only if they can reliably predict them;
  - j. Receive reminders about upcoming deadlines and appointments; and
  - k. Receive notifications about new documents, status changes, and other developments in their cases.
3. Online self-help portals should be designed to allow different functionality, with appropriate permissions, for different types of users including parties, intervenors, representatives and their staff, and amici curiae.
4. Agencies should ensure online self-help portals have security mechanisms in place to protect user privacy. Agencies that require users to register for and log in to online self-help portals should allow users to use Login.gov or other universal login used by government agencies.

*Electronic Filing and Forms*

5. Agencies should permit all parties and require all represented parties to file documents electronically, except in instances when electronic filing would be

impossible or impracticable or a party has good cause for needing alternative means of submission.

6. Agencies should ensure that their processes for electronic filing allow all users to, as applicable:
  - a. File documents in batch;
  - b. File documents at significant size to allow for all common filings;
  - c. File documents in multiple file formats, except that users should be required to file documents in a format that cannot be edited, such as Portable Document Format (PDF), unless a specific procedure requires parties to submit documents that can be edited (e.g., a proposed order);
  - d. Notify the agency that documents being filed contain legally protected or other sensitive information; and
  - e. Notify the agency that documents are being filed under seal or in camera.
7. Agencies without an eCMS should allow parties to file briefs, evidence, and other documents electronically, by emailing documents to a designated agency email address, uploading them to a web-accessible file-hosting service, or transferring them to the agency using the file transfer protocol (FTP).
8. Agencies with an eCMS should develop web-based tools that can be used to submit documents directly into the eCMS. These tools should allow users to input structured metadata collected by the eCMS, such as document type, so long as it would not be confusing or burdensome for members of the public to do so.
9. Agencies with an eCMS should develop application programming interfaces (APIs) that allow users, such as representatives, who use their own eCMS to directly transfer data between a user's eCMS and the agency's eCMS, without needing to use an online form or self-help portal as an intermediary.
10. Agencies that have forms or templates for use in adjudications (e.g., applications, appointment of representative, hearing requests, requests for agency appellate review, subpoena requests) should post PDF versions of the forms on their websites and allow users to complete, sign, and submit them electronically. Agencies should adapt frequently used forms as web-based forms that users can complete and submit using a web browser. When feasible, web-based forms should:
  - a. Be prepopulated with information about a user or case that the agency already has collected in an eCMS or other database; and
  - b. Based on prepopulated data and previous responses, only require users to answer questions that are relevant to them.
11. Except when explicitly prohibited by statute, agencies should allow participants in adjudications to sign documents electronically and, as applicable, should accept the following as valid electronic signatures:

- a. Submitting a form or document through an agency’s online self-help portal while registered for and logged in to the portal;
  - b. A cryptographic digital signature;
  - c. A scanned or other graphical representation of a handwritten signature;
  - d. A conformed signature (e.g., “/s/ Jane Doe”); and
  - e. An email used to transmit the document.
12. Agencies should only review electronically filed documents before associating them with a case file if there is a need to do so, for example to ensure nondisclosure of legally protected or other sensitive information, for quality assurance purposes, or when a party files or requests to file a document under seal or in camera.

*Electronic Service*

13. Agencies should allow parties to serve documents to other represented parties electronically, except in instances when electronic service would be impossible or impracticable or a party has good cause for needing alternative means of delivery.
14. Agencies without an eCMS should allow parties to serve documents to other parties electronically, by emailing documents to other parties. In addition, or as an alternative, agencies that allow parties to submit documents using a file-hosting service or FTP should notify other parties when new documents become available.

*Management of Sensitive Documents*

15. Agencies that redact legally protected or other sensitive information from documents before making them available to other parties or publicly available should clarify whether parties should submit redacted versions of documents or whether the agency will make redactions.

*Fees and Other Payments*

16. Agencies that require filing fees, application fees, payment of civil penalties, or other payments should accept electronic payments.

*Scheduling, Notifications, and Reminders*

17. Agencies should, as applicable, allow parties to use an appointment-booking tool or scheduling tool to help schedule meetings, conferences, hearings, and other appointments efficiently and at times that are reasonably convenient for the agency and all non-agency participants.
18. Agencies with an eCMS should provide automatic notifications or reminders to users about important developments in their cases, such as when (a) a new document submitted by another party is available to view; (b) an agency notice or order is available to view; (c) a filing deadline is approaching; (d) a meeting, conference, hearing, or other appointment is scheduled; (e) an appointment is upcoming; and (f) a case status changes. Notifications and reminders should be sent through an online self-service portal, by email, and/or by text message, according to user preferences.

### *Developing and Improving Online Processes*

19. When designing and implementing online processes, agencies should consult potential users and relevant stakeholders, including parties, representatives, adjudicators and adjudicative staff, agency personnel who represent the government in adjudicative proceedings, and personnel who provide customer service or oversee customer experience functions for the agency. Agencies should also continuously solicit feedback from users on their online processes, for example through online surveys and listening sessions, and should use that feedback to identify and prioritize improvements.
20. When designing or working with a contractor to design their online processes, agencies should create systems that can be expanded to incorporate new technologies without requiring replacement.
21. Agencies should ensure that their online processes function on multiple platforms including, when practicable, on mobile devices.

### *Guidance, Training, and Outreach*

22. Agencies should update their rules of practice to permit or, when appropriate, require the use of online processes.
23. Agencies should develop self-help materials (e.g., instruction manuals, reference guides, instructional videos) and, if needed, hold training sessions to help agency personnel and members of the public understand how to use the agency's online processes. Materials intended for public users should be posted in an appropriate location on the agency's website and made accessible through any online self-help portal.
24. Agencies should conduct public outreach if needed to encourage parties and representatives to adopt their online processes, in particular prior to making an online process mandatory.
25. Agencies should make staff available to help agency personnel and members of the public use online processes and should clarify when assistance is available (e.g., during normal business hours).