

Comment from Public Member Jonathan R. Siegel to *Agency Appellate Systems*
December 13, 2020

This is a good recommendation, but one important point seems to me to be omitted.

As the report notes, under 5 U.S.C. § 704 it is important whether an agency's regulations make an internal agency appeal mandatory as a prerequisite to seeking judicial review and whether the agency's regulations provide that while an internal appeal is sought, the agency's action shall be inoperative. Accordingly, I think these points should be included in Recommendation 2.

The first point is perhaps included in Recommendation 2(k), but it could be clearer. The second point does not appear to me to be included anywhere in Recommendation 2.

Accordingly, I propose, as an amendment, adding at the end of the current Recommendation 2, "n. whether seeking agency appellate review automatically operates to stay the effectiveness of the appealed agency action until the appeal is resolved, and, if not, how a party seeking agency appellate review may request such a stay and the standards for deciding whether to grant it."

It might also be worth considering adding at the end of Recommendation 2(k), "including a clear statement as to whether agency appellate review is a mandatory prerequisite to judicial review."

The latter proposal may not be necessary if others feel that it is comprehended in what Recommendation 2(k) already says, but I think the recommendation could be a bit clearer. And feel free to adjust the wording of either part of the proposed amendment.

Jon Siegel
Public Member