



Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

Congressional Response Report

Interagency Agreements with the
Office of Personnel Management
for Administrative Law Judge
Services

A-05-12-22144/ February 2013

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

February 14, 2013

The Honorable Sam Johnson
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On July 19, 2012, you asked that we review the interagency agreement (IAA) between the Social Security Administration (SSA) and Office of Personnel Management (OPM) for services related to administrative law judges (ALJ). As part of this review, we determined (1) whether OPM provided SSA with performance reports related to ALJ services for Fiscal Year (FY) 2011 before SSA paid for those services; (2) how OPM calculated the charges for ALJ-related services; and (3) whether available accounting and performance detail adequately supported the amount SSA paid for these services. Additionally, you asked that we obtain a signed copy of the FY 2012 IAA for review.

The enclosed report addresses your request and concerns about the increasing costs, given the fiscal constraints limiting the SSA's administrative funding. To ensure SSA and OPM are aware of the information provided to your office, we are forwarding a copy of this report to each agency.

If you have any questions concerning this matter, please call me or have your staff contact Misha Kelly, Special Agent-in-Charge of Congressional Affairs, at (202) 358-6319.

Sincerely,



Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Carolyn W. Colvin

Interagency Agreements with the Office of Personnel Management for Administrative Law Judge Services

A-05-12-22144



February 2013

Office of Audit Report Summary

Objectives

To determine (1) whether the Office of Personnel Management (OPM) provided the Social Security Administration (SSA) with performance reports related to administrative law judge (ALJ) services for Fiscal Year (FY) 2011 before SSA paid for those services; (2) how OPM calculated the charges for ALJ-related services; and (3) whether available accounting and performance detail adequately supported the amount SSA paid for these services. We also reviewed the status of the FY 2012 ALJ interagency agreement (IAA) process.

Background

In a July 19, 2012 letter, Representative Sam Johnson, Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, expressed concerns about the increasing costs associated with SSA's IAAs with OPM for services related to ALJs given the fiscal constraints limiting SSA's administrative funding.

Our Findings

In FY 2011, OPM provided SSA with an annual billing letter and accompanying statement describing the ALJ work it performed before SSA paid for those services. OPM calculated SSA's costs for ALJ Program services on a pro rata basis after dividing all Federal ALJs into the Program's estimated annual costs. As a result, SSA's costs were based on the number of ALJs the Agency employed. OPM acknowledged ALJ Program costs had increased and attributed these rising costs to (1) developing and administering the previous examination, (2) developing a new examination, and (3) serving a growing ALJ population.

After SSA reviewed the FY 2011 annual billing letter and accompanying statement as well as the additional detail provided by OPM, SSA continued requesting more detailed cost information from OPM. While we found OPM's annual billing letter and accompanying statement did not provide adequate cost detail to support the amount SSA paid for these services, OPM provided SSA with sufficient cost detail later in FY 2011. We did not determine the accuracy and completeness of OPM's information and cost data. OPM's Office of the Inspector General has expressed concerns about its lack of resources to provide oversight of all of OPM's funds, including funding mechanisms involving ALJ Program costs. We believe periodic audits of OPM's ALJ Program would alleviate some of SSA's cost-related concerns.

In March 2012, OPM concluded that it was not necessary to continue entering into IAAs with SSA, given OPM's legal obligation to perform ALJ work and SSA's legal obligation to reimburse its pro rata share of the cost of that work. As of January 2013, SSA and OPM had not signed a FY 2012 IAA, and SSA had not reimbursed OPM for ALJ services because they did not agree on the need for an IAA for SSA to obligate funds. We consulted with the Office of Management and Budget (OMB) to ascertain its understanding regarding SSA's need for an IAA to reimburse OPM for ALJ services. While OMB did not specifically state an IAA is required, OMB indicated that, as a general policy and good practice, IAAs can effectively manage work one Federal agency performs for another Federal agency. SSA and OPM still need to address the FY 2012 incurred costs and their future working relationship in the area of ALJ services.

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ABBREVIATIONS

ALJ	Administrative Law Judge
APA	<i>Administrative Procedure Act of 1946</i>
AR	Accomplishment Record
ARRA	<i>American Recovery and Reinvestment Act of 2009</i>
C.F.R.	Code of Federal Regulations
Fed. Cir.	Federal Circuit
FOIA	Freedom of Information Act
FY	Fiscal Year
GAO	Government Accountability Office
HHS	Department of Health and Human Services
HR	Human Resources
IAA	Interagency Agreement
MSPB	Merit Systems Protection Board
ODAR	Office of Disability Adjudication and Review
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
Pub. L. No.	Public Law Number
RF	Revolving Fund
SI	Structured Interview
SSA	Social Security Administration
SSAB	Social Security Advisory Board
U.S.C.	United States Code
WD	Written Demonstration

OBJECTIVES

Our objectives were to determine (1) whether the Office of Personnel Management (OPM) provided the Social Security Administration (SSA) with performance reports related to administrative law judge (ALJ) services for Fiscal Year (FY) 2011 before SSA paid for those services; (2) how OPM calculated the charges for ALJ-related services; and (3) whether available accounting and performance detail adequately supported the amount SSA paid for these services. We also reviewed the status of the FY 2012 ALJ interagency agreement (IAA) process.¹

BACKGROUND

In a July 19, 2012 letter, Representative Sam Johnson, Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, expressed concerns about the increasing costs associated with SSA's IAAs with OPM for services related to ALJs, given the fiscal constraints limiting SSA's administrative funding. The letter noted that OPM's charges to SSA for ALJ-related services had increased almost three-fold since FY 2005 without any apparent change in the scope of services over the same period.

Congress first authorized the ALJ position, originally referred to as the "hearing examiner," in the *Administrative Procedure Act of 1946* (APA).² In general, ALJs prepare for, and preside over, formal hearings on the record. The APA provides statutory protections to ensure ALJs have qualified decisional independence from undue Agency influence. These protections include making the positions independent of the employing agencies with respect to appointment, tenure, and compensation.³ OPM was given the authority to establish ALJ qualifications, administer the ALJ examination, and maintain a register of qualified candidates for ALJ employment by

¹ An IAA is an agreement or understanding between two or more Federal agencies. SSA policy states it will establish an IAA when a Federal agency agrees to perform work for SSA and is reimbursed by SSA for that work. The SSA IAA package includes an *Interagency Agreement Data Sheet* (Form SSA-429), a memorandum of understanding identifying the provisions of the agreement, and a clearance memorandum from SSA's Office of the General Counsel (OGC). See Appendix A for the format of an SSA IAA memorandum of understanding.

² Congress enacted the APA on June 11, 1946. Pub. L. No. 79-404, 60 Stat. 237, 244 (1946) (current version codified at 5 U.S.C. § 551 et seq.). Section 11 provides for the establishment of the "examiner" (now ALJ) position. The title of the position was changed to ALJ in 1978 by Pub. L. No. 95-251, 92, Stat. 183 (1978).

³ *Administrative Law Judges at the Social Security Administration: Hearing before H. Ways and Means Committee, Subcommittee on Social Security*, 110th Cong. (May 1, 2007) (written statement of Linda M. Springer, Director, OPM).

