

*Audit Report*

Effects of the Senior Attorney  
Adjudicator Program on Hearing  
Workloads

A-12-13-23002 / June 2013

**OIG** Office of the Inspector General  
SOCIAL SECURITY ADMINISTRATION

**MEMORANDUM**

**Date:** June 28, 2013 **Refer To:**  
**To:** The Commissioner  
**From:** Inspector General  
**Subject:** Effects of the Senior Attorney Adjudicator Program on Hearing Workloads (A-12-13-23002)

The attached final report presents the results of our audit. Our objectives were to determine the effect the Senior Attorney Adjudicator Program has had on productivity and the timeliness of hearing-level workloads.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.



Patrick P. O'Carroll, Jr.

Attachment

# Effects of the Senior Attorney Adjudicator Program on Hearing Workloads

## A-12-13-23002



June 2013

Office of Audit Report Summary

### Objective

To determine the effect the Senior Attorney Adjudicator (SAA) Program has had on productivity and the timeliness of hearing-level workloads.

### Background

As part of the Social Security Administration's (SSA) appellate process, administrative law judges (ALJ) and SAs screen claimants' files to determine whether they can issue an on-the-record (OTR) decision. OTR decisions do not require a hearing because the documentary evidence alone supports a fully favorable decision.

SSA implemented the SAA Program in November 2007 to issue high quality, fully favorable OTR decisions while maintaining the current level of ALJ decision writing support. By having SAs issue fully favorable OTR decisions, SSA would be able to conserve ALJ resources for the more complex cases and cases that require a hearing. SSA originally included a provision to end the program on August 10, 2009, but it extended the Program twice through August 2013. As of the end of our audit period, SSA had not stated its intent to extend the program for another 2 years.

### Our Findings

The SAA Program has contributed to both an increase in adjudicative capacity and improved average processing time. However, the number of SAA OTRs peaked in FY 2010, and the decline continued through the first 5 months of FY 2013. Overall, SAA and ALJ OTRs have been decreasing since FY 2008, consistent with ODAR management's predictions. In addition, in an FY 2012 quality review, the Office of Quality Performance noticed a significant drop in its decisional agreement rate on SAA OTRs, though the Agency did not have sufficient data to determine whether the issue was specific to SAs or more broadly related to OTRs. Finally, hearing office managers were interested in additional training and greater duties for their SAs. Given the expected decline in SAA OTRs, which was the primary purpose of the SAA Program, SSA should decide before any future extension of the program, or expansion of the SAA corps, whether the program needs to be modified to address future hearing office workload needs.

### Our Recommendations

1. Evaluate the benefits of conducting focused quality reviews on ALJ and SAA OTR decisions using a consistent set of criteria so results are comparable. In this way, common OTR issues can be identified and appropriate training developed.
2. Ensure additional training is available to SAs in those areas identified in our report, including mentoring for attorneys and paralegal specialists, as appropriate.
3. Consider expanding SAs' duties to assist hearing offices with case processing, such as adjudicating non-disability cases and dismissals.
4. Align existing SAA positions with predicted workloads and related duties before making additional promotions to the SAA position.

The Agency agreed with the recommendations.

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## **ABBREVIATIONS**

AC	Appeals Council
ALJ	Administrative Law Judge
APT	Average Processing Time
CAR	Caseload Analysis Report
CPMS	Case Processing and Management System
DDS	Disability Determination Services
FY	Fiscal Year
HOD	Hearing Office Director
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
OPM	Office of Personnel Management
OQP	Office of Quality Performance
OTR	On-the-Record
POMS	Program Operations Manual System
POR	Probability of Reversal
SAA	Senior Attorney Adjudicator
SSA	Social Security Administration
VSU	Virtual Screening Unit

## OBJECTIVE

Our objective was to determine the effect the Senior Attorney Adjudicator (SAA) Program has had on productivity and the timeliness of hearing level workloads.

## BACKGROUND

As part of the Social Security Administration's (SSA) administrative adjudication system, administrative law judges (ALJ) and SAAs at locations throughout the United States issue decisions. SAAs can only issue an on-the-record (OTR) decision, which is a decision where no hearing was necessary because the documentary evidence alone supported a fully favorable decision.

SSA implemented the SAA Program in November 2007 to issue high-quality, fully favorable OTR decisions while maintaining the current level of ALJ decision writing support.<sup>1</sup> Having SAAs issue fully favorable OTR decisions allows SSA to conserve ALJ resources for cases that are more complex or require a hearing. SSA originally included a provision to end the SAA Program on August 10, 2009, but it extended the program twice through August 2013. As of the end of our audit period, SSA had not stated its intent to extend the program for 2 more years.

SAAs' additional adjudicatory capacity is especially important when the Agency is struggling to reduce its pending hearings backlog. In her March 14, 2013 testimony,<sup>2</sup> SSA's Acting Commissioner stated the Agency still suffers from a shortage of ALJs.<sup>3</sup>

While we have hired over 850 new ALJs since FY 2007, historically high ALJ attrition, and dramatic workload growth leaves us short on adjudicatory capacity. The Office of Personnel Management's ALJ register is virtually exhausted and we will end FY 2013 far short of our hiring target. . .we will not be able to make further progress on reducing our backlog until we get more ALJs. Hearing requests continue to come in at high levels in FY 2013.

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<sup>1</sup> See Appendix A for more information on SAA duties.

<sup>2</sup> *Addressing Social Security Administration's Management Challenges in a Fiscally Constrained Environment: Hearing Before the H. Committee on Appropriations, Subcommittee on Labor, Health, and Human Services, Education and Related Agencies*, 113<sup>th</sup> Cong. (March 14, 2013) (statement of Carolyn W. Colvin, Acting Commissioner of the Social Security Administration).

<sup>3</sup> In our February 2013 report, *Interagency Agreements with the Office of Personnel Management for Administrative Law Judge Services* (A-05-12-22144), we discussed SSA's concerns with the Office of Personnel and Management's (OPM) ALJ register and related processes to select new ALJs. In the report, we noted that the Office of Disability Adjudication and Review (ODAR) was seeking to hire 125 ALJs in September 2012, but 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.

