



SOCIAL SECURITY
Office of the Inspector General

March 19, 2012

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

Dear Mr. Johnson:

In a June 16, 2011 letter, you and other members of the House Committee on Ways and Means, Subcommittee on Social Security, requested we assess the use and effectiveness of management controls regarding administrative law judges' (ALJ) adherence to the Social Security Administration's (SSA) policies and procedures. To address this request, we initiated two reviews. One review, *Congressional Response Report: Oversight of Administrative Law Judge Workload Trends (A-12-11-01138)*, covered ALJ outliers and related management controls. The second review, discussed in the enclosed report, addressed your request that we identify any constraints, including statutory limitations, that make it difficult to ensure ALJ adherence to these policies and procedures.

I appreciate the opportunity to share our insights on this important matter. To ensure SSA is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have any questions concerning this matter, please call me or have your staff contact Misha Kelly, Congressional and Intra-governmental Liaison, at (202) 358-6319.

Sincerely,

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Michael J. Astrue

CONGRESSIONAL RESPONSE REPORT

The Social Security Administration's Review of Administrative Law Judges' Decisions

A-07-12-21234



March 2012

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

OBJECTIVE

The objectives of our review were to evaluate (1) the constraints, including statutory limitations, the Social Security Administration (SSA) faces in reviewing administrative law judges' (ALJ) decisions and (2) SSA's quality review systems for ALJs' decisions.

BACKGROUND

The Office of Disability Adjudication and Review (ODAR) holds hearings and issues decisions as part of SSA's process for determining whether a person may receive benefits. ODAR directs a nationwide field organization staffed with ALJs who conduct impartial hearings and make decisions on appealed determinations involving retirement, survivors, disability, and Supplemental Security Income benefits.

A claimant who disagrees with an ALJ's decision may ask for a review by the Appeals Council (AC),¹ an ODAR component that provides the final Agency decision on appealed cases. The AC may deny, dismiss, or grant the request. If the AC grants the request, it will either issue a decision that affirms, modifies, or reverses the ALJ decision or return the case to the ALJ with instructions to conduct further proceedings on the case.²

The majority of ALJs' decisions are allowances. For example, in Fiscal Year (FY) 2011, ALJs issued approximately 629,000 allowance or denial decisions,³ of which approximately 393,000 decisions (62 percent) were allowances.⁴ Likewise, in FY 2010, 67 percent of ALJs' decisions were allowances. Given these high allowance rates,

¹ 20 C.F.R. §§ 404.967, 416.1467.

² *Id.* SSA refers to returning a case to an ALJ as a remand. See SSA, POMS, GN 03104.350 A.2 (July 10, 2001). Generally, when the AC returns a case, it is reassigned to the ALJ who originally issued the decision. A case would not be assigned to the ALJ who issued the original decision if the case was previously assigned to that ALJ on a prior remand and the ALJ's decision after remand is the subject of the new remand or if the AC or the Federal court directs that the case be assigned to a different ALJ. See SSA, HALLEX I-2-1-55-D.11 (February 12, 2009).

³ In FY 2011, ODAR issued over 793,000 dispositions, of which approximately 740,000 were issued by ALJs and over 53,000 were issued by Attorney Adjudicators. An Attorney Adjudicator can issue an allowance decision that does not require a hearing. See 20 C.F.R. §§ 404.942, 416.1442. Of the 740,000 dispositions issued by ALJs, approximately 629,000 dispositions resulted in an allowance or denial decision and the remaining 111,000 dispositions were dismissals of the hearing request. A hearing request can be dismissed for a variety of reasons, including failure of the claimant to appear at the hearing, the claimant choosing to withdraw the hearing request, or death of the claimant. See 20 C.F.R. §§ 404.957, 416.1457.

⁴ See Appendix C for more information regarding ALJ dispositions and decisions.

Congress and the media have raised concerns regarding the accuracy of ALJs' decisions and SSA's ability to review ALJs' decisions.

