



Administrative Conference Recommendation 2018-3

Electronic Case Management in Federal Administrative Adjudication

Adopted June 15, 2018

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

Benefits of an Electronic Case Management System

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



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

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

Considerations in Adopting an Electronic Case Management System

Despite the advantages of an eCMS, the decision to implement an eCMS must be carefully considered. It may not be cost efficient for every adjudicative agency to implement an

¹ Felix F. Bajandas & Gerald K. Ray, Implementation and Use of Electronic Case Management Systems in Federal Agency Adjudication (May 23, 2018) (report to the Admin. Conf. of the U.S.), <https://acus.gov/report/final-report-implementation-and-use-electronic-case-management-systems-federal-agency>.

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

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

⁴ See Admin. Conf. of the U.S., Recommendation 2017-1, *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31,039, 31,039 (Jul. 5, 2017); Admin. Conf. of the U.S., Recommendation 2013-5, *Social Media in Rulemaking*, 78 Fed. Reg. 76,269, 76,269 (Dec. 17, 2013); and Admin. Conf. of the U.S., Recommendation 2011-1, *Agency Innovations in E-Rulemaking*, 77 Fed. Reg. 2,257, 2,264 (Jan. 17, 2012).



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eCMS given agency-specific factors such as caseload volume. For example, there may be significant costs associated with the development, purchase, and maintenance of new hardware and software. Further, the need to train agency staff in new business processes associated with the eCMS may also be significant, as the new operations may be substantially different. In addition, an agency may need to allocate resources to ensure that any new eCMS complies with existing legal requirements, such as the protection of private information about individuals, as required by the Privacy Act.⁵

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

The implementation or expansion of an eCMS deserves full and careful consideration by federal adjudicative agencies, with recognition that each agency is unique in terms of its mission, caseload, and challenges. This Recommendation suggests that agencies implement or expand an eCMS only when they conclude, after conducting a thorough consideration of the costs and benefits, that doing so would lead to benefits such as reduced costs and improved efficiency, accuracy, public access, and transparency without impairing the fairness of the proceedings or the participants' satisfaction with them.

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



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RECOMMENDATION

1. Federal adjudicative agencies should consider implementing electronic case management systems (eCMS) in order to reduce costs, expand public access and transparency, increase both efficiency and accuracy in the processing of cases, identify opportunities for improvement through the analysis of captured data, and honor statutory requirements such as the protection of personally identifiable information.
2. Federal adjudicative agencies should consider whether their proceedings are conducive to an eCMS and whether their facilities and staff can support the eCMS technology. If so, agencies should then consider the costs and benefits to determine whether the implementation or expansion of an eCMS would promote the objectives identified in Recommendation 1 as well as the agency's statutory mission without impairing the fairness of proceedings or the participants' satisfaction with them. This consideration of the costs and benefits should include the following non-exclusive factors:
 - a. Whether the agency's budget would allow for investment in appropriate and secure technology as well as adequate training for agency staff.
 - b. Whether the use of an eCMS would reduce case processing times and save costs, including printing of paper and the use of staff resources to store, track, retrieve, and maintain paper records.
 - c. Whether the use of an eCMS would foster greater accessibility and better public service.
 - d. Whether users of an eCMS, such as administrative law judges, other adjudicators, other agency staff, parties, witnesses, attorneys or other party representatives, and reviewing officials would find the eCMS beneficial.
 - e. Whether the experiences of other agencies' eCMS implementations provide insight regarding other factors which may bear on the manner of an eCMS implementation.



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3. The following possible eCMS features, currently implemented by some federal adjudicative agencies, should be considered by other agencies for their potential benefits:
 - a. Web access to the eCMS that allows parties the flexibility to file a claim, complaint, or petition; submit documents; and obtain case information at any time.
 - b. Streamlining of agency tasks in maintaining a case file, such as sorting and organizing case files, providing simultaneous access to files and documents by authorized users, tracking deadlines and elapsed age of a case, notifying parties of new activity in a case, and pre-populating forms with data from the case file.
 - c. The comprehensive capture of structured and unstructured data that allows for robust data analysis to identify opportunities for improving an agency's operations, budget formulation, and reporting.
 - d. Streamlined publication of summary data on agency operations.