As part of our methodology, we interviewed managers, ALJs, and staff from ODAR headquarters. We also discussed quality reviews of the SAA workload with managers in the Offices of Quality Performance (OQP) and Appellate Operations. We analyzed national and regional statistics to determine trends in SAA decisions. We interviewed managers, ALJs, SAAs, and staff at three hearing offices. We also sent electronic questionnaires to 20 hearing offices to learn more about their experiences with SAA duties.<sup>4</sup>

## RESULTS OF REVIEW

The SAA Program has contributed to hearing office productivity and timeliness since its introduction in FY 2008, though SAA OTR decisions peaked in FY 2010. SAA OTR decisions decreased by 31 percent in FY 2012 and continued dropping through the first 5 months of FY 2013. OTR decisions as a percent of total dispositions, whether decided by SAAs or ALJs, also decreased over the same 5-year period, from about 17 percent in FY 2008 to about 10 percent in FY 2012. An OQP quality review of FY 2012 SAA OTR decisions found a significant decrease in the decisional agreement rate from prior years. However, the Agency has not conducted similar quality reviews focused on ALJ OTR decisions, so we could not determine whether the quality issues related to SAAs specifically or OTRs in general. Finally, hearing office managers stated their SAAs needed additional training related to their current duties, including mentoring, writing, and screening. Hearing office managers also identified areas where SAAs could assist hearing offices as the OTR workload decreases, such as processing non-disability cases and dismissals.

### SAA Dispositions and the Effect on Hearing Workloads

We assessed the contribution of SAA OTR decisions, as well as OTR decisions in general, to the overall hearings workload at ODAR since FY 2008. In addition, we reviewed the impact of OTR decisions on hearing office timeliness during this same period.

#### *Trends in SAA OTR Decisions*

SAAs issued about 206,000 OTR decisions from FYs 2008 through 2012 (see Table 1), about 6 percent of the approximately 3.6 million dispositions<sup>5</sup> issued during this period. The number of SAA OTR decisions increased steadily during the Program's first 3 years, peaking at approximately 54,200 OTR decisions in FY 2010, and declined in subsequent years.<sup>6</sup> The

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<sup>4</sup> See Appendix B for our scope and methodology and Appendix C for our hearing office selection criteria.

<sup>5</sup> Dispositions are the sum of fully favorable, partially favorable, and unfavorable decisions, as well as dismissals.

<sup>6</sup> Besides implementing the SAA program, ODAR began an informal remand initiative designed to increase ODAR's adjudicatory capacity and reduce paper case backlogs by having DDS reexamine certain cases based on scoring profiles established by the OQP. SSA commented that the informal remand initiative might have removed a significant number of allowances from the hearing offices. We examined the informal remand workload and found that even if the informal remands had been processed as OTR decisions during FYs 2008 to 2012, total OTRs both numerically and as a percent of dispositions still would have decreased in recent years.

number of SAA OTR decisions dropped about 31 percent to approximately 37,400 OTRs in FY 2012. SAA OTR decisions continued decreasing in 2013 to about 8,100 in the first 5 months of FY 2013, approximately 9,000 fewer OTR decisions than were issued during the same period in FY 2012.<sup>7</sup>

**Table 1: Trends in SAA OTR Dispositions  
(FYs 2008 to 2012)**

FY	Total Dispositions <sup>1</sup>	SAA OTR Dispositions <sup>2</sup>	SAA OTR Dispositions as a Percent of Total Dispositions
2008	575,380	24,577	4.3%
2009	660,842	36,368	5.5%
2010	737,616	54,186	7.3%
2011	793,563	53,258	6.7%
2012	820,484	37,426	4.6%
<b>Total</b>	<b>3,587,885</b>	<b>205,815</b>	<b>5.7%</b>

**Notes:**

1. Information taken from SSA's Case Processing and Management System (CPMS) Caseload Analysis Report.
2. Information taken from SSA's CPMS closed claims database.

### *Trends in Total OTR Decisions*

OTR dispositions as a percent of total dispositions, whether decided by SAAs or ALJs, also decreased over the same 5-year period, from 17 percent in FY 2008 to 10 percent in FY 2012 (see Table 2). Moreover, the ALJ share of the OTR decisions declined during the 5-year period (see Figure 1), consistent with the SAAs' new adjudicative role and fulfilling the goal of conserving ALJ resources for the more complex cases and cases that require a hearing. In FY 2012, SAAs processed about 46 percent of all OTR decisions. SAAs obtain their OTR decisions through screening but do not handle cases assigned to an ALJ's docket. Since ALJs identify some OTR decisions as they work through their dockets, it is unlikely that SAAs would process 100 percent of the OTR decisions.

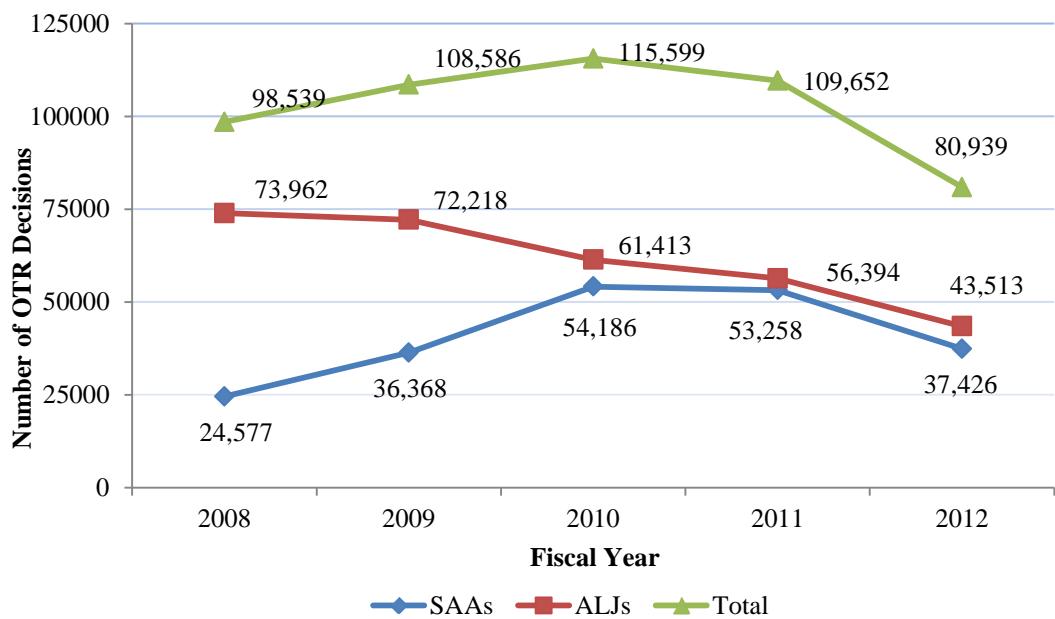
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<sup>7</sup> See Appendix D for more information on SSA OTR processing trends.