In a June 16, 2011 letter, several members of the Committee on Ways and Means, Subcommittee on Social Security, requested that we review SSA's ability to review ALJs for unusual allowance rates. Specifically, the Subcommittee requested we assess the use and effectiveness of management controls regarding ALJ adherence to SSA's policies and procedures as well as any constraints, including statutory limitations, that may make it difficult to ensure ALJ adherence to these policies and procedures.⁵ The Subcommittee also requested we describe and assess the effectiveness of SSA's quality review system for ALJs' decisions.⁶

⁵ Our assessment of the use and effectiveness of management controls regarding ALJ adherence to SSA's policies and procedures is covered in the *Congressional Response Report: Oversight of Administrative Law Judge Workload Trends* (A-12-11-01138).

⁶ See Appendix B for a detailed discussion of the scope and methodology of our review.

Results of Review

SSA has the authority to review ALJs' decisions but faces legal limitations in conducting its reviews. Specifically, Federal regulations require that neither SSA's random sampling procedures nor its selective sampling procedures will identify ALJ decisions for the AC's pre-effectuation review based on the identity of the decisionmaker or the identity of the office issuing the decision.⁷ According to SSA, this requirement in its rules ensured that its case selection procedures did not stop ALJs from deciding cases impartially, free from Agency influence.⁸ Under the regulations, the AC has 60 days in which to decide whether to take an own motion review of a claimant's case,⁹ and the decision is subject to change based on the review results.¹⁰

SSA also has the authority to conduct post-effectuation reviews of specific ALJ decisions based on anomalies, such as unusually high percentages of allowance or denial decisions. Post-effectuation reviews occur after the 60-day period within which the AC can take own motion review and ordinarily do not result in a change to the decision.¹¹ The post-effectuation reviews identify whether ALJs followed SSA's policies and procedures. If SSA determines an ALJ failed to comply with the Agency's policies and procedures, it can issue directives to the ALJ to comply. If the ALJ fails to comply with the directives, SSA can seek disciplinary actions against the ALJ. SSA also uses post-effectuation reviews to identify training needs.

Most recently, SSA conducted three types of reviews of ALJs' decisions.

- In FY 2011, ODAR completed its first annual pre-effectuation review of ALJ decisions, reviewing 3,692 randomly selected allowance decisions. Based on the case review, ODAR's AC allowed the ALJs' decisions to proceed to effectuation, issued final decisions on the cases, or returned the cases to the ALJs with instructions for additional actions.

⁷ 20 C.F.R. §§ 404.969(b)(1), 416.1469(b)(1).

⁸ *Administrative Review Process; Identification and Referral of Cases for Quality Review Under the Appeals Council's Authority to Review Cases on Its Own Motion*, 63 Fed. Reg. 36560, 36566 (July 7, 1998).

⁹ 20 C.F.R. §§ 404.969(a), 416.1469(a). When the AC reviews a case absent a request from the claimant to review the case, the AC is reviewing the case on its own motion.

¹⁰ After a pre-effectuation review of a decision, the AC has the authority to issue its own final decision or return the case for the ALJ to conduct further proceedings. See 20 C.F.R. §§ 404.967, 416.1467.

¹¹ Generally, an ALJ's decision can only be changed if it has been reviewed within the 60-day appeal period. See 20 C.F.R. §§ 404.968(a)(1), 404.969(a), 416.1468(a), 416.1469(a). After the 60-day period ends, the AC may reopen and revise final agency decisions only under certain limited circumstances. See 20 C.F.R. §§ 404.987(b), 404.988, 404.989, 416.1487(b), 416.1488, 416.1489.

- In FY 2011, ODAR conducted seven post-effectuation studies on cases based on anomalies that came to its attention. Since these studies occurred post-effectuation, these decisions were not changed even if they were found to include errors.¹² ODAR plans to use the results of the studies for training purposes.
- In FY 2010, SSA's Office of Quality Performance (OQP) began performing post-effectuation reviews of randomly selected ALJ decisions. OQP completed reviews of 2,044 ALJ decisions issued during FYs 2009 and 2010. Since these reviews were post-effectuation, these decisions were not changed even if they were found to include errors (except for the rare instance when such a decision satisfied the criteria for reopening).¹³ ODAR uses the results of the OQP reviews to ensure ALJs are following policies and procedures and identify training that may be necessary for ALJs and hearing office staff.

