



Highlights of [GAO-10-14](#), a report to congressional addressees

Why GAO Did This Study

The Administrative Procedure Act established unique conditions for administrative law judges' (ALJ) hiring and employment to protect their decisional independence. However, the potential for a wave of retirements and other events have focused attention on how ALJs are hired and managed. In response to the Consolidated Appropriations Act of 2008, this report examines, among other things, (1) the process for hiring ALJs and selected agencies' observations of the process; (2) ALJs' retirement eligibility and retirement issues; (3) and agency managers' reported ALJ performance management practices and stakeholders' views of these practices. To address these objectives GAO reviewed relevant statutes, regulations, Office of Personnel Management (OPM) retirement-related data, and other program-related documents, and interviewed officials from OPM, ALJ professional associations, and the two largest federal agencies employing ALJs—the Social Security Administration (SSA) and the Department of Health and Human Services (HHS).

What GAO Recommends

GAO is making recommendations to OPM regarding ALJ hiring and performance management. OPM agreed with the hiring-related recommendation, but disagreed with applying the term "performance management" to ALJs. GAO clarified the statutory basis for its recommendations and retained its recommendations.

[View GAO-10-14 or key components.](#)
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RESULTS-ORIENTED CULTURES

Office of Personnel Management Should Review Administrative Law Judge Program to Improve Hiring and Performance Management

What GAO Found

SSA and HHS officials responsible for hiring new ALJs reported they were satisfied with the quality of the judges hired from OPM's ALJ register of qualified candidates in 2008. Despite their satisfaction with these ALJ candidates, agency officials raised several issues regarding ALJ hiring and offered suggestions to improve the process, including (1) opening the OPM registry to accept new candidates more frequently, (2) giving greater consideration to agency-specific knowledge and experience, and (3) providing additional agency flexibility in meeting the procedural requirements associated with selecting from the three best qualified candidates and awarding veterans' preference. OPM officials reported they are working to address these issues and develop new approaches, where appropriate.

ALJ agencies could experience skill and competency gaps in the ALJ workforce in the near future. As of September 2008, the most currently available data, 51 percent of all ALJs were already eligible to retire. Moreover, by 2013, 78 percent of all ALJs employed as of September 2008 will be eligible to retire, while at 9 of the 25 ALJ agencies, all of the ALJs were eligible to retire. Retiring employees can leave gaps in institutional knowledge and technical skills due, in part, to the time required for new hires to become fully productive. To ensure agencies have talented staff to accomplish their missions, OPM requires agencies to make meaningful progress toward closing skills, knowledge, and competency gaps/deficiencies in all occupations in the agency. Despite the significant proportion of ALJs who were eligible to retire from 2008 to 2013, OPM officials reported that, as of October 2009, they had no record of any federal agency designation of ALJ skill gaps or competency issues. OPM, as ALJ program manager and lead agency in federal human capital management, could use its annual review of federal agencies' human capital accountability plans to assure that ALJ agencies appropriately identify and plan for future ALJ related skill and competency gaps.

To safeguard the independence of ALJ decisionmaking, ALJ agencies are prohibited from rating or tying an ALJ's compensation to their performance. Nevertheless, SSA and HHS officials reported using numerous other practices to manage ALJ performance. ALJ association officials were concerned some SSA performance management practices could affect ALJs' decisional independence. The use of competencies in ALJ performance management might help OPM and ALJ agencies define needed ALJ skills and behaviors, ensure objective and balanced performance discussions between managers and ALJs, and enhance consistency in ALJ performance, while not influencing ALJ compensation. Given its role as ALJ program manager and its expertise in performance management, OPM is well-positioned to lead a review of all agencies' ALJ-related management practices.