**Table 2: Trend in Total OTR Dispositions  
(FYs 2008 to 2012)**

Fiscal Year	Total Dispositions	OTR Dispositions (SAAs and ALJs)	OTR Dispositions as a Percent of Total Dispositions
2008	575,380	98,539	17.1%
2009	660,842	108,586	16.4%
2010	737,616	115,599	15.7%
2011	793,563	109,652	13.8%
2012	820,484	80,939	9.9%
<b>Total</b>	<b>3,587,885</b>	<b>513,315</b>	<b>14.3%</b>

**Figure 1: 5-Year Trend in OTR Decisions  
(FYs 2008 Through 2012)**



In our 2011 audit,<sup>8</sup> ODAR explained that it expected OTR decisions as a percent of the total workload to decrease as it continued processing the oldest cases in its backlog.<sup>9</sup> ODAR managers noted that as the Agency continued working down the backlog of aged cases and the average processing time (APT) approached the goal of 270 days,<sup>10</sup> SAAs would be screening more cases recently decided by the disability determination services (DDS).<sup>11</sup> In such cases, the hearing offices are more likely to be viewing the same evidence provided to the DDS since, unlike older cases, less time will have elapsed during which a medical condition may have worsened. As a result, while ODAR managers expected the SAA screening process to continue identifying claims that could be decided as OTR decisions, they also expected such cases to be less prevalent.

### *Effect on Hearings Timeliness*

SAA OTR decisions have contributed to a lower national APT for ODAR dispositions since FY 2008.<sup>12</sup> ODAR's national APT was 514 days in FY 2008, but it dropped to 353 days in FY 2012. While both SAA and ALJ OTR decisions lowered overall APT, SAA OTR decisions have taken less time to process than ALJ OTR decisions (see Figure 2) or an average of 121 days in FY 2012 versus 259 days for an ALJ OTR. National APT, as well as APT specific to SAA and ALJ OTR workloads, has remained steady over the last 2 FYs.

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<sup>8</sup> SSA Office of the Inspector General (OIG), *Senior Attorney Adjudicator Program* (A-12-10-11018), July 2011.

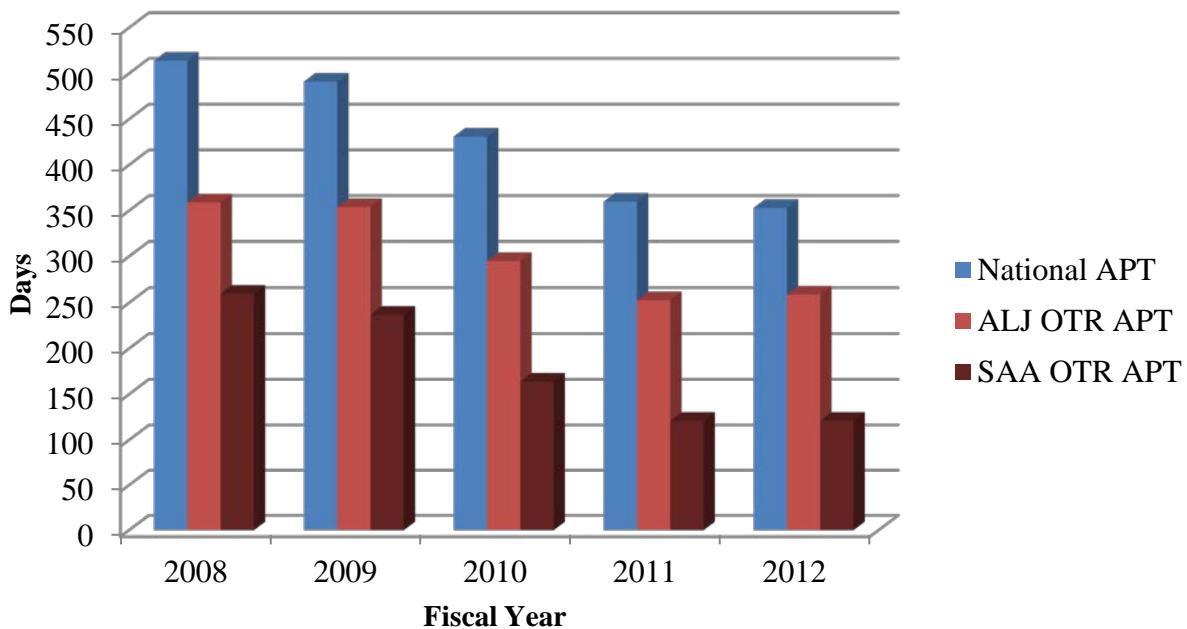
<sup>9</sup> As we noted in our September 2009 report, *Aged Claims at the Hearing Level*, (A-12-08-18071), ODAR began its *Aged Case* initiative in FY 2007, which helped reduce the number of aged cases in its backlog. ODAR began FY 2013 with 209,732 requests for hearing pending that would be 675 or more days old by the end of FY 2013. As of February 22, 2013, ODAR reported 66,277 such cases were still pending.

<sup>10</sup> We discuss APT in the next section.

<sup>11</sup> DDSs in each State or other responsible jurisdiction perform determinations under both Disability Insurance and Supplemental Security Income programs. Such determinations must be performed in accordance with Federal law and underlying regulations. In carrying out its obligation, each DDS is responsible for determining claimants' disabilities and ensuring adequate evidence is available to support its determinations.

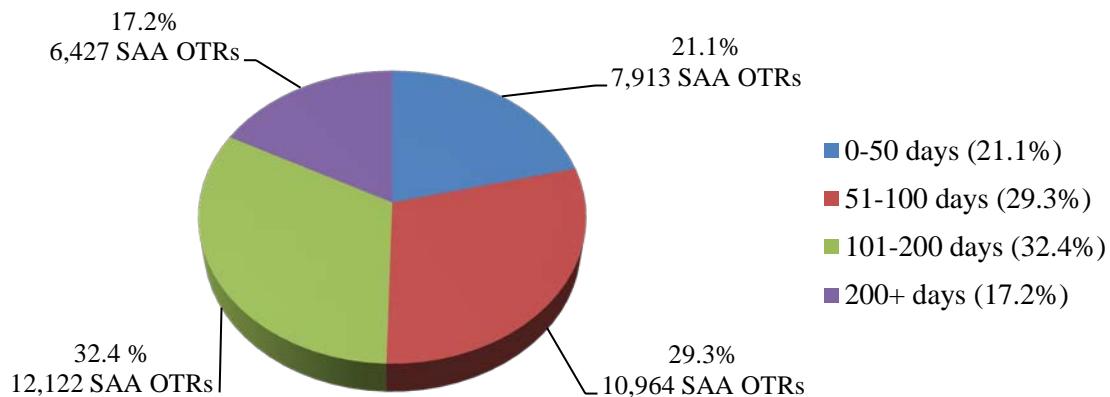
<sup>12</sup> National APT is a cumulative annual rate that includes the processing time for ALJ and SAA dispositions.