SSA'S AUTHORITY TO REVIEW ALJ DECISIONS

Congress created the administrative hearing process and the ALJ position to ensure public confidence in the adjudication process and ALJs' decisions.¹⁴ Accordingly, Congress enacted the *Administrative Procedure Act* (APA) in part to protect ALJs' qualified decisional independence.¹⁵ The APA put safeguards in place to ensure the independence of ALJs' judgments and that ALJs would not be paid, promoted, or discharged arbitrarily or for political reasons. Congress enacted provisions to address how ALJs are hired, paid, and disciplined.¹⁶ Furthermore, Congress excluded ALJs from performance evaluations and prevented agencies from requiring that ALJs perform duties that are inconsistent with their responsibilities as adjudicators.¹⁷ By protecting the independence of the ALJ position and the ALJ's decision, Congress intended to maintain public confidence in the essential fairness of the process.¹⁸

¹² Id.

¹³ See fn. 11, supra at p. 3.

¹⁴ *Nash v. Califano*, 613 F.2d 10, 16 (2d Cir. 1980).

¹⁵ Id.

¹⁶ Congress enacted the APA on June 11, 1946. Pub. L. No. 79-404, 60 Stat. 237 (1946). Section 11 governs the establishment of the "examiner" (now ALJ) position. Id.

¹⁷ 5 U.S.C. §§ 1305, 4301(2)(D).

¹⁸ Federal courts have addressed the basis and purpose of ALJs' qualified decisional independence. For example, in *Nash v. Califano*, the Second Circuit observed that the APA's provisions "confer a qualified right of decisional independence upon ALJs." See *Nash*, 613 F.2d at 15. As support, the court cited the APA sections that safeguard the pay and tenure of ALJs and exempt ALJs from performance evaluations. Id., citing 5 U.S.C. §§ 554, 4301, 5372; 5 C.F.R. § 930.211. Examining the purpose, the court stated as follows: "The independence granted to ALJs is designed to maintain public confidence in the essential fairness of the process through which Social Security benefits are allocated by ensuring impartial decisionmaking." See *Nash*, 613 F.2d at 16.

Although ALJs have qualified decisional independence, they must follow their agency's policies and procedures when making adjudicatory decisions. SSA has defined the concept of qualified decisional independence as follows.

“Qualified decisional independence” means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with agency policy as laid out in regulations, rulings, and other policy statements. Further, because of their qualified decisional independence, ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. The agency may not take actions that abridge the duty of impartiality owed to claimants when ALJs hear and decide claims.¹⁹

While the APA establishes an ALJ's qualified decisional independence, it also authorizes an agency to review an ALJ's decisions. Specifically, the APA provides that, “. . . [o]n appeal from or review of [an ALJ's] decision, the agency has all the powers which it would have in making the initial decision”²⁰ Further, the APA requires that ALJs conduct hearings and make or recommend decisions “. . . [s]ubject to published rules of the agency”²¹ Therefore, according to SSA, the APA clarifies SSA's authority to set the rules that dictate how ALJs exercise authority.

In addition, the *Social Security Act* (Act) does not expressly limit SSA's ability to review ALJ decisions. In fact, the Act grants the Commissioner of Social Security the “full power and authority to make rules and regulations and to establish procedures” that govern the conduct of adjudications.²²

While the APA and the Act permit SSA to review ALJ decisions, the Agency cannot review ALJ decisions in any manner it chooses. For instance, in October 1981, SSA instituted the Bellmon Review Program where the AC reviewed pre-effectuation decisions of ALJs with high allowance rates. Under the program, the AC reviewed these ALJs' decisions to determine whether the decisions were correct, and, if they were not, the AC issued final decisions or returned cases to ALJs with instructions for additional actions. The Association of Administrative Law Judges filed suit against SSA and alleged that the Bellmon Review Program violated ALJs' decisional independence.²³ When the district court issued its decision in 1984, SSA no longer

¹⁹ *Rules for Setting the Time and Place for a Hearing Before an Administrative Law Judge*, 75 Fed. Reg. 39154, 39156 (July 8, 2010).

²⁰ 5 U.S.C. § 557(b).

²¹ 5 U.S.C. § 556(c).

²² *Social Security Act* § 205(a), 42 U.S.C. 405(a).