4. Federal adjudicative agencies that decide to implement or expand an eCMS should plan and manage their budgets and operations in a way that balances the needs of a sustainable eCMS with the possibility of future funding limitations. Those agencies should also:
 - a. Consider the costs associated with building, maintaining, and improving the eCMS.
 - b. Consider whether the adoption of an eCMS requires modifications of an agency's procedural rules. This would include addressing whether the paper or electronic version of a case file will constitute the official record of a case and whether filing methods and deadlines need to be changed.
 - c. Consider whether to require non-agency individuals to file claims, complaints, petitions, and other papers using the eCMS. Such consideration should include the accessibility, suitability, usability, and burden of the eCMS for its likely user population, and whether creating exceptions to electronic filing procedures would assist in maintaining sufficient public access.



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- d. Create a map or flow chart of their adjudicative processes in order to identify the needs of an eCMS. This involves listing the tasks performed by employees at each step in the process to ensure the eCMS captures all of the activities that occur while the case is pending, from initial filing to final resolution. It also includes identifying how members of the public or other non-agency users will access and interact with the eCMS. To the extent practical, this effort should also involve mapping or flow-charting the legal and policy requirements to decisional outcomes.
 - e. Put in place a management structure capable of: (1) restoring normal operations after an eCMS goes down (incident management); (2) eliminating recurring problems and minimizing the impact of problems that cannot be prevented (problem management); (3) overseeing a new release of an eCMS with multiple technical or functional changes (release management); (4) handling modifications, improvements, and repairs to the eCMS to minimize service interruptions (change management); and (5) identifying, controlling, and maintaining the versions of all of the components of the eCMS (configuration management).
 - f. Establish a “service desk,” which is a central hub for reporting issues with the eCMS, providing support to eCMS users, and receiving feedback on the resolution of problems. A service desk should gather statistics of eCMS issues in order to help guide future improvements of the eCMS. A service desk could also enable eCMS users to offer suggestions for improving the eCMS.
 - g. Plan adequate and timely training for staff on the use of the eCMS.
5. Federal adjudicative agencies that decide to implement or expand an eCMS must do so in such a way that appropriate protections for privacy, transparency, and security are preserved by:
- a. Ensuring that the agency’s compliance with the Privacy Act, other statutes protecting privacy, and the agency’s own privacy regulations and policies remains undiminished by the implementation or expansion of an eCMS.



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- b. To the extent it is consistent with Recommendation 5(a) above, making case information available online to parties and, when appropriate, the public, taking into account both the interests of transparency (as embodied in, for example, the Freedom of Information Act's proactive disclosure requirements) as well as the benefits of having important adjudicative documents publicly available.
 - c. Adopting security measures, such as encryption, to ensure that information held in an eCMS cannot be accessed or changed by unauthorized persons.
 - d. Ensuring that sensitive information is not provided to unintended third parties through private email services, unsecured data transmission, insider threats, or otherwise.
 - e. Keeping track of the evolution of security technologies and considering the adoption of those technologies as they mature in order to ensure the integrity of agency information systems.
6. Federal adjudicative agencies that decide to implement or expand an eCMS should consider how to analyze and leverage data that is captured by the eCMS to improve their adjudicative processes, including through the use of natural language processing, machine learning, and predictive algorithms. Agencies should consider:
 - a. Evaluating how eCMS features could generate the types of data that would be useful for evaluating the effectiveness of their adjudicative processes and policies.
 - b. Capturing and analyzing such data about adjudicative processes and policies to detect and define problem areas that present opportunities for improvement.
 - c. Upon identification of areas for improvement in the adjudication process, taking corrective action, refining performance goals, and measuring performance under the newly improved process.
 - d. Hiring staff trained in data science to facilitate data analysis and giving that staff access to subject matter experts within agencies.
 - e. Collaborating with other agencies on best practices for data analytics.