



Online Processes in Agency Adjudication

Committee on Adjudication

Draft Recommendation for Committee | May 4, 2023

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

7 To improve accuracy, efficiency, and accessibility, and fulfill legal obligations to develop
8 electronic business processes,¹ agencies increasingly have deployed online processes by which
9 parties, their representatives, and other interested persons can perform routine tasks such as
10 filing, serving, and viewing forms, briefs, evidence, and other case records.² These processes
11 range from simple email-based systems to robust online self-help portals that allow users to
12 update contact information, communicate with agencies, complete forms, submit and view case
13 records, and perform other tasks.

14 If properly deployed, these processes can make adjudicative systems easier to use and
15 more accessible for the public, reduce the administrative burden on agency staff, and increase the
16 accuracy of information collected during adjudication. However, these processes also pose

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. 71357 (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 (June 28, 2019); 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* (April 16, 2023) (draft report to the Admin. Conf. of the U.S.).



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17 significant risks if improperly deployed, including increased burdens due to poor design,
18 exposure of agencies' computer systems to malware and other security threats, and ongoing costs
19 in maintenance and upgrades. In designing and implementing these processes, agencies also must
20 ensure that all users, including people with disabilities, can easily navigate them. This may
21 include making user resources available in languages other than English.³

22 Many agencies have already begun implementing these processes. The Social Security
23 Administration, Department of Veterans Affairs, and U.S. Citizenship and Immigration Services
24 have launched robust customer service portals that provide a single, user-friendly website that
25 parties can use to perform tasks at many stages of adjudication from case initiation through
26 appeal. Others have only recently begun, especially in response to office closures during the
27 COVID-19 pandemic.

28 This Recommendation encourages agencies to develop online processes and provides
29 best practices for agencies to consider when doing so. Of course, agencies have different needs,
30 serve different communities, and have different resources available to them, and what works best
31 for one agency may not be appropriate for another. The best practices provided in this
32 Recommendation provide positive steps that agencies at any stage of developing online
33 processes can take to improve the accuracy, efficiency, and accessibility of their adjudicative
34 systems.

RECOMMENDATION

Accessing Online Processes in Adjudicative Systems

- 35 1. Agencies should ensure that online processes ~~accessed by users~~ work effectively with
36 relevant electronic case management systems (eCMS) and any agency website where
37 ~~agency~~ adjudication materials are made publicly available.

³ 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); Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000).



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- 38 2. Agencies should develop online self-help portals that allow users, as applicable and
39 feasible, to, ~~as applicable and feasible~~:
- 40 a. Update contact information, including email addresses, phone numbers, and
 - 41 physical addresses;
 - 42 b. Complete and submit forms;
 - 43 c. File briefs, evidence, and other documents;
 - 44 d. Receive service of documents, including documents filed by other parties and
 - 45 agency notices and orders;
 - 46 e. View and download case documents;
 - 47 f. Make payments (e.g., filing fees, application fees, civil penalties);
 - 48 g. Schedule meetings, conferences, hearings, and other appointments;
 - 49 h. Access virtual appointments;
 - 50 i. View case status information and information about deadlines, appointments, and
 - 51 wait times, but only if agencies can reliably predict them;
 - 52 j. Receive reminders about upcoming deadlines and appointments; and
 - 53 k. Receive notifications about new documents, status changes, and other
 - 54 developments in their cases.
- 55 3. Online self-help portals should allow different functionality, with appropriate
56 permissions, for different types of users, including but not limited to agency staff and
57 contractors, parties, intervenors, representatives and their staff, amici curiae, and the
58 public.
- 59 4. Agencies should ensure online self-help portals have-employ security mechanisms, such
60 as firewalls and encryption, ~~that to~~ protect sensitive user information and maintain the
61 system's integrity. Agencies should also ensure self-help portals employ mechanisms to
62 and authenticate users when necessary, ~~to and ensure the integrity of the system, without~~
63 ~~compromising the ability of the public to access public documents~~. Agencies that require
64 authenticate users by requiring them to register for and log in to online self-help portals
65 should allow users to use Login.gov or other universal logins used by government



66 agencies. These security mechanisms should not compromise the ability of non-
67 authenticated users to access public documents.

Electronic Filing and Forms

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

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

- 74 a. File documents in batch;
- 75 b. File documents of a large enough size to encompass common filings;
- 76 c. File documents in multiple file formats, except that users should be required to
77 file documents in a format that cannot be edited, such as Portable Document
78 Format (PDF), unless a specific procedure requires parties to submit documents
79 that can be edited (e.g., a proposed order);
- 80 d. Notify the agency that documents being filed contain legally protected or other
81 sensitive information; and
- 82 e. Notify the agency that documents are being filed under seal or in camera.

83 7. Agencies without an eCMS should allow ~~parties adjudication participants in an~~
84 adjudication to file briefs, evidence, and other documents electronically by emailing
85 ~~documents them~~ to a designated agency email address, uploading them to a web-
86 accessible file-hosting service, or transferring them to the agency using a secure file
87 transfer protocol (SFTP).