²³ *Association of Administrative Law Judges v. Heckler*, 594 F. Supp. 1132 (D.D.C. 1984).

used the Bellmon Review Program.²⁴ The court did not find that the Bellmon Review Program violated the law, but it did find that focusing review on ALJs with high allowance rates created an “atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof.”²⁵

In 1998, SSA published revised regulations regarding reviews of ALJs’ decisions.²⁶ The revised regulations prevent SSA from conducting pre-effectuation reviews of ALJs’ decisions based on the identity of a specific ALJ or the hearing office where the decision was made.²⁷ Instead, SSA uses random and selective sampling when selecting ALJs’ decisions for pre-effectuation reviews.²⁸

SSA’s regulations authorize the AC to issue its own decision or return a case to an ALJ after reviewing an ALJ’s decision under the following circumstances.

1. If a claimant is dissatisfied with an ALJ’s decision or dismissal, the claimant has 60 days following receipt of the decision or dismissal to request AC review.²⁹
2. SSA can refer an ALJ’s decision to the AC if, in the Agency’s view, the decision cannot be effectuated because of a clerical error, the ruling is inconsistent with SSA’s laws and policies, or the decision is unclear regarding a matter that affects the claim’s outcome.³⁰
3. Within 60 days after the date of an ALJ’s decision or dismissal, SSA is permitted to use random and selective sampling to refer cases to the AC for possible review under the AC’s own motion as part of a quality assurance program.³¹

In addition, SSA can perform post-effectuation reviews of ALJs’ decisions that do not require sampling, but the Agency ordinarily cannot change the ALJs’ decisions.³² For example, SSA can conduct special studies based on anomalies, such as the outliers in

²⁴ *Id.* at 1141.

²⁵ *Id.* at 1143.

²⁶ See fn. 8.

²⁷ 20 C.F.R. §§ 404.969(b)(1), 416.1469(b)(1).

²⁸ *Id.*

²⁹ 20 C.F.R. §§ 404.967, 404.968, 416.1467, 416.1468.

³⁰ 20 C.F.R. §§ 404.969(b)(2), 416.1469(b)(2).

³¹ 20 C.F.R. §§ 404.969(b)(1), 416.1469(b)(1).

³² As noted in fn. 11, unless a case satisfies the criteria for reopening, an ALJ’s decision can be changed only if it has been reviewed within the 60-day appeal period. See 20 C.F.R. §§ 404.968(a)(1), 404.969(b)(1), 404.987(b), 404.988, 404.989, 416.1468(a), 416.1469(b)(1), 416.1487(b), 416.1488, 416.1489.

allowance and denial rates or the number of decisions issued by an ALJ or a hearing office. The special studies allow SSA to “gather data and form an opinion of an ALJ’s performance,”³³ including determining whether ALJs properly interpreted and applied SSA’s policies. If SSA determines an ALJ failed to comply with the Agency’s policies and procedures, it can issue directives to the ALJ to comply. If the ALJ fails to comply with the directives, SSA can seek disciplinary actions against the ALJ.³⁴

ODAR’S QUALITY REVIEW SYSTEM

In FY 2010, ODAR’s Office of Appellate Operations (OAO) created Quality Review Branches (QRB) to conduct pre-effectuation reviews of hearing-level decisions.³⁷ QRBs review a sample of disability hearing-level allowances to determine whether the decisions are consistent with SSA regulations, policies, and procedures.³⁸ If the QRB questions a decision, the AC will choose whether to review the case. Based on its review, the AC will either issue its own decision on the case or return the case to the ALJ with instructions for additional actions.

In FY 2011, QRBs reviewed 3,692 hearing-level decisions, of which the AC reviewed 813 decisions (22 percent) (see Table 1). The AC reviewed cases if there appeared to be an ALJ abuse of discretion, an error of law, or a decision not supported by

Table 1: Cases Reviewed by QRBs and the AC in FY 2011 ³⁵	
QRB Cases Reviewed	
Cases Reviewed	3,692
AC Actions	
Cases Reviewed	813
Returned to ALJs	550
Final Decisions ³⁶	135
Final Action Pending	128
Percentage of Cases Reviewed by the AC	22%

³³ *Association of Administrative Law Judges*, 594 F. Supp. at 1140.