Federal agencies.⁴ SSA's FY 2011 IAA indicated that OPM would provide a variety of ALJ-related services, including (1) conducting competitive examinations for ALJ positions; (2) considering and approving SSA actions on ALJs, including transfers, reassignments, and reinstatements; and (3) working with SSA to review the ALJ examination program for effectiveness and efficiency, including identifying needed improvements. SSA's IAA also stated that, at least quarterly, OPM would provide SSA with performance reports that detail the work performed and work with SSA to reconcile balances related to revenue and expenses for work performed under the IAA.

SSA's Office of Disability Adjudication and Review (ODAR) is responsible for holding hearings and issuing decisions as part of SSA's process for determining whether a person may receive benefits. In FY 2012, ODAR employed approximately 1,500 ALJs who, in conjunction with senior attorney adjudicators, issued approximately 820,000 dispositions, of which about 411,000 were allowances. At the end of FY 2012, SSA's hearings backlog was approximately 817,000 cases. In 2007, SSA's Commissioner established a goal to reduce the hearings backlog to approximately 466,000 cases by the end of FY 2013 and the time it takes to process a hearing to 270 days.

To meet our objectives, we obtained copies of the signed IAAs between SSA and OPM from FYs 2005 to 2011 as well as documentation supporting the request and payment for ALJ-related services. We also discussed the status of the FY 2012 IAA. In addition, we communicated with the SSA components responsible for the approval, monitoring, and payment of the IAAs to gain an understanding of these processes. We also communicated with OPM executives, managers, and staff who oversaw and performed ALJ Program services for Federal agencies. Moreover, we obtained additional accounting and performance details from OPM. Finally, we contacted the Office of Management and Budget (OMB) to discuss the IAA's role and the Department of Health and Human Services (HHS) to discuss its experiences with OPM's ALJ Program.⁵

RESULTS OF REVIEW

In FY 2011, OPM provided SSA with an annual billing letter and accompanying statement describing the ALJ work it performed before SSA paid for those services. OPM calculated SSA's costs for ALJ Program services on a pro rata basis after dividing all Federal ALJs into the Program's estimated annual costs. As a result, SSA's costs were based on the number of ALJs

⁴ Pursuant to 5 U.S.C. § 1104(a)(2), *Delegation of Authority for Personnel Management*, "... the Director [of OPM] may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under [5 U.S.C.] § 3105 of this title, the cost of which examinations shall be reimbursed by payments from agencies employing such judges to the revolving fund established under [5 U.S.C.] § 1304(e)), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service." See Appendix B for more information about the OPM's ALJ examination process.

⁵ See Appendix C for more information on our scope and methodology.

the Agency employed. OPM acknowledged ALJ Program costs had increased and attributed these rising costs to (1) developing and administering the previous examination, (2) developing a new examination, and (3) serving a growing ALJ population.

After SSA reviewed the FY 2011 annual billing letter and accompanying statement, as well as the additional detail provided by OPM, SSA continued to request more detailed cost information from OPM. While we found OPM's annual billing letter and accompanying statement did not provide adequate cost detail to support the amount SSA paid for these services, we determined OPM provided SSA with sufficient cost detail later in FY 2011. We did not determine the accuracy and completeness of OPM's information and cost data. OPM's Office of the Inspector General (OIG) has expressed concerns about its lack of resources to provide oversight of OPM's funds, including funding mechanisms involving ALJ Program costs. We believe periodic audits of OPM's ALJ Program would alleviate some of SSA's cost-related concerns.

In March 2012, OPM concluded that it was not necessary to continue to enter into IAAs with SSA, given OPM's legal obligation to perform ALJ work, and SSA's legal obligation to reimburse its pro rata share of the cost of that work. As of January 2013, SSA and OPM had not signed a FY 2012 IAA, and SSA had not reimbursed OPM for ALJ services because they disagreed about the need for an IAA for SSA to obligate funds to reimburse OPM. We consulted with OMB to ascertain its understanding regarding SSA's need for an IAA to reimburse OPM for ALJ services. While OMB did not specifically state an IAA is required, OMB indicated that as a general policy and good practice, IAAs can be an effective tool for managing work being performed by one Federal agency for another Federal agency. SSA and OPM still need to address both the FY 2012 incurred costs as well as their future working relationship in the area of ALJ services.

Quarterly Performance Reports

In FY 2011, OPM provided SSA with a performance report in the form of an annual billing letter and accompanying statement dated July 19, 2011 describing the work performed under the IAA⁶ before SSA paid for these services. The FY 2011 billing letter provided the following statement of work performed.

OPM continues to issue Certificates of Eligibles for ALJ positions, administers the quarterly ALJ examination to 10-point preference eligibles under 5 CFR 332.311, maintains the ALJ register, is updating ALJ announcement/exam procedures to meet Federal Hiring Reform initiatives and is currently conducting an Occupational Analysis of ALJ positions as part of the new ALJ examination development.

⁶ While SSA and OPM signed an IAA for the FY 2011 ALJ Program services, during our review OPM emphasized it already had a statutory obligation to perform the ALJ work covered by the IAA with SSA, and the law obliges Federal ALJ agencies to reimburse OPM for its ALJ program administration. We discuss this later in the report.

The billing statement also included SSA's FY 2011 assessment fee rate of \$1,526 per ALJ with the total amount due of \$2.2 million.⁷ According to OPM managers, OPM generally bills agencies for ALJ services annually rather than quarterly.⁸

OPM also responded to SSA's questions regarding the activities associated with the amounts being billed. For instance, on August 26 and September 12, 2011,⁹ OPM provided additional details pertaining to (1) the number of staff working in the ALJ Program, (2) quarterly examination activities related to veterans,¹⁰ (3) maintenance of the register, and (4) communications with outside parties. While OPM provided this information to SSA upon request rather than in a quarterly performance report, OPM could have shared this information with SSA more regularly.

OPM provided the information above before SSA's October 2011 payment for the FY 2011 ALJ Program services. SSA and OPM signed the FY 2011 IAA in September 2011, the last month of FY 2011, after OPM provided the ALJ services. We believe the Agency could have used the previous year's costs as an estimate to obligate funds for the FY 2011 IAA at the start of the FY.¹¹ Moreover, the earlier establishment of the IAA would have protected SSA's ability to dispute costs related to the bill, if necessary, since that was one of the provisions in the FY 2011 IAA.¹²

On September 9, 2011, SSA's OGC sent a memorandum to the Agency component overseeing the IAA stating the FY 2011 agreement should have been executed by the parties, and thus made effective, before, or on, October 1, 2010, in accordance with 31 U.S.C. § 1501. In the letter, OGC explained

. . . amounts shall be recorded as obligations only when supported by documentary evidence of a binding, written agreement between the agencies. Since obligations have been recorded from October 1, 2010 to the effective date of this agreement without the benefit of a written agreement, compliance with the requirements of 31 U.S.C. § 1501 has not occurred. In the future, you must ensure that interagency agreements . . . are executed and in place prior to, or at the

⁷ See Appendix D for OPM's annual billing letter and statement.