88 8. Agencies with an eCMS should develop tools that can be used to submit documents
89 directly into the eCMS. These tools should ~~allow require~~ users to provide or allow the
90 system to capture information about their submission, - such as document type, purpose,
91 or date, which would be stored as structured metadata in the eCMS, so long as it would
92 not be confusing or burdensome for users.



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- 93 9. Agencies with an eCMS should consider developing application programming interfaces
94 (APIs) that allow users, such as representatives, who use their own eCMS to directly and
95 securely transfer data between a user’s eCMS and the agency’s eCMS, without needing
96 to use ~~an online form or a~~ self-help portal as an intermediary.
- 97 10. Agencies that have forms or templates for use in adjudications (e.g., applications,
98 appointment of representative, hearing requests, requests for agency appellate review,
99 subpoena requests) should post PDF versions of the forms on their websites and allow
100 users to complete, sign, and submit them electronically. Agencies should adapt frequently
101 used forms as web-based forms that users can complete and submit using a web browser.
102 When feasible, web-based forms should:
- 103 a. Be prepopulated with information about a user or case that the agency already has
104 collected in an eCMS or other database; and
 - 105 b. Be based on prepopulated data and previous responses, requiring users to answer
106 only questions that are relevant to them.
- 107 11. Except when explicitly prohibited by statute, agencies should allow participants in
108 adjudications to sign documents electronically and, as applicable, should accept as valid
109 electronic signatures:
- 110 a. A form or document submitted through an agency’s online self-help portal while
111 registered for and logged in to the portal;
 - 112 b. A cryptographic digital signature;
 - 113 c. A scanned or other graphical representation of a handwritten signature;
 - 114 d. A conformed signature (e.g., “/s/ Jane Doe”); and
 - 115 e. An email used to transmit the document.
- 116 12. Agencies should consider whether to review some or all electronically filed documents
117 before associating them with a case file, for example to ensure that they comport with
118 agency rules and do not disclose nondisclosure of legally protected or other sensitive
119 information, ~~comports with agency rules, or~~ such as when a party files or requests to file
120 a document under seal or in camera.

Electronic Service



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- 121 13. Agencies should allow electronic service, except in instances when electronic service
122 would be impossible or impracticable or a party has good cause for needing alternative
123 means of delivery.
- 124 14. Agencies with an eCMS should provide automated service through notice when a
125 document has been filed through the web portal.
- 126 15. Agencies without an eCMS should allow parties to serve documents to other parties
127 electronically, by emailing documents to other parties. Agencies that allow parties to
128 submit documents using a file-hosting service or SFTP should ensure that all parties are
129 notified when new documents become available.

Management of Sensitive Documents

- 130 16. Agencies that redact legally protected or other sensitive information from documents
131 before making them available to other parties or publicly available should clarify whether
132 parties should submit redacted versions of documents or whether the agency will make
133 [the necessary](#) redactions.

Fees and Other Payments

- 134 17. Agencies that require filing fees, application fees, payment of civil penalties, or other
135 payments should accept electronic payments.

Scheduling, Notifications, and Reminders

- 136 18. Agencies should provide an online scheduling tool for parties to schedule meetings,
137 conferences, hearings, and other appointments efficiently and at times that are reasonably
138 convenient for ~~the agency and all non-agency~~ participants.
- 139 19. Agencies with an eCMS should provide automatic notifications or reminders to
140 ~~partieusersusers~~ about important events and developments ~~in their cases~~, such as when (a)
141 a meeting, conference, hearing, or other appointment is scheduled or upcoming; (b) a
142 filing deadline is approaching; (c) a new document has been submitted ~~by another party~~
143 and is available to view; (d) an agency notice or order is available to view; and (e) the



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144 case status changes. Notifications and reminders should be sent through an online self-
145 service portal, by email, and/or by text message, according to user preferences.

Developing and Improving Online Processes

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

Guidance, Training, and Outreach

- 158 23. Agencies should update their rules of practice to permit or, when appropriate, require the
159 use of online processes.
- 160 24. Agencies should develop self-help materials (e.g., instruction manuals, reference guides,
161 instructional videos) and, if needed, hold training sessions to help agency personnel and
162 ~~the members of the public~~public users understand how to use the agency's online
163 processes. Materials intended for ~~the public~~ users should be posted in an appropriate
164 location on the agency's website and made accessible through any online self-help portal.
- 165 25. Agencies should conduct public outreach if needed to encourage parties and
166 representatives to adopt their online processes, in particular prior to making an online
167 process mandatory.



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168 26. Agencies should make staff available to ~~help assist agency personnel and all~~ members of
169 ~~the public~~ users of the agency's online processes, ~~including agency personnel~~, and should
170 clarify when ~~such~~ assistance is available (e.g., during normal business hours).