**Figure 2: 5-Year Trend in Average Processing Time for ODAR Dispositions**



In FY 2012, SAAs decided about 19,000 OTRs (50 percent) in 100 days or less (see Figure 3). About 17 percent of the SAA OTRs were over 200 days old when the OTR was issued.

**Figure 3: FY 2012 SAA OTR Processing Times per Case**



**Note:** The slices may not add to 100 percent due to rounding.

OTR decisions are processed more timely for a number of reasons.<sup>13</sup> First, under the SAA Program, many OTRs are identified when the case is screened<sup>14</sup> as it is being entered into the hearing office master docket system, and action can be taken immediately. Second, OTR decisions do not require a hearing, so the efforts and time spent preparing the case and scheduling the hearing can be avoided. Finally, the processing time related to SAA OTR decisions is often less than that of the ALJs because ALJs often encounter OTR cases within their docket as they work through the cases on a First-in, First-out basis.<sup>15</sup> A potential OTR case may be pending longer in the ALJ's docket than if it had been identified as an OTR case during the screening process.

## OQP Quality Review of SAA Decisions

OQP<sup>16</sup> completed an in-depth post-effectuation quality review assessing the accuracy of SAA decisions from the first 6 months of FY 2012 and found a significant decrease in the agreement rate from the prior year (see Table 3).<sup>17</sup> The agreement rate for SAA cases dropped from 96 percent in FY 2011 to 81 percent over this period. OQP reviewed a sample of 432 fully favorable SAA decisions from the first 6 months of FY 2012 and disagreed with 84 of the cases, stating the decisions lacked sufficient documentation to substantiate a fully favorable decision or the evidence was conflicting and needed clarification. The OQP report stated, "When we cite a disagreement, we are indicating that the SAA allowance is not supported by preponderance of the evidence, and at a minimum, a hearing is required. Our disagreement with the SAA allowance does not imply that the decision should have been a denial." OQP found no difference in OTR accuracy when comparing SAA's working with the Virtual Screening Unit (VSU) and those not participating with the VSU.<sup>18</sup>

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<sup>13</sup> Before this SAA Program, ALJs made all OTR decisions. In this review, we did not determine whether fewer OTR cases in an ALJ's mix of cases led to longer processing time on the remaining cases.

<sup>14</sup> In August 2009, ODAR issued guidance recommending OTR screening focus on (1) claimants age 50 and older and (2) targeted impairment codes.

<sup>15</sup> SAAs also use First-in, First-out in their screening of incoming cases.

<sup>16</sup> OQP conducts quality reviews, studies, and statistical analyses of SSA programs, business processes, and service delivery. They assess the accuracy of programmatic payments and transactions, and recommend corrective changes in programs, policies, procedures, or legislation.

<sup>17</sup> See SSA OQP, *Review of Senior Attorney Advisor Disability Decisions: Midyear 2012*, December 2012

<sup>18</sup> The VSU consists of up to 100 SAAs from around the country who work from their home offices and review screened cases from other parts of the country, particularly cases from backlogged hearing offices. We discuss the VSU workload in more detail in Appendix D.

**Table 3: OQP SAA OTR Decisional Agreement Rates  
(FYs 2010 to 2012)**

FY	Number of Cases Sampled	Agreement Rate
2010	987	94%
2011	960	96%
October 2011 to March 2012	432	81%

ODAR's Appeals Council (AC) also identified accuracy issues with the SAA decisions in its quality reviews. In our discussions with AC managers, we learned that while the AC had not conducted in-depth studies of SAA cases, in its random sample analysis of a small number of SAA OTR decisions, the AC agreed with 75 percent of the decisions in FY 2011 and 67 percent in FY 2012. The AC cautioned that the small samples did not allow it to make definitive statements on the quality of SAA decisions during these 2 years.<sup>19</sup>

Part of the difference in agreement rates between OQP and the AC quality reviews relate to different methodologies, including what counts as an "error." For instance, an OQP director explained that her team used a "preponderance of the evidence" standard for its reviews, whereas the AC used a "substantial evidence" standard that also counted issues related to onset dates,<sup>20</sup> abuse of discretion, and errors of law as "errors." Under OQP's SAA OTR review methodology, while the reviewers noted onset date issues separately in the report, they did not use them in the final agreement rate.<sup>21</sup>

OQP also used a "probability of reversal" (POR) rule<sup>22</sup> when reviewing the SAA cases, which it did not use for the ALJ cases. Under this rule, OQP will not return a reviewed case to the SAA

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<sup>19</sup> Regulations limited the way the AC collected cases for own-motion review. The AC implemented a random sample provision of the regulation and not a selective sample process. See SSA, Emergency Message 10090—*Case Processing Information on the Pre-effectuated Cases Sampled by the New ODAR Appeals Council Quality Review Branch—One-Time-Only Instructions* (December 20, 2010): The AC considers under own-motion review a random sample of unappealed favorable or partially favorable decisions in Certified Electronic Folder cases. The cases are limited to disability cases.

<sup>20</sup> The onset date refers to when a claimant was determined to be unable to work.

<sup>21</sup> The OQP report assessing the accuracy of SAA decisions from the first 6 months of FY 2012 identified 29 "onset issue only" cases.

<sup>22</sup> SSA POMS, GN 0440.110—*Defining the Probability of Reversal (POR) Rule and Classifying Documentation Deficiencies* (May 4, 2011): The POR rule is an administrative criterion used by the Federal quality reviewer to decide whether to return medical or vocational documentation deficiencies to the adjudicating component for correction. The purpose is to minimize unnecessary use of resources for development of medical or vocational evidence. Under the POR rule, (1) if a disability determination is not fully documented as required by SSA disability program policy, (2) but the evidence on file is sufficient for the Federal quality reviewer to judge that the missing evidence is unlikely to change the disability determination, or the length of the period of disability, the Federal quality reviewer classifies the discrepancy as a non-returnable "technical corrective action."

as a disagreement if the evidentiary deficiency in the file is unlikely to change the disability decision or period of disability. Cases reviewed under this rule are more likely to have a higher agreement rate.

When we asked OQP and AC managers whether they maintained similar agreement rates for OTRs issued by ALJs, we learned that neither component performed OTR-specific quality reviews on ALJ OTRs. As a result, we were unable to determine whether ALJ OTR decisions had a higher agreement rate. That said, we did see some anecdotal evidence of high disagreement rates related to ALJ OTRs reviewed as part of broader studies.<sup>23</sup>

In our July 2011 report on the SAA Program,<sup>24</sup> we noted that the Agency discontinued the previous SAA Program that operated from 1995 to 2000 because of a number of issues, including concerns about decisional accuracy. However, we believe it would be more helpful for Agency decision makers to learn more about the overall accuracy of OTRs, whether conducted by an ALJ or an SAA, before making any conclusions on the OQP and AC findings.