³⁴ According to SSA, the Agency cannot take disciplinary actions against an ALJ based solely on the ALJ’s decisions in particular cases. SSA’s basis for this belief comes from its interpretation of the Merit System Protection Board’s ruling *In re Chocallo*, 1 M.S.P.R. 605, 610-11 (1980) (holding that Board will not find good cause to discipline an ALJ based solely on decision outcomes, and it will carefully examine for satisfaction of the good cause standard any proposed discipline based on an ALJ’s performance of an adjudicatory function).

³⁵ Figures in Table 1 came from the SSA, OAO, Executive Director’s Broadcast, Volume 3, Issue 2 (January 20, 2012).

³⁶ *Id.* As of January 20, 2012, ODAR affirmed the hearing allowance decision in 73 cases, affirmed the hearing allowance but corrected an issue in 57 cases, and reversed the hearing allowance decision in 5 cases.

³⁷ While QRBs were created in FY 2010, the quality review process did not start until FY 2011. The QRBs are located in Crystal City, Virginia.

³⁸ Sampled cases are selected in equal numbers from all regions plus the National Hearing Centers and include both ALJ and Attorney Adjudicator decisions. In FY 2011, critical/terminal illness cases, continuing disability review cases, and cases returned by the Federal courts were excluded from selection in the sample. ODAR limited its review to allowances in FY 2011 because the QRBs were in their first year with new staff that required training and experience. In FY 2012, ODAR expects to expand the number of pre-effectuation reviews beyond the 3,692 reviewed in FY 2011 and to include other types of actions, such as unfavorable decisions and dismissals.

substantial evidence.³⁹ The AC returned cases that required additional development to make a decision, lacked sufficient evidence to make a decision, or had on-the-record decisions that required hearings.

For cases that were not returned to ALJs, the AC issued a decision that

- reversed the hearing allowance decision,
- affirmed the hearing allowance decision, or
- affirmed the hearing allowance decision but corrected an issue that was not fully explained in the ALJ's decision.

ODAR uses the results of the case reviews to identify training opportunities for all ALJs and hearing office staff. However, individual ALJs and hearing offices did not know the results of the QRBS' or AC's reviews of their specific cases. ALJs only knew the results of cases returned to them for additional actions. When the AC issued its own decision, it did not notify the ALJ.

In addition, ODAR did not maintain data on the numbers of cases the AC reviewed for each ALJ or hearing office. Therefore, ODAR could not identify any training opportunities needed for individual ALJs or hearing offices. However, once ODAR has collected more data, it will be able to draw conclusions at the hearing office and individual ALJ level. ODAR will then provide direct feedback to the hearing offices and ALJs based on those conclusions.

ODAR'S SPECIAL STUDIES

In FY 2011, ODAR's OAO performed 7 special studies in addition to the 3,692 cases the QRBS reviewed.⁴⁰ These special studies were based on anomalies that came to ODAR's attention. The cases selected for the special studies were post-effectuation. Therefore, ODAR could not ordinarily change the decisions. Rather, ODAR planned to use the results of the special studies to identify training needs for FY 2012.

ALJs and hearing offices generally did not know the results of any special studies of their decisions. In fact, despite the numerous issues found during the special studies,⁴¹ only one ALJ was aware that a special study had been conducted. In this case, the

³⁹ SSA, POMS, GN 03104.350 A.1 (July 10, 2001).

⁴⁰ These special studies consisted of in-depth reviews of decisions issued by individual ALJs and Attorney Adjudicators. In FY 2012, ODAR plans to undertake at least 15 other special studies, including exploring further any issues arising from in its QRB reviews.

⁴¹ For example, ODAR identified ALJs and Attorney Adjudicators who consistently failed to adequately develop the record, lacked rationale in the hearing decision, failed to properly evaluate evidence, and failed to inform unrepresented claimants of their rights to representation.

study identified that this ALJ was not following SSA's policies and procedures. The ALJ was issued a directive to adhere to the policies and procedures and the ALJ complied.⁴²

OQP'S QUALITY REVIEW SYSTEM

In FY 2010, OQP implemented its post-effectuation disability case review (DCR) of ALJs' decisions.⁴³ The DCR is an in-depth review conducted by disability examiners in OQP who assess the accuracy of ALJ decisions. Cases for the DCR are selected randomly from the nation-wide pool of ALJ allowance and denial decisions.⁴⁴ OQP reviews a case to determine whether a preponderance of the evidence supports the ALJ's decision. If OQP disagrees with the ALJ's decision, it refers the case to the AC for review. The AC reviews the case and provides an opinion to OQP citing agreement or disagreement with OQP's findings.