⁸ 5 C.F.R. § 930.203 establishes that OPM compute program costs on an annual basis.

⁹ See Appendix E for more information regarding OPM's list of ALJ Program services.

¹⁰ The examination is opened quarterly for 10-point preference eligible veterans.

¹¹ We discuss the IAA process in greater detail later in the report.

¹² Section 10 of the FY 2011 IAA, (SSA Agreement Number OPM-11-0002), *Dispute Resolution*, states "Disputes related to this IAA shall be resolved in accordance with instructions provided in the Treasury Financial Manual, Volume 1, Part 2, Chapter 4700, Appendix 10, *Intra-governmental Business Rules* (June 2011)."

commencement of, the period of performance. Failure to do so may result in disapproval of the interagency agreement.

OPM's Calculation of Charges for ALJ-Related Services

In accordance with the law,¹³ OPM bills Federal agencies for ALJ Program services on a pro rata share of the estimated costs based on the actual number of ALJs the agency employs. In FY 2011, OPM's ALJ Program represented approximately 27 Federal agencies employing 1,704 ALJs.¹⁴ OPM billed SSA approximately \$2.2 million, about 85 percent of the approximately \$2.6 million in total costs associated with ALJ Program services in FY 2011.¹⁵ This 85 percent was based on SSA employing 1,448 of the 1,704 ALJs in the Government as of December 2010.¹⁶

OPM's Explanation for the Increase in ALJ Program Costs

Between FYs 2005 and 2012, overall OPM charges to SSA for ALJ services have more than tripled, and the charges per ALJ have more than doubled (see Table 1). OPM indicated that ALJ costs have increased as a result of (1) development of the examination opened in 2007; (2) subsequent re-openings of that examination (twice at SSA's request); (3) development of a new iteration of the ALJ examination instrument; and (4) a 35-percent increase in the ALJ workforce requiring OPM's routine activities related to administering the ALJ Program.¹⁷

¹³ Pursuant to 5 U.S.C. §1104(a)(2), *Delegation of authority for personnel management*, and 5 C.F.R. 930.203, *Cost of competitive examination*, agencies pay a pro rata share of OPM's ALJ Program costs based on the actual number of ALJs the agency employs.

¹⁴ The count is based on the number of ALJs on hand as of December 2010. Refer to Appendix G for a list of the 27 Federal ALJ Program agencies.

¹⁵ OPM noted that about \$440,000 of the FY 2011 charges related to the recovery of losses to the program in FYs 2009 and 2010. According to OPM, under a Revolving Fund, an agency is expected to recover its actual costs over a reasonable period.

¹⁶ We discuss the costs included in the FY 2011 OPM bill in the section below titled *Adequacy of Accounting Detail*.

¹⁷ In commenting on our draft report, OPM stated that the work performed in relation to the ALJ Program expanded significantly in the period between FYs 2005 and 2011. As a result, OPM believed using FY 2005 as a base year for understanding cost increases may be misleading.

Table 1: OPM's ALJ Program Charges to SSA

FY	Assessment Fee Rate Per ALJ	Increase over Previous Year's Assessment Fee Rate Per ALJ	SSA ALJ Program Costs
2005 ¹	\$742	0%	\$785,036
2006	\$835	12.5%	\$929,355
2007	\$895	7.2%	\$1,012,058
2008	\$957	6.9%	\$1,198,500
2009	\$1,180	23.3%	\$1,423,566
2010	\$1,440	22.0%	\$1,920,960
2011	\$1,526	6.0%	\$2,209,648
2012	\$1,633	7.0%	\$2,395,611
TOTAL			\$11,874,734

Note 1: According to OPM's June 30, 2006 billing letter, the assessment fee rate remained the same in FYs 2004 and 2005.

Adequacy of Accounting Detail

We found OPM's annual billing letter and accompanying statement did not provide enough cost detail to reasonably meet the IAA requirements.¹⁸ The FY 2011 IAA required that, "OPM shall provide SSA with a performance report (e.g. a billing statement) that details all work performed to date." However, when added to the information OPM provided in response to SSA's questions, we believe the amount of detail OPM provided in FY 2011 addressed SSA's request for information as defined in the IAA.¹⁹

Table 2 provides the breakout of FY 2011 charges provided to SSA after it requested greater detail from OPM. For instance, OPM noted that 9 full-time employees performed the daily operations of the ALJ Program, while 11 part-time reemployed retired ALJs performed other necessary duties associated with the Program.²⁰

¹⁸ See Appendix D for OPM's annual billing letter and statement.

¹⁹ See Appendix E for OPM's list of ALJ Program services.

²⁰ See Appendix F for more information regarding OPM's ALJ Program Office staff.

Table 2: Breakout of Charges Associated with SSA’s FY 2011 OPM Bill

Cost Category	Charges
Salaries and Benefits for Administrators	\$1,613,391.66
Travel, Training, Supplies, and Miscellaneous	\$18,489.47
Infrastructure Support ¹	\$577,766.87
TOTAL	\$2,209,648.00

Note 1: Defined as corporate expenses, common services, rent, telecommunications, information technology, etc.

Source: OPM provided this information to SSA on August 26, 2011.

OPM explained that the travel and training costs in Table 2 consisted of ALJ Program staff attending training to support ALJ examining responsibilities and meetings regarding the review and disposition of ALJ records and ALJ examination process improvements; travel associated with conducting Occupational Analysis focus group meetings nationwide; Structured Interview (SI) Panel members traveling to OPM Headquarters to serve as SI Panel members; and various training sessions performed in connection with the ALJ examination. According to OPM, the Infrastructure Support costs included corporate oversight, financial and administrative support services, legal services, rent and utility expenses, telecommunication, and information technology. We requested additional detail related to these Infrastructure Support costs. In a December 13, 2012 written response, OPM informed us it no longer had the documents that provide further details on the Infrastructure Support costs for FY 2011.

In our conversations with SSA managers, they stated they were not satisfied with the detailed billings and communications OPM provided to support the ALJ-related costs.²¹ For instance, Agency managers indicated they wanted to see itemized costs for OPM’s work, such as the cost of each OPM transaction related to SSA ALJ transfers, reassignments, and reinstatements. When we discussed this with OPM managers, they explained that OPM did not charge agencies per transaction, but rather, per the law, on a pro rata share of the estimated costs.

Given SSA’s stated desire for more specific break-outs of the ALJ Program’s costs, it is not clear why this requirement was not incorporated into the wording of the FY 2011 IAA. Based on our review of changes to the IAA process over the years, it appears SSA’s FY 2011 IAA language pertaining to “performance reports” and “quarterly” reporting was standard language recommended for all IAAs rather than something specifically written for the ALJ Program.

²¹ During our discussions with HHS managers, we learned that they would be interested in receiving more billing detail from OPM for ALJ services. HHS managers stated their agency only receives a copy of the annual billing letter and accompanying statement.

Before 2008, the IAAs referred to an annual “itemized billing statement,”²² indicating the performance requirement had become vague over time.