## **SAA Training and Additional Duties**

While we discussed a number of issues in our visits and questionnaires,<sup>25</sup> we focused on hearing office director (HOD) responses related to SSA training and duties.

### ***SAA Training Needs***

In our December 2012 audit that examined the training of group supervisors,<sup>26</sup> we learned that SSA did not have a national training program for SAAs. However, many SAAs had received 1 week of training in a national VSU program on how to screen cases and adjudicate fully favorable OTR decisions.<sup>27</sup> SAAs who are not actively adjudicating OTR cases, or did not volunteer to serve on a VSU detail, can also take the VSU training. The curriculum also involves the analysis and development of the legal issues in the disability claim, review of case law, circuit and district court cases, and other disability case screening procedures.

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<sup>23</sup> In the FY 2010 ALJ quality report, OQP reviewers agreed with 65 of the 84 OTR allowances (77 percent) among the 722 allowances reviewed. See SSA OQP, *Disability Case Review of Administrative Law Judge Hearing Decisions: Fiscal Year 2010*, January 2012.

<sup>24</sup> SSA OIG, *Senior Attorney Adjudicator Program* (A-12-10-11018), July 2011.

<sup>25</sup> See Appendix C for further discussion of our hearing office selection criteria.

<sup>26</sup> SSA OIG, *Training and Development of Hearing Office Group Supervisors* (A-12-12-11240), December 2012.

<sup>27</sup> According to ODAR, through February 2013, 498 of ODAR's nearly 700 SAAs attended the 1-week VSU training program.

When we asked the HODs in 20 hearing offices<sup>28</sup> what training they needed for their SAAs, 11 stated they would like their SAAs to get more training in mentoring less experienced attorneys and paralegal analysts. Another nine HODs thought their SAAs needed additional decision writing training for the more difficult decisions, while five thought additional screening training would be useful (see Table 4). Only two HODs stated additional training in adjudication was needed.

**Table 4: Additional SAA Training Requested by HODs  
(Based on 20 HOD Respondents)**

Training Areas	Number of Respondents Requesting Additional Training <sup>1</sup>	Percent of Total Respondents
Mentoring Less Experienced Attorneys and Paralegal Analysts	11	55%
Writing More Difficult Decisions	9	45%
Screening Cases	5	25%
Adjudicating OTR Decisions	2	10%
No Additional Training Is Necessary	6	30%

**Note 1:** Respondents could choose more than one category.

OQP informed us that it shared its SAA OTR errors with ODAR each month during the first 6 months of FY 2012. OQP issued its quality review of FY 2012 SAA OTRs in December 2012, after we conducted our hearing office questionnaire. OQP also noted that it shared the SAA OTR quality report findings with SAAs at a February 2013 VSU nation-wide session and ensured VSU trainers used the results of the information in formal training sessions. Moreover, ODAR managers informed us that the Office of the Chief ALJ shared OQP's findings with its regional offices so that this information could be provided to the SAAs.

### *SAA Duties in the Hearing Office*

Given the decreasing OTR workload, we asked the HODs to identify additional duties their SAAs would be able to perform to assist with ALJ workloads. Among the 20 HODs, 13 responded that they would like their SAAs to issue decisions for non-disability cases,<sup>29</sup> and 11 stated they would like their SAAs to adjudicate dismissals (see Table 5). Some other ideas

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<sup>28</sup> See Appendix E for further analysis of our questionnaire results.

<sup>29</sup> Non-disability workloads could include appeals related to retirement claims and SSA overpayment assessments.

included SAAs assisting with (1) res judicata decisions,<sup>30</sup> (2) pre-hearing conferences, and (3) review of “good-cause for untimely filing.”

**Table 5: Additional Adjudication Duties for SAAs**

Additional Duties	Number of Respondents Requesting Additional Duties <sup>1</sup>	Percent of Total Respondents
<b>Issue Decisions on Non-Disability Workloads</b>	13	65%
<b>Issuing Dismissals</b>	11	55%
<b>Other</b>	6	30%

**Note 1:** Respondents could choose more than one category

## CONCLUSIONS

The SAA Program has contributed to both an increase in adjudicative capacity and improved APT. However, the number of SAA OTRs peaked in FY 2010 and the decline continued through the first 5 months of FY 2013. Overall, SAA and ALJ OTRs have been decreasing since FY 2008, consistent with ODAR management’s predictions. In addition, in an FY 2012 review, OQP noticed a significant drop in its decisional agreement rate on SAA OTRs, though the Agency did not have sufficient data to determine whether the issue is specific to SAAs or more broadly related to OTRs. Finally, hearing office managers were interested in additional training and greater duties for their SAAs. Given the expected decline in SAA OTRs, which was the primary purpose of the SAA Program, SSA should decide before any future extension of the program, or expansion of the SAA corps, whether the program needs to be modified to address future hearing office workload needs.

## RECOMMENDATIONS

To improve the SAA program, we recommend SSA:

1. Evaluate the benefits of conducting focused quality reviews on ALJ and SAA OTR decisions using a consistent set of criteria so results are comparable. In this way, common OTR issues can be identified and appropriate training developed.
2. Ensure additional training is available to SAAs in those areas identified in our report, including mentoring for attorneys and paralegal specialists, as appropriate.

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<sup>30</sup> In civil law, res judicata is a rule that provides once an issue is decided it does not need to be decided again, provided the same person, same issue, and same facts are involved. Res judicata applies to adjudication involving post-adjudicative issues as well as issues involved with the filing of subsequent applications.

3. Consider expanding SAAs' duties to assist hearing offices with case processing, such as adjudicating non-disability cases and dismissals.
4. Align existing SAA positions with predicted workloads and related duties before making additional promotions to the SAA position.

## **AGENCY COMMENTS**

The Agency agreed with our recommendations (see Appendix F).

# *APPENDICES*

## **Appendix A – SENIOR ATTORNEY ADJUDICATOR DUTIES**

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The senior attorney adjudicator's (SAA) primary duties are as follows.