While OQP agreed with the majority of the decisions it reviewed, it disagreed more often with ALJs' allowance decisions than their denial decisions. Specifically, for decisions issued in FYs 2009 and 2010, OQP disagreed with ALJs' allowance decisions in 14 percent of the cases reviewed (see Table 2). At the same time, OQP disagreed with ALJs' denial decisions in 10 percent of the cases reviewed.⁴⁵

⁴² After we issued our draft of this report, the Committee on Ways and Means, Subcommittee on Social Security, requested additional information regarding the special studies. To address the additional questions, members of ODAR's executive staff met with the Subcommittee on February 23, 2012.

⁴³ The DCR was implemented in December 2009 with the first review covering ALJ decisions made from April through September 2009. OQP reports the results of its DCRs every 6 months.

⁴⁴ For FYs 2009 and 2010, OQP only selected ALJ allowance decisions that had previously undergone a quality assurance review by OQP following an initial denial decision. OQP used these criteria to collect additional data and address how an accurate initial denial subsequently resulted in an accurate ALJ allowance. In FY 2011, OQP changed its sampling methodology to include all ALJ allowances regardless of whether the case was previously reviewed by OQP. OQP will continue to select ALJ denial decisions regardless of whether OQP had previously conducted a quality assurance review. In FY 2011, OQP began a separate review of ALJ dismissals.

⁴⁵ OQP's review of FY 2011 cases was not complete. As of September 15, 2011, OQP had reviewed 193 ALJ allowances, with a 5-percent disagreement rate, and 219 ALJ denials, with a 2-percent disagreement rate.

Fiscal Year	ALJ Allowances			ALJ Denials		
	Number Reviewed	Number with Disagreement	Disagreement Percentage	Number Reviewed	Number with Disagreement	Disagreement Percentage
2009 ⁴⁷	300	31	10%	300	33	11%
2010	722	117	16%	722	66	9%
Total	1,022	148	14%	1,022	99	10%

Since the DCRs occur post-effectuation, ODAR ordinarily cannot change ALJs' decisions.⁴⁸ Rather, ODAR uses information from the DCRs to identify policies and procedures that need clarification or additional training that is necessary for ALJs and hearing office staff. According to OQP, the DCR was designed to provide data and report agreement rates with its analyses only at the national level. As such, OQP would not inform the regional offices, hearing offices, or individual ALJs directly of the results of the DCRs conducted on particular decisions. Nor would OQP have any data of individual ALJ's, a hearing office's, or a region's disagreements with its analyses to maintain. However, ODAR had monitored the findings in relation to individual ALJs and notified regional offices and individual ALJs of the results in some cases, particularly when an issue existed that warranted correction or suggests potential training needs.

⁴⁶ OQP provided the figures in this table. The numbers with disagreement only include the numbers of cases in which both OQP and the AC disagreed with the ALJs' decisions.

⁴⁷ FY 2009 results are for April through September 2009.

⁴⁸ The AC returned one DCR case it reviewed to the ALJ because the AC believed the ALJ did not provide the claimant with a sufficient explanation during the hearing regarding important factors in the case.

Conclusions

SSA has the authority to review ALJs' decisions but faces legal restrictions in conducting its reviews. Specifically, in pre-effectuation reviews where the ALJs' decisions are subject to change, SSA's regulations provide that neither SSA's random sampling procedures nor its selective sampling procedures will identify ALJ decisions for AC review based on the identity of the decisionmaker or the office issuing the decision. The APA and other ALJ-related statutes⁴⁹ would need to be changed to clarify SSA's authority to conduct pre-effectuation reviews of specific ALJs' decisions based on anomalies, such as unusually high or low allowance rates.