While we believe OPM’s activity and cost data related to the ALJ Program were eventually responsive to SSA’s IAA requirements, we did not determine the accuracy and completeness of the underlying activity and financial information. In OPM’s FY 2011 financial statement,²³ OPM OIG auditors highlighted a material weakness related to OIG funding for oversight of OPM’s revolving fund (RF), which includes funds related to the ALJ Program, noting that

In FY 2011, the OIG reported that it continues to have a material weakness involving oversight of the RF. Furthermore, OIG reported that, although it received some funding in its FY 2011 budget for RF audits and investigations, the funding is still not sufficient. OIG in FY 2012 will continue to request the needed resources for effective oversight of the RF programs, including pursuing legislative avenues. It should be noted that this reported weakness involves issues outside of OPM’s control (e.g., OMB and Congressional budget decisions). Further, OIG has issued an audit report on the RF despite funding issues and OPM management is sponsoring two reviews (Deloitte Consulting and Lani Eko & Company) to improve oversight of the RF. OPM senior management will discuss this issue with senior OIG management in FY 2012 on how this weakness can be reduced.

A March 2012 OPM OIG audit of IAAs also identified control weaknesses.²⁴ Specifically, the report stated OPM needed to strengthen controls to ensure IAAs are properly executed, monitored, and managed. The report also made eight recommendations to OPM management related to (1) internal controls over financial aspects of IAAs; (2) internal controls over the approval of IAAs – buyer and seller; (3) internal controls over IAAs when OPM is the buyer; (4) internal controls over IAAs when OPM is the seller; and (5) recordkeeping over IAAs – buyer and seller.²⁵

Given OPM OIG’s concerns regarding its oversight of the RF and internal controls over IAAs, it may be prudent for SSA and other agencies being served by OPM’s ALJ Program to request a periodic audit of the Program. Such audits may alleviate future billing and service concerns.

²² Moreover, even if more specific wording was incorporated into the IAA, SSA was signing the IAAs after OPM had provided the ALJ services. We reviewed IAAs with OPM for ALJ Program services from FY 2005 to FY 2011, and we found that the IAAs were generally signed at the end of the FY after services had been performed.

²³ OPM, *FY 2011 Agency Financial Statement*, Section 1 – Management’s Discussion and Analysis, Compliance with Federal Financial Management Improvement Act, November 2011, p. 24.

²⁴ OPM OIG, *Audit of the U.S. Office of Personnel Management’s Interagency Agreement Process*, Report No. 4A-CF-00-09-014, March 28, 2012.

²⁵ *Id.* at pp. 5 through 14.

FY 2012 Agreement for ALJ-Related Services

OPM billed SSA \$2.4 million for ALJ Program services in FY 2012, which was still unpaid at the time of our review. SSA and OPM managers differ in their opinions regarding the need for an IAA between the two agencies to obligate and pay for these ALJ services. According to OPM, an IAA is unnecessary since OPM has statutory authority to provide the ALJ services to all Federal agencies.²⁶ Based on this interpretation, OPM decided in March 2012 that it would no longer sign an IAA with SSA.²⁷ OPM managers stated SSA had sufficient authority to obligate and expend funds to reimburse OPM for ALJ services without an IAA. SSA had an opportunity to provide OPM with an IAA for FY 2012 before this OPM decision. However, the two agencies did not sign an IAA for FY 2012 ALJ Program services in FY 2012.²⁸ OPM indicated that SSA was the only Federal agency that had an IAA with OPM for ALJ Program services in FY 2011.²⁹

SSA managers believed an IAA was required for ALJ Program reimbursement and would have preferred that OPM continue annually signing an IAA with SSA. SSA believed the IAA would have provided the necessary documentary evidence required to legally obligate funds to reimburse OPM's ALJ costs.

It appears the two agencies were citing different sections of 31 U.S.C. 1501, which provides documentary evidence requirement for government obligation. OPM was referencing section (a)(3), which states, "An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of an order required by law to be placed with an agency." Whereas SSA appeared to be referencing section (a)(1)(A) and (B), which states the following.

An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of a binding agreement between an agency and another person (including an agency) that is in writing, in a way and form, and for a purpose authorized by law; and executed before the end of the period of availability for obligation of the appropriation or fund

²⁶ In responding to our draft report, OPM emphasized it already had a statutory obligation to perform the ALJ work covered by its prior IAAs with SSA, and the law obliges Federal ALJ agencies to reimburse OPM for its ALJ program administration. OPM also noted in its response that "...the FY 2011 IAA into which OPM entered with SSA could not supersede either OPM's or SSA's obligations under law." OPM indicated that it agreed to the IAA with SSA because SSA requested it as a means of documenting its obligation to pay.

²⁷ SSA management informed us during our review that it never received a notification about OPM's plans to discontinue signing IAAs with SSA for its ALJ Program services.

²⁸ OPM provided SSA with an estimate of the FY 2012 ALJ Program costs on November 14, 2011. SSA could have used this estimate to develop an IAA.

²⁹ In FY 2011, SSA had IAAs with OPM for other services besides ALJ services.

used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided.

We consulted with OMB to obtain its interpretation of existing laws and regulations related to the need for an IAA for OPM's ALJ Program services. OMB sent us the following written response.

As a general policy and good practice, we believe IAAs are an effective tool for managing work being performed by one Federal agency for another Federal agency. Lack of clear understanding of work to be performed between two agencies and the cost associated with that work can raise difficulties in providing services. IAAs can help avoid these concerns by providing a written agreement, clearly outlining expectations and costs. Therefore, we generally recommend IAAs in situations such as these.

In responding to OMB's statement, OPM management agreed nothing prohibits an IAA between SSA and OPM for ALJ Program services. However, OPM also stated that such an agreement was not legally required for SSA to pay its overdue bill for FY 2012. As of January 2013, SSA had not paid the \$2.4 million in OPM charges for the FY 2012 services, and the two agencies were working on this payment issue.³⁰ While we see little value in signing an IAA for FY 2012 at this point to initiate reimbursement, based on what we learned from OMB, we believe an IAA would be beneficial in the future.

In our discussions with SSA managers, they also expressed concerns about (1) the lack of more frequent examinations for potential ALJ candidates, (2) the qualification process OPM uses to identify viable ALJ candidates, and (3) issues surrounding the maintenance of candidate information on the ALJ register. SSA reported it had to re-contact hundreds of candidates to update their geographic locations before they could make any selections. SSA reported that other issues with OPM have affected its ability to timely hire enough qualified ALJs to meet its 2013 commitment to reduce the hearing backlog.³¹ While ODAR was seeking to hire 125 ALJs in September 2012, it only hired 46 ALJs from OPM's ALJ register. According to SSA, it was unable to identify additional ALJ candidates because of quality issues with the register. After the two agencies discussed these issues in FY 2012, OPM agreed to take additional steps to address some of these points. We discuss this further in Appendix I.

In 2007, the Social Security Advisory Board (SSAB) identified three options for Congress' consideration pertaining to SSA's relationship with OPM: (1) create a separate OPM register specific to SSA's needs; (2) create a single OPM register with supplemental qualifications data

³⁰ Both OPM and SSA informed us in January 2013 that OPM asked Treasury to begin the formal dispute resolution process to seek reimbursement for the FY 2012 ALJ Program charges.

³¹ Refer to Appendix H for information on SSA ALJ hiring and Appendix I for information regarding SSA ALJ hiring challenges.

related to SSA (such as an ALJ's ability to handle a large docket); and (3) transfer management of the ALJ selection process to SSA (have SSA maintain its own separate register). SSAB noted, "The Board believes that the Administration and the Congress should carefully review the existing system for recruiting ALJs to assure that standards of independence are maintained and that the selection process provides candidates for these important positions in sufficient numbers and with the appropriate qualifications."³² Other parties have made recommendations regarding OPM's ALJ hiring and performance management.³³

In our discussions with SSA managers, they indicated the Agency would not be opposed to maintaining a separate ALJ register specific to SSA needs or managing the ALJ selection process but acknowledged that both options would require legislation. For example, OPM could administer a core examination process to ensure consistency of the ALJ Program across the government, while individual agencies could supplement this core process with agency-specific requirements. Under such a scenario, agencies would continue reimbursing OPM for an agreed-upon amount to develop and administer the core examination process.

Although an IAA is not legally required, OMB has indicated it is a good practice. As such, we believe an IAA between SSA and OPM at the start of each FY can clearly identify the work to be performed, address expectations, and provide expected costs. As part of this, both parties should specifically set out the respective rights and obligations for each agency. Since SSA employs four out of five of the ALJs in the Government, additional alternatives to the current process could also be explored, such as OPM delegating SSA greater authority to manage its selection of ALJs. OPM would continue administering the examination. As noted earlier, greater SSA authority in this area would require a change in the law. SSA has a continuing need for a large corps of qualified ALJs to process more than 800,000 cases annually. OPM has an obligation to provide SSA and other Federal agencies with qualified and competent ALJs to address their workload needs.

³² SSAB, *Recruiting SSA Administrative Law Judges: Need for Review of OPM Role and Performance*, Issue Brief #3, April 2007, p. 1.

³³ Some recommendations are discussed in the Government Accountability Office report, *Results-Oriented Cultures: Office of Personnel Management Should Review Administrative Law Judge Program to Improve Hiring and Performance Management* (GAO-10-14), January 2010, pp. 21 through 27.

CONCLUSIONS

OPM provided SSA with an annual billing statement showing the Agency's pro rata share of the FY 2011 ALJ Program estimated costs as well as additional details upon request. While OPM believed its annual billing statement adequately supported the amount charged to SSA and complied with the requirements under the law, SSA requested additional detail as part of its oversight of the reported costs. Our review determined OPM met the reporting requirements outlined in the FY 2011 IAA once it provided SSA with additional detailed cost information. However, OPM OIG has stated concerns about its lack of resources to provide oversight of the RF, and highlighted issues with internal controls over the IAA processes, which reinforces SSA's reservations about the underlying ALJ Program costs. We believe periodic audits of OPM's ALJ Program would alleviate some of SSA's cost-related concerns. In FY 2012, OPM ended its IAA process with SSA, while SSA delayed its payment for the FY 2012 services. At the time of our review, SSA's FY 2012 payment was still outstanding.

SSA has a continuing need for a large corps of qualified ALJs to process more than 800,000 cases annually, and OPM has an obligation to provide SSA and other Federal agencies with qualified and competent ALJs to address their workload needs. OMB agrees that an IAA between SSA and OPM for ALJ Program services would be a good practice to ensure SSA's needs are met. We support an IAA between the two agencies that clearly delineates the roles and responsibilities of each party. Furthermore, since SSA may be willing to assume more duties associated with the ALJ Program, any future agreements should specifically list those duties that can be legally delegated by OPM to SSA. This should lead to a reduction in OPM charges to SSA.

APPENDICES

Appendix A – FORMAT OF A SOCIAL SECURITY ADMINISTRATION INTERAGENCY AGREEMENT

INTERAGENCY AGREEMENT

BETWEEN

INSERT NAME OF AGENCY (ACRONYM)

AND THE

SOCIAL SECURITY ADMINISTRATION (SSA)

- I. PURPOSE: The purpose of this Agreement is to memorialize the parties' agreement under which SSA will reimburse *INSERT APPROPRIATE DESCRIPTION OF PURPOSE – DESCRIBE WHAT SSA WILL RECEIVE AND WHY IT NEEDS THE GOODS OR SERVICES FROM THE PERFORMING AGENCY*
- II. BACKGROUND: *OPTIONAL*
- III. RESPONSIBILITIES OF THE PARTIES: The responsibilities of the parties to this agreement are as follows:
 - a. SSA's Responsibilities:
 - i. *LIST WHAT SSA WILL DO*
 - b. XXX's Responsibilities:
 - i. *LIST WHAT OTHER AGENCY WILL DO FOR SSA*
- IV. DURATION OF AGREEMENT: The period of performance of this agreement is October 1, 2___ to September 30, 2___.
- V. MODIFICATION AND TERMINATION: Modifications to this agreement must be in writing and agreed to by the parties. This agreement may be terminated by either party upon 30 days advance written notice.

If SSA cancels the order, XXX is authorized to collect costs incurred prior to cancellation of the order plus any termination costs.

VI. POINTS OF CONTACT:

SSA Project Coordinator:

NAME

Social Security Administration

ADDRESS

PHONE

XXX Project Coordinator:

NAME

ADDRESS

PHONE

SSA Accounting/Finance Contact:

NAME

Social Security Administration

ADDRESS

PHONE

XXX Accounting/Finance Contact:

NAME

ADDRESS

PHONE

SSA Contracting Officer [if applicable]

NAME

Social Security Administration

ADDRESS

PHONE

XXX Contracting Officer [if applicable]

NAME

ADDRESS

PHONE

- VII. FUNDING: SSA agrees to transfer funds to XXX, in the form of progress or periodic payments, on at least a quarterly basis, up to the sum of \$_____ to support XXX's activities under this Agreement. Transfers of funds will be by means of the IPAC (Intra-Governmental Payment and Collection) system. The SSA IAA number must be cited on all IPAC submissions.

At least quarterly, but no later than 30 days after an accountable event, XXX shall provide SSA with a performance report (e.g. a billing statement) that details all work performed to date. Additionally, at least quarterly, the parties will reconcile balances related to revenue and expenses for work performed under the Agreement.

- VIII. AUTHORITY: *INSERT CITATION TO LEGAL AUTHORITY*

- IX. INTEGRATION CLAUSE: This agreement and the accompanying Form SSA-429 constitute the entire Agreement of the parties with respect to its subject matter. There have been no representations, warranties or promises made outside of this Agreement. This Agreement shall take precedence over any other documents that may be in conflict with it.

- X. DISCLAIMER: SSA will not accept responsibility for reimbursement of late fees or other costs incurred due to the negligence of the servicing agency in complying with its obligations to third party contractors.

- XI. DISPUTE RESOLUTION: Disputes related to this IAA shall be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM)

Volume I, Part 2, Chapter 4700, Appendix 10 *Intragovernmental Business Rules*
(June 2011).