- Render professional legal advice and assistance to the administrative law judges (ALJ) in pre-hearing development and preparation of cases for hearing, post-hearing development, and other post-hearing actions.
- Analyze, research, and develop cases that are reviewed for ALJ decisions.
- Write comprehensive decisions in the most legally complex cases for ALJ signatures after an ALJ hearing. ALJs instruct SAAs on the content needed in each decision. SAAs are responsible for providing an adequate draft decision that (1) is factually correct; (2) complies with the drafting instructions; (3) is prepared in a timely manner; (4) is persuasive; (5) properly analyzes the legal issue of the claim; (6) has proper spelling, punctuation, and grammar; and (7) includes an adequate rationale for each finding. SAAs also write dismissal orders for Hearing Office Chief ALJs.
- Screen cases and adjudicate fully favorable on-the-record (OTR) decisions. SAAs may request additional evidence and prior files or call claimant representatives and request updated medical evidence. SAAs cannot request that case technicians pull the claim before examining the case for an OTR decision. SAAs prepare the fully favorable decisions and have the authority to sign the decision. When a favorable decision cannot be issued, SAAs return the case with a summary sheet explaining why the claims could not be paid OTR to the hearing office for normal processing.
- Mentor less experienced attorneys.

## **Appendix B – SCOPE AND METHODOLOGY**

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To accomplish our objective, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals and Litigation Law Manual.
- Reviewed prior reports and studies conducted by SSA's Office of the Inspector General and Office of Quality Performance (OQP).
- Analyzed Case Processing and Management System (CPMS) closed cases for Fiscal Years (FY) 2008 to 2012 to identify OTR decisions issued by SAAs and ALJs, as well as CPMS Caseload Analysis Reports (CAR). We also used the CPMS CAR to identify the first 5 months of SAA OTR decisions in FY 2013.
- Interviewed managers and staff at ODAR's headquarters to discuss the costs and benefits of the SAA initiative as well as plans for the program.
- Interviewed OQP and Appeals Council managers to learn more about their process for determining quality of SAA decisions.
- Interviewed hearing office managers at hearing offices in Richmond, Virginia; Charleston, West Virginia; and Little Rock, Arkansas, to discuss SAA productivity trends and learn about other factors that may affect ALJ and SAA OTR workloads.
- Sent a questionnaire to 20 hearing office directors to identify processing trends, SAA training needs, and other SAA duties (see Appendix C for more information about our hearing office selection criteria).
- Discussed our findings with ODAR staff and management.

We found that the CPMS data were sufficiently reliable to meet our objective. The entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted this performance audit from July 2012 through March 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and conduct the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Appendix C – HEARING OFFICE SELECTION CRITERIA**

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Using the Case Processing and Management System (CPMS) Fiscal Year (FY) 2011 closed claims database, we categorized all the Office of Disability Adjudication and Review's (ODAR) hearing offices by administrative law judge (ALJ) and senior attorney adjudicator (SAA) on-the-record (OTR) decision ratios.

We visited three hearing offices where we interviewed managers, ALJs, SAAs, and staff to learn more about SAAs' roles and responsibilities. We visited the Richmond, Virginia, Hearing Office where SAAs issued 79 percent of the OTR decisions in FY 2011. We also visited two other hearing offices where SAAs issued a smaller percentage of each hearing office's OTRs—Charleston, West Virginia, where SAAs issued 11 percent of the OTRs, and Little Rock, Arkansas, where SAAs issued 30 percent of the OTRs.

We sent an electronic questionnaire to two hearing office directors (HOD) in each of ODAR's 10 regions, focusing on 1 office with a high percent of SAA OTRs (see Table C-1 ) and 1 office with a high percent of ALJ OTRs (see Table C-2).

**Table C-1: Hearing Offices with High SAA OTR Rates in Each Region  
(FY 2011 CPMS Data)**

Region	Hearing Office
Boston	Springfield, Massachusetts
New York	Ponce, Puerto Rico
Philadelphia	Philadelphia, Pennsylvania
Atlanta	Atlanta (downtown), Georgia
Chicago	Lansing, Michigan
Dallas	Houston, Texas
Kansas City	West Des Moines, Iowa
Denver	Denver, Colorado
San Francisco	San Rafael, California
Seattle	Spokane, Washington

**Table C-2: Hearing Offices with High ALJ OTR Rates in Each Region  
(FY 2011 CPMS Data)**

Region	Hearing Office
Boston	Portland, Maine
New York	Jericho, New York
Philadelphia	Elkins Park, Pennsylvania
Atlanta	Orlando, Florida
Chicago	Detroit, Michigan
Dallas	Dallas (Down Town), Texas
Kansas City	St. Louis, Missouri
Denver	Salt Lake City, Utah
San Francisco	Honolulu, Hawaii
Seattle	Tacoma, Washington

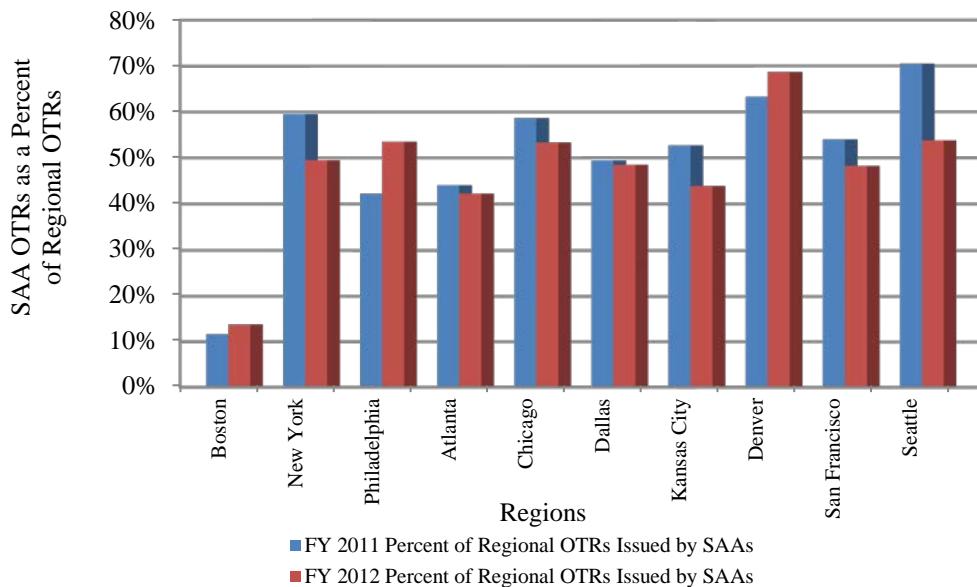
## Appendix D – TRENDS IN REGIONAL AND HEARING OFFICE SENIOR ATTORNEY ADJUDICATORS ON-THE-RECORD RATES

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In Fiscal Year (FY) 2011, six regions reported senior attorney adjudicators (SAA) had issued 50 percent or more of the on-the-record (OTR) decisions in their hearing offices, what we refer to as the SAA OTR rate (see Figure D–1). The Seattle Region had the highest SAA OTR rate at about 70 percent, whereas the Boston Region had the lowest SAA OTR rate at about 12 percent.