Otherwise, SSA is limited to performing post-effectuation reviews of specific ALJs' decisions. Based on post-effectuation reviews, SSA typically does not change the ALJs' decisions, but it does determine whether ALJs followed SSA's policies and procedures. If SSA determines an ALJ failed to follow SSA's policies and procedures, it can issue directives to the ALJ to comply. Ultimately, SSA can seek a finding of good cause to take disciplinary action against an ALJ who fails to follow the Agency's directives.

SSA conducts both pre- and post-effectuation reviews of ALJs' decisions.⁵⁰ SSA uses the results of its reviews and studies to identify changes that are needed in its policies and procedures and to develop training for ALJs and hearing office staff. However, most ALJs were not notified of the quality review results of their decisions. Only those ALJs who received a returned case or a specific directive from SSA were aware of the quality review results. In addition, SSA did not maintain data on the review results by ALJ or hearing office. If SSA maintained such data and notified individual ALJs of the review results, any issues identified could be directly addressed.

⁴⁹ Other ALJ-related statutes include 5 U.S.C. §§ 1215, 1305, 3105, 3323, 3344, 3502, 4301, 5372, and 7521.

⁵⁰ In addition to its reviews of ALJs' decisions, SSA commissioned the Administrative Conference of the United States, an institution that studies Government policy, to perform an independent study of the disability appeals process. The final recommendations are scheduled to be released in November 2012. Damian Paletta, *Disability-Benefits System Faces Review*, The Wall Street Journal (December 15, 2011), <http://online.wsj.com/article/SB10001424052970204844504577098810070396878.html>.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – Administrative Law Judges' Allowance Decision Rates

Acronyms

AC	Appeals Council
Act	<i>Social Security Act</i>
ALJ	Administrative Law Judge
APA	<i>Administrative Procedures Act</i>
C.F.R.	Code of Federal Regulations
DCR	Disability Case Review
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law Manual
OAD	Office of Appellate Operations
ODAR	Office of Disability Adjudication and Review
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OQP	Office of Quality Performance
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
QRB	Quality Review Branch
SSA	Social Security Administration
U.S.C.	United States Code

Scope and Methodology

To address the Subcommittee on Social Security's requests related to the Social Security Administration's (SSA) review of administrative law judges' (ALJ) decisions, we:

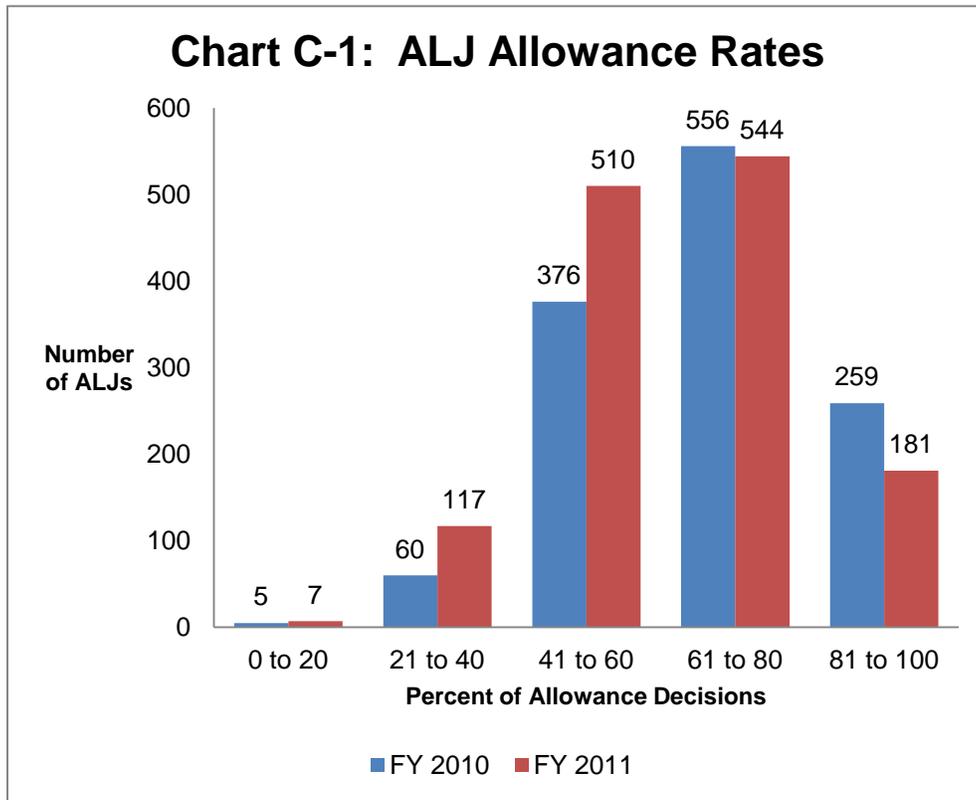
- Reviewed applicable Federal laws and regulations; the Hearing, Appeals, and Litigation Law Manual; and SSA's Program Operations Manual System sections related to constraints that may make it difficult to ensure ALJs adhere to SSA's policies and procedures.
- Obtained information from SSA's Offices of Disability Adjudication and Review (ODAR), Quality Performance (OQP), and General Counsel (OGC), including laws and court rulings that affect how SSA can discipline ALJs and information on ODAR's and OQP's quality review systems, including
 - number of cases reviewed,
 - number and reasons for remands and reversals,
 - how remands and reversals were tracked by ODAR's quality review system, and
 - how disagreements were tracked by OQP's quality review system.

