

**NATIONAL ORGANIZATION OF  
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES  
(NOSSCR)**

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***Executive Director***  
**Barbara Silverstone**

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Michael Rigas  
Acting Director, Office of Personnel Management

Submitted via [regulations.gov](https://www.regulations.gov)

**Re: Administrative Law Judges (85 Fed. Reg. 59207), RIN 3206-AN72**

Dear Mr. Rigas,

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR), a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants throughout the adjudication process and in federal court.

NOSSCR members interact frequently with Social Security Administration (SSA) Administrative Law Judges (ALJs). Some members also interact with ALJs at other agencies, such as the Departmental Appeals Board of HHS, which hears certain Civil Monetary Penalty and other cases under a Memorandum of Understanding with SSA.

We support ALJs being restored to the competitive service either through rescission of [Executive Order 13843](#) or passage of the ALJ Competitive Service Restoration Act ([H.R. 2429/S.2348](#)). The previous ALJ hiring process was imperfect, but there are ways of fixing it other than removing all ALJs from the excepted service. However, should the current system remain in place, we offer the following comments in hopes that agencies will use transparent procedures to hire qualified ALJs.

*Recruitment*

Qualified ALJs can come from a variety of backgrounds. To obtain the largest and most skilled applicant pool, and to provide transparency in the hiring process, OPM should require agencies to post all ALJ vacancies on USAJobs. Agencies should have the option to advertise open ALJ positions by other means, such as on their own websites, on listservs used by practitioners in the field, at conferences, etc., but such advertising should direct applicants to USAJobs to apply. Agencies should be required to keep USAJobs postings open for a reasonable period of time so that applicants can learn about and complete the application process: one week should generally be considered the minimum allowable time for a posting to accept applications. The amount of

time an application is open should be related to the amount of time it takes to complete the application: requirements for submission of supporting documentation, writing samples, or extensive responses to questions or KSAs should lead to a longer amount of time to apply.

OPM should require postings for ALJ positions to be open to the public, not restricted to federal employees, armed forces, or any subset of these categories although hiring preferences may apply to the applicant pool.

### *Qualifications*

Merely possessing a license to practice law is insufficient qualification to serve as an ALJ. OPM should require agencies to only hire attorneys and judges who have experience preparing for, participating in, and/or reviewing formal hearings or trials involving litigation and/or administrative law at the Federal, State or local level. Applicants should also be required to supply notice of any informal admonitions, periods of suspension, or other disciplinary actions ever taken against them by the federal judiciary, any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution.

We encourage OPM to add more guidance to agencies on which qualifications are important in hiring ALJs. For example, agencies should be encouraged to consider prospective ALJs' experience with litigation, administrative hearings, and the people or entities who often appear as parties before that agency's ALJs. While program-specific knowledge and ability to manage a large docket could be useful, they should not be the only factors considered.

We also suggest that OPM direct agencies to evaluate ALJ candidates through writing samples, performance on an examination developed by the agency or its contractor, and participation in an interview. These evaluation techniques will help ensure that agencies hire ALJs who have the knowledge and "soft skills" necessary to carry out their duties. ALJs are held to a high standard of conduct to maintain the integrity and independence of the administrative judiciary. Therefore, applicants should participate in interviews where they can demonstrate judicial temperament. Agencies should consider whether ALJs will be overseeing adversarial or non-adversarial hearings and whether parties ever represent themselves in hearings and assess ALJ candidates for their ability to act appropriately in the types of hearings they will conduct. For example, applicants for SSA ALJ positions should undergo assessment of their ability to adjudicate claims in a non-adversarial manner for people, both represented and unrepresented, with a variety of disabling impairments.

OPM should require agencies to ensure that any ALJs they hire are willing and able to follow the Code of Conduct for United States Judges and/or the ABA Model Judicial Code. However, OPM should clarify that nothing in these codes should restrict ALJs from their rights to join or form unions.

### *Performance Ratings, Awards, and Incentives*

We agree that ALJs should continue to not receive performance ratings. There are alternative ways for agencies to monitor and discipline ALJs if needed. Although the proposed rule clarifies that ALJs are ineligible for certain awards and incentives by virtue of not receiving performance ratings, this is outweighed by the current system's support for ALJs' qualified decisional independence. That independence is critical to protecting the due process rights of Social Security claimants and beneficiaries and must be preserved.

Thank you for your consideration of these comments.

Sincerely,

Barbara Silverstone  
Executive Director