In FY 2012, the SAA OTR rate dropped in seven regions and increased in the Boston, Philadelphia, and Denver Regions. Only the Seattle, Denver, Chicago, and Philadelphia Regions had an SAA OTR rate over 50 percent. SAAs in the Denver Region issued about 70 percent of all the OTRs in the Region, the highest in the nation. As in FY 2012, SAAs in the Boston Region issued the lowest percent of OTRs (about 14 percent) among all the regions.

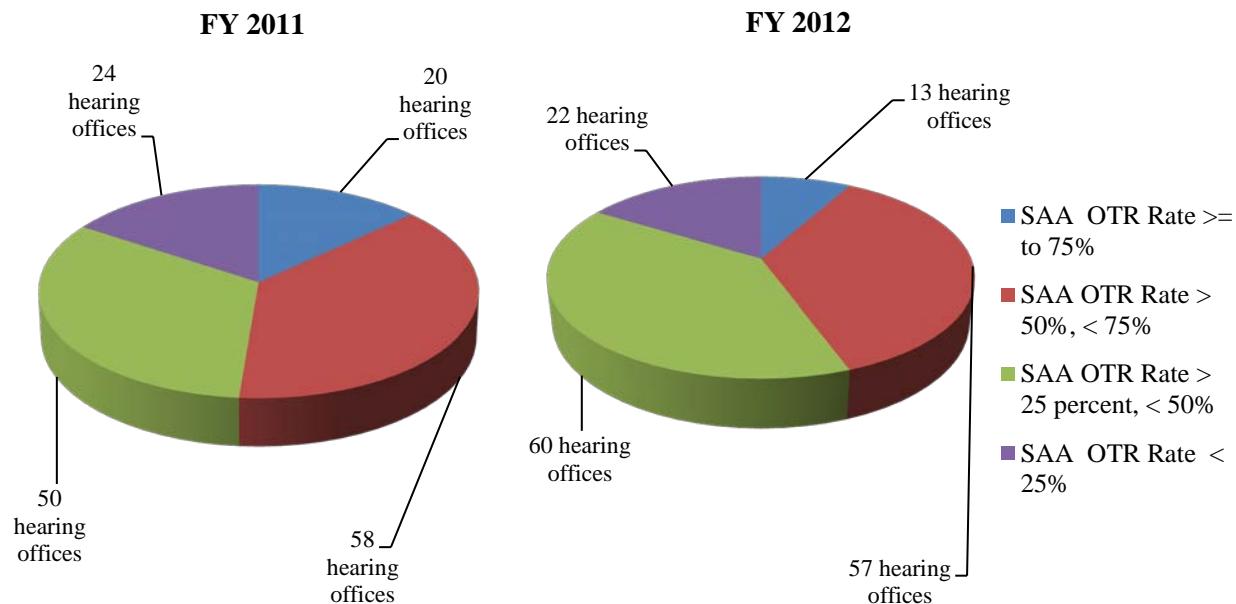
**Figure D–1: 2-Year Trend in Regional SAA OTR Rates (FYs 2011 and 2012)**



### 2-Year Trend in Hearing Office SAA OTR Rates

We found large variances in SAA OTR rates at the hearing offices in FY 2011 (see Figure D–2). Whereas 20 hearing offices had an SAA OTR rate greater than or equal to 75 percent in FY 2012, this number dropped to 13 hearing offices in FY 2012. The decline in OTR rates nationwide corresponds with our earlier analysis in the body of the report showing fewer SAA OTRs were issued nationally and regionally in FY 2012.

**Figure D–2: 2-Year Trend SAA OTR Rates at Hearing Offices**



## Virtual Screening Unit

As shown in Table D–1, the number of cases screened by SAAs declined between FYs 2011 and 2012, though Virtual Screening Unit (VSU) case screening increased.<sup>1</sup> Nonetheless, the number of OTRs resulting from the VSU screening declined as well from FY 2011 to FY 2012, indicating the higher volume of screening in FY 2012 could not identify the same proportion of OTRs compared to FY 2011. In both FYs 2011 and 2012, VSU screening identified a higher rate of OTRs among screened cases than the non-VSU SAAs in hearing offices. This may relate to the nature of the cases being screened. VSU SAAs focused on backlogged hearing offices, so the cases may be older than those being screened by non-VSU SAAs at each hearing office.

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<sup>1</sup> The VSU consists of up to 100 SAAs from around the country who work from their home offices and review screened cases from other parts of the country, particularly cases from backlogged hearing offices.

**Table D–1: Comparing SAA Screening and OTR Rates (Non-VSU versus VSU)**

FY	Non-VSU SAA Cases Screened <sup>1</sup>	Non-VSU SAA OTRs	Percent of Non-VSU SAA OTRs per Cases Screened	SAA VSU Cases Screened	SAA VSU OTRs	Percent of VSU SAA OTRs per Cases Screened
2011	187,019	41,492	22.2%	37,376	11,765	31.5%
2012	150,852	27,784	18.4%	40,649	9,638	23.7%

**Note 1:** Non-VSU screening and decisions include by SAAs, HODs, group supervisors, regional attorneys, writers, and other hearing office personnel.

## Appendix E – QUESTIONNAIRE TO SELECTED HEARING OFFICES

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We contacted hearing office directors in 20 hearing offices—2 per region—to identify on-the-record (OTR) processing trends, senior attorney adjudicator (SAA) training needs, and other SAA duties. We provide our results in Table E–1.

**Table E–1: Hearing Office Questionnaire Responses**

Question/Response Options	Number of Responses	Percent of Respondents
<b>What duties do your SAA's Perform? (More than one category can be selected)</b>		
Adjudicating OTR Decisions	20	100%
Case Screening	20	100%
Mentoring Less Experienced Attorney and Paralegal Analysts	18	90%
Writing More Difficult Decisions	17	85%
<b>How many SAAs employed at the hearing office?</b>		
1-3	7	35%
4-6	9	45%
7 or more	4	20%
<b>Who screens cases for possible OTR decisions? (More than one category can be selected)</b>		
ALJs	18	90%
Group Supervisors	12	60%
Master Docket Clerk	4	20%
SAAs	19	95%
Other	10	50%
<b>After screening, how are OTR cases rotated among ALJs? (More than one category can be selected)</b>		
Assigned by code	0	0%
Assigned randomly	3	15%
Assigned to a specific ALJ who agrees to do OTRs	6	30%
Cases are not assigned to ALJs	5	25%
Other	10	50%
<b>After screening, how are OTR cases rotated among SAAs? (More than one category can be selected)</b>		
Assigned by code	3	15%
Assigned randomly	7	35%
Assigned to a specific SAA who agrees to do OTRs	5	25%
Cases are not assigned to SAAs	0	0%
Other	9	45%

Question/Response Options	Number of Responses	Percent of Respondents
<b>How are OTR requests from claimant representatives assigned in the hearing office?</b> <b>(Assuming the cases have not been assigned to ALJ)</b> <b>(More than one category can be selected)</b>		
Assigned randomly to ALJs	2	10%
Assigned to specific ALJs	2	10%
Assigned randomly to SAAs	9	45%
Assigned to specific SAAs	4	20%
Other	9	45%
<b>Has the hearing office or regional management established productivity goals?</b> <b>(More than one category can be selected)</b>		
Yes	16	80%
No	5	25%
<b>In what way have the SAAs in your offices assisted with timely case processing?</b> <b>(More than one category can be selected)</b>		
To a great extent	7	35%
To a moderate extent	8	40%
To a small extent	2	10%
The initiative made no discernible change in office timeliness	1	5%
The initiative had a negative effect on office timeliness	1	5%
Other	4	20%
<b>In what way have the SAAs in your offices assisted with productivity?</b> <b>(More than one category can be selected)</b>		
To a great extent	5	25%
To a moderate extent	7	35%
To a small extent	6	30%
The initiative made no discernible change in office productivity	2	10%
The initiative had a negative effect on office productivity	1	5%
Other	3	15%

Question/Response Options	Number of Responses	Percent of Respondents
<b>Do you use any management information reports to show the effect of your SAAs on the workload in your hearing office?</b>		
Yes	19	95%
No	1	5%
<b>If regulations could be modified, what additional duties would you add to an SAA's responsibilities?</b> <b>(More than one category can be selected)</b>		
Processing/deciding non-disability workloads	13	65%
Processing/issuing dismissals	11	55%
No additional duties would be added	2	10%
Other	6	30%
<b>Have any of the current SAAs in the offices participated in the VSU?</b>		
Yes	16	80%
No	4	20%
<b>Check those areas where Headquarters or your region has provided training to your SAAs</b> <b>(More than one category can be selected)</b>		
Adjudicating OTR decisions	14	70%
Mentoring less experienced attorneys and paralegal analysts	1	5%
Screening cases	13	65%
Writing the more difficult decisions	2	10%
No training has been provided	2	10%
Other	5	25%
<b>Check those areas where you believe additional training for your SAAs would be beneficial</b> <b>(More than one category can be selected)</b>		
Adjudicating OTR decisions	2	10%
Mentoring less experienced attorneys and paralegal analysts	11	55%
Screening cases	5	25%
Writing the more difficult decisions	9	45%
No additional training is necessary	6	30%
Other	2	10%

## **Appendix F – AGENCY COMMENTS**

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### **SOCIAL SECURITY**

#### **MEMORANDUM**

**Date:** June 14, 2013

**Refer To:** S1J-3

**To:** Patrick P. O'Carroll, Jr.  
Inspector General

**From:** Katherine Thornton   
Deputy Chief of Staff

**Subject:** Office of the Inspector General Draft Report, "Effects of the Senior Attorney Adjudicator Program on Hearing Workloads" (A-12-13-23002)--INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,  
"EFFECTS OF THE SENIOR ATTORNEY ADJUDICATOR PROGRAM ON  
HEARING WORKLOADS" (A-12-13-23002)**

**Recommendation 1**

Evaluate the benefits of conducting focused quality reviews on ALJ and SAA OTR decisions using a consistent set of criteria so results are comparable. In this way, common OTR issues can be identified and appropriate training developed.

**Response**

We agree. By the end of October 2013, we plan to conduct a focused quality review using a consistent set of criteria to gain a better understanding of the issues identified with the administrative law judge (ALJ) on-the-record (OTR) decisions compared to senior attorney adjudicator (SAA) OTR decisions. The results of the review will assist us in determining if we need to develop any new ongoing ALJ and SAA OTR reviews or create additional specialized training for OTR decisions. We will also continue to evaluate a random sampling of hearing-level decisions, including ALJ OTR decisions, to identify any errors or corrective actions.

We are also planning in-line reviews of ALJ and SAA decisions, not limited to OTR decisions. These reviews will identify ALJ and SAA compliance with the Electronic Business Process and our policy. During the first phase, we will review ready-to-schedule claim files and SAA decisions in six regional offices. For the next phase, we will conduct reviews that cover all regional offices and will include ALJ draft decisions written by decision writers. We expect the review will identify errors and we will take any necessary actions. In addition, our review will highlight training needs for SAAs and decision writers to provide timely and legally sufficient decisions.

We will evaluate our recent quality review findings to determine if there is sufficient data to identify any other areas of concern in ALJ and SAA OTR decisions that will assist us to improve consistency and training.

**Recommendation 2**

Ensure additional training is available to SAAs in those areas identified in our report, including mentoring for attorneys and paralegal specialists, as appropriate.

**Response**

We agree. We will develop additional mentoring programs, training, and resources. In 2013, we started developing a decision writer (DW) mentoring program similar to our program for ALJs and senior case technicians. The DW Mentoring Guide includes expectations for management, the mentee, and the mentor.

We also developed tools and offer the following to assist SAAs write decisions that are difficult, screen cases, and adjudicate OTR decisions:

- Training materials are available for all writers, including DWs and SAAs on a SharePoint site. The training materials serve as a reference tool or as a self-study tool.
- Employees detailed to the Virtual Screening Unit attend a 5-day training session. Many SAAs have attended this training.
- The quarterly interactive video tele-training series, “ODAR Continuing Education Program,” provides supplemental training on substantial policy issues beyond the scope of initial programmatic training. These training sessions are mandatory for SAAs, ALJs, and DWs. They are available post broadcast in video-on-demand, with scripts and training materials available for reference at: <http://odar.ba.ssa.gov/hq-components/ocalj/chief-judge-resources/ocep/>.

We will instruct staff on how to access these and other related tools for SAA training.

### **Recommendation 3**

Consider expanding SAAs’ duties to assist hearing offices with case processing, such as adjudicating non-disability cases and dismissals.

### **Response**

We agree. However, expanding the SAAs’ duties as suggested will require regulatory changes.

### **Recommendation 4**

Align existing SAA positions with predicted workloads and related duties before making additional promotions to the SAA position.

### **Response**

We agree. We are actively assessing the best use of our SAAs. We plan to pilot a program in the first quarter of fiscal year 2014 to centrally select cases for SAA screening. As part of the pilot program, SAAs would only screen cases with the highest likelihood of allowance. Additionally, we would implement enhanced controls over the SAA screening process to ensure a proper mix of SAA screening time compared to other SAA duties.

## **Appendix G – MAJOR CONTRIBUTORS**

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Mary Ann Braycich, Senior Program Analyst

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