Administrative Conference Recommendation 2023-4

Online Processes in Agency Adjudication

Adopted June 15, 2023

Millions of people each year navigate adjudication systems administered by federal agencies to, among other actions, access benefits and services, answer charges of legal noncompliance, and settle disputes with third parties. Individuals participating in these systems often expend substantial time and resources completing forms, submitting evidence and arguments, and monitoring their cases, while agencies expend substantial time and resources processing submissions, managing dockets, and providing case updates.

To improve accuracy, efficiency, and accessibility, and fulfill legal obligations to develop electronic business processes,[1] agencies increasingly have deployed online processes by which parties, their representatives, and other interested persons can perform routine tasks such as filing, serving, and viewing forms, briefs, evidence, and other case records or materials.[2] These processes range from simple email-based systems to robust online self-help portals that allow users to update contact information, communicate with agencies, complete forms, submit and view case records or materials, and perform other tasks. These processes ideally link with agencies' own electronic case management systems,[3] which serves also to reduce the time

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[1] *See*, *e.g.*, 21st Century Integrated Digital Experience Act, Pub. L. No. 115-336, 132 Stat. 5025 (2018); Exec. Order No. 14,058, 86 Fed. Reg. 71,357 (Dec. 16, 2021); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-19-21, MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, TRANSITION TO ELECTRONIC RECORDS (June 28, 2019); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-23-07, MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, UPDATE TO TRANSITION TO ELECTRONIC RECORDS (Dec. 23, 2022); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, CIRCULAR NO. A-11, SEC. 280 (2020).

[2] Matthew A. Gluth, Online Processes in Agency Adjudication (May 24, 2023) (report to the Admin. Conf. of the U.S.).

[3] *See* Admin. Conf. of the U.S., Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*, 83 Fed. Reg. 30,683 (June 29, 2018).

agency staff spend receiving paper records, converting them into an electronic format, and associating them with case files.

If properly deployed, these processes make adjudication systems easier to use and more accessible to the public, reduce the administrative burden on agency staff, and increase the accuracy of information collected during adjudication. However, these processes can also pose significant risks, including increased burdens due to poor design, exposure of agencies' computer systems to malware and other security threats, and ongoing costs of maintenance and upgrades. In designing and implementing online processes, agencies should not only address these risks but also ensure that they meet all legal accessibility requirements.[4] In addition, agencies should make user resources available in languages other than English.[5]

Examples of agencies with online adjudication processes include the Social Security Administration, Department of Veterans Affairs, and U.S. Citizenship and Immigration Services, which have launched robust customer service portals that let parties perform tasks at many stages of adjudication from case initiation through appeal. Others have only recently begun to develop online processes, particularly in response to office closures during the COVID-19 pandemic.

This Recommendation encourages agencies to develop online processes and provides best practices for agencies to consider when doing so. Of course, agencies have different needs, serve different communities, and have different resources available to them. Further, what works best for one agency may not be appropriate for another. This Recommendation identifies steps that agencies can consider at any stage of developing online processes to improve the accuracy, efficiency, and accessibility of their adjudication systems.

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[4] *See, e.g.*, Rehabilitation Act of 1973, § 508, 29 U.S.C. § 794d; Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861; Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

[5] *See, e.g.*, Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

RECOMMENDATION

Accessing Online Processes in Adjudication Systems

1. Agencies' online processes should work effectively with relevant electronic case management systems (eCMS) and agency websites where adjudication materials are made publicly available.

2. Agencies should develop online self-help portals that allow users, as applicable and when feasible, to:

    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, when agencies 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 allow different functionality, with appropriate permissions, for different types of users, including agency staff and contractors, parties, intervenors, representatives and their staff, amici curiae, and the public.

4. Agencies should ensure online self-help portals employ security mechanisms, such as firewalls and encryption, to protect sensitive user information and maintain the system's integrity. Agencies should also ensure self-help portals employ mechanisms to

authenticate users when necessary. Agencies that authenticate users by requiring them to register for and log in to online self-help portals should allow users to use Login.gov or other universal logins used by government agencies. These security mechanisms should not compromise the ability of non-authenticated users to access public documents.

Electronic Filing and Forms

5. Agencies should permit, and consider requiring, parties to file documents electronically. If agencies require electronic filing, they should implement exceptions for when electronic filing would be impossible or impracticable or a party has demonstrated good cause for using an alternative means of submission.

6. Agencies should ensure that their processes for electronic filing allow users, as applicable and when feasible, to:

   a. File documents in batches;

   b. File documents of a large enough size to encompass 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 participants in an adjudication to file briefs, exhibits, and other documents electronically by emailing them to a designated agency email address, uploading them to a web-accessible file-hosting service, or transferring them to the agency using a secure file transfer protocol (SFTP).

8. Agencies with an eCMS should develop tools that can be used to submit documents directly into the eCMS. These tools should require users to provide, or allow the system to capture, information about their submission, such as document type, purpose, or date,

which would be stored as structured metadata in the eCMS, so long as it would not be confusing or burdensome for users.

9. Agencies with an eCMS should consider developing application programming interfaces (APIs) that allow users, such as representatives, who use their own eCMS to transfer data directly and securely between a user's eCMS and the agency's eCMS, without needing to use a 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 or templates 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. Be based on prepopulated data and previous responses, requiring users to answer only 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, accept as valid electronic signatures:

    a. A form or document submitted 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 consider whether to review some or all electronically filed documents before associating them with a case file. For example, agencies should ensure that documents are associated with the correct case file, that they comport with agency rules, and that they do not disclose legally protected or other sensitive information, such as when a party files or requests to file a document under seal or in camera.

Electronic Service

13. Agencies should allow electronic service, except when electronic service would be impossible or impracticable or a party has good cause for needing alternative means of delivery.

14. Agencies with an eCMS should provide automated service through notice when a document has been filed through the web portal.

15. Agencies without an eCMS should allow parties to serve documents to other parties electronically, such as by emailing documents to other parties. Agencies that allow parties to submit documents using a file-hosting service or SFTP should ensure that all parties are notified when new documents become available.

Management of Sensitive Documents

16. 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 the necessary redactions.

Scheduling, Notifications, and Reminders

17. Agencies should provide an online tool for parties to schedule meetings, conferences, hearings, and other appointments efficiently and at times that are reasonably convenient for all participants.

18. Agencies with an eCMS should provide automatic notifications or reminders to users about important events and developments, such as when (a) a new document has been submitted and is available to view; (b) an agency notice or order is available to view; (c) the case status changes; (d) a meeting, conference, hearing, or other appointment is scheduled or upcoming; and (e) a filing deadline is approaching. Notifications and reminders should be available in an online self-service portal and sent by email and/or by text message, according to user preferences.

Developing and Improving Online Processes

19. When designing and implementing online processes, especially before making them mandatory, 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, 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 the public understand how to use the agency's online processes. Materials intended for the public 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 use their online processes, even prior to making an online process mandatory.

25. Agencies should make staff available to assist all users of the agency's online processes, including agency personnel, and should inform users when such assistance is available (e.g., during normal business hours).