- XII. AUTHORIZING SIGNATURES AND DATES: The signatories below warrant and represent that they have the competent authority on behalf of their respective agencies to enter into the obligations set forth in this Agreement.

SOCIAL SECURITY ADMINISTRATION XXX

NAME
TITLE

NAME
TITLE

Date: _____

Date: _____

Appendix B – ADMINISTRATIVE LAW JUDGE EXAMINATION PROCESS

Figure B–1: The Office of Personnel Management’s Administrative Law Judge Examination Process

Step 1: Entry-level administrative law judge (ALJ) open period is announced on USAJOBS Website (see Note 1).
Step 2: Applicant completes the online application, which includes (1) qualifications; (2) claimed veterans’ preference; and (3) Accomplishment Record (AR) (narrative responses about work-related experiences).
Step 3: Office of Personnel Management (OPM) evaluates application: (1) reviews qualifications; (2) adjudicates veterans’ preference; and (3) rates AR.
Step 4: OPM notifies applicants of status based on minimum qualifications and AR score. Applicants who are in the high-scoring group on the AR are invited to continue the examination process with the Written Demonstration (WD) exercise and Structured Interview (SI) (see Note 2).
Step 5: Applicants who are moving forward in the examination process complete the proctored WD and the in-person SI.
Step 6: OPM notifies each applicant who completed the entire examination of his/her final rating.
Step 7: Applicants who have completed the entire examination are placed on a central register of eligible applicants. Subsequent applicants are merged into the existing register (see Note 3).
Step 8: When agencies request certificates to fill ALJ vacancies, OPM refers certificates of applicants in score order based on the locations of the vacancies to be filled.

Note 1: Under 5 C.F.R. 332.311, individuals who are eligible for 10-point preference are entitled to file an application at any time to open the ALJ examination upon request because OPM maintains the ALJ standing register. The ALJ examination process for 10-point preference eligibles mirrors the primary examination. However, it is administered quarterly to this smaller pool of applicants.

Note 2: Applicants who do not meet the minimum qualifications or who are not in the high-scoring group on the AR can appeal.

Note 3: Applicants can appeal their final scores but remain on the register during the appeal process. The appeal consists of a review of all aspects of the examination. OPM adjudicates applicant appeals. Adjudication of appeals involves a review of the same exam process as described above. Applicants are informed that their ratings may rise, fall, or stay the same as a result of the appeal. Appeal results are final.

Appendix C – SCOPE AND METHODOLOGY

To accomplish our objectives, we:

- Reviewed applicable laws and regulations, as well as Agency and other Federal policies and procedures, related to interagency agreements (IAA) and the hiring of administrative law judges (ALJ).
- Reviewed prior Social Security Administration (SSA) and Office of Personnel Management (OPM) Offices of the Inspector General (OIG) and Government Accountability Office reports pertaining to IAAs and OPM's ALJ Program services.
- Met with Agency executives, managers, and staff in SSA's Offices of the Deputy Commissioners for Disability Adjudication and Review; Human Resources; Budget, Finance and Management; and General Counsel.
- Consulted with the Office of Management and Budget regarding Federal IAA policy.
- Interviewed SSA and OPM staff responsible for approving, monitoring, and paying the IAAs.
- Interviewed representatives at the Department of Health and Human Services, the second largest Federal ALJ agency serviced by OPM, to learn about its experiences with OPM's ALJ Program.
- Obtained copies of the signed IAAs between SSA and OPM for ALJ services from Fiscal Years (FY) 2005 to 2011, as well as documentation supporting the request and payment for ALJ-related services. We also discussed the status of the FY 2012 IAA.
- Reviewed FY 2011 IAA between SSA and OPM for ALJ services, quarterly reports, and the available accounting and performance detail.
- Requested and reviewed SSA communications with OPM related to billings for ALJ services.
- Coordinated the review with OPM's OIG staff.

Our review was limited in scope to analyzing data as supplied to us by SSA and OPM. As such, we relied on the representations of Agency and OPM personnel indicating the data reported to us were complete and accurate to the best of their awareness and ability. Accordingly, our work did not constitute an audit of such information. We conducted our review from August 2012 through January 2013 in Chicago, Illinois, and Washington, DC. The principle entities audited were the Offices of the Deputy Commissioners for Budget, Finance and Management and Human Resources. We conducted our work in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix D – ANNUAL BILLING LETTER AND STATEMENT



Chief Financial
Officer

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

July 19, 2011

██████████
Chief Financial Officer
Social Security Administration
6401 Security Boulevard, Altmeyer Building, Room 800
Baltimore, MD 21235-0001

Dear ██████████

This letter informs you that the Social Security Administration's assessment for the Administrative Law Judge (ALJ) program is \$2,209,648.00 for fiscal year (FY) 2011.

The regulations contained in 5 CFR Part 930 implement the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104-52, November 19, 1995), which amended 5 U.S.C. 1104 to authorize the Office of Personnel Management (OPM) to delegate examining authority for all competitive service positions except for administrative law judges, and to require employing agencies to reimburse OPM for their pro rata share of the costs of the ALJ program.

OPM continues to issue Certificates of Eligibles for ALJ positions, administers the quarterly ALJ examination to 10-point preference eligibles under 5 CFR 332.311, maintains the ALJ register, is updating ALJ announcement/exam procedures to meet Federal Hiring Reform initiatives and is currently conducting an Occupational Analysis of ALJ positions as part of the new ALJ examination development.

We request that you complete the enclosed billing statement by providing us with your Agency Location Code (ALC) and agency accounting data. Please return the completed billing statement by fax in accordance with the instructions provided thereon. We will use this information to withdraw your assessment from the Intra-Government Payment and Collection (IPAC) system. If your agency is not on IPAC, you may pay by Visa or MasterCard. In either case, please provide us with your complete billing instructions. Funding documents and billing instructions must be received by Tuesday, August 2, 2011 to ensure processing prior to year-end processing for FY 2011. Finally, if any information provided on the statement is incorrect, please make appropriate corrections.

If you have any billing related questions, please contact ██████████. If you have any questions about the ALJ program in general, contact ██████████.

Sincerely,

██████████
██████████
Chief Financial Officer

Enclosure

cc: ██████████
Deputy Commissioner, Human Resources

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www.opm.gov



U.S. Office of Personnel Management
 1900 E Street, NW, Room 2458
 Washington, DC 20415

**ADMINISTRATIVE LAW JUDGE BILLING STATEMENT
 FOR FY 2011**

Bill To:

Chief Financial Officer
 Social Security Administration
 6401 Security Boulevard, Altmeyer Building, Room 800
 Baltimore, MD 21235-0001

(Note: Please update the above information by crossing out and writing in correct information.)

Agency Code	# of Employees	Assessment Amount	Assessment Date	Funding Document Due Date
SZ00	1,448	\$2,209,648.00	7/19/2011	8/2/2011

The regulations contained in 5 CFR Part 930 implement the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104-52, November 19, 1995), which amended 5 U.S.C. 1104 to authorize the Office of Personnel Management (OPM) to delegate examining authority for all competitive service positions except for administrative law judges, and to require employing agencies to reimburse OPM for the cost of the administrative law judge examination. The assessment rate for FY 2011 has been established as \$1526.00 per administrative law judge. The agency population used in this billing is based on the December 2010, Central Personnel Data File (CPDF) agency submission, the most recent information available.

