



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ACUS is an independent federal agency that develops recommendations to improve administrative process and procedure. ACUS also arranges for the interchange of useful information to carry out its mission. ACUS Information Interchange Bulletins are intended to help agencies and the public understand the administrative process. They should not be relied upon as legal documents.

## Information Interchange Bulletin No. 010

# Agency Appellate Systems: Standards of Review for Factual Findings

## What is an agency appellate system?

Adjudication is one of the principal forms of agency action. Adjudication usually results in an order or decision, often after a hearing. Many agencies have appellate systems to review hearing decisions and, if needed, take corrective action. ACUS recommends agencies provide appellate review of initial decisions (Rec. [2016-4](#)).

## What is a standard of review?

A standard of review describes how much deference an appellate body gives to the findings and conclusions in the decisions it is reviewing. Standards of review vary among agencies and can be different for factual findings and legal conclusions.

Standards of review that agencies use for factual findings include:

**De Novo** means the reviewer will give no deference to factual findings made in decisions under review.

Some appellate bodies that review factual findings de novo give greater deference to credibility determinations made in decisions under review.

**Clearly Erroneous** means the reviewer will defer to factual findings made in decisions under review unless, after reviewing the record, he or she is left with the definite and firm conviction that a mistake has been committed.

**Substantial Evidence** means the reviewer will only disturb factual findings made in decisions under review if they are not reasonably supported by the record.

ACUS recommends agencies include the standard of review in publicly available procedural rules (Rec. [2020-3](#)).

## What standards of review do agencies use?

The table below shows the standards of review for factual findings used by appellate bodies at nine federal agencies.

Appellate Body	Standard of Review
Administrative Appeals Office (DHS/USCIS)	De Novo
Administrative Review Board (DOL)	Clearly Erroneous
Board of Immigration Appeals (DOJ/EOIR)	Clearly Erroneous
Board of Veterans' Appeals (VA)	Clearly Erroneous
Environmental Appeals Board (EPA)	Clearly Erroneous
Medicare Appeals Council (HHS)	De Novo
Merit Systems Protection Board	Clearly Erroneous
National Labor Relations Board	Clearly Erroneous
Office of Federal Operations (EEOC)	Clearly Erroneous

## How do agencies choose a standard of review?

Agencies typically have broad, statutory discretion to choose a standard of review for the internal review of decisions. The Administrative Procedure Act, for instance, provides that agency appellate bodies may, but need not, review factual findings de novo (5 U.S.C. § 557).

The appropriate standard of review for factual findings depends on the objectives an agency seeks to maximize through appellate review. Despite performing similar tasks, appellate systems can have varying objectives. Objectives can include:

- correcting errors made in hearing-level decisions;
- ensuring that hearing-level decisions are consistent with each other and that like individuals are treated the same;
- formulating and clarifying substantive policy;
- providing review by a politically accountable agency head or designee;
- managing the hearing-level adjudication program;
- providing insight into the operation and performance of agency-wide adjudication; and
- reducing the number of cases that get appealed to the federal courts.

ACUS recommends that, consistent with the objectives of their appellate systems and in light of time and resource costs, agencies “consider adopting an appellate model . . . in which the standard of review is not de novo with respect to findings of fact.” (Rec. [2020-3](#)).

### Additional Resources

Christopher J. Walker & Matthew L. Wiener, [Agency Appellate Systems](#) (2020)  
ACUS Rec. [2020-3](#), *Agency Appellate Systems*