Our work was conducted at the Office of Audit in Kansas City, Missouri, from August through December 2011. The entities reviewed were ODAR, OQP, and OGC. We conducted our review in accordance with the Council of Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Administrative Law Judge Allowance Decision Rates

In Fiscal Year (FY) 2010, there were 1,256 administrative law judges (ALJ) who issued 200 or more dispositions.¹ Of these 1,256 ALJs, there were 259 ALJs with an allowance decision rate higher than 80 percent (see Chart C-1).² The average allowance decision rate in FY 2010 was 67 percent.

In FY 2011, there were 1,359 ALJs who issued 200 or more dispositions.³ Of these 1,359 ALJs, there were 181 ALJs with an allowance decision rate higher than 80 percent (see Chart C-1). The average allowance decision rate in FY 2011 was 62 percent.



¹ In FY 2010, there were 1,398 ALJs who issued dispositions, including allowance and denial decisions and dismissals of the hearing request. We limited our analysis to ALJs who issued 200 or more dispositions to ensure the ALJs processed a sufficient number for accurate analysis.

² We did not include dismissals in our calculation of allowance decision rates. As such, we calculated allowance decision rates as the percentage of allowances to all allowance and denial decisions.

³ In FY 2011, there were 1,515 ALJs who issued dispositions.

DISTRIBUTION SCHEDULE

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Chairman and Ranking Minority Member, Committee on the Budget, House of
Representatives

Chairman and Ranking Minority Member, Committee on Oversight and Government Reform

Chairman and Ranking Minority Member, Committee on Appropriations, House of
Representatives

Chairman and Ranking Minority, Subcommittee on Labor, Health and Human Services,
Education and Related Agencies, Committee on Appropriations, House of Representatives

Chairman and Ranking Minority Member, Committee on Appropriations, U.S. Senate

Chairman and Ranking Minority Member, Subcommittee on Labor, Health and Human
Services, Education and Related Agencies, Committee on Appropriations, U.S. Senate

Chairman and Ranking Minority Member, Committee on Finance

Chairman and Ranking Minority Member, Subcommittee on Social Security Pensions and
Family Policy

Chairman and Ranking Minority Member, Senate Special Committee on Aging

Social Security Advisory Board

Overview of the Office of the Inspector General

The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

Office of Investigations

OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Office of the Counsel to the Inspector General

OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

Office of External Relations

OER manages OIG's external and public affairs programs, and serves as the principal advisor on news releases and in providing information to the various news reporting services. OER develops OIG's media and public information policies, directs OIG's external and public affairs programs, and serves as the primary contact for those seeking information about OIG. OER prepares OIG publications, speeches, and presentations to internal and external organizations, and responds to Congressional correspondence.

Office of Technology and Resource Management

OTRM supports OIG by providing information management and systems security. OTRM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, OTRM is the focal point for OIG's strategic planning function, and the development and monitoring of performance measures. In addition, OTRM receives and assigns for action allegations of criminal and administrative violations of Social Security laws, identifies fugitives receiving benefit payments from SSA, and provides technological assistance to investigations.