1) Please IPAC our assessment from the information below:

Agency Name: _____

Agency Location Code (must be 8 digits): _____

Treasury Account Symbol (TAS): _____

Business Event Type Code (BETC): _____

Business Partner Number (BPN): _____

Central Contracting Registration Number (CCR): _____

Agency Accounting Data (i.e., P.O.#, Doc. Ref. #, IAA., etc.): _____

Agency Point of Contact (POC): _____

POC Phone Number: _____ POC Fax Number: _____

POC Email: _____

Billing Address: _____

2) Please charge our VISA MASTERCARD from the information provided below (a receipt will be mailed back to the cardholder's attention, at the address above):

CARDHOLDER'S NAME: _____

CREDIT CARD NUMBER: _____ EXP. DATE: _____

Appendix E – LIST OF ADMINISTRATIVE LAW JUDGE PROGRAM SERVICES

Table E–1: Fiscal Year 2011 Administrative Law Judge Program Activities

Staffing
<ul style="list-style-type: none"> • Nine full-time staff required to administer the administrative law judge (ALJ) program • Intermittent part-time staff consisting of retired ALJs and support staff (see Note).
ALJ Examinations
<ul style="list-style-type: none"> • Administrating ALJ quarterly exams for 10-point preference eligible veterans • Determining applicants’ basic qualifications • Evaluating Accomplishment Record (AR) narratives and analyzing AR results • Scheduling and scoring Written Demonstration (WD) submissions • Performing and rating Structured Interviews (SI) • Conducting training to AR raters, WD raters, and SI panel members • Compiling/analyzing results and determining ratings of all assessment phases • Adjudicating and processing appeals • Participating in meetings regarding automation process improvements and modifications for the administration and scoring of the examination • Maintaining applicant records and posting the announcement/closure notices • Coordinating/conducting internal planning meetings and ALJ stakeholder meetings regarding the ALJ Occupational Analysis • Facilitating Subject Matter Expert site visits to obtain occupational information • Compiling/processing financial data for Fiscal Year 2011 annual agency billing cycle.
Certificates
<ul style="list-style-type: none"> • Issuing certificates to include customized certificate matrices and unique geographic availability list per applicant • Auditing certificates • Updating applicant records and geographic preferences based on certificate inquiries • Verifying applicant availability status • Updating ALJ register based on results of certificate selections/audits.

Communications
<ul style="list-style-type: none"> • Answering correspondence (applicant, congressional and other stakeholder inquiries) • Responding to litigation and Equal Employment Opportunity complaints • Processing <i>Freedom of Information Act</i> requests • Addressing telephone inquiries from agency officials and human resource staff members.
Other Expenses
<ul style="list-style-type: none"> • Corporate expenses, common services, rent, telecommunications, information technology, etc.

Note: In Appendix F, we provide more details about the ALJ Program staffing.

Source: The Office of Personnel Management provided this information to the Social Security Administration on August 26, 2011.

Appendix F – ADMINISTRATIVE LAW JUDGE PROGRAM OFFICE STAFF

The Office of Personnel Management (OPM) provided us with a list of the 9 full-time and 11 reemployed retired ALJs that worked on administrative law judge (ALJ) activities.¹

Table F–1: OPM’s ALJ Program Office Staff

Position	Grade Level	Summary of Duties (Not All Inclusive)
Program Manager	GS-15	Manages the overall functions of the ALJ Program Office (examining and noncompetitive functions).
Human Resources (HR) Specialist	GS-14	Serves as lead HR Specialist for the ALJ’s examining functions Program Office (that is, maintenance of the ALJ register; issuance/auditing of certificates; coordination of ALJ exams; appeals; responding to applicants; congressional requests; and <i>Freedom of Information Act</i> (FOIA) and <i>Privacy Act</i> requests).
HR Specialist	GS-13	Serves as FOIA coordinator; reasonable accommodation point of contact; exam scheduling coordinator; ALJ Program Office budget point of contact; and examining duties and appeals coordinator.
HR Specialist (Two positions) ¹	GS-13	Issues/audits certificates; responds to a variety of correspondence; maintains ALJ register; coordinates exam; and supports appeals function.
Program Analyst	GS-13	Acts on matters pertaining to the noncompetitive functions of the ALJ Program Office (that is, ALJ noncompetitive actions; classification requests; Senior ALJ requests; and ALJ loan requests).
HR Specialist	GS-12	Issues/audits certificates; responds to correspondence; maintains ALJ register; coordinates exam; and supports appeals function.
Program Analyst	GS-12	Issues/audits certificates; responds to applicant inquiries; records disposition point of contact, and supports appeals function.
Administrative Assistant	GS-7	Performs administrative support for the ALJ Program Office.
Retired ALJs ²	Expert	Serve as raters for the Written Demonstration and as panelists for the Structured Interview; and assists in other areas where needed.

Note 1: Both positions have the same title, grade, and responsibilities.

Note 2: The number and cost for the experts varies from year to year depending on the volume of applicants that go through the ALJ examination process.

Source: OPM provided this information to the Office of the Inspector General as part of this review.

¹ According to OPM, all positions were devoted to ALJ activities full-time, except the intermittent part-time retired ALJs.

Appendix G – FEDERAL ADMINISTRATIVE LAW JUDGE PROGRAM AGENCIES

In Fiscal Year 2011, the Office of Personnel Management billed Federal agencies a pro rata share of the administrative law judge (ALJ) program costs based on the actual number of ALJs employed as of December 2010. At that time, the Social Security Administration had 1,448 ALJs employed, or about 85 percent of all Federal ALJs (see Table G-1).

Table G-1: Number of Federal ALJs as of December 2010

Federal Agencies		Number of ALJs
1	Social Security Administration	1,448
2	Department of Health and Human Services	70
3	Department of Labor	44
4	National Labor Relations Board	39
5	Federal Mine Safety and Health Review Commission	19
6	Federal Energy Regulatory Commission	15
7	Occupational Safety and Health Review Commission	12
8	Department of the Interior	11
9	Department of Homeland Security	7
10	International Trade Commission	6
11	Department of Justice	4
12	National Transportation Safety Board	4
13	Department of Agriculture	3
14	Environmental Protection Agency	3
15	Federal Labor Relations Authority	3
16	Securities and Exchange Commission	3
17	Commodity Futures Trading Commission	2
18	Department of Housing and Urban Development	2
19	Department of Transportation	2
20	Federal Maritime Commission	2
21	Department of Education	1
22	Federal Communications Commission	1
23	Federal Trade Commission	1
24	Office of Financial Institution Adjudication	1
25	United States Postal Service	1
26	Merit Systems Protection Board	0
27	Small Business Administration	0
TOTAL		1,704

Appendix H– SOCIAL SECURITY ADMINISTRATION ADMINISTRATIVE LAW JUDGE HIRING

The Office of Personnel Management (OPM) maintains a register of eligible candidates for the administrative law judge (ALJ) position. Upon request, OPM provides the Social Security Administration (SSA) with a certificate of eligible candidates to hire for the ALJ position. OPM established the current register in May 2007. Since then, OPM has re-opened the examination twice. With the exception of the 10-point preference eligible veterans,¹ the last time OPM administered the examination was in November 2009. Between Fiscal Years (FY) 1998 and 2012, SSA hired approximately 1,230 ALJs (see Table H–1).

Table H–1: ALJs Hired by SSA from FYs 1998 Through 2012

FY	Selected from Certificates ¹	Transfers from Other Agencies ²	Reinstatements ³	Total ALJs Hired
1998	0	0	0	0
1999	0	0	0	0
2000	0	1	0	1
2001	0	6	0	6
2002	125	1	0	126
2003	0	0	0	0
2004	102	0	0	102
2005	98	0	0	98
2006	38	3	0	41
2007	0	4	0	4
2008	184	4	1	189
2009	142	3	0	145
2010	226	3	0	229
2011	143	0	0	143
2012	144	1	1	146
Total	1,202	26	2	1,230

Note 1: SSA has not always been able to obtain the ALJs it needed to process its hearings workload. With the exception of a 1-time hiring of 126 ALJs in early FY 2002, SSA was precluded from hiring ALJs from the register between 1999 and 2003 because of an adverse ruling in litigation before the Merit Systems Protection Board (MSPB), then referred to as the *Azdell* litigation (now referred to as *Meeker v. MSPB*, 319 F.3d 1368 (Fed. Cir. 2003)).

Note 2: SSA’s selection of an ALJ from the rolls of another agency.

¹ OPM administers an examination for 10-point preference eligible veterans. 5 U.S.C. § 3305(b) and 5 C.F.R. § 332.311 require OPM to hold an examination not later than the quarterly period succeeding that in which the application is filed.

Note 3: SSA's re-hiring of someone who previously held an ALJ position and who was previously selected from an ALJ certificate.

The growth in SSA hiring of ALJs since FY 2007 related to a number of factors, including the increase in the hearings backlog during the period ALJ hiring was restricted. In FY 2007, SSA's Commissioner announced an initiative to reduce the size of the hearings backlog, which included additional hiring of ALJs.² In addition, on February 17, 2009, the President signed the *American Recovery and Reinvestment Act of 2009* (ARRA), which provided SSA with \$500 million to process disability and retirement workloads. SSA used a portion of these funds to hire additional ALJs.³

² *SSA's Plans to Reduce the Disability Backlogs: Hearing Before Senate Finance Committee*, 110th Cong. (May 23, 2007) (Statement on the Record of Michael J. Astrue, Commissioner of Social Security). SSA established more than 30 initiatives to eliminate the hearings backlog.

³ Pub. L. No. 111-5, Division A, Title VIII, 123 Stat. 115, 185 – 186 (2009). ARRA allowed SSA to use up to \$40 million of these funds for health information technology research and activities to facilitate the adoption of electronic medical records in disability claims. *Id.* We discuss this hiring in our August 2010 audit, *The Social Security Administration's Hiring Under the American Recovery and Reinvestment Act of 2009* (A-12-10-11050).

Appendix I – ADMINISTRATIVE LAW JUDGE HIRING CHALLENGES

As part of our review of the Office of Personnel Management’s (OPM) administrative law judge (ALJ) Program services, we learned about the Social Security Administration’s (SSA) concerns with the process as it relates to a new examination process as well as the maintenance of the ALJ register. OPM has responded to SSA’s concerns to resolve some of these issues.

ALJ Examination

In Fiscal Year (FY) 2012, SSA’s Commissioner repeatedly requested that OPM reopen the ALJ examination and add new candidates to the ALJ register. The last opening of OPM’s ALJ examination process was in November 2009. The only exception has been examinations held for 10-point preference veterans. SSA was concerned about its ability to timely hire enough qualified candidates to meet its 2013 commitment to reduce the time Americans wait for a hearing.¹

SSA has met with and provided comments to OPM regarding the next ALJ examination. For example, in a May 2012 letter to OPM, both SSA and the HHS expressed concerns about OPM’s examination and qualification process, offering proposals related to identifying viable candidates and the formulation of the ALJ examination.

Maintenance of the ALJ Register

According to SSA staff, some certificates were issued and re-issued because of such issues as the following.

- ✓ Some ALJ candidates were referred to the Agency without meeting the licensure qualifications requirement established by OPM.
- ✓ An OPM certificate contained incorrect geographic availability locations where the candidates preferred to work. For example, Portland, Maine, was listed instead of Portland, Oregon. SSA stated that, as a result, staff had to re-contact hundreds of candidates to update the certificates before making any selections.²
- ✓ The number of individuals on the OPM certificate of eligible candidates who failed to respond to SSA’s consideration notice for the ALJ position continued to increase in

¹ During our discussions with managers at the Department of Health and Human Services (HHS), we learned that they had similar concerns regarding a new examination.

² SSA staff later informed us that OPM implemented a quality control review before issuing subsequent certificates, which led to a reduction in errors with candidate geographic availability.

FY 2012. For example, OPM issued a certificate in June 2012 and 20 percent of the candidates failed to respond.

- ✓ In FY 2012, SSA's request for bilingual candidates in its San Juan, Puerto Rico office was returned without a certificate of eligible candidates because of a lack of candidates.
- ✓ Some of the candidates SSA selected for the ALJ position in the past continued to show as potential candidates on new lists provided to SSA.

OPM's Response to SSA's Concerns

In FY 2012, OPM responded to a number of SSA's concerns in the form of a letter. OPM stated it was developing a new examination to administer in 2013. In addition, OPM stated it had (1) re-publicized the ability of the 10-point preference eligible veterans to take the ALJ examination; (2) allowed applicants on the current ALJ register to update their geographic availability; (3) made expedited suitability investigations available to SSA; (4) expedited the adjudication of objection and passover requests; and (5) adjudicated the licensure requirement for the specific ALJ candidates currently certified to SSA whom SSA believes are not currently in compliance with the licensure requirement. When we discussed these changes with SSA managers, they noted that the OPM changes occurred after the Agency requested a certificate from the register for the September 2012 hiring, so the changes above had not yet taken effect. Additionally, OPM informed SSA it intended to leave the next application period open for at least a week, which SSA believes will result in a larger pool of highly qualified candidates.

OPM staff informed us that SSA's increased hiring needs led to three iterations of opening the ALJ examination over 3 years (2007 through 2009). OPM explained that this pace of examination taxed OPM's resources while reducing the future utility of the examination. OPM stated that the time it spent on testing under the 2007 examination reduced the amount of time OPM had to prepare the next examination. OPM attributes this 3-year examination workload to the delay in the next ALJ examination, still being prepared at the time of our review, about 3 years after the last ALJ test was administered.

Appendix J – MAJOR CONTRIBUTORS

Walter Bayer, Director, Chicago Audit Division

Deborah Kinsey, Audit Manager, Chicago Audit Office

Linda Smid, Auditor-in-Charge

